

# STATE OF TENNESSEE

## COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) 2020 PROGRAM MANUAL



WILLIAM R. SNODGRASS TENNESSEE TOWER  
312 ROSA L. PARKS AVENUE, 27TH FLOOR NASHVILLE, TENNESSEE 37243

[www.tn.gov/ecd/CDBG](http://www.tn.gov/ecd/CDBG)

## Table of Contents

INTRODUCTION .....	I
CHAPTER A: GRANT AWARD AND FINANCIAL MANAGEMENT .....	1
CHAPTER B: ENVIRONMENTAL REVIEW .....	10
CHAPTER C: FAIR HOUSING AND EQUAL OPPORTUNITY.....	24
CHAPTER D: ACQUISITION OF REAL PROPERTY.....	33
CHAPTER E: RELOCATION .....	42
CHAPTER F: PLANS AND SPECIFICATIONS .....	47
CHAPTER G: BIDDING AND PROCUREMENT .....	52
CHAPTER H: PRE-CONSTRUCTION AND CONSTRUCTION ACITIVITIES .....	61
CHAPTER I: LABOR COMPLIANCE .....	66
CHAPTER J: HOUSING REHABILITATION .....	77
CHAPTER K: GRANT ADMINISTRATION AND PROJECT MANAGEMENT.....	92
CHAPTER L: GRANT CLOSEOUT .....	96
EXHIBITS .....	101

## INTRODUCTION

**Welcome to the Community Development Block Grant (CDBG) program**, a federal program funded through the U.S. Department of Housing and Urban Development (HUD). The Tennessee Department of Economic and Community Development (TNECD) administers the program for the cities and counties in the state that are not entitlement communities, meaning communities that are not eligible for funding directly from HUD. This manual is designed to fully assist you complete every phase of implementation for the Tennessee Small Cities Community Development Block Grant program.

The Community Development Block Grant (CDBG) program is a flexible program that provides communities with resources to address a wide range of unique community development needs. Beginning in 1974, the CDBG program is one of the longest continuously run programs at HUD. The CDBG program provides annual grants on a formula basis to 1209 general units of local government and States. Funds are available for a wide range of activities including economic development, housing rehabilitation, water and sewer projects and projects that improve the health and safety of the community.

All HUD regulations as well as TNECD regulations apply to the grants. The federal and state regulations represent a set of standards which every applicant must follow to qualify for funding. These codified set of standards help to avoid conflicts of interest, waste, fraud and abuse in connection with utilization of public funds. Simultaneously, they mitigate negative environmental impacts and guarantee workers are paid a fair wage, while also guaranteeing equal benefit regardless of race, income, national origin or disability.

TNECD staff recognizes that the number of federal requirements may seem excessive. Please remember that we have made a concerted effort to keep them to a minimum and continue to emphasize administrative simplification and reduction of paperwork, alongside the provision of technical assistance to grantees.

### **Grantee Responsibilities**

It is the responsibility of the grantee to maintain compliance with: financial management, preparation of an environmental review record, labor standards, civil rights laws, acquisition and relocation laws (if applicable), audits, monitoring, and the closeout process. State requirements include the establishment of local project control, reporting, monitoring requirements, time frames, and contract execution.

### **Manual and Training Format**

The material is organized based on the chronological flow for the grantee. Instructions and forms are included. The handbook discusses execution of the contract. Actual pages of the contract are included as a reference so that you will know where to start. The manual also includes instructions on how to complete the other various requirements. The material is designed so that you can reference the information continuously throughout the life of the project. These resources will help remind you what, when and how to administer this grant successfully.

### **TNECD's Role**

TNECD has the responsibility for program development, threshold eligibility and compliance monitoring. The State desires to help each grantee comply with the varied program requirements so that auditors, the State and HUD are all satisfied that each project follows the regulations and statutes. Our procedures are designed to serve several purposes:

1. Allow the State to meet its responsibility for ensuring grantee compliance with all federal and state laws governing the use of CDBG funds.
2. Provide a management system to assist the grantee and state staff in performing the following:
  - a. Determine project
  - b. Request and release grant funds
  - c. Formally close the completed project
3. Make grantees aware of the entire range of documentation needed to ensure compliance and avoid potential audit or monitoring problems.

<b>NATIONAL OBJECTIVE</b>
---------------------------

All CDBG projects must meet one of three national objectives:

1. Activities benefiting low and moderate income persons (LMI),
2. Activities which aid in the prevention or elimination of slums or blight, or
3. Activities designed to meet community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available to meet such needs.

(24 C.F.R. § 570.483)

To qualify as principally benefiting LMI persons, the project must:

1. Be carried out in an LMI area or community and provide services for such persons,
2. Involve facilities designed for use predominately by such persons, or
3. Employ a majority of such persons.

For projects to qualify as aiding in the elimination or prevention of slums or blight, they must meet the following requirements:

1. The area must meet the definition of slum/blighted area under state or local law  
AND
2. Must meet A or B below:
  - A. At least 25% of properties throughout the area experience one or more of the following conditions
    - Physical deterioration of buildings or improvements;
    - Abandonment of properties;
    - Chronic high occupancy turnover rates or chronic high vacancy rates in commercial/industrial buildings;
    - Significant declines in property values or abnormally low property values relative to other areas in the community; or
    - Known or suspected environmental contamination
  - B. At least two public improvements (streets, sidewalks, water, sewer, etc.) in the area are in a general state of deterioration.

Projects qualify as meeting community development needs having a particular urgency if:

1. The activity alleviates existing conditions which pose a serious and immediate threat to the health or welfare of the community,
2. The activity addresses a problem which has occurred within the last 18 months, and
3. The recipient is unable to finance the activity on its own and other sources of funding are not available

Additionally, projects should not be submitted as urgent need if the activity addresses a problem of deferred maintenance or addresses a future problem. These types of projects do not meet the qualifications.

Refer to the TNECD website for the Imminent Threat application, <http://tn.gov/ecd/CDBG/> and contact TNECD if an urgent need arises which may qualify as an imminent threat project.

## **BENEFICIARIES**

If a project qualifies for funding under the low and moderate income (LMI) benefit national objective of the Housing and Community Development Act, documentation must be maintained to verify that at least 51 percent of the beneficiaries are low- and moderate-income persons. This requirement pertains to all benefits associated with the program, whether they are direct or indirect. Persons of low- and moderate-income are families or individuals whose incomes do not exceed 80% of the median income of the area benefitting from the project.

A direct/limited clientele benefit project is an activity which requires the beneficiary to apply or complete a personal record as an integral part of receiving the benefit of that activity. Some examples of direct benefit projects are:

1. Housing rehabilitation
2. Utility services provided by the program
3. Relocation
4. Program generated employment

An indirect/area benefit project is an activity that will benefit the entire community or neighborhood. Some examples of indirect benefits are:

1. Water or sewer plant or system improvements
2. Street paving
3. Water storage tank

Grantees must keep a record of the number of people who are receiving either direct or indirect benefits from the CDBG project. Each project will be monitored during the project and checked at closeout for beneficiaries and files will be inspected for proper documentation.

### **DIRECT BENEFICIARIES**

Documentation of any direct beneficiary is essential and should be kept in the project files. The application lays out the expected beneficiaries and the information contained therein is incorporated into the contract. The beneficiary information will document both the low- and moderate-income benefit and the equal opportunity provided to the protected classes of persons as described on the form. Each project will be monitored for benefits to low- and moderate-income persons and for equal opportunity as well as compliance with the application and contract.

Water and sewer grantees with hook-ups are required to document that the project will serve at least 51 percent low- and moderate-income persons. As hook-ups begin, documentation shall be kept on the family size and household income by using the target area survey forms and sign-up documentation to verify who received service. Target area survey forms should be signed by the beneficiary for proof of residence.

Housing rehabilitation beneficiaries are all required to be low- and moderate-income households. The target area survey forms are used for these beneficiaries too, and should be signed by the beneficiary. Refer to Chapter J: Housing for further requirements and guidance on housing activities.

### **INDIRECT BENEFICIARIES**

A random sampling of beneficiaries for indirect beneficiary projects such as projects that benefit an entire water or sewer district or fire protection service area, is required to show documentation of the LMI national objective. Target area surveys must be kept on file at the community, or census data provided by HUD or TNECD must be on file.

## **CONTRACTS**

The contract start date is typically the date of the announcement by the Governor's office, or award letter. However, choice-limiting work cannot begin on a project until the Environmental Review is complete and approved by TNECD. The only activities that can begin before the Environmental Review is cleared are administration, the process of completing the Environmental Review, and some engineering design work. The scope of the contract outlines the project and must be adhered to. Contracts are for a 3-year period, and extensions will only be given in extreme and unpredictable circumstances.

## **SCOPE CHANGES**

Projects are approved based upon the information in the application. Changes in the scope of the project must be approved by TNECD before any work is done. A scope change is defined as anything that expands or alters the original design, intent, cost, or area of service of a project. (Examples of scopes changes are: altering the size of a water tank from 300,000 gallon to 500,000 gallon, changing sewer treatment plant rehabilitation to inflow/infiltration work, reducing the number of housing rehabilitations, etc.).

Additionally, if the combined change orders for the project total 25% or more of the cost of construction, the result will be a scope change, and the project or additional work may have to be rebid.

A formal, written request from the grantee must be submitted to TNECD for all scope changes. The request should include a map showing the change, a summary of the households to be served, including LMI households, a cost estimate with justification from the engineer explaining why the change is necessary, and information detailing how the changes will be funded. TNECD will review the request, and if it determines the changed project would have been funded under the application criteria, the change will likely be approved. Grantees must never proceed with the requested changes until written approval from TNECD is received.

Scope changes may require an additional environmental review or an addendum to the environmental review as well as the possibility of a contract amendment. When communities request a scope change, the contract should be referenced to see if an amendment is required. If required, work cannot begin until the amendment is approved.

Major reductions in the scope of the proposed work can result in adverse State action: grant reduction or termination or a finding of ineligibility for subsequent funding.

## CHANGE ORDERS

Change orders are alterations from previously approved documents that require a modification (an increase or decrease) in project cost, engineering charges, quantity, or schedule. For example, if the number of linear feet installed on a water line is greater or less than estimated, a change order is needed to adjust the quantities. If an unanticipated increase or decrease in cost occurs, this would result in a change order.

Change orders should be used sparingly and only when necessary. Additionally, changes cannot increase the original contract amount for the project. The project must remain within the contracted amount or additional non-CDBG funds should be allocated to the project.

Change orders with justification for the needed change by the engineer must be submitted to TNECD for approval. TNECD prefers that change orders be submitted by the grant administrator but will accept them from the grantee or engineer. If submitted by the grantee or engineer, ensure the administrator aware of the changes being requested and the documentation presented. Approval must be granted by TNECD prior to work being done. A budget revision must be submitted to the TNECD fiscal office after the change order is approved. If a change order results in a scope change, the required scope change documentation must be submitted with the change order documentation.

Final adjusting change orders are submitted near the completion of a project to reconcile final quantities installed. If the changes in quantities are not significant and there are no new items, this change order does not need to be approved by TNECD before the work is completed. If a grantee plans to request payment before completion of a project, a change order approving any increase in installed quantities must be approved or the request cannot be paid.

Change orders that require more than one funding agency's approval must be approved by all agencies before the work can begin. It is important to remember that if CDBG funds are any part of a project, then CDBG rules and regulations apply to the entire project. Therefore, change orders for any part of a project, even a part not funded by CDBG must be approved by TNECD.

## FORCE ACCOUNT

Force account labor occurs when municipal or county employee's complete construction work rather than the work being completed by a contractor. For force account labor to be approved, the municipality must own the equipment and the municipality's forces must do the work. For information and details on using force account labor refer to "Chapter I: Labor".

**NOTE:** *In order to perform force account work, the grant recipient must own the equipment, use city or county forces, and obtain State approval by submitting the following information.*

1. Names and engineering qualifications of personnel performing the work and their capabilities for design, supervision, planning, inspection, testing, etc. as applicable.
2. Details of experience with projects of like or similar nature.
3. Information on workload (as it may affect capacity to do the work within timeframe or work scheduled).
4. Justification for doing the work by force account rather than by contract.

5. A complete breakdown showing:
  - a. the number of work hours and cost per hour for each category of labor, and
  - b. a list of non-salary costs such as materials, supplies, equipment, etc.
6. Certification from the above-mentioned personnel's supervisor that they are full time city/county employees and have not been hired just for this project.
7. Certification that the equipment to be used is owned by the county/city and is not rental equipment.
8. Project Engineer certification of force account utilization. (signature on force account request).

## **BUDGET**

CDBG grants fund a specific activity, and each grant is to be used solely for that purpose. If a project exceeds the original contract budget, the grantee is responsible for the difference. Please refer to the "Chapter G: Bidding and Procurement" for developing procedures for high bids. If less is spent than originally anticipated in the project budget, TNECD will reduce the grant proportionally.

The budget is approved during the application process and included in the contract. Any changes to the budget must be approved by TNECD's fiscal office.

## **RECORDKEEPING/ADMINISTRATION**

The grantee is ultimately responsible for the project progress and contract compliance. Coordination is critical when using a consultant or development district to administer the project. The roles and responsibilities of each party should be determined early in the grant process to ensure all areas of the grant are properly addressed. The community must be able to fully document compliance with all applicable regulations of the CDBG program. CDBG records must be maintained for a period of not less than five years after the closeout of the grant, and should provide a historical account of the project for examination and review by the State, HUD, auditors, and local staff. Grantees must have one complete set of files **on site** at the city or county. A file checklist, included in this introduction chapter, will help ensure the grantee has all needed files in place.

TNECD exclusively communicates via electronic documentation with grantees. All documents including, but not limited to, award letters, approval letters, and contract documents will only be distributed electronically. Equally TNECD will only accept documentation related to CDBGs electronically, including plans and specifications, recommendation for bid awards, environmental review documents, etc. Documents and records may be stored electronically by the grantee if they are regularly backed up and are readily available to TNECD staff or any other auditors for review.

## **PERFORMANCE MEASURES**

Grantees are required to report performance measures on all projects. These performance measures will take the form of outputs or outcomes. Outputs are the quantitative measures of the project, i.e. linear feet of water line installed, number of ambulances purchased, etc. Outcomes are the qualitative measures of the project, i.e. number of people will clean drinking water, reduction in water loss, reduction in emergency response time, etc. Outcomes will often be connected to and the result of an output. For instance, a grantee may list an output of purchase 2 new ambulances and an outcome of 10% reduction in average emergency response time.

The performance measures for each grant are set forth in the application, and if awarded, the grantee will report on these set of measures with each annual report and at closeout.

## CLOSEOUT

The closeout report is submitted to TNECD at the end of the grant and provides a summary of the entire grant. This report will provide a description how the completed project compares to the project as proposed in the application. Other data, such as the amount and source of leveraged funding, wage compliance, and how any findings and concerns were addressed and resolved, etc. will be captured at this time. Refer to “Chapter L: Grant Closeout” for more detailed information and forms to complete the closeout package at the end of the project

## ADDITIONAL RESOURCES

Below are additional resources (regulations, laws, etc.) that apply to the Tennessee Small Cities CDBG program. Each grantee is responsible for familiarizing themselves with the rules and regulations guiding the CDBG program; many of these are listed in the Statement of Assurances document included as a part of the contract.

- U.S. Code Title 42 – The Public Health and Welfare, Ch. 69 (42 USC §§ 5301 – 5321)  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/communitydevelopment/rulesandregs/laws](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/rulesandregs/laws)
- Code of Federal Regulations Title 24: Housing and Urban Development, Part 570: Community Development Block Grants (24 C.F.R. Part 570)
- <http://www.eC.F.R..gov/cgi-bin/text-idx?rgn=div5;node=24:3.1.1.3.4>
- HUD Exchange website <https://www.hudexchange.info/cdbg-state/>

**CHAPTER A:  
GRANT AWARD AND  
FINANCIAL MANAGEMENT**

## **A.1 CONTRACT & FINANCIAL OVERVIEW**

The contract between the community and the State is an essential document throughout the life of the project. It identifies the description of the activities funded, budgeted costs (total and CDBG), general terms and conditions, and any special conditions which must be met before the State will release funds.

CDBG funds will be spent as a percentage of total costs according to the line item budget for all contracts with funding from other sources. The match rate that is required for all communities is determined by the community's ability to pay percentage. TNECD distributes the ability to pay information, and it is available on the CDBG website.

If CDBG funds are any part of a project, then CDBG rules and regulations apply to the entire project.

## **A.2 PREPARATION OF ACH (AUTOMATED CLEARING HOUSE) CREDITS FORM AND AUTHORIZED SIGNATURE FORMS;**

Four forms must be completed before CDBG funds can be requested and should be completed when the contract is submitted. These forms are the "ACH (Automated Clearing House) Credits Form" (Exhibit A-1), the W-9 form (Exhibit A-2), the Grant Pre-Reimbursement Forms (Exhibit A-3), and the "Signature Authorization Form" (Exhibit A-4) these forms must be completed carefully.

The Grant Pre-Reimbursement Form allows the State to know whether an organization has received funds from the State before.

The "ACH (Automated Clearing House) Credits Form" indicates to the State where to send the transfer of CDBG funds. CDBG deposits may not draw interest. If interest is accumulated, TNECD must be notified so the interest can be collected by the State for return to the U.S. Treasury. Cities have the option of establishing a separate bank account for CDBG funds, but counties must deposit funds into the Trustee's account.

The "Signature Authorization Form" designates who is permitted to sign the community's "Request for Payment."

If these forms need to be changed (e.g., using a different financial institution or staff members change), simply provide the State with copies of revised forms with original signatures.

## **A.3 REQUESTS FOR PAYMENT**

The "Final Notice of Removal of Contract Conditions" (Exhibit A-8) must be received before any CDBG funds may be drawn. After that time, TNECD expects grantees to request funds once per month. Funds are requested by using the invoice template that will be sent to the grantee upon execution of the contract and after any subsequent revisions to the grant budget. This form must be completely and accurately filled in or it cannot be processed. Incomplete forms and documentation slow down the process for reimbursement and cause more work for all involved. Questions about the form should be directed to a staff person in the financial section of TNECD. Administrators who are responsible for submitting payment requests should submit them to TNECD as soon as possible once the requests are received.

If the request is in order and can be approved, the funds will be transferred to the designated bank account through the Automated Clearing House. If the request is not in order, TNECD will contact the community/administrator to correct the deficiencies.

Drawdowns should be made only in amounts necessary to meet current disbursement needs (defined as the funds that will be expended in three days). This "three day rule" means that all drawdowns must be expended within three working days of the date of deposit. For example, if a CDBG check is deposited on Friday, checks totaling the entire amount must be written by close of business Wednesday. In order to disburse this money promptly, grantees should arrange for their financial institution to notify them the day a CDBG deposit is received. If money is remaining in the account after three working days, these funds must be returned to the State or an additional "Request for Payment" must be submitted, the total requested amount of which is equal to the total billing for this request minus the amount of the remaining funds. The easiest way to meet this requirement is to use local government funds to pay CDBG invoices; then reimburse the community for these payments with CDBG funds. If the community's cash flow will not permit this, inform contractors of the time period between receipt of their invoice and payment.

The "Invoice Request for Payment" should be prepared and submitted to [ecd.invoices@tn.gov](mailto:ecd.invoices@tn.gov) . Retain a copy for the grantee records.

Section A of the request provides general information needed in processing the request. Section B provides information about the status of the funds on hand. Section C provides a detail of actual costs by line item. Detailed support for each line item (actual invoices) must be attached. Exhibit A-5 is an example of the Request for Payment template used to submit for reimbursement of funds.

Each invoice template received will contain instructions detailing how to complete the form and what documentation should be provided. Below is a brief summary of acceptable documentation to back up costs associated with specific line items.

*Construction*

This line item is documented with an invoice detailing description, quantity, unit price and total amount for each of the items as approved in the construction contract. The engineer must certify that the work has been completed. Five percent (5%) retainage must be deducted from the contractor's invoice. When the grantee is ready to submit the final invoice, the "Notice of Completion" for the project should be publicly advertised. This notice should request anyone having a claim against the project to notify the City or County. If no claims are made within ten days from the date of advertisement, a "Release of Liens" from the contractor may be accepted and submitted to the State with the contractor's final pay estimate so that final retainage may be released. A copy of the advertisement of the "Notice of Completion" should also accompany the final "Request for Payment."

*Construction Inspection,  
Engineering, Design,  
Other Engineering  
Services*

This line item is documented with an invoice from the firm stating specific tasks completed, the date of these services, and a detail of their costs. These items should be billed on a cost plus fixed fee or lump sum basis. Payment of engineering design costs cannot exceed seventy-five percent (75%) of the budgeted amount until plans and specifications have been approved by TNECD.

<i>Legal Services</i>	This line item is documented with an invoice stating specifically the service performed and the date of service.
<i>Appraisals</i>	This line item is documented with an invoice from the appraiser stating the date the appraisal was done and the address of and/or a description of the appraised property.
<i>Acquisition</i>	This line item is documented with a written "Offer to Purchase" (Located in the "Acquisition Chapter") accepted by the property owner.
<i>Relocation</i>	<p><b>Voluntary:</b> This line item is documented with the applicable claim form(s) (Located in the Relocation Chapter).</p> <p>All <u>new</u> housing is billed to the Relocation line item.</p> <p><b>Involuntary:</b> This line item is documented with the applicable claim form(s).</p>
<i>Housing Rehabilitation</i>	<p>If an escrow account is to be used, this line item is documented with the following (Periodic reports will be required to document disbursement of escrowed funds.):</p> <ul style="list-style-type: none"> <li>- Bid tabulation summary</li> <li>- Copy of housing rehabilitation contract</li> <li>- Copy of City's estimate</li> <li>- Certification of escrow by appropriate local official or administrator (one needed for each contract to be escrowed)</li> <li>- If the rehabilitation funds are not escrowed (requires TNECD approval), this line item is documented with the following.</li> <li>- Bid tabulation summary</li> <li>- Copy of housing rehabilitation contract</li> <li>- Copy of City's estimate</li> <li>- "Certificate of Completion and Final Inspection" (Located in the "Housing Chapter")</li> </ul> <p>New construction is not billed to housing rehabilitation</p>
<b>**NOTE:**</b>	<i>Whether funds are escrowed or not, payment requests for change orders must include a copy of that change order that has been approved by the homeowner, contractor and a local official.</i>
<i>Housing Inspection</i>	This line item is documented with an invoice detailing the name of the homeowner and address of the property that was inspected. Costs should be billed on a per unit basis.
<i>Clearance</i>	This line item is documented with an invoice describing the work performed and the location of the property cleared.

<i>Capital Purchase</i>	This line item is documented with an invoice for the purchase of equipment or supplies. Capital purchases are considered to be any single item that equals at least \$5,000 in price.
<i>Professional Fee</i>	Detail of administrative costs must be included in "Section D." Salaries being charged to the grant must be listed with inclusive payroll dates, name of employee, percentage of time spent on CDBG and amount of each salary charged. Time and effort reports should be maintained at the locality to support these costs. In addition, any salaries or consultant billings must be further documented by task performed. A suggested format is included as Exhibit A-6. Claims for time spent on administrative activities will not be paid without this documentation.
	All travel and per diem costs to be charged to CDBG must conform to the Comprehensive Travel Regulations of the State of Tennessee. If a copy of the current travel regulations is needed, one may be obtained from TNECD.
<i>Tap Fees</i>	Documentation must be submitted to show what population is benefitting from the service. This can include target area surveys, household income verification form or utility sign up form.
<i>Environmental Review</i>	Invoice from the environmental review preparer.

<b>A.4 ESTABLISHING PROCEDURES FOR FINANCIAL MANAGEMENT OF CONTRACT FUNDS</b>
---

**A.4.a Overview**

The following accounting procedures should be followed in order to comply with State and Federal requirements under the CDBG program. The accounting systems described provide a means for tracking and reporting CDBG funds that flow into and out of the community, funds that are controlled by the community and against which claims will be made. The established accounting procedures should systematize the collection, processing, evaluation, and reporting of these funds.

CDBG project funds should be accounted for separately within a community's accounting system. This separate fund should be established similar to a street or water fund.

**A.4.b Accounting Records**

Management systems are required to provide the following.

- Accurate, current and complete disclosure of the financial results of each grant program.
- Records that adequately identify the source and application of funds for grant-supported activities.
- Effective control over and accountability for all funds, property, and other assets.
- Comparison of actual outlays with budget amounts for each grant.
- Accounting records that are supported by source documentation, such as invoices, bills of lading, purchase vouchers and payrolls.
- A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

The following accounting records are suggested to fulfill these requirements.

<i>Cash Receipts Journal</i>	All receipts of cash which are deposited into the CDBG fund are recorded initially in this journal.
<i>Cash Disbursements Journal</i>	All expenditures are recorded in this journal. In order to facilitate completion of the "Request for Payment," accounts for all line item expenditures need to be established here (i.e., separate columns for recording of administration costs, construction costs, etc.)
<i>Journal Entry Voucher</i>	The accounts to be debited and credited, together with a description of the transaction are recorded in this journal. Accrual information may be recorded through the use of a journal entry voucher.
<i>General Ledger</i>	The status of all accounts is summarized in this book of final entry. All journal accounts should be posted monthly to the general ledger.
<i>Fixed Asset Ledger</i>	All fixed assets acquired using CDBG funds are recorded in this ledger. Include the date of purchase, cost of item, etc.

Additionally, the following general guidelines are presented to assist communities in establishing procedures for financial management:

- In all financial recordkeeping, grantees should account for administrative costs separately.
- Grantees should never make payment without invoices and vouchers physically in hand. All vouchers/invoices should be on vendor letterhead.
- All employees paid in whole or in part from CDBG funds should prepare a timesheet indicating the hours worked on CDBG projects for each pay period. Based on these time-sheets and the hourly payroll costs for each employee, a distribution of payroll charges should be prepared and placed in the appropriate files.
- All financial records are to be retained for a period of five years after closeout with access guaranteed to State, HUD or Treasury officials or their representatives.

Accounting requirements for local government are established by the Comptroller of the Treasury, State of Tennessee. Project Representatives can assist communities with any questions relating to their system, CDBG requirements and State accounting requirements by referring them to the proper source of information.

As of December 26, 2014 the Office of Management and Budget (OMB) has consolidated all previous financial circulars (i.e. A-87, A-102, A-110, etc.) into one “super-circular”, 2 C.F.R. § 200 entitled “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).”

#### **A.4.c Allowable Costs**

2 C.F.R. § 200 addresses allowable costs for federal grants. Please reference the provisions “Subpart E-Cost Principles“ for allowable and unallowable costs. Generally, an allowable cost must be necessary and reasonable for proper and efficient administration of a grant program.

#### **A.4.d Unallowable Costs**

The following costs are specifically unallowable under the provisions of 2 C.F.R. § 200 Subpart E.

<i>Bad Debts</i>	Any losses arising from uncollectible accounts and other claims, and related costs.
<i>Contingencies</i>	Contributions to a contingency reserve or any similar provision for unforeseen events.
<i>Contributions and Donations</i>	Costs related to contributions and donations including (but not exhaustive) cash, property, services, are unallowable.
<i>Entertainment</i>	Costs of amusements, social activities, and incidental costs relating thereto (i.e., meals, beverages, lodgings, rentals, transportation, and gratuities).
<i>Fines and Penalties</i>	Costs resulting from violation of or failure to comply with Federal, State and local laws and regulations.
<i>Interest and Other Financial Costs</i>	Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, except when authorized by Federal legislation.
<i>Legislative Expenses</i>	Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction.
<i>Underrecovery of Costs Under Grant Agreements</i>	Any excess cost over the Federal contribution under the grant agreement, is unallowable under other grant agreements.

#### **A.4.e Costs Allowable with the Approval of the Grantor Agency**

The following costs are allowable only with TNECD approval:

- Automatic Data Processing
- Building Space and Related Facilities
- Capital Expenditures
- Insurance and Indemnification
- Management Studies
- Professional Services
- Proposal Costs
- Pre agreement Costs

### **A.5 PROPERTY MANAGEMENT STANDARDS**

Unless acquisition of property is an approved part of the State contract, prior approval must be obtained from the State for any real or personal property to be acquired using grant funds.

## A.6 PROGRAM INCOME

Program income includes, but is not limited to, the following:

- Proportional shares of proceeds of the sale of real property to the extent to which the original purchase was funded with CDBG monies.
- Payments of principal and/or interest on loans made from CDBG funds.
- Interest earned from investment of program income.

Program income must be returned to the State unless approval is obtained to retain it at the local level.

Any program income which the State has approved to be retained at the local level must be accounted for and, to the maximum feasible extent, disbursed prior to requesting additional CDBG funds from the State. Any program income generated prior to closeout of the project must be used following all Federal requirements which apply to CDBG funds.

## A.7 BUDGET REVISIONS AND PROGRAM AMENDMENTS

If the line item budget needs a revision, a letter detailing the reason for any changes and a copy of the revised line item budget (Exhibit A-7) must be submitted to TNECD. If contingency funds are to be used, a budget revision is required.

**NOTE:** *The contingency funds line item must always match the grant rate. If some of the contingency funds are moved to a different line item, the remaining contingency funds in the CDBG costs column and other columns should match the grant rate for the project.*

For all construction projects, once a bid has been accepted a budget revision should be submitted to adjust the construction budget to actual dollars required. A copy of the bid tabulation should be submitted with this budget revision. If the lowest bid exceeds the amount available in the budget for construction, a revised total cost budget must be submitted with a verification of the source of the additional funds.

If there are any change orders on construction contracts, these must be approved by TNECD prior to work being done. If necessary, a budget revision must be approved after the change order is approved.

In the case of projects funded jointly with funds from the Department of Environment and Conservation, change orders should be submitted to them for their approval. Once their approval is received, a copy should be sent to TNECD. If the change order involves any change in scope, however, your Project Representative should be contacted prior to submitting it to Environment and Conservation.

**NOTE:** *Any change in the scope of the project requires prior written approval by the State. See the Introduction Chapter for a more detailed description of change orders and scope changes. You are strongly urged to contact your Project Representative if problems emerge which might lead to program modifications.*

## **A.8 GRANT AWARD & FINANCIAL MANAGEMENT EXHIBIT LIST**

- A-1 ACH (AUTOMATED CLEARING HOUSE) CREDITS
- A-2 FORM W-9
- A-3 GRANT PRE-REIMBURSEMENT FORMS
- A-4 SIGNATURE AUTHORIZATION FORM
- A-5 SAMPLE REQUEST FOR PAYMENT
- A-6 DETAIL OF ADMINISTRATIVE COSTS
- A-7 BUDGET REVISION TEMPLATE
- A-8 FINAL NOTICE OF REMOVAL OF CONTRACT CONDITIONS

# CHAPTER B:

## ENVIRONMENTAL REVIEW

## B.1 GLOSSARY

**Categorically Excluded Not Subject To Federal Environmental Regulations (CENST) - TN CDBG does not use this category, currently.**

*Categorically Excluded Not Subject To Federal environmental regulations* projects are activities that the Department of Housing and Urban Development has determined will not alter any conditions that would require a review or compliance under the environmental Federal laws and authorities. These projects are still required to comply with other Federal requirements.

**Categorically Excluded Subject to Federal Environmental Regulations (CES)**

*Categorically Excluded Subject to Federal environmental regulations* projects are excluded from NEPA reviews, but are still subject to other Federal environmental laws and authorities.

**Certifying Officer (CO)**

The *Certifying Officer* refers to the official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities 24 C.F.R. § 58.13. This is typically the mayor.

**Concurrent Notice**

The *Concurrent Notice* includes the Finding of No Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF).

**Consultation**

*Consultation* means the process of seeking, discussing and considering the views of other participants, and where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Program as pursuant to the National Historic Preservation Act" provide further guidance on consultation.

**Department of Economic and Community Development (TNECD)**

The *Department of Economic and Community Development* is the Tennessee authority that administers the Department of Housing and Urban Development (HUD) grants for the Community Development Block Grant (CDBG) program.

**Environmental Assessment (EA)**

The *Environmental Assessment* is an environmental review which requires a more detailed analysis than for projects that are exempt or categorically excluded.

**Environmental Impact Statement (EIS)**

The *Environmental Impact Statement* is the most detailed level of analysis.

**Early Notice and Public Review (ENPR)**

The *Early Public Notice* is the first notice which is required for all projects located in a floodplain and is published prior to any other notice. This notice must be sent to all interested parties identified on the distribution list.

**Environmental Review Record**

The *Environmental Review Record* contains all documents, public notices, and written determinations issued during the environmental review process.

### **Finding of No Significant Impact (FONSI)**

The *Finding of No Significant Impact* is published and sent to all interested parties on projects that require an environmental assessment. It is included in the Concurrent Notice.

### **Historic Property**

*Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

### **Letter of Removal of Environmental Condition (LOREC)**

The *Letter of Removal of Environmental Condition* will be sent to the recipient after the environmental requirements have been satisfied.

### **National Environmental Policy Act (NEPA)**

The *National Environmental Policy Act* establishes national environmental policy and goals for the protection, maintenance, and enhancement of the environment and provides a process for implementing these goals within the federal agencies.

### **Final Notice and Public Explanation (FNPE)**

The *Notice of Explanation* is the second notice required for all projects located in a floodplain. It can be published concurrently with other publications 15 days after the Early Public Notice is published. This notice must also be sent to all interested parties.

### **Notice of Intent to Request a Release of Funds (NOI/RROF)**

The *Notice of Intent to Request a Release of Funds* is published and sent to all interested parties on projects that are categorically excluded or require an environmental assessment. It is also included in the Concurrent Notice.

### **Final Notice of Release of Contract Conditions (FNORCC)**

The *Notice of Release of Contract Conditions* is received after environmental conditions and contract conditions have been satisfied.

### **Responsible Entity**

The *Responsible Entity (RE)* means: (i) with respect to environmental responsibilities under programs listed in 24 C.F.R. § 58.1(b)(1), (2), (3), (4), and (5), a recipient under the program.

### **Request for Release of Funds and Certification (RROFC)**

The *Request for Release of Funds and Certification* certifies that all environmental activities have been covered or adhered to. The Request for Release of Funds and Certification, along with the ERR and proof of publication of the appropriate notice(s), must be sent to TNECD.

### **State Historic Preservation Officer (SHPO)**

The *State Historic Preservation Officer* means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

### **Tribal Historic Preservation Office (THPO)**

The *Tribal Historic Preservation Office or Officer* means the tribal office/official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

## **B.2 ENVIRONMENTAL OVERVIEW:**

In order to proceed with a CDBG award, the project must comply with the National Environmental Policy Act (NEPA) and the environmental requirements of other Federal laws covering historic properties, noise, air quality, floodplains, wetlands, water quality, solid waste management, man-made hazards, farmlands protection, wild and scenic rivers, coastal areas, endangered species and environmental justice.

Environmental responsibilities have both legal and financial ramifications. As part of the grantee assurances, the mayor or county mayor/executive must assume the role of the responsible Certifying Officer (CO) under the provisions of NEPA. This person is the environmental CO and must sign all environmentally related material. This means that if someone sues a project in Federal court on environmental grounds, the mayor or county mayor/executive acting as the environmental CO, will be named as the responsible party.

Communities cannot obligate or expend block grant funds until the environmental requirements have been completed and all contract conditions satisfied. After the environmental requirements have been completed, the community will receive a Letter of Removal of Environmental Conditions (LOREC).

Even after receipt of this letter stating environmental requirements have been completed, funds cannot be obligated or expended until all contract conditions have been satisfied and the community receives a Final Notice of Release of Contract Conditions (refer to Chapter A).

Any and all public comments must be considered before the Request for Release of Funds. The comments should be submitted to the State with the response that was given to the concerned citizen(s).

### **Allowable Activities Prior to Receipt of Final Notice of Release of Contract Conditions**

The only activities that may be undertaken prior to receiving the LOREC are the following:

- Eligible administrative costs
- Preliminary Engineering design
- Environmental review

In order to follow all the requirements, rules, regulations, etc., an Environmental Review Record (ERR) must be maintained. The ERR describes the project and its environmentally related activities, and contains all original documents, public notices and written determinations issued during the environmental review process. A copy of the ERR must be available at the city or county for public review, and another ERR must be sent to the State.

### **Time Frame for submittal of Environmental Review Records**

- Exempt project ERR is due to ECD 15 days after award announcement.
- Categorically Excluded converting to Exempt project ERR is due 45 days after award announcement.
- Categorically Excluded project ERR is due 60 days after award announcement.
- Environmental Assessment project ERR is due 90 days after award announcement.

If an incomplete ERR is received, the State's 15-day comment period will not begin until all required information is received.

The following link can be used to calculate wait times and comment periods.  
<http://www.timeanddate.com/date/dateadd.html>

### B.3 ENVIRONMENTAL REVIEW PROCESS

The environmental review process can be divided into four basic steps.

**Step 1:** To determine into which of the five environmental review categories your project should be placed based on the definition of each category. The environmental review category should be based on the aggregate project scope. Regardless if a different funding source is being utilized in addition to, the environmental review category to be selected will be reflective of the entire project. Projects may be categorized into one of the following NEPA categories:

1. Environmental Impact Statement (EIS)
2. Environmental Assessment (EA)
3. Categorically Excluded Subject to Federal Environmental Laws (CES)
4. Categorically Excluded Converting to Exempt
5. Exempt

**Step 2:** To complete all the environmental requirements based on the category selected in the first step. The grantee must maintain a written record of the environmental review undertaken for each project. This document shall be designated the Environmental Review Record (ERR) and shall contain all original documents, public notices, and written determinations issued during the environmental review process. The ERR must be available for public review.

**Step 3:** To submit the entire ERR to the Department of Economic and Community Development (TNECD). At that time, TNECD will review the ERR for completeness and compliance, and initiate a 15-day comment period so that interested parties may respond to the project.

**Step 4:** Upon clearance of the 15-day period, TNECD will issue a Letter of Release of Environmental Conditions (LOREC). However, no obligation or spending of money to implement the project can occur until the Final Notice of Removal of Contract Conditions (FNORCC) has been issued.

### B.4 ENVIRONMENTAL IMPACT STATEMENTS

An Environmental Impact Statement (EIS) is required under any of the following circumstances:

1. The project is determined to have a potentially significant impact on the human environment;
2. The project would provide a site(s) for hospitals and nursing homes containing a total of 2,500 or more beds;
3. The project would remove, demolish, convert, or substantially rehabilitate 2,500 or more existing housing units; or
4. The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units.

Contact TNECD for assistance if any of the above conditions are met.

## **B.5 ENVIRONMENTAL ASSESSMENT PROJECTS**

**NOTE:** *Due to ECD 90 days after award announcement*

Projects that involve new construction or substantial improvements to existing facilities will require an Environmental Assessment (EA). Examples of these projects include:

1. New Construction
  - New building on vacant site
  - Water/sewer line construction to an area not serviced
  - New water storage tank
  
2. Substantial Improvements
  - Doubling the size of an existing building
  - Increasing employment by more than 20%
  - Changing the land use
  - Increasing the capacity of public facilities by more than 20%
  - Major rehabilitation

Projects that require an Environmental Assessment will complete the Environmental Assessment Worksheets (Exhibit B-2).

### **B.5.a Environmental Assessment Requirements**

Early in the environmental assessment of a project, the grantee must initiate coordination and consultation with concerned Federal Agencies and with designated State Agencies responsible for administering State programs. The grantee must also complete all procedures and take other actions required under the provisions of applicable laws. Any such actions shall be integrated into the EA as compliance documentation.

### **B.5.b Environmental Assessment Narrative**

The primary purpose of the Narrative is to discuss in detail any adverse impacts and mitigating measures that were identified in the Environmental Assessment Checklist (Exhibit B-1). The following areas are included on the form:

1. Grant Data including items such as project identification, preparer, project name/location, cost, administering agency, contact person, etc.
2. Conditions for Approval and FONSI
3. Statement of Need for Proposal
4. Description of the Proposal – Alternatives to the project **MUST** be listed.
5. Positives and negatives should be listed with each alternative including a no action alternative.
6. Existing Conditions and Trends

### **B.5.c Project Area Map(s)**

A project map(s), delineating the location of the project site(s), must be included in the ERR. The Federal Emergency Management Agency (FEMA), Flood Boundary maps, and/or FIRM maps must also be included in the ERR. The project site must be marked/outlined on the map(s). New water and/or sewer line extensions must be demonstrated precisely on map(s).

### **B.5.d Statutory Worksheet**

The Statutory Worksheet documents compliance with Federal laws, regulations and Executive Orders. It includes a listing of applicable statutes and regulations by fourteen areas of compliance. A specific source must be documented for each area. Statutory Directions gives direction on who to consult and how to complete the Statutory Worksheet, as well as the HUD thresholds for each category. All documentation should be included in the ERR.

### **B.5.e Historic Preservation Office Letters (SHPOs & THPOs)**

Many projects require consultation with the State Historic Preservation Officer (SHPO) to ensure that the proposed activities will not damage sites of significant historical importance. If SHPO is consulted, Tribal Historic Preservation Offices (THPO) requesting to be consulting parties must be consulted. A SHPO letter and THPO letter/email is the only acceptable documentation. All correspondence with SHPO should be done via submission of hard copies. It is suggested that all correspondence with SHPO/THPO be accompanied by some form of delivery confirmation or certified mail to prove the SHPO/THPO did receive the consult request and failed to respond within the thirty/thirty-five-day comment period.

#### **State of Tennessee SHPO contact information:**

Mr. Patrick McIntyre, Jr., Executive Director,  
SHPO ATTN: Section 106 Review and Compliance  
2941 Lebanon Road  
Nashville, TN 37243-0442  
Phone: 615-532-1550  
Fax: 615-532-1549  
E-mail: [patrick.mcintyre@tn.gov](mailto:patrick.mcintyre@tn.gov)

Tribal Consultation exhibits give directives and specific information for THPO and Consulting Agency requirements.

**REVIEW THESE EXHIBITS AND ABIDE BY ALL DIRECTIONS CONCERNING TRIBAL CONSULTATION OR YOU COULD BE LIABLE.**

### **B.5.f NEPA Environmental Assessment Worksheet**

The Environmental Assessment Checklist contains impact categories within four major areas. The four impact areas represent categories with related and overlapping issues. Some of these areas are also included on the Statutory Worksheet.

A project may comply the laws, regulations and Executive Orders stipulated on the Statutory Worksheet yet still have an impact on the environment as listed on the NEPA Environmental Assessment Checklist. For example, no statutes or regulations pertaining to Air Quality may be present on the Statutory Checklist; however, during construction, short-term dust levels may need proper mitigation. The appropriate code (1-4) should be listed on the NEPA Environmental Assessment Checklist with reference to supporting documentation that is included in the ERR.

**NOTE:** *If code 4 is listed, please call the ECD environmental staff to discuss.*

Information to include in the “Source of Documentation” column would be: the name of person giving consult, their title, their agency, the date contacted and their assessment. The required experts to consult are listed on the NEPA EA Documentation Directions.

Only use the experts listed there as contacts for each category. TNECD has to approve any other consultants.

**NOTE:** Refer to the NEPA EA worksheet documentation directions for a listing of “Experts to Contact” for each category on the NEPA EA worksheet.

State and Local requirements/regulations are considered in these consultations.

In the Summary section, #1, alternatives to the Proposed Action - ALTERNATIVES TO THE PROJECT MUST BE LISTED. Positives and negatives (short and long-term, concentrated and dispersed), as well as increased cost, loss of life, property, income, vital services, etc. should be listed with each alternative.

### **B.5.g Publications**

EA projects require publication in the grantee’s local newspaper\* in order to inform the public of the environmental requirements for the proposed project. Required notices must be published a minimum of one time. The number of notices and the amount of time required for the local comment period depend on if the project is located in a floodplain. Sample calendars are listed in the Calendars exhibit.

When copies of publications rather than original publications are included in the ERR, an original publisher’s affidavit must be submitted in order to verify the actual date of publication.

- Grantees may post the notices in public places and mail to interested parties. If posting, the Concurrent Notice must be made available for 18 days. Also, posting must occur in a minimum of five (5) public places.
- A memo on letterhead must be placed in the ERR giving details of the posting: date of posting, list of places posted with their addresses, pictures and copy of the posting must be included.
- Grantees may NOT post for floodplain projects. Floodplain projects must be published.

### **Publications for EA Projects not located in a Floodplain**

For projects not located in a floodplain, the grantee must publish the Concurrent Notice which is followed by a fifteen-day local comment period. Publication dates must succeed the dates of the Statutory Worksheet, NEPA Environmental Assessment Checklist, and EA Narrative.

### **Publications for EA Projects located in a Floodplain**

If the project is located within a floodplain or a wetland, the grantee must document completion of the HUD 8-Step Process. Notification to HUD/FEMA occurs when the ERR preparer publishes the Early Notice and Public Review and sends a copy to the required distribution list FEMA contact. Documentation of the 8-Step Process is accomplished by completing 8-Step Process Checklist. The 8-Step Process is as follows:

1. Determine if the action is located in a 100-year floodplain (500-year floodplain for critical actions)
2. Notify the public for early review of the proposal and involve the affected and interested public in the decision-making process - publish the Early Notice and Public Review and allow fifteen days for public comment
3. Identify and evaluate practicable alternatives
4. Identify potential direct and indirect impacts associated with floodplain development
5. Design or modify the proposed action to minimize the potential adverse impacts to lives, property, and natural values within the floodplain and to restore, and preserve the values of the floodplain
6. Reevaluate the alternatives
7. Determination of no practicable alternative - the Final Notice and Public Explanation may be published and run concurrently with the Concurrent Notice. A 7-day comment period is required for the FN&PE, while a 15-day local comment period is required for the Concurrent Notice.
8. Implement the proposed action

### **B.5.h Distribution List**

Whenever a notice is published in the paper, a copy with a cover memo must be sent to all interested parties on or immediately before the date of publication. These include, but are not limited to, those agencies listed on the Distribution List. The Distribution List and copies of all the cover memos must also be included in the ERR as proof that the agencies on the Distribution List were sent the required notices.

### **B.5.i Flood Insurance**

If the project is located in a floodplain and involves the construction or improvement to a structure, the grantee must have flood insurance. Documentation to prove this must be included in the ERR.

### **B.5.j Request for Release of Funds (RROF) and Certification**

The RROF and Certification must be completed and signed by the grantee's Certifying Official (CO). This form certifies that the CO has complied with all Federal/State regulations in the environmental review process. The grantee must consider any comments from the public or agencies in response to the published notices prior to completing this form. The original copy must be included in the ERR.

After all the above activities have been completed, the ERR should be submitted to TNECD. The Environmental Review Requirements Checklist should be completed by the grantee to ensure that all necessary forms have been included in the ERR.

Upon receipt of a complete Environmental Review Record containing all the required information at TNECD, the fifteen-day public comment period for the State will begin. After the completion of this period, TNECD will send the LOREC to the grantee.

**NOTE:** *Often listed on the LOREC will be clearance conditions required by various agencies. A Clearance of LOREC Notations for Plans and Specs Approval is found in the Exhibits. If the LOREC has notations, this completed form must accompany any plans and specifications (P&S) submitted to TNECD before review of P&S can be completed.*

<h2><b>B.6 CATEGORICALLY EXCLUDED PROJECTS SUBJECT TO FEDERAL ENVIRONMENTAL LAWS</b></h2>
---

**NOTE:** *Due to ECD 60 days after award announcement*

Categorical exclusion refers to a category of activities for which no Environmental Impact Statement (EIS) or Environmental Assessment (EA) and finding of no significant impact under the National Environmental Policy Act (NEPA) are required. Three types of categorically excluded projects exist – those subject to federal environmental laws (CES), those converting to Exempt status, and those not subject to federal environmental laws (CENST). *TNECD does not currently use the CENST category.*

Projects that require and Categorical Exclusion will complete the Categorical Excluded Worksheets (Exhibit B-3).

### **B.6.a Categorically Excluded Projects Subject to Federal Environmental Laws**

Projects not subject to NEPA requirements, but bound by other regulatory considerations and compliances are termed Categorical Excluded Subject to Federal Environmental Regulations (CES) and include:

1. Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
2. Special projects directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly and handicapped persons.
3. Rehabilitation of buildings and improvements
  - a. Residential, multi-family buildings
    - i. Unit density is not increased by more than 20 percent;
    - ii. The project does not involve changes in land use from residential to non-residential or from one class of residential to another (e.g. from single family attached dwellings to high-rise multiple dwelling units; and
    - iii. The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
  - b. Commercial and industrial (non-residential) rehabilitation activities
    - i. The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
    - ii. The activity does not involve a change in land use, such as from non- residential to residential, commercial to industrial, or from one industrial use to another.
4. An individual action on up to four dwelling units where a maximum of four units are on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between. A project of five or more units when the units are more than 2,000 feet apart and developed on scattered sites.
5. Acquisition/disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired/disposed of will be retained for the same use.
6. Combinations of the above activities.

**B.6.b Rehabilitation work is considered CES unless**

1. There is an increase in the ‘footprint’
2. There is any new construction
3. Capacity is increased by over 20% (i.e. changing from 6” to 10” pipe)
4. Land/facility use is changing

If any of these conditions exist, the project will need an Environmental Assessment

**B.6.c Categorically Excluded Project Requirements**

If the CES project is not in a floodplain and no compliance is triggered on the Statutory Worksheet, the project may convert to Exempt and publication and RROF are not required. The following is required ERR documentation:

1. ERR Checklist
2. Project Area Map
3. The Worksheets with documentation
4. SHPO/THPO consultation letters and responses
5. Exempt Worksheets checking box 12

If the project is determined to be CES and compliance activities are required by the Statutory Checklist, the following is required ERR documentation:

1. ERR Checklist
2. Project Area Map
3. The CES Worksheets with documentation
4. SHPO/THPO consultation letters and responses
5. Flood plain notices and 8-Step Process documentation, if necessary
6. Publication(s)
7. Distribution List(s)
8. NOI/RROF

#### **B.6.d Publications for CES Projects not located in a Floodplain**

For projects not located in a floodplain, the grantee must publish the Notice of Intent to Request Release of Funds (NOI/RROF) which is followed by a seven-day local comment period. Publication dates must succeed the date of the Statutory Worksheet.

- Grantees may post the notices in public places and mail to interested parties. If posting, the NOI/RROF must be made available for 10 days. Also, posting must occur in a minimum of five (5) public places.
- A memo on letterhead must be placed in the ERR giving details of the posting: date of posting, list of places posted with their addresses, copy of the posting must be included.
- Grantees may NOT post for floodplain projects. Floodplain projects must be published.

#### **B.6.e Publications for CES Projects located in a Floodplain**

If the project is located within a floodplain, the grantee must document completion of the same HUD 8-Step Process used for EA projects in a floodplain. For directions concerning this process, the distribution list to be used for consultation, and requirements regarding flood insurance, refer to sub-sections A.5.g.2 Publications for EA Projects located in a Floodplain, A.5.g Distribution List, and A.5.h Flood Insurance.

### **B.7 CATEGORICALLY EXCLUDED PROJECTS CONVERTED TO EXEMPT**

**NOTE:** *Due to ECD 45 days after award announcement*

Activities that are listed above and in 24 C.F.R. § 58.35(a) (1)-(6) as categorical exclusions may be converted into exempt activities under the following conditions:

- a. The Grantee completes a compliance determination under the Federal laws and authorities cited in 24 C.F.R. § 58.5 for the proposed activity.
- b. The Grantee concludes that no circumstances exist where any of the Federal laws and authorities requires compliance with its own review procedures.
- c. The Grantee documents its conclusions on the compliance review. A project area map is generated. However, no public notices are published and no request for Release of Funds and Certification is submitted. The Grantee documents that the activity did not trigger compliance with any Federal laws and authorities and consequently, the activity was converted and is certified as an exempt activity. All documents will be placed in the Environmental Review Record.
- d. No publications/comment periods are necessary for CE projects converting to Exempt. The ERR is still sent to TNECD with a completed (ERR Checklist for Environmental clearance.

## **B.8 CATEGORICALLY EXCLUDED PROJECTS NOT SUBJECT TO FEDERAL ENVIRONMENTAL LAWS (CENST)**

Categorically Excluded Projects Not Subject to Federal Environmental Laws (CENST) are not currently utilized by TNECD.

## **B.9 EXEMPT PROJECTS**

**NOTE:** *Due to ECD 15 days after award announcement*

Projects that are Exempt from federal environmental laws will complete the Exempt Worksheets (Exhibit B-4).

Exempt projects do not require compliance with any Federal environmental laws or authorities. The basis for qualifying a project or activity as Exempt is the underlying activity. A project, if it consists solely of the activities listed in 24 C.F.R. § 58.34, can be categorized as Exempt.

Purchase of equipment or vehicles falls under the ‘purchase of tools’ section. The Exempt Worksheets must be completed and sent to TNECD for project clearance. (#7 is checked)

## **B.10 ADOPTION OF ANOTHER AGENCY’S ENVIRONMENTAL IMPACT STATEMENT OR ENVIRONMENTAL ASSESSMENT**

If an Environmental Impact Statement (EIS) or Environmental Assessment (EA) has been prepared on the project for another agency, the grantee may adopt this document as part of the environmental review requirements under the Community Development Block Grant (CDBG) program. However, the following must also be included:

1. A copy of the other agency’s EIS/EA
2. Addendum of Validity – Project’s Certifying Officer (CO) must complete this form.
3. Environmental Review Requirement Checklist
4. EA Worksheets
5. 8-Step Process (if applicable)
6. State Historic Preservation Office (SHPO) consult and response letter
7. Tribal Historic Preservation Office (THPO) consult and response letters
8. Map(s)
9. Distribution List and accompanying letters
10. Documentation of flood insurance (if applicable)
11. Request for Release of Funds and Certifications

**NOTE:** *The Concurrent Notice and the floodplain notices (if applicable) must be published even if a previous notice was published as part of the adopted EIS/EA. The time frame for public comment is the same as for EAs.*

**NOTE:** *If the project is not in a floodplain, grantees may post the notices in a public place and mail it to interested parties. If posting, the Concurrent Notice must be made available for 18 days. A memo must be placed in the ERR giving details of the posting.*

## **A.11 PROJECT SCOPE CHANGE**

### **Re-evaluation of Environmental Review Record requiring an Addendum**

If size, location, or scope of a project changes, environmental impact must be reassessed and the ERR updated.

If the original scope of a project is changed, an ERR addendum must be completed. Situations that would require reassessment are:

1. Adding new activities not covered in original project scope (e.g., cost savings result in ability to extend water line beyond what was originally planned)
2. New circumstances and environmental conditions that may affect the project
3. Choosing an alternative approach or site not considered in the original assessments

If a change in the scope of the project occurs, the grantee must first request approval from TNECD. Once the scope change is approved, TNECD and the grantee will re-evaluate the original ERR based on the new information to determine whether the ERR is still applicable. If the original ERR is still valid, the grantee will submit an Addendum to the original ERR.

### **ERR Addendum Requirements**

If the project is determined to need an addendum the following is required ERR documentation:

1. Addendum of Validity (Exhibit B-5) – Project’s CO must complete this form.
2. If applicable, acknowledgement that the EA Worksheets have been reviewed and are also still valid. However, A current Statutory Worksheet related to the new project are must be completed.
3. A description and map of the new project area
4. A current SHPO consultation and response letter and THPO consultation and response letters, related to the new project area.

The Environmental Review Requirements Checklist column titled “Addendum”

If the original ERR is determined to no longer be applicable, the grantee must prepare a new ERR that includes all the requirements for that type project.

## **B.12 AGGREGATE**

Grantees may reuse an ERR if it is under 5 years old, covers the same project area, and has the same scope. However, a charge cannot be made to the grant for completion of an ERR.

### **ERR Aggregate Requirements**

1. An Addendum of Validity must be signed and dated by the Certifying Officer (CO).
2. A project map delineating the area to be worked
3. An RROF/Certification must also be submitted

**ENVIRONMENTAL REVIEW RECORDS ARE VALID FOR FIVE (5) YEARS FROM THE ORIGINAL CLEARANCE DATE**

## **B.13 ENVIRONMENTAL EXHIBIT LIST**

- B-1 ENVIRONMENTAL REVIEW RECORD CHECKLIST
- B-2 ENVIRONMENTAL ASSESSMENT (EA) WORKSHEETS
- B-3 CATEGORICALLY EXCLUDED (CES) WORKSHEETS
- B-4 EXEMPT WORKSHEETS
- B-5 ADDENDUM OF VALIDITY
- B-6 REQUIRED TRIBAL CONSULTATION BY COUNTY
- B-7 TRIBAL CONSULTATION UNDER THE NATIONAL HISTORIC PRESERVATION ACT
- B-8 STATUTORY WORKSHEET DOCUMENTATION DIRECTIONS & HUD THRESHOLDS
- B-9 NEPA EA WORKSHEET DOCUMENTATION DIRECTIONS
- B-10 CALENDARS FOR PUBLIC COMMENT PERIODS
- B-11 TRIBAL CONSULTATION LETTER TEMPLATE
- B-12 ENVIRONMENTAL REVIEW RECORD USEFUL WEB LINKS

**CHAPTER C:**  
**FAIR HOUSING AND**  
**EQUAL OPPORTUNITY**

## C.1 FAIR HOUSING & EQUAL OPPORTUNITY OVERVIEW

The CDBG program is a federal program administered by the Department of Housing and Urban Development (HUD). Part of HUD’s mission statement is to “build inclusive and sustainable communities free from discrimination”, which includes furthering Fair Housing, Equal Employment Opportunities, and Accessibility for disabled persons. Several laws and regulations, along with the issuance of executive orders, have been put into place to prevent discrimination under federally funded programs based on race, color, national origin, religion, sex, disability, and the presence of children. These protections cover housing and employment opportunities. For a full list of laws, regulations, and executive orders, refer to Exhibit C-1, but for quick reference, use the five steps below during the administration of federally funded projects.

1. Affirmative steps must be taken to promote fair and equal access to housing, regardless of the type of grant, or amount of grant.
2. Equal opportunities must be afforded to all persons.
3. No person shall be excluded or denied program benefits on the basis of race, color, religion, sex, national origin, age, or disability.
4. Affirmative steps must be taken to assure that minority- and female-owned businesses are informed of grant funded contracts.
5. To the greatest extent feasible, Section 3 resident and business concerns should be given preference in employment, training, and contracting.

Compliance with Fair Housing & Equal Opportunity requirements is easy if a complete and organized recordkeeping system is instituted at the beginning of the project. Fair Housing & Equal Opportunity activities should occur early in the project timeline, and not at the end. Preferably, activities should be undertaken before the bidding of the project.

## C.2 FAIR HOUSING LAW

Title VIII of the Civil Rights Act of 1968 prohibits discrimination in the sale, rental, and financing of dwellings based on:

- Race
- Color
- Religion
- Sex
- National Origin

The Fair Housing Amendments Act of 1988 expands the coverage of Title VIII to:

1. Prohibit discrimination in housing on the basis of:
  - a. Disability
  - b. Familial Status
2. Strengthen the administrative enforcement provisions of Title VIII.
3. Provide for the award of monetary damages where discriminatory housing practices are found.

The following actions are considered to be discriminatory under the Fair Housing Law:

- Refusing to sell, rent, deal, or negotiate with any person.
- Discriminating in terms or conditions for buying or renting.
- Advertising that housing is available only to persons of a certain race, color, religion, sex, national origin, or of a specific family size.

- Denying that housing is available for inspection, sale, or rent when it really is available.
- "Blockbusting" - persuading owners to sell or rent housing by telling them that minority groups are moving into the neighborhood.
- Denying or making different terms or conditions for home loans by commercial lenders, such as banks, savings and loans, and insurance companies.
- Denying to anyone the use of or participation in any real estate services, such as broker organizations, multiple-listing services, or other facilities related to the selling and renting of housing.
- Refusing to allow reasonable accommodation to be made for a person with disabilities.

**NOTE:** *Tennessee's fair housing laws also prohibit discrimination on the basis of "creed", in addition to the protected classes identified by Title VIII (T.C.A. § 4-21-601).*

### C.3 FAIR HOUSING ACTIVITIES

As a recipient of CDBG funds, grantees are required to affirmatively further fair housing. At least one TNECD approved fair housing activity must be accomplished within the grant period to inform the community about fair housing, that denial of fair housing rights to the citizens is illegal, and the grantee supports fair housing practices. Fair housing activities must be approved by TNECD before being implemented. Selected fair housing activities should also address the issues outlined within the Analysis of Impediments to Fair Housing Choices .

The Analysis of Impediments to Fair Housing Choices serves to remind jurisdictions to reflect on the current fair housing situations in their communities. Currently, this document is updated regularly by TNECD and should be referred to before a grantee conducts a fair housing activity.

### C.4 FAIR HOUSING ORDINANCES

A Fair Housing Ordinance is an important tool for a county or municipality to protect its citizens against discrimination and unfair housing practices. Not only does this ordinance clearly define prohibited practices and applicability, but it also can be used to address complaint procedures and outline penalties for violations.

### C.5 SECTION 3 REQUIREMENTS

**A new final rule regarding Section 3 was issued in the Federal Register on September 29, 2020 (85 FR 60907) and will be effective as of October 29, 2020. TNECD is currently reviewing the rule to determine the effect on Tennessee's CDBG program.**

**A Section 3 Area Resident** is any low-income individual residing within the Section 3 area.

**A Section 3 Area** is, for the purpose of training and employment a jurisdictional area of the local government in which the project is located. For the purpose of contracting, the Section 3 area is the county in which the project is located.

**A Section 3 Business Concern** is a business (1) that is 51% or more owned by Section 3 residents; or (2) whose permanent full-time employees include persons, at least 30% of whom are currently Section 3 residents, or who, within three years of the date of employment with the business concern were Section 3 residents; or (3) that provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in (1) or (2) of this definition of “Section 3 business Concern.”

Section 3 is a provision of the Housing and Urban Development Act of 1968, implemented by the regulations set forth in 24 C.F.R. Part 135, which requires that programs of direct financial assistance administered by HUD provide, to the greatest extent feasible, opportunities for job training and employment to lower income residents. Further, to the greatest extent feasible, contracts in connection with these projects are to be awarded to Section 3 business owners.

Section 3 does not require the creation of economic opportunities for low- and very low-income persons simply for the sake of creating economic opportunities.

Generally, Section 3 requirements apply to any grantee who receives a grant of \$200,000 or more and to any contractor whose contract is \$100,000 or more. Section 3 requirements are triggered by the need for hiring new employees or for additional training needed to upgrade present employees because of this project. See 24 C.F.R. § 135.3 for more information.

Section 3 recipients (State, unit of local government, or contractor) must include the Section 3 clause (Exhibit C-2) in all contracts awarded (24 C.F.R. § 135.38).

The Section 3 regulations established thresholds and goals for meeting the “greatest extent feasible” requirement (24 C.F.R. § 135.30). Meeting these goals is not statutorily mandated, but in the interests of efficient program administration, constitutes a “safe harbor” for compliance with Section 3. The training and employment goals are 30% of the aggregate number of new hires for each fiscal year. For Section 3 contracts, each covered contract or activity is to commit to Section 3 business concerns at least 10% of the total dollar amount of all covered contracts for building trades work arising in connection with the covered activity, and at least 3% of the total dollar amount of all other covered contracts.

All applicable grantees must prepare and keep a Section 3 file. To fulfill this requirement, the following tasks must be completed:

1. Complete Section 3 questionnaire (Exhibit C-3) and place in file.
2. Insert LMI threshold for grantee into the file.
3. Document all outreach efforts to recruit Section 3 residents or business concerns including efforts of the contractor as well as the grantee. The outreach may include the following:
  - Advertising in the newspaper or other local media;
  - Contacting area churches, labor unions, distributing flyers, etc.;
  - Informing resident groups such as PHA resident councils;
  - Holding workshops to assist Section 3 residents in completing applications for employment and training; and
  - Identifying the businesses within the area and informing them of the upcoming opportunities.
4. Maintain a list of all Section 3 business concerns hired by the grantee or contractor.
5. Maintain a list of all Section 3 employees hired or trained specifically for this project by the grantee or contractor/subcontractor.
6. Complete the online Section 3 webform as part of the closeout process.
7. Post Policy of Non-Discrimination (Exhibit C-4).

## C.6 HOUSING DISCRIMINATION COMPLAINT PROCEDURE

The Fair Housing Act provides that any person who believes that he or she has been or will be subject to a discriminatory housing practice because of race, color, religion, sex, disability, familial status, or national origin may file a complaint with the Secretary of Housing and Urban Development.

The aggrieved person or the Assistant Secretary for Fair Housing and Equal Opportunity in the Department of Housing and Urban Development may file a complaint no later than one year after an alleged discriminatory housing practice has occurred or terminated. The complaint may be filed with the help of an authorized representative, including any agency acting on behalf of an aggrieved person.

1. Prepare a complaint letter, including the Housing Discrimination Complaint form (Exhibit C-5).  
Complaints may be filed to:

FHEO Headquarters  
U.S. Department of Housing and Urban Development  
451 7th Street, SW Washington, DC 20410  
-or-  
Atlanta Regional Office  
U.S. Department of Housing and Urban Development Southeast Office  
40 Marietta Street  
Atlanta, GA 30303

2. Complaints may also be filed in person or by mail to:

Tennessee Human Rights Commission  
Housing Section  
7175 Strawberry Plains, Ste. 209  
Knoxville, TN 37914

3. Each written complaint must be signed and affirmed by the aggrieved person.
4. Complaints may also be filed online through the HUD website at the following address:  
[https://www.hud.gov/topics/housing\\_discrimination](https://www.hud.gov/topics/housing_discrimination) .

## C.7 RELOCATION ACTIVITIES

CDBG grantees may not select sites or locations for housing and housing-related facilities which have an exclusionary or discriminatory effect. CDBG grantees must also take all necessary and appropriate actions to prevent discrimination in housing and housing-related activities.

Records must be kept that will document the following:

- The number of and the racial/ethnic and gender characteristics of displaced persons.
- The location of CDBG-funded activities that caused displacement.
- The type of replacement housing provided to each displaced person.
- The discrimination procedure must be followed in cases of housing discrimination.
- See Chapter E of this handbook for additional guidance on relocation.

## **C.8 POLICY OF NONDISCRIMINATION OF THE BASIS OF DISABILITY STATUS**

The Department of Economic and Community Development, Division of Rural Development, does not discriminate on the basis of disability status in the admission or access to, or treatment or employment in, its federally assisted programs or activities. Please contact TNECD for additional information/complaint process:

Kent Archer  
CDBG Director  
William R. Snodgrass Tennessee Tower, 27<sup>th</sup> Floor  
312 Rosa L. Parks Avenue  
Nashville, Tennessee 37243  
(615) 354-3591  
[kent.archer@tn.gov](mailto:kent.archer@tn.gov)

TNECD has been designated to coordinate compliance with the nondiscrimination requirements contained in Department of Housing and Urban Development (HUD) regulations implementing Section 504 (24 C.F.R. Part 8).

## **C.9 GRANTEE EMPLOYMENT**

No person shall be denied employment under any federally assisted program on the basis of any of the following protected classes:

- Race
- Religion
- Color
- Age
- National Origin
- Disability
- Sex

The city/county must make available a copy of any written policies and procedures used by the grantee to hire, terminate, promote, or train individuals. If no formal written hiring policies are available, the city/county will need to implement a policy utilizing the format in this manual (Exhibit C-6) and place a copy in the file indicating that the city/county will not deny employment under any federally assisted program on the basis of any protected classes identified above.

## **C.10 CONSTRUCTION GENERATED EMPLOYMENT**

Employment of individuals through construction of a CDBG project may occur. Those responsible for the hiring must be aware of the Equal Employment Opportunity requirement.

Three things must be considered when meeting this requirement.

1. The construction contract must have the proper equal employment opportunity language and correct goals for minority and female employment. (Refer to Exhibits C-2 and C-7 and to the Supplemental and General Conditions of the contract document in the Labor Standards Chapter.)

2. The city/county must document efforts to inform minority or female owned firms, and Section 3 Businesses, of the impending project and invite their participation.
3. Any contractor who intends to use subcontractors must provide documentation that he or she has attempted to use, or is using, minority or female owned firms, and Section 3 businesses. Copies of letters or a memo of the telephone call must be included in the files.

### C.11 SECTION 504

Section 504 of The Rehabilitation Act of 1973 requires equal opportunity for persons with disabilities in federally assisted programs. Section 504 states:

*“No otherwise qualified individual with disabilities in the United States . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”*

Under Section 504, an individual must be provided the opportunity to participate in, or benefit from, the program that is equal to that provided to other citizens. The opportunity need not be identical in approach, but rather, must afford a person with a disability an equal opportunity to obtain the same result. This is commonly referred to as "program accessibility."

Under Section 504, federal funds recipients must ensure that their programs are accessible to qualified individuals with disabilities. Essentially, this means that when "viewed in its entirety," a program offered by the recipient must be readily accessible to and usable by persons with disabilities. Not every single building or dwelling unit has to be accessible.

The focus of Section 504, for existing facilities, is on programs, not buildings. If accessibility can be ensured through alternative means, such as providing auxiliary aids, relocating programs, or making home visits, structural changes are not required. Only when absolutely necessary to achieve program accessibility are recipients required to retrofit existing facilities.

Recipients must remember, however, that the program accessibility requirement applies only to existing facilities. New construction and alterations must be fully accessible and designed in accordance with recognized accessibility standards.

Every organization that receives federal financial assistance from HUD, including community development agencies and local governments, is deemed a recipient and must meet the specific requirements of the Section 504 regulations (24 C.F.R. Part 8). Requirements include having policies and procedures that do not discriminate against qualified individuals with disabilities and making reasonable accommodations to allow participation by such individuals.

All recipients of federal assistance must conduct self-evaluations as part of their initial Section 504 compliance activities and designate a 504 coordinator and post conspicuously the designee. Any recruitment of informational material published by a recipient must contain a statement regarding the recipient's pledge not to discriminate on the basis of disabilities.

## C.12 MINORITY/FEMALE BUSINESS SOLICITATION

Contractors, vendors, and suppliers may not be denied an opportunity for employment under the CDBG programs on the basis of:

- Race
- Religion
- Color
- Age
- National Origin
- Disability
- Sex

Recipients of federal funds must take affirmative steps to ensure minority- and female-owned businesses are afforded opportunities to bid on service, material, and construction contracts. To meet the requirement, grantees must take steps to inform minority- and female-owned businesses about federally funded contracts.

- The grantee should notify minority and female-owned businesses of contracts and bid deadlines. This applies to professional service contracts and materials and equipment purchases, as well as to construction contracts. For construction contracts, notices should be published in the local newspaper and a statewide publication. In addition, notices may also be published in a minority publication.
- The invitation to bid should be sent directly to minority- and female-owned firms in addition to running advertisements. These efforts must be documented.
- Solicit quotes and proposals from minority and female-owned firms. For non-construction contracts, or any solicitation not requiring formal bidding (e.g., small purchases or local procurement contracts), it is a good idea for larger cities and counties to develop a list of local minority and female-owned businesses to use when small purchase and local procurement procedures are followed.
- Invite by phone or letter any minority and female contractors in a reasonable geographic area to bid. For example, a project in Marion County should solicit bids not only from within the county, but also from Hamilton County. Copies of letters and memos of phone calls should be placed in the file.
- A contract and subcontract activity report form must be filled out each time a contract or subcontract is awarded. These forms must be sent to the State as soon as contracts have been awarded (Exhibit H-3).
- Databases for Female/Minority-Owned business are maintained by State departments to provide an up-to- date list of qualified contractors.
- The Governor’s Office of Diversity Business Enterprise (GoDBE) acts as *“the central point of contact to attract and assist minority owned, women owned, service-disabled veteran owned and small business enterprises interested in competing in State of Tennessee procurement and contracting activities”*.

<https://tn.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=tn&XID=1215>

- The TDOT Tennessee Uniform Certification Program (TNUCP) Disadvantaged Business Enterprise (DBE) “*provides a directory of DBE and Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) companies that are certified to conduct business in the state of Tennessee*”. <https://www.tdot.tn.gov/APPLICATIONS/DBEDirect/>

### **C.13 RECORDKEEPING**

Retention of records for fair housing and equal employment opportunity should follow the requirements outlined in the “Recordkeeping” section of the Introduction. The Equal Opportunity and Fair Housing section of the Project Checklist is also a good resource that details the documents that should be kept.

### **C.14 FAIR HOUSING AND EQUAL OPPORTUNITY EXHIBIT LIST**

- C-1 FAIR HOUSING AND EQUAL OPPORUNITY LAWS AND REGUALTIONS
- C-2 SECTION 3 CONTRACTING CLAUSE
- C-3 SECTION 3 QUESTIONNAIRE
- C-4 POLICY OF NON-DISCRIMINATION
- C-5 HOUSING DISCRIMINATION COMPLAINT FORM (HUD 903)
- C-6 SAMPLE HIRING POLICY
- C-7 MINORITY EMPLOYMENT GOALS

# CHAPTER D:

## ACQUISITION OF PROPERTY

## D.1 GLOSSARY

### **ACQUISITION**

*Acquisition* is the purchase, donation or partial donation of real property.

### **APPRAISAL**

An *appraisal* is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

### **DONATIONS**

Nothing in these regulations shall prevent a person, after being informed of the right to receive just compensation, based on an appraisal of the real property, from making a gift or donation of real property or any part thereof or any interest therein, or of any compensation paid therefore to the agency (city/county). The agency (city/county) is responsible for assuring that an appraisal of the real property is obtained unless the owner(s) release the agency from such obligation.

### **FAIR MARKET VALUE**

*Fair Market Value* is the price real property will bring in a competitive market under conditions requisite to a fair sale, which would result from negotiations between a buyer and seller, each acting prudently and wisely, and without pressure or undue influence.

### **JUST COMPENSATION**

*Just Compensation* is a fair and reasonable payment being not less than fair market value.

### **REVIEW OF APPRAISALS**

A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions. It must include a recommendation of fair market value of the subject property.

### **STANDARDS OF APPRAISAL**

The format and level of documentation of an appraisal depends upon the complexity of an appraisal.

## D.2 ACQUISITION OF REAL PROPERTY

### **D.2.a Background**

This chapter includes the sequence of events to move those projects which require acquisition, in a timely and cost-effective manner.

All property acquired by a governmental entity for any activity that is funded, in whole or in part, with CDBG funds is subject to the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 as amended (URA).

For any project in which CDBG dollars are going to be used that takes place on private property, the Uniform Act applies. If the proposed work/project takes place on State, County or Municipal land, then appropriate written permission must be secured before the project can be bid.

### **D.2.b Expanded Coverage**

Under URA statutory changes and the rule at 49 C.F.R. Part 24, all persons (families, individuals, businesses, non-profit organizations, and farms) displaced (forced to move permanently) on or after April 2, 1989 as a direct result of rehabilitation, demolition, or acquisition (privately undertaken or public) for a HUD-assisted project are entitled to relocation payments and other assistance under the URA. Even a person forced to move before HUD approval of a project may be determined to have been displaced "for the HUD-assisted project."

Grantees must also meet the Section 104(d) of the Housing and Community Development Act requirements when applicable. For Tennessee's CDBG projects, this is typically when relocation assistance is provided to residents who are displaced by the projects. The grantee is responsible for ensuring whether or not Section 104(d) applies to a specific project. More information on Section 104(d) can be found at: [https://www.hud.gov/program\\_offices/comm\\_planning/affordablehousing/training/web/relocation/section104d](https://www.hud.gov/program_offices/comm_planning/affordablehousing/training/web/relocation/section104d).

### **D.2.c Purpose**

The purpose of this chapter is to ensure that:

1. The rules which pertain to the acquisition of real property with federal funds are followed;
2. The owners of real property to be acquired are treated: fairly, consistently, and without intimidation, thus minimizing litigation and congestion in the courts and promoting public confidence in federally assisted land acquisition; and
3. Persons displaced as a result of the project are treated fairly, consistently, and equitably so that each person will not suffer disproportionate injuries as a result of projects designed to benefit the public as a whole.

**NOTE:** *Before a CDBG project can proceed, all acquisition activities on each parcel for the project must be completed and appropriately recorded.*

Each property owner must be properly informed of his/her rights, as required by law, and grantees must be able to document that this was done. Furthermore, each property owner is entitled to the payment of just compensation for his/her land, even if he or she is a direct beneficiary of the project.

Before requiring the property owner to surrender possession of the real property, the agreed purchase price must be paid to the owner; in the case of condemnation, deposit with the court, for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of such property.

The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modifications in the proposed terms and conditions of the purchase.

**NOTE:** *FOLLOW THE PROPER PROCEDURES. CITY/COUNTY INSURANCE MAY NOT PROTECT AGAINST DAMAGE CLAIMS IF THE COMMUNITY IS SUED AND THE CORRECT PROCEDURES HAVE NOT BEEN FOLLOWED.*

### **D.2.d One for One Replacement Unit Requirement**

Under this rule, all occupied and vacant, habitable low/moderate income dwelling units which are demolished or converted to a use other than low/moderate income dwelling units, as a direct result of activities assisted under the CDBG program, must be replaced with a like number of low/moderate income dwelling units. Substandard, but still habitable units that have been demolished or converted to non-residential uses must be replaced under this provision; however, more seriously deteriorated units that are deteriorated to the point of being uninhabitable and have been demolished or converted to non-residential uses do not require replacement. See 24 C.F.R. § 42.375.

**NOTE:** *If the project is to be placed on state, county or city right-of-way, then a letter giving permission to use that right-of-way must be on file.*

## **D.3 ACQUISITION OF DILAPIDATED DWELLING AND VOLUNTARY RELOCATION**

### **D.3.a Overview**

If the community is acquiring a dilapidated structure and relocating the homeowner (either to the same site or another) refer to Chapter E: Relocation. The first letter you will send the homeowner will be a general information letter with the Preliminary Acquisition Notice (Exhibit D-1). Next, inform the property owner(s) of their rights and provide documentation.

Once the property owner has been informed you may then:

1. Ask for a donation of the property, or
2. If the owner will not donate, then:
  - a. Offer to pay just compensation based on fair market value determined by appraisals.
  - b. If the owner will not donate, negotiate with the property owner(s) (within limits).
  - c. If the owner(s) will not negotiate, the community may go to court to condemn the property.

The easiest and most cost-effective way to acquire property is through donations. However, each property owner(s) is entitled to just compensation for his/her property even if he or she is a direct beneficiary of the project. The property required for the project may be entirely acquired by donations, or any combinations of the preceding step.

### **D.3.b Outline of the Acquisition Process**

1. Project Funds Released-Determine land to be acquired
2. Basic Preparation: Consult with City/County Attorney and Engineer to obtain property legal descriptions, maps and surveys.
3. Inform the Owners(s): Mail the “Preliminary Acquisition Notice” (Exhibit D-1) and Donation form- “Waiver of Rights and Benefits” (Exhibit D-3)
4. Request Donations: (If owner(s) donate, STOP, go to Step 9)
5. Select Appraiser and Review Appraiser Qualifications: Request Qualifications.
6. Determine the Purchase Offer: Invite the property owner(s) to accompany the appraiser using the document “Invitation to Accompany the Appraiser” (Exhibit D-4)

7. Perform the appraisal (The Appraisal Report).
8. Perform Appraisal Review (Exhibit D-6)
9. Establish Just Compensation: “Written Statement of Just Compensation”.
10. Work with Owner(s): Owners(s) could: donate now; or accept just compensation, or counter-offer, or refuse all offers.
11. Successful Negotiations: Sign a “Purchase Agreement”; and sign a contract for the sale.
12. Complete the Settlement: Execute the deal including a “Statement of Settlement Costs”.
13. If Property is condemned: The City/County Attorney files the paperwork with the courts, Escrow is deposited in an escrow account.
14. Final Follow-up: Obtain the Title.

## D.4 THE ACQUISITION PROCESS

### **D.4.a After Project Funds Are Released**

Determine who will be responsible for coordination of acquisition/relocation activities. Next, establish recordkeeping procedures for each parcel of property according to this manual. Include copies of all documents in the files. Attach a checklist inside the file and keep it current throughout the process. An attorney should be utilized to finalize the legal documentation.

### **D.4.b Basic Preparation**

Determine the parcels to be acquired are all consistent with the scope of the project and with the preliminary engineering plans, surveys and maps. Obtain preliminary title evidence, boundary surveys and legal descriptions. Verify clear and accurate titles. Prepare a map describing the project and showing the proposed acquisitions. Take this map to each property owner or show it at public meetings when asking for donations.

### **D.4.c Inform the Owner(s)**

Send the property owner(s) the following documents by certified mail or hand delivery. Obtain and file a signed receipt for them.

- Send a "Preliminary Acquisition Notice" to each property owner (Exhibit C-1). This indicates an interest in acquiring the property or an easement. It is important to note that it is not a notice to vacate nor does it establish eligibility for relocation payments or assistance. Give the name and phone number of the person to be contacted for further information.
- Send the booklet, When a Public Agency Acquires Your Property (Exhibit C-2). Grantees may make photocopies of the booklet to give to each property owner if the supply is inadequate.
- Send a copy of the Donation Form to each property owner - "Waiver of Rights and Benefits of the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970" (Exhibit C-3). Once the property owner(s) has been informed of his rights through the preceding documents, he may waive his right to an appraisal of his property and the payment of just compensation for his property. He is entitled to an appraisal(s) and payment, but he may waive these rights.

**NOTE:** *Make sure to document in the individual file that each owner has received the "Preliminary Acquisition Notice" (Exhibit C-1) and the booklet, When a Public Agency Acquires Your Property (Exhibit C-2).*

You may also find the HUD Acquisition and Relocation site helpful:

<https://www.hudexchange.info/programs/relocation/>

#### **D.4.d Request Donations**

Approach each property owner and request that they donate the land under consideration for acquisition (Exhibit D-3). The owner(s) must understand that he is entitled to an appraisal. The payment of just compensation is based on the "fair market value" of his property. However, the property owner(s) may waive his rights and benefits and make his donation without an appraisal or offer of just compensation.

If the owner(s) agrees to donate his property – **Go to Step 9.**

If the owner(s) declines to donate his property – **Go to Step 5.**

#### **D.4.e Select Appraiser**

To perform a proper evaluation of the properties the grantee intends to acquire, select and contract with an independent appraiser. Requests for statements of qualifications from several appraisers should be sent. To meet minimum qualifications, the appraiser must:

- a. Have no interest in the property, nor be related to, nor in business with anyone having an interest, or an apparent interest, in the property to be acquired;
- b. Be qualified, reputable, and professional;
- c. Belong to a professional organization that has a code of ethics; and
- d. Have previous experience in doing similar types of appraisals as will be required by the project.

The city/county must execute a professional services contract with the selected appraiser. The contract must require that race, color, religion or ethnic characteristics of a neighborhood shall not be considered in estimating the value of residential property. The property owner(s) must be invited to accompany the appraiser during the inspection of the property. This must be done in writing with documentation, see (Exhibit D-4) as an example.

#### **D.4.f Determine Purchase Offer**

##### **A. First Appraisal:**

If property is not donated, then the fair market value of the property must be established through an appraisal. An appraisal is performed on each parcel to be acquired. It should be done in standard form, degree and detail of analysis consistent with the complexity of the appraisal problem. The appraiser must determine a precise fair market value and state this value in writing. Easements can be evaluated on a short form (Exhibit D-5) or equivalent which summarizes the complete documentation that the appraiser must have on file. See 49 C.F.R. § 24.103.

**NOTE:** *A property owner may choose to have an appraisal done, then donate the property. This is because they are simply curious about the value, or they may want it for income tax purposes.*

##### **B. Review Appraisal:**

Each appraisal, regardless of value, must be reviewed. If the appraisal is complex, the review should be done by another appraiser; however, if it is simple and of low value, the review appraisal may be done by an independent qualified person. See 49 C.F.R. § 24.104.

- The review appraiser must visit the property and should invite the property owner(s) to be present. The review report must be written, signed and dated.
- The reviewer's recommendation of the property's fair market value must be stated in writing.

### **C. Just Compensation:**

Following a review of the appraisal, just compensation must be established. The amount offered for just compensation cannot be less the appraised value of the property

Grantees must prepare a written "Statement of the Basis for the Determination of Just Compensation", to be provided to the property owner(s). See 49 C.F.R. 24.102.

This statement must include:

- A legal description and location identification of the property;
- Interest to be acquired (e.g., fee simple, easement, etc.);
- An inventory identifying the building, structures, fixtures, etc. which are considered to be part of the real property;
- The amount of the offer and a statement to the effect that this offer is:
  - The full amount believed by the community to be just compensation,
  - Not less than the fair market value of the property,
- Disregard as to any increase or decrease in the fair market value attributable to projects for which the property will be acquired, and does not include any consideration or allowance for relocation costs;
- A definition of fair market value;
- A brief explanation of the principal appraisal techniques used in appraising the property;
- Any purchase option agreement (should be attached); and
- A statement apportioning the just compensation between the actual piece to be acquired and an amount representing damages to the remaining portion, if only a part of the parcel is to be acquired. If an "uneconomic remnant" is left, this should be purchased also.

### **D.4.e Work with Owner(s)**

After the just compensation for the property has been determined, the community is ready to present the offer to the owner(s) with the following:

- A written "Offer to Purchase" must be sent to the owner(s). The offer must specify the date on which negotiation for the sale of the property must begin. This date must be the same date as the written offer. As with all notices, its receipt must be documented.
- A written statement of the "Basis for the Determination of Just Compensation" must be included with the Offer to Purchase.
- A written Notice of Displacement must be issued within 30 days of the date specified for the initiation of negotiation, if the property to be acquired is owner or tenant occupied. Refer to the Chapter E: Relocation for more detail.
- The owner(s) has several choices at this point.
  1. The owner(s) may now decide that he/she wishes to donate the property; if so, go to Step 9.
  2. The owner(s) may accept the just compensation as offered; if so, go to Step 9.
  3. The owner(s) may make a counter offer that requests more money or terms other than those offered as just compensation; if so, go to Step 8.
  4. The owner(s) may refuse or may indicate the refusal of any offer; if so, go to Step 10.

#### **D.4.g Successful Negotiation**

With the approval of TNECD, the city/county may accept an owner(s)'s counter offer (which will be higher than the just compensation) on the basis that the cost of condemnation proceedings would be greater than the increase in price requested by the owner(s). Any potential significant delay in the implementation of the project may also provide justification for payment of a larger amount.

**NOTE:** *If the city/county is negotiating, approval must be obtained from ECD for the amount of just compensation to be paid.*

If the negotiations are successful, the grantee would execute a signed written "Offer to Purchase" and an executed contract for the sale.

#### **D.4h Completing the Settlement**

- Sign a written "Offer to Purchase" if the negotiations are successful.
- Execute the deed. This should be done by an attorney.
- Complete a "Statement of Settlement Costs" and give to the owner(s). This identifies all settlement costs regardless of whether they are paid at, before, or after closing and must clearly separate charges paid by the owner(s). If a title or escrow company is used, the standard RESPA form is acceptable.
- Obtain a receipt for the purchase price.
- Pay incidental costs. Grantee must reimburse the owner(s) to the extent deemed "fair and reasonable" for incidental costs associated with the transfer of title (i.e., recording fees, transfer taxes, penalty cost or other charges for prepayment of any pre-existing recorded mortgages and the like).
- Pay the net amount. Present the owner(s) with a check for the agreed purchase price.

#### **D.4.i Condemnation**

If it has been determined that condemnation is necessary, the following issues must be addressed:

- An attorney must carry out the condemnation proceedings since it is a legal action.
- A resolution authorizing the proceedings must be passed by the city/county.
- File copies of surveys and maps in the office in which instruments affecting real property in the county are recorded.
- Initiation of proceedings in the circuit court of the county in which the property is located.
- A deposit of the amount determined to be just compensation must be placed in an escrow account with the court.

If condemnation proceedings as outlined above have begun, the grantee must complete the purchase in accordance with the verdict of the court. If the court rules that the property value is greater than the amount placed in escrow, the grantee must pay the deficiency. As with any negotiated sale; the grantee must also pay incidental costs and complete a *Settlement Cost Statement* as described above. The court will provide guidance in completing the settlement.

#### **D.4.j Final Follow-Up**

- Obtain Final Title evidence acknowledging the city/county as the owner.
- If the property is occupied, execute a short-term lease with the tenant until relocation can be completed.
- Maintain a record on each piece of property acquired

## **D.5 ACQUISITION EXHIBIT LIST**

- D-1 PRELIMINARY ACQUISITION NOTICE
- D-2 WHEN A PUBLIC AGENCY ACQUIRES YOUR PROPERTY
- D-3 WAIVER OF RIGHTS AND BENEFITS OF THE URA
- D-4 INVITATION TO ACCOMPANY AN APPRAISER
- D-5 SHORT APPRAISAL FORM FOR EASEMENT TAKINGS
- D-6 APPRAISAL REPORT REVIEW
- D-7 NOTICE OF INTENT NOT TO ACQUIRE
- D-8 DISPOSITION OF PROPERTY ACQUIRED WITH SMALL CITIES CDBG FUNDS
- D-9 SITE ACQUISITION REPORT

# CHAPTER E:

## RELOCATION

## E.1 GLOSSARY

### COMPARABLE REPLACEMENT DWELLING

When a person is relocated whether voluntarily or involuntarily, they are moved to a "comparable replacement dwelling." Based on 49 C.F.R. § 24.2(a)(6), a comparable replacement dwelling is generally:

- Decent, safe and sanitary [as described in 49 C.F.R. § 24.2(a)(8)]
- Functionally equivalent to the displacement dwelling
- Adequate in size to accommodate the occupants
- Free from adverse environmental conditions
- In a location no less desirable
- On a site typical of the area
- Currently available on the private market
- Within the financial means of the displaced person

### DISPLACED PERSON

Is when any low income family or individual that moves from real property, or moves his or her personal property (a trailer) from real property, permanently and involuntarily as a direct result of the conversion of an occupied or vacant occupiable low/moderate income dwelling unit or the demolition of any dwelling unit in connection with an assisted activity (a person funded with CDBG dollars.) 24 C.F.R. § 42.305.

**NOTE:** *The CDBG program as operated will not "displace" persons.*

Pursuant to 24 C.F.R. § 42.375, all occupied and vacant occupiable low/moderate income dwelling units that are demolished or converted to a use other than low/moderate income housing must be replaced.

This is also known as the "one for one" requirement. If you demolish one dwelling you must replace it the demolished building with one dwelling. Under the CDBG program, you must adhere to this requirement.

### UNIFORM RELOCATION ACT (URA)

All of the policies and procedures concerning the acquisition and relocation are covered by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, which covers all HUD assisted programs. The URA requirements can be found at 49 C.F.R. § 24 (see 54 FR 8912).

### VOLUNTARY RELOCATION

The URA makes a clear distinction between a "displaced person", someone forced to move permanently, and a "non-displaced" person, or not forced to move permanently. The difference translates to different benefits for the person depending on the classification. A person who has voluntarily relocated is a non-displaced person.

A voluntary relocation occurs when "the person is an owner-occupant of the property who moves as a result of an arm's length acquisition (not condemnation) or as the result of voluntary rehabilitation or demolition of the real property". There are three additional requirements:

1. The city/county determines and informs the owner in writing that it will not use its power of eminent domain to acquire the property if the negotiations fail to result in an amicable agreement.
2. No specific site or property needs to be acquired for the project to proceed.
3. The city/county informs the owner its estimate of the fair market value of the property.

**NOTE:** *The CDBG program meets all three of these conditions. That is why it is voluntary relocation, and the persons are not "displaced."*

## E.2 RELOCATION

The Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the URA) applies to all Federal or federally-assisted activities that involve the acquisition of real property or the displacement of persons, including displacement caused by rehabilitation and demolition activities. The URA is intended to ensure implementation of such activities by Federal agencies or other public or non-profit agencies is as uniform and consistent as possible.

Under the URA, all persons (families, individuals, businesses and farms) displaced (forced to move permanently) as a direct result of rehabilitation, demolition or acquisition for a HUD-assisted project are entitled to relocation payments and other assistance. Relocation concerns must be addressed early in a project's process, primarily at the time the project is proposed. After the execution of the agreement is received, the appropriate notices regarding relocation should be disseminated to eligible residents.

When a homeowner or tenant is forced to move from their dwelling against their will, the relocation becomes involuntary and they have become a "displaced person." However, CDBG Policies and Procedures for housing rehabilitation projects using Federal funds in designated target areas does not allow for Involuntary Relocation. When a homeowner does not want to relocate or rehabilitate their dwelling, the city or county cannot force the homeowner to do so or condemn the dwelling.

## E.3 VOLUNTARY RELOCATION

When a project is undertaken that will facilitate the acquisition, rehabilitation or demolition of dilapidated dwellings, the affected homeowner(s) must be offered relocation benefits. In some cases, rehabilitation of a dilapidated dwelling is not cost efficient and the homeowner agrees to sell or donate their dwelling to the city or county who then demolishes the dwelling. The homeowner is then voluntarily relocated into a new building on the same site, a more suitable (decent, safe and sanitary) site or to an existing dwelling on another site. This voluntary relocation provides the homeowner with the benefits of receiving a new and/or better dwelling. The homeowner is also entitled to benefits related to the move, including moving and related expenses. The grantee benefits from the removal of an "eyesore" and improves the housing stock in the community.

Homeowners who are voluntarily relocated must be referred to at least one "comparable" replacement unit. The comparable replacement unit must be similar in (1) size (contain the same amount of space as the original unit), and function (performing the same purpose as the original unit), (2) reasonably accessible to the person's employment, (3) located in an equal or better area than the location of the original unit, (4) decent, safe and sanitary, (5) currently available and (6) within the financial means of the homeowner. 49 C.F.R. § 24(d)(1).

### **E.3.a Processing Relocation Claims**

The grantee is responsible for assisting displaced persons (as a result of the activity) in applying for benefits under the URA. Each homeowner affected must receive the appropriate notices/forms relating to voluntary relocation. These may include:

- General Information Notice (GIN) (Exhibit E-1)
- Claim for Replacement Housing Payment (Exhibit E-2)
- Acknowledgement of Services and Payments for Voluntary Relocation (Exhibit E-3)

All Notices must be served at the appropriate time so that adverse actions will not be realized. The files must also indicate the manner in which the Notices are delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery.

If a claim is denied, or a relocate intends to waive his/her relocation benefits, TNECD should be contacted immediately.

### ***Request for Payment for Relocation Claims***

In those cases where a new house is being built or a new manufactured home being purchased, the funds should be requested from the "Relocation" line item in the budget not from the "Housing Rehabilitation" line item.

### **E.3.b Recordkeeping**

Recordkeeping is an integral part of your responsibilities. Refer to the relocation file checklist to ensure all voluntary relocation activities are complete. Separate files must be maintained on each household for 3 years following completion of the project or relocation payment, whichever is later.

### **E.3.c Areas of Special Concern**

#### ***Affirmative Action***

Efforts must be made and documented that low income and minority homeowners who are displaced have been shown replacement housing in areas not concentrated by low income and minority populations.

#### ***Housing Discrimination***

The persons being relocated must be assisted in making complaints of housing discrimination (See Exhibit C-6).

#### ***Self-Relocatees***

It is the decision of the person to be relocated if he/she should desire to move into a housing unit that is not "decent, safe and sanitary" or that does not meet code specifications. They are entitled to receive moving costs, but not a replacement housing payment. Contact TNECD for assistance.

### **E.3.d Relocation of Farms and Business**

Additionally, pay attention to citizen concerns regarding housing and relocation. They may be frightened and suspicious of efforts to refurbish the housing stock. The counseling and assistance required in helping homeowners is significant, and the area in which many programs experience the greatest difficulty.

### **E.3.e Relocation Policy**

When the homeowner agrees to be relocated because he/she will benefit and there is no threat of condemnation, relocation policy is locally determined. Because voluntary relocation occurs in the housing rehabilitation program, a sample "relocation" policy is included under the housing policies and procedures.

## E.4 INVOLUNTARY RELOCATION

When a homeowner or tenant is forced to move from their dwelling against their will, the relocation becomes involuntary and they have become a "displaced person." Displaced persons are entitled to all the benefits under the Uniform Relocation Act and/or Section 104(d).

Involuntary relocation benefits are covered in detail by the Uniform Relocation Act and Section 104(d).

If a grantee is considering involuntary relocation, TNECD must be contacted prior to starting the process. In some instances, a new set a set of procedures may need to be developed to accommodate this method of relocation.

**NOTE:** *The CDBG policies and procedures for Housing Rehabilitation projects using Federal funds in designated target areas does not allow for involuntary relocation. Any city or county considering the involuntary relocation of a homeowner or tenant for any reason must contact ECD before contacting the homeowner or tenant.*

## E.5 RELOCATION EXHIBIT LIST

- E-1 GENERAL INFORMATION NOTICE – 180-DAY HOMEOWNER
- E-2 CLAIM FOR REPLACEMENT HOUSING PAYMENT FOR 180-DAY HOMEOWNER
- E-3 ACKNOWLEDGEMENT OF SERVICES AND PAYMENTS
- E-4 RELOCATION FILE CHECKLIST – VOLUNTARY

# CHAPTER F:

## PLANS AND SPECIFICATIONS

## F.1 INTRODUCTION

All CDBG activities to intend to procure equipment, supplies, or construction service must submit a set of specifications to TNECD for approval prior to procurement. In most cases, especially with construction contracts, a set of plans must be submitted as well.

Below is a list of procedures to follow for the development of plans and specifications for construction contracts and a list of procedures for equipment contracts. Use these lists to ensure that all appropriate activities are complete and the proper documents are included in the bid contract document. This will avoid having to re-submit the document for approval. Contract documents should be submitted to TNECD in a complete and accurate form with all bid items listed exactly as the bidders will receive them.

## F.2 CONSTRUCTION CONTRACTS

**Technical bid specifications:** Should be prepared by the Engineer and must provide a clear and accurate description of the requirements for the materials and workmanship required by the project. They are to be submitted to TNECD within 90 days of the release of the funds.

*Include a note which indicates in the event of conflicts between two sets of documents, the more restrictive shall apply.*

**A set of plans** if the project requires construction. The plans should be consistent with the technical specifications.

**A qualified professional registrant's stamp** and the date and signature of the engineer, in accordance with state law, must be placed on the first page of the specifications and on each page of the plans.

**Include the appropriate cost and pricing format**, depending on whether the project is to be bid as a lump sum or unit prices. Cost plus pricing is prohibited for CDBG contracts.

**Acquisition of all lands, rights of way and easements** necessary to carry out the project must be completed at this time. Acquisition of real property must conform to the procedures outlined by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Submit the Status of Land Acquisition document (Exhibit F-3) with the plans and specifications. If the city, county, state, or utility right-of way will be used, TNECD will need a letter from the appropriate entity stating that the right-of-way can be used.

**Obtain all permits and notify all utilities about the proposed construction.** Obtain all information concerning utilities and include it in the working drawing or plans. If a city, county, state or utility right-of-way will be used, TNECD will need a letter from the appropriate entity stating that the right of way can be used.

**A review of the documents by an attorney** should be performed to ensure compliance with applicable state and municipal law.

**A provision to allow rejection** of any or all bids should be included.

**Certification that applicable standards of accessibility** by the handicapped will be met (Exhibit F-2) must be executed by the qualified professional registrant, co-signed by a local government official and placed in the contract documents file. This document is only required if the project include construction or rehabilitation of a building.

**Include all required CDBG documents** (Exhibit F-1). These documents contain federal language which is required of block grant projects and cannot be substituted for or altered. For jointly funded RD-CDBG or EPA-CDBG projects, use RD or EPA forms plus the following:

- Advertisement for Bids
- Information for Bidders
- Certification of Bidder Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion
- Certification of Bidder Regarding Equal Employment Opportunity
- Certification of Bidder Regarding Use of Female/Minority Subcontractors
- Certification of Bidder Regarding Section 3 and Segregated Facilities
- Certification by Proposed Subcontractor Regarding Equal Employment Opportunity
- Certification of Proposed Subcontractor Regarding Section 3 and Segregated Facilities
- Drug-Free Workplace Affidavit
- Statement of Compliance Certificate Illegal Immigrants
- Certificate of Owner’s Attorney
- Iran Divestment Act

**Include the CDBG Contract General and Supplemental Conditions.** (Exhibit F-4)

**Determine minority/female goals** from the Fair Housing/Equal Opportunity Section of this manual (Exhibit C-8). Complete the appropriate blanks on the supplemental conditions portion as found in the contract document guide.

**Review of documents for brand names.** Plans and/or specifications cannot specify brands of materials or equipment for bidding. Brand names are allowed as a point of reference but must be accompanied by “or equal” language. Only in rare cases can a brand be specified, and only with TNECD approval.

**Submit the documents to TNECD 21 days before advertising.** Review by other agencies can occur within the 90 days after the release of funds has occurred. If this deadline cannot be met, an extension must be requested and approved by TNECD. This should also be completed and the bid document approved before advertising. Bid documents should be submitted exactly as the bidders will receive it.

**Make all corrections before advertising.** If items are missing from the bid document, complete them and send a fully completed, bound copy to TNECD for approval before advertising.

**Resubmit the plans and specifications to TNECD** for approval if there are any changes made.

**If the plans and specifications differ from the application** by more than just a clarification of amounts, distances, etc., submit a letter outlining the change with the plans and specifications document. If the change involves different direct beneficiaries, note that new target area surveys will need to be completed.

**Submit Addenda to our TNECD for approval BEFORE issuance to bidders.** Addenda must be approved by TNECD and then communicated to potential bidders at least 48 hours (excluding weekends and holidays) before bids are due according to state law. It is best practice to set a firm deadline for contractors to submit questions or to hold a pre-bid conference to ensure enough time for approval of the addendum by TNECD and for communication to the potential bidders.

**NOTE:** *ADVERTISEMENT OF THE PROJECT BEFORE TNECD APPROVAL OF PLANS AND SPECIFICATIONS OR ADDENDA MAY RESULT IN REBIDDING.*

### F.3 EQUIPMENT CONTRACTS

**Technical bid specifications:** Should be prepared in coordination with the appropriate personnel. For instance, if the grant is to purchase a fire truck, the fire chief should be included in the development of the specifications. The specifications must provide a clear and accurate description of the requirements for the equipment or materials required by the project. They are to be submitted to TNECD within 90 days of the release of the funds.

*Include a note which indicates in the event of conflicts between two sets of documents, the more restrictive shall apply.*

**Include the appropriate cost and pricing format,** depending on whether the project is to be bid as a lump sum or unit prices. Cost plus pricing is prohibited for CDBG contracts.

**A review of the documents by an attorney** should be performed to ensure compliance with applicable state and municipal law.

**A provision to allow rejection** of any or all bids should be included.

**Include all required CDBG documents** (Exhibit F-5). These documents contain federal language which is required of block grant projects and cannot be substituted for or altered. For jointly funded RD-CDBG or EPA-CDBG projects, use RD or EPA forms plus the following:

- Advertisement for Bids
- Information for Bidders
- Certification of Bidder Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion
- Drug-Free Workplace Affidavit
- Certificate of Owner’s Attorney
- Iran Divestment Act

**Review of documents for brand names.** Plans and/or specifications cannot specify brands of materials or equipment for bidding. Brand names are allowed as a point of reference but must be accompanied by “or equal” language. Only in rare cases can a brand be specified, and only with TNECD approval.

**Submit the documents to TNECD 21 days before advertising.** Review by other agencies can occur within the 90 days after the release of funds has occurred. If this deadline cannot be met, an extension must be requested and approved by TNECD. This should also be completed and the bid document approved before advertising. Bid documents should be submitted exactly as the bidders will receive it.

**Make all corrections before advertising.** If items are missing from the bid document, complete them and send a fully completed, bound copy to TNECD for approval before advertising.

**Resubmit the plans and specifications to our TNECD** for approval if there are any changes made.

**If the specifications differ from the application** by more than just a clarification of amounts, distances, etc., submit a letter outlining the change with the specifications document. If the change involves different direct beneficiaries, note that new target area surveys will need to be completed.

**Submit Addenda to TNECD for approval BEFORE issuance to bidders.** Addenda must be approved by TNECD and then communicated to potential bidders at least 48 hours (excluding weekends and holidays) before bids are due according to state law. It is best practice to set a firm deadline for contractors to submit questions or to hold a pre-bid conference to ensure enough time for approval of the addendum by TNECD and for communication to the potential bidders.

**NOTE:** *ADVERTISEMENT OF THE PROJECT BEFORE TNECD APPROVAL OF PLANS AND SPECIFICATIONS OR ADDENDA MAY RESULT IN REBIDDING.*

<b>F.4 PLANS AND SPECIFICATIONS EXHIBIT LIST</b>
--

- F-1 CDBG BID AND CONTRACT DOCUMENTS
- F-2 CERTIFICATION OF COMPLIANCE WITH ACCESSIBILITY STANDARDS
- F-3 STATUS OF LAND ACQUISITION
- F-4 CDBG CONTRACT GENERAL AND SUPPLEMENTAL CONDITIONS
- F-5 CDBG BID AND CONTRACT DOCUMENTS FOR EQUIPMENT

# CHAPTER G:

## BIDDING AND PROCURMENT

## G.1 PREFACE

This chapter a guide to the various procurement and bidding processes that may be used for CDBG projects. The sections include preparation of the bid package, bidding procedure, and procurement requirements. The sections are set up to be utilized as checklists enabling the grant administrator to easily ascertain which activities have been completed and which are left to complete.

## G.2 PRE-BID/ PROCUREMENT CONSIDERATIONS

### **G.2.a Conflicts of Interest and the Code of Conduct**

During the procurement goods or services instances may arise where competition can be restricted by organizational conflict of interest or non-competitive practices among contractors. Communities should be alert to issues of this nature which may adversely affect procurement practices.

Each community must have a written Code of Conduct which specifically prohibits elected officials, staff or agents from personally benefiting from CDBG procurements. The code must prohibit the solicitation or acceptance of favors or gratuities from contractors or potential contractors, and it must provide sanctions or penalties for violations of the code of conduct by local government officials, staff or agents, or by contractors or their agents. "Standards of Conduct" prescribed by HUD's Office of Inspector General is included as Exhibit A-6 of this manual. A copy of these standards of conduct must be placed in your CDBG files. If the community already has a code of conduct, a copy of that code must be made and placed in the CDBG files in addition to the HUD Standards of Conduct.

### **G.2.b Other Requirements**

- Procurements should be reviewed by staff to avoid unnecessary and duplicative purchases and to ensure costs are "reasonable".
- Invitations for bids or requests for proposals must be clearly written and must describe the technical requirements of the equipment or services without requesting a certain brand.
- Positive efforts must be made to use small and/or minority-owned businesses. (See the "Chapter C: Fair Housing and Equal Opportunity" for minority bid solicitation requirements)
- The method of contracting (fixed price, cost plus fixed fee, purchase orders, etc.) should be appropriate. Cost plus percentage of cost contracts are specifically prohibited if CDBG funds are involved.

### **G.2.c Procurement Procedures**

All cities, towns, and counties in the State of Tennessee are governed by some sort of procurement policy. Policies vary from community to community. If a town or county does not have a specific procurement policy or law, the County Purchasing Law of 1983 (Tenn. Code Ann. § 5-14-201), or the Municipal Purchasing Law of 1983 (Tenn. Code Ann. § 6-56-301) will apply. Both laws require formal bidding for all purchases of \$2,500 or greater. Some cities and counties in Tennessee have procurement policies that require formal bidding for purchases less than \$2,500.

**NOTE:** *The grantee is responsible to ascertain whether the local procurement policies or federal procurement policies apply. The stricter standard must always be used.*

## **G.3 SMALL DOLLAR PROCUREMENT REQUIREMENTS**

Informal methods that are sound and appropriate are allowed for the procurement of supplies and other property whose total cost is not more than the local bidding limit (\$2,500 in most cases).

### **G.3.a Small Dollar Purchases of Equipment, Supplies, And Non-Professional Services**

Price or rate quotations must be obtained from at least three qualified sources. These quotations may be obtained over the telephone (maintain written record of calls in the grant files). The contract should be awarded to the offeror with the lowest price quotation.

### **G.3.b Professional Service Contracts**

Prior to the performance of any professional services, a written request for statements of qualifications must be sent to at least three firms that offer the type of service the community wishes to procure. Copies of these letters must be on file. Advertising for statements of qualifications is not required. The contract must be awarded solely on the basis of qualifications, not price. Stating “this is the firm the community has always used” is not sufficient reason for award. Often a method of scoring applications based on history, experience, price, qualifications, etc. is conducted.

## **G.4 PROCUREMENTS THAT REQUIRE FORMAL BIDDING**

Procurements of equipment, non-professional services and construction contracts where the total cost is more than the local bidding limit (\$2,500 in most cases) must formally advertise for sealed bids and a public bid opening in a newspaper of general circulation.

### **G.4.a Advertisement Requirements**

The invitation to bid must be published in a daily newspaper of general circulation at least **14 days prior** to the public bid opening.

**NOTE:** *The Environmental Protection Agency (EPA) requires the invitation to bid to be published in a newspaper of entitlement city at least 30 days prior to the bid opening; grantees must follow EPA's advertisement requirements if EPA funds are in the project. Entitlement communities are Bristol, Chattanooga, Clarksville, Hendersonville, Jackson, Johnson City, Kingsport, Knoxville, Memphis, Murfreesboro, Nashville, Oak Ridge, Morristown, and Cleveland.*

One method to increase the circulation of an invitation to bid is to advertise in the Dodge Report. While this advertisement is free of charge, TNECD will not accept it as a substitute for an advertisement in a newspaper of general circulation.

### **G.4.b Deductive and Additive Alternates**

The use of alternates in bidding is recommended to allow for flexibility in the case the bids greatly differ from the estimated costs of the project. A bid package may include additive and/or deductive alternates. The use of bid alternates may not alter the scope of the project.

A deductive alternate is a portion of the project that can be deleted to bring construction costs within the budget if all bids received exceed the funds available for construction. When deductive alternates are applied, they must be done so in the order in which they are listed in the bid specifications.

If using additive alternates, the alternates are applied in the order they are listed in the bid specifications to the base bid until the budget is reached.

#### **G.4.c Bid Opening Requirements, Rejection and Award to Low Bidder**

Formal bidding of goods and services requires for bids to be sealed and submitted in the manner detail in the bid documents distributed or acquired by potential bidders. Potential bidders are instructed to submit the sealed bids to a specific address by a specific time. Bids that are not received in the appropriate manner as directed should be disallowed and not opened. Sealed bids must be opened publicly at the time and place specified in the invitation to bid.

#### **Rejection of Improper Bids**

Any and all bids may be rejected when sound business reasons are documented for rejecting bidders.

#### **Award to Low Bidder**

A firm fixed-price contract must be awarded to the lowest responsive and responsible bidder whose bid conforms to all bid specifications. If the lowest cost bid is not accepted, justification should be presented in writing to TNECD for approval before accepting the bid. For construction projects the justification may be submitted by the project engineer with a letter of concurrence from the mayor or county executive.

#### **Prohibition Against Negotiation with Bidders**

If all bids received exceed the amount of the construction budget, a grantee may not negotiate the contract price with any bidder, especially the low bidder. Negotiation solely with the low bidder is a violation of CDBG policies and procedures.

**NOTE:** *NEGOTIATION OF THE CONTRACT PRICE SOLELY WITH THE LOW BIDDER WILL RESULT IN THE DISALLOWANCE OF CONSTRUCTION COSTS FOR REIMBURSEMENT WITH GRANT FUNDS.*

#### **G.4.d Allowable Alternatives If All Bids Exceed the Amount of the Construction Budget**

If all bids received are over-budget the grantee has three alternatives for next steps:

1. Provide the additional funds needed to pay for the contract from local funds. (May require a resolution for the commitment of additional local funds.)
2. Rebid the project.
3. Alter the project as follows:
  - a. Consult with the project engineer and decide which items would be feasible to eliminate from the construction bid specifications.
  - b. Submit a letter detailing all requested changes in the bid specifications to TNECD for approval.
  - c. After receiving written approval of these changes, contact all bidders who submitted bids for the initial bidding by certified mail and request that they resubmit sealed bids without the removed items over the amount of the construction budget, communities have

**NOTE:** *Changes to bid specifications must not change the project's scope.*

**NOTE:** *Bidders must be informed that they have the right to change the unit price of any of the line items in their original bid, as long as they conform to the revised bid specifications.*

Award the contract to the bidder submitting the lowest bid that conforms to the revised bid specifications (i.e., the original bid specifications less the deleted items).

If all bids received in the second bidding are still greater than the amount of the budget, grantees should repeat any of these three alternatives or decide that the project, as originally submitted in the application, cannot be performed for the amount of money budgeted and return the grant funds to the State.

## **G.5 COMPETITIVE NEGOTIATION**

Competitive negotiation must be used for professional service contracts and may be used if no acceptable bids have been received after formal advertising (Contact TNECD for permission before this occurs).

### **G.5.a Professional Service Procurement**

This section applies to all professional service contracts paid in whole or in part with CDBG funds.

Common professional services that are used for CDBG projects include administration, housing rehabilitation inspection/management, relocation management, engineering, land surveying, architectural work, auditing, and legal counseling. If CDBG funds are not used for such services, this section will not apply.

**NOTE:** *Professional service procurement procedures must be performed prior to the performance of any work by the professional service contractor. If professional service procurement procedures are not performed correctly, fees for professional services must be paid with local funds.*

However, procurement procedures do not have to be performed prior to the submission of the grant application if professional services are unnecessary in order to submit the grant application.

*Example:* If a preliminary engineering report is to be a part of the application, the procurement procedures for the engineering services must be performed prior to selection of the engineer who then prepares the preliminary engineering report. Costs of application preparation are not CDBG eligible.

Prior to the performance of any professional services, a written request for statements of qualifications must be sent to at least three firms that offer the type of service the community wishes to procure. Copies of these letters must be on file. Advertising for statements of qualifications is not required. The contract must be awarded solely on the basis of qualifications, not price.

**NOTE:** *If the community chooses to use the local development district for administration of the grant, the issuance of requests for statements of qualifications is not required.*

### **G.5.b Requests for Proposals**

Requests for proposals are used when advertising is not feasible because the products or services procured are of a specialized nature or when, after advertising, no acceptable bids have been received. Approval by the State is required prior to procurement by the use of requests for proposals.

### **G.5.c Suggested Professional Service Contractor Evaluation Process**

Once the requested statements of qualifications or proposals are received, the review process begins. The process should be thorough, uniform and well-documented. The preferred method is a review conducted by a committee of at least three people who have technical knowledge of the type of project being considered. However, these reviewers should have no potential conflicts of interest with any of the firms or individuals under review. Some criteria to consider include:

- Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and with the complexity of the project.
- Past performance on contracts with the community and other clients, including quality of work, timeliness, and cost control.
- Capacity of firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm.
- Familiarity of the firm with the type of problems applicable to the project.

Communities may also wish to establish an evaluation consideration for local firms if familiarity with local conditions is an important element for a successful project. The relative importance of these factors can be predetermined by assigning values to each (e.g., specialized experience may be assigned 40 points out of a total possible 100 points).

**G.5.d Required Contract Conditions for Professional Service**

A contract must be drafted with terms and conditions for all professional services contracts, including:

- Executive Order 11246 clause (7 paragraphs if contract above \$10,000, or 3 paragraphs Equal Opportunity provisions if \$10,000 or under). See, 24 C.F.R. § 1.4 and 41 C.F.R. § 60.
- Contractor's Certification regarding Equal Employment Opportunity.
- Title VI clause pertaining to the Civil Rights Act of 1964.
- Access to Records/Maintenance of Records statement.
- Conflict of Interest clause.
- Section 3 statement (written plan if contract over \$10,000) pertaining to the Housing and Urban Development Act of 1968, as amended.
- Section 109 clause of the Housing and Community Development Act of 1974, as amended.

**G.5.e Required Documentation for the Professional Service Contract File**

Grantees should establish a contract file and monitor the contract to assure that it is completed in a satisfactory and timely manner. The contract file must contain:

- a copy of the professional service contract;
- a list of the firms to which the request for statements of qualification was sent;
- the actual statements of qualifications received;
- a written statement explaining why/how the winner was selected.

**G.6 NON-COMPETITIVE NEGOTIATION**

Non-competitive negotiation may be used when the award of a contract is not feasible under small purchase, competitive bidding or competitive negotiation procedures. This may be due to single source availability or inadequate competition, determined after solicitation of several sources. Approval by TNECD is required prior to procurement by non-competitive negotiation.

**G.7 STATE CONTRACT AND COOPERATIVE AGREEMENT**

When purchasing equipment local governments may be able to take advantage of either purchasing off state contract or through a cooperative agreement. Both of these methods are approved as the contracts have already been competitively procured.

### **G.7.a State Contract**

When procuring via state contract, the grantee must provide documentation of the proposed purchase that can be found on the Active Statewide Contract list. This documentation, along with a letter from the mayor on grantee letterhead, must be submitted to ECD prior to contacting the chosen vendor. This essentially takes the place of submission of specifications.

Once the method of procurement by state contract is approved, the grantee may proceed with contacting the vendor. Once the grantee is ready to submit the request for purchase (bid package) to ECD for review, the following items must be included:

- Letter of recommendation signed by the mayor on grantee letterhead
- Draft purchase order with detailed equipment costs and total
- Certification of Bidder Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (Signed by the selected vendor)
- Iran Divestment Act Certification (Signed by the selected vendor)

Once the approval for the purchase is received, the grantee may proceed with the purchase of agreed upon equipment.

### **G.7.b Cooperative Agreement**

The other option of procurement is via cooperative agreement. All cooperative purchases must fully comply with [T.C.A. § 12-3-1205](#). Cooperative agreements may only be executed with other governmental entities inside or outside of the State of Tennessee. Local governments may be a member of a purchasing cooperative, and in these cases compliance with federal, state, and local procurement policies is vitally important. If a grantee opts to purchase through cooperative, the following must be submitted to ECD prior to contacting any chosen vendor:

- Letter of request to use the selected service/platform signed by the mayor on grantee letterhead
- Documentation from the other governmental entity or service of the proposed equipment to be purchased
- If using a service/platform, documentation the method of procurement is compliant with the State of Tennessee (often listed somewhere on the website)
- An adopted resolution agreeing to the terms of the master agreement of the cooperative purchase service/platform

Once the method of procurement by state contract is approved, the grantee may proceed with contacting the vendor. Once the grantee is ready to submit the request for purchase (bid package) to ECD for review, the following items must be included:

- Letter of recommendation signed by the mayor on grantee letterhead
- Draft purchase order with detailed equipment costs and total
- Certification of Bidder Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (Signed by the selected vendor)
- Iran Divestment Act Certification (Signed by the selected vendor)

Once the approval for the purchase is received, the grantee may proceed with the purchase of agreed upon equipment.

## **G.8 PREPARATION OF A BID PACKAGE**

### **G.8.a Initial Bid Package Preparation Considerations**

The grantee should closely monitor the preparation of the bid contract documents to ensure that all necessary requirements have been met in order to avoid delays in the project.

### **G.8.b Wage Rate Determination**

Any contract for a prime contract that exceeds \$2,000 and uses CDBG dollars for construction, is subject to the Davis–Bacon Act of 1931. This includes projects for alteration and/or repairs, and those projects must pay wage rates, fringe benefits and payments, as determined by the Davis-Bacon Act. See, 40 U.S.C. § 3142.

Without the correct wage decision in the bid contract document, the grantee will not be permitted to advertise for bids. Plan ahead and send the request in early enough for proper processing. Only classifications listed on the wage decision may be used.

**NOTE:** *Classifications not listed must be added by the additional classification process after contract award.*

The correct wage determination must be downloaded from the SAM.gov website at <https://beta.sam.gov/search?index=wd>. Determine the correct category of construction.

**NOTE:** *Multiple categories of construction might rarely apply in the event that 20% or more of total construction fall under separate categories (example, building vs. heavy)*

## **G.9 BIDDING PROCEDURE**

Once bid documents have been approved, all activities involved in the bid process may proceed. Check to assure that the following items have been appropriately covered.

### **G.9.a Advertising for Bids**

- Solicit bids by public advertising as required by federal procurement regulations.
- Advertise at least once, 14 days prior to bid opening. Local procurement regulations must be followed if more restrictive. If a project is jointly funded, the more restrictive regulations apply.
- Note the wage rate, Section 3, and Equal Opportunity provisions in the advertisement.
- Contact minority and female contractors in the area directly by telephone or mail and document those efforts. Refer to the Equal Opportunity section of the manual and use the Minority Business Directory as a guide.
- All addenda must be sent to TNECD All contractors receiving bid documents when a revision is required prior to bid opening. This addendum must be communicated to all prospective bidders not later than 48 hours prior to the date fixed for the opening of bids.
- Call or e-mail TNECD 10 days before the bid opening. The wage decision must be verified 10 days before the bid opening and a memorandum of this verification must be maintained in the file. In the event the wage decision has been modified, an addendum must be sent to TNECD for approval prior to the bid opening as well as meet the required addendum deadline.

### **G.9.b Bid Opening**

The bid opening is to be conducted in a business-like manner on the date scheduled.

- Requirements of the Tennessee Contractors Licensing Act of 1994 should be followed concerning information on the outside of the contractor's bid submittal envelope. See, Tenn. Code Ann. § 62-6-101.
- Bids must remain sealed until the opening.
- Log time and date of receipt, name of offeror and procurement number on each bid received.
- Keep minutes of the meeting. Read the bids aloud and determine the apparent low bidder.

### **G.9.c The Bid Award**

After the bid opening, the proper local government officials and their consultant should review the bids. The review of all bids should include analysis of both technical and legal responsiveness. If a grantee feels it must award the contract to someone other than the lowest bidder, contact the TNECD project representative and advise him/her of the problems or questions. A letter from the project engineer and with the justification for not accepting the lowest bidder must be submitted to TNECD for a approval with the recommendation for award. A letter from the community official must accompany a formal recommendation for award and indicating that the approval of the bid was made pursuant to local procurement policy.

**NOTE:** *If your local procurement policy indicates a governing body must vote on and approve the low/winning bidder, the letter with the recommendation for award must account for this process.*

Upon the determining the proposed awarded bidder, the grantee should do the following:

- Evaluate of the bidder and their capacity to perform the services required.
- Send the detailed bid tabulations from all of the bidders along with the Recommendation for Award, all necessary and required certifications and affidavits, the newspaper bid advertisement and the minutes from the bid opening to TNECD for review and approval within two weeks of opening bids.
- If any addenda are applicable to the project, documentation must also be submitted to TNECD indicating such addenda were issued to potential bidders within the required timeframe as prescribed Tennessee State law.
- Verification of contractor eligibility will be mailed or e-mailed upon receipt of the bid tabs. This assures that the contractor is not on the Lists of Parties Excluded from Federal Procurement or Non-Procurement Programs.
- Award the contract, after TNECD approval, within 60 days of the bid opening, or reject all bids. Enough money must be available in the construction budget to cover the bids in order to award the contract, or a resolution of commitment of additional funds must be submitted.
- Send the Notice of Contract Award and Pre-Construction Conference (Exhibit H-1) to the appropriate TNECD representative at least ten (10) days prior to the conference.

**NOTE:** *If a community has questions about the definitions of our processes for scope changes and change orders, see the introduction and finance chapters of this manual.*

**NOTE:** *A contract shall not be awarded without TNECD approval.*

**CHAPTER H:  
PRE-CONSTRUCTION &  
CONSTRUCTION ACTIVITIES**

## **H.1 PRE-CONSTRUCTION ACTIVITIES**

Once the contract has been awarded, several activities to be performed before construction can begin.

### **H.1.a Certifications and Assurances**

Ensure that all Equal Opportunity Certifications, Section 3 Certifications, Certification of Bidder Regarding Debarment, Suspension, Ineligibility and Voluntary be completed. These completed forms should have been included with the bid package for TNECD approval for the prime contractor. These forms should remain bound in the contract document upon completion and kept in the grantee's file. The prime contractors should be made aware that all subcontractors must complete the Equal Opportunity Certifications and Section 3 Certifications also.

All bonding and insurance provisions must be met as required in the contract. These documents should be attached to the contract document and submitted to TNECD with the bid tabs.

### **H.1.b The Pre-Construction Conference**

A pre-construction conference should be conducted with the prime contractor and all available subcontractors and lower-tier contractors in attendance. In addition, the individual responsible for preparing the payrolls should be encouraged to attend. Close attention should be paid to issues and questions involving labor and payrolls. Keep an accurate record of all items discussed at the meeting.

Cover all labor and payroll issues as shown:

1. Explain to the contractors their responsibilities with respect to labor standards and equal opportunity requirements, as well as the technical job requirements.
2. Explain that each contractor and subcontractor must submit weekly payrolls and statements of compliance signed by an office of the company. The prime contractor is responsible for securing payrolls and statements of compliance from all subcontractors.
3. Any change to the contract after the fact between the grant recipient and the contractor will require following the formal contract addendum process.
4. Explain wages paid must conform to or exceed the wage rate decision included in the contract.
5. For all Davis Bacon Requirements to be discussed at the Pre-construction conference, see the Labor Chapter.

### **H.1.c. Notices**

The following are required documents for compliance during this phase of the project:

- The “Notice of Contract award and Pre-Construction Conference” (Exhibit H-2) must be submitted to TNECD at least 10 days prior to the pre-construction conference being held. If less than 10 days is needed, a waiver must be requested to TNECD. TNECD will send a letter indicating what must be covered during the pre-construction conference.
- Prepare the “Pre-Construction Conference Report” (Exhibit H-3). This report is to be signed by the prime contractor as proof that he/she attended the pre-construction conference and all items documented in the minutes were covered at the meeting. This is to be kept in the monitoring file.
- “Notice to Proceed” (Exhibit H-4) authorizes the contractor to begin work on a designated date. Send a copy to the contractor. Retain a copy of the city/county files signed by the contractor indicating that he/she was properly notified.

- Notice of Start of Construction (Exhibit H-5) informs TNECD that construction will begin on a designated date and how many working days are allowed. Send a copy to TNECD before construction begins.
- Contractor/Subcontractor Activity Report (Exhibit H-1) should be submitted to TNECD within 30 days after the Pre-Construction Conference is conducted. This form must be completed for all prime contractors and subcontractors for the project as well as for engineers and private administrators. Any time additional contractors are added to the project, this form should be updated and submitted to TNECD.

## H.2 CONSTRUCTION

### **H.2.a Scope Changes**

Projects are approved based upon the information in the application; therefore, changes in the scope of the project must be approved by TNECD before any work is done.

A scope change is defined as anything that expands or alters the original design, intent, cost, or area of service of a project. Additionally, if the combined change orders for the project total 25% or more of the cost of construction, the result will be a scope change, and the project or additional work may have to be rebid.

A formal, written request from the grantee must be submitted to TNECD for all scope changes. The request should include a map showing the change, a summary of the households to be served, including LMI households, a cost estimate with justification from the engineer explaining why the change is necessary, and information detailing how the changes will be funded. TNECD will review the request, and if it determines the changed project would have been funded under the application criteria, the change will likely be approved.

**NOTE:** *Grantees must never proceed with the requested changes until written approval from TNECD is received. Scope changes may require an additional environmental review or an addendum to the environmental review as well as the possibility of a contract amendment.*

When communities request a scope change, the contract should be referenced to see if an amendment is required. If required, work cannot begin until the amendment is approved. Major reductions in the scope of the proposed work can result in adverse State action (i.e. grant reduction or termination or a finding of ineligibility for subsequent funding).

### **H.2.b Change Orders**

Change orders are alterations from previously approved documents that require a modification (an increase or decrease) in project cost, engineering charges, quantity, or schedule. For example, if the number of linear feet installed on a water line is greater or less than bid, a change order is required to adjust the quantities.

- Change orders should be used sparingly and only when necessary.
- The project must remain within the contracted amount or additional non-CDBG funds should be allocated to the project.

Change orders with justification for the needed change by the engineer must be submitted to TNECD for approval. TNECD prefers that change orders be submitted by the grant administrator but will accept them from the grantee or engineer. If submitted by the grantee or engineer, ensure the administrator aware of the changes being requested and the documentation presented. Approval must be granted by TNECD prior to work being done. A budget revision must be submitted to the TNECD fiscal office after the change order is approved. If a change order results in a scope change, the required scope change documentation must be submitted with the change order documentation.

Final adjusting change orders are submitted near the completion of a project to reconcile final quantities installed. If the quantities are not significant changes and there are no new items, this change order does not need to be approved by TNECD before the work is completed.

If a grantee plans to request payment before completion of a project, a change order approving any increase in installed quantities must be approved or the request cannot be paid. Change orders that require more than one funding agency's approval must be approved by all agencies before the work can begin. It is important to remember that if CDBG funds are any part of a project, then the CDBG rules and regulations apply to the entire project. Therefore, change orders for any part of a project, even a part not funded by CDBG must be approved by TNECD.

#### **H.2.d Force Account Work**

Force account labor occurs when municipal or county employees are used to complete construction work rather than the work being completed by a contractor. For force account labor to be approved, the municipality must own the equipment and the municipality's forces must do the work. For information and details on using force account labor refer to "Chapter I: Labor".

**NOTE:** *In order to perform force account work, the grant recipient must own the equipment, use city or county forces, and obtain State approval by submitting the following information:*

The following is required for justifying the use of force account labor:

1. Names and engineering qualifications of personnel performing the work and their capabilities for design, supervision, planning, inspection, testing, etc. as applicable.
2. Details of experience with projects of like or similar nature.
3. Information on workload (as it may affect capacity to do the work within timeframe or work scheduled).
4. Justification for doing the work by force account rather than by contract.
5. A complete breakdown showing:
  - a. the number of work hours and cost per hour for each category of labor, and
  - b. a list of non-salary costs such as materials, supplies, equipment, etc.
6. Certification from the above-mentioned personnel's supervisor that they are full time city/county employees and have not been hired just for this project.
7. Certification that the equipment to be used is owned by the county/city and is not rental equipment.
8. Project Engineer certification of force account utilization. (signature on force account request).

### **H.3 CONSTRUCTION COMPLETION**

Prior to closeout, inspection and acceptance of the work of construction and making the final payment is required including involving the completion of the following tasks:

- A certification of completion of work and a request for final payment should be submitted by the contractor to the grant recipient’s engineer/architect.
- A final inspection should be arranged.
- A final inspection report should be submitted by the architect/engineer to the grant recipient.
- All labor compliance activities must be completed, including:
  - Viewing all weekly payrolls and statements of compliance;
  - Resolving all interview discrepancies;
  - Satisfying all equal opportunity requirements;
  - Receiving all contractor/subcontractor certifications;
  - Resolving all monitoring findings;
  - Resolving all claims and disputes involving the contractor;
  - Completing all files and filing as-built plans.

### **H.4 PRE-CONSTRUCTION & CONSTRUCTION EXHIBIT LIST**

- H-1 Contract and Subcontract Activity Report (HUD-2516)
- H-2 Notice of Contract Award and Pre-Construction Conference
- H-3 Pre-Construction Report
- H-4 Notice to Proceed
- H-5 Notice of Start of Construction

# CHAPTER I: LABOR COMPLIANCE

## I.1 GLOSSARY

### **APPRENTICES**

Apprentices may be paid less than the pre-determined rate for the particular job classification that they are employed under if: 1) those apprentices are individually registered in an apprenticeship program that is registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or 2) if a person is employed in their first 90 days of probationary employment as an apprentice who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency. The allowable ratio of apprentices to journeymen in any classification shall not be greater than the ratio permitted to the contractor for the entire work force under the registered program. (Usually this is a 3:1 apprentice to journeyman ratio.) The ratio can depend on the contract and is determined on a daily basis (not weekly). Documentation must be provided to support the apprentice status such as documentation from the registered apprenticeship program. This documentation must be on file at the time of monitoring by TNECD. *See, 29 C.F.R. § 5.5(a)(4)(i) for additional guidance.*

### **BID CONTRACT DOCUMENT**

TNECD will only accept the Bid Document contained in our training manual for submission with Plans and Specifications to our office. When other agencies' funds are included, the other agency forms must be completed and submitted along with TNECD's. Wage rates must be included in the document upon submission. Only a complete set of Plans and Specifications will be accepted for review; this includes the Status of Land Acquisition form and, where applicable, the Certification of Compliance with Minimum Standards for Accessibility by the Physically Handicapped forms.

### **CONFORMANCE**

This is the procedure for establishing a Davis-Bacon enforceable wage and benefit rate for missing job classifications. (Contractors are responsible for determining the appropriate crafts necessary to perform the contract work. If a classification considered necessary for performance of the work is missing from the WD, the contractor must initiate a request for approval for a proposed wage and benefit rate. *See, 29 C.F.R. § 5.5(a)(1)(ii)* sets the criteria that must be met to obtain a rate for an unlisted classification.)

### **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (CWHSS)**

All laborers and mechanics that work over forty hours per week are to be paid one and one-half times their basic rate of pay. Contractors in violation of this act will be liable to the United States for a penalty of \$27.00 per day per employee as well as to any affected employee for unpaid wages. *See, 24 C.F.R. § 5.8.*

### **COPELAND ANTI-KICKBACK ACT**

The Copeland Act (Anti-Kickback Act) provides that no deduction or rebate on any account will be taken from an employee's pay, except deductions permitted by law, unless this deduction is authorized in writing by the employee. *See, 18 U.S.C. § 874.*

### **DAVIS-BACON ACT**

Any contract over \$2,000 that uses CDBG dollars for construction, alteration and/or repair of public buildings or public works must pay the wage rates, fringe benefits and payments without deductions or rebates as determined by the Davis-Bacon Act to all laborers and mechanics working on the project. Davis-Bacon applies to all subcontracts or lower-tier contracts under a prime contract that exceeds \$2,000 regardless of the amount of the subcontract or lower-tier contract. *See, 40 U.S.C. § 3142.*

**NOTE:** *This Act does not apply to the construction or rehabilitation of residential projects of fewer than 8 units or to force account work.*

### **DAVIS-BACON WAGE CATEGORY**

Davis-Bacon wage rates are divided into five categories: Building, Heavy, Residential, Construction and Highway. According to the Department of Labor, the Building category applies to the construction of sheltered enclosures, the installation of utilities and the installation of equipment associated with that building. The Highway category applies to the construction or alteration of roads, highways, etc. not incidental to building or heavy construction. The Heavy Construction category covers projects that are not properly classified as one of the other categories. Residential Construction applies to the construction, alteration, or repair of single-family homes, townhomes, or apartment buildings of no more than four stories in height and only if the property contains no less than 8 units (*See [https://www.hudexchange.info/resources/documents/Davis-BaconandHOME\\_TrainingManual.pdf](https://www.hudexchange.info/resources/documents/Davis-BaconandHOME_TrainingManual.pdf) for additional guidance and reference*).

### **EMPLOYEE INTERVIEWS**

Employee interviews are to be conducted with sufficient frequency to establish the degree of accuracy of the records. Additional information on employee interview processes is included herein.

### **FORCE ACCOUNT WORK**

Force Account work is the construction, rehabilitation, repair or demolition that is performed by municipal employees.

### **FRINGE BENEFITS**

Fringe benefits are the rate of costs to the contractor or subcontractor for the provision of benefits to laborers and mechanics for:

1. Medical or hospital care;
2. Pensions on retirement or death;
3. Life insurance, disability and sickness insurance, or accident insurance;
4. Vacation and holiday pay;
5. Defraying costs of apprenticeship or other similar programs; and
6. Other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State or local law to provide any such benefits.

Fringe benefits can be paid into a bona fide fringe benefits plan or paid as cash to the employees. *See, 29 C.F.R. § 5.29.*

### **HELPERS**

This class of workers who can no longer be used on any CDBG funded project. They may be employed if the duties are clearly defined and distinct from other classifications on the wage determination and are part of an established prevailing practice in the area but are not employed in an informal training program. Additionally, only if the above conditions are met and no wage determinations class performs the work (such as a recorder or secretary), may they be employed.

### **LABORERS AND MECHANICS**

Any employees working on a CDBG funded project.

## **OVERTIME VIOLATIONS AND LIQUIDATED DAMAGES**

The prime contractor shall be liable to all employees for any unpaid wages. The prime contractor shall also be liable to the United States government for liquidated damages at the rate of \$25.00 per day for every employee that did not receive time and one-half as necessary under the Contract Work Hours and Safety Standards Act (CWHSSA). Liquidated damages may also be assessed a contractor whose construction time goes past the stated time limit for construction of the project, as stated in the project specifications form (*See, Information for Bidders, Item 9.*)

## **PAYROLL**

Both prime contractors and subcontractors are required to submit payrolls to the grant recipient on a weekly basis. Grant recipients are to promptly review these payrolls against the Wage Rate Determination issued for the project. The grantee should check for proper payment of each classification, overtime payment (if applicable), fringe benefit payment, etc. Any discrepancies or questionable items should be recorded for follow-up. If there are no discrepancies, write "none" in the space provided for remarks. If payrolls are not certified by the owner or an officer of the firm, a letter authorizing the designated person to supervise payment must be submitted with the first payroll. Checking the first payrolls as soon as they are submitted and catching any mistakes can help the contractor avoid continuing to make mistakes throughout the project and having to pay significant amounts in restitution to employees. This also makes for less work for the administrator and TNECD.

## **PRIME CONTRACTOR**

This is the entity to whom the project was awarded as a result of bidding and/or other means by the grant recipient. The prime contractor is responsible for all acts and omissions of his subcontractors and lower-tier contractors. In addition, the prime contractor is responsible for ensuring that the Federal Labor Standards Provisions and the applicable wage decision are included in all subcontracts. Subcontractors are responsible for ensuring that Federal Labor Standards Provisions and the applicable wage decision are inserted in all lower tier contracts.

## **SITE OF WORK**

The site of work includes the physical location of construction called for in the contract, any other site where a significant portion of the building or work is constructed (provided that such a site is established specifically for the contract), and job headquarters, tool yards, batch plants, borrow pits etc. provided they are located adjacent or virtually adjacent to the "site of work" and are dedicated exclusively or nearly so to the performance of the contract or project, unless otherwise excepted.

## **SUBCONTRACTOR**

Subcontractors are contractors hired by and work directly for the prime contractor. The prime contractor is responsible for all subcontractors adhering to CDBG regulations.

## **TRAINEES**

Trainees may be paid less than the pre-determined rate for the particular job classification they are employed under, if the trainee is individually registered in a program which has received prior approval. Such approval would be evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not exceed the percentage allowed by the Employment and Training Administration. *See, 29 C.F.R. § 5.2 for definition.*

## **WAGE RATE DETERMINATION**

Wage decisions are published for specific characters of work by geographic location, usually a county or group of counties. General wage rate determinations are available on-line at <https://beta.sam.gov/>.

## **WORKING FOREMAN**

A working foreman is one who devotes more than twenty (20) percent of their time during a work week to mechanic or laborer duties, and who must be paid no less than the applicable wage rate for those hours beyond twenty (20) percent worked. The payroll should contain the normally required information of the person, the trade they are performing, the hours worked, hourly rate of pay, etc. *See, 29 C.F.R. § 5.2.*

## **I.2 LABOR STANDARDS PREFACE**

Upon receipt of the Final Notice of Release of Contract Conditions (FNORCC), (release of funds has occurred), the grant recipient may proceed with the steps necessary for compliance with Davis-Bacon labor standards regulations.

This chapter is broken down into five sections which outline the activities that must be undertaken in order to comply with these regulations. The sections are set up to be utilized as checklists enabling the grant administrator to easily ascertain which activities have been completed and which are left to complete.

Two files must be kept. Specifically, a labor standards compliance file and a construction contract compliance file. Checklists of items necessary to complete these files are found in the exhibit section.

Any need for additional wage rate classifications will only occur after the grant award.

## **I.3 PRE-CONSTRUCTION DAVIS BACON ACTIVITIES**

### **I.3.a Pre-Construction Davis Bacon Considerations**

Once the contract has been awarded, there are several activities to be performed before construction can begin. (*See also Chapter G: Bidding and Procurement and Chapter H: Pre-Construction and Construction Activities*).

A pre-construction conference should be conducted with the prime contractor, all available subcontractors, and lower-tier contractors in attendance. In addition, the individual responsible for preparing the payrolls should be encouraged to attend. Close attention should be paid to issues and questions involving labor and payrolls. Keep an accurate record of all items discussed at the meeting.

Cover all labor and payroll issues as shown:

1. A project wage rate sheet (Exhibit I-1) should be completed for all contractors, prime and sub, summarizing the wages for each contractor's employee working on the project. This sheet should be updated periodically as new employees work on the project.
2. Authorization to Make Other Deductions should be completed as signed by the employee acknowledging permissible deductions from wages (Exhibit I-2).
3. Indicate that a copy of the wage rate decision and appropriate labor and equal opportunity posters (Exhibit I-4) must be posted on the job site. All must be accessible and visible to the workers.
4. Identify classifications that may be needed and are not included in the wage decision. If an additional classification is needed, the grantee shall complete Report of Additional Classification and Rate (HUD-4230A) (Exhibit I-5) and submit to TNECD with justification for the requested rate.

5. Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by DOL’s Bureau of Apprenticeship and Training. The telephone number for the Bureau’s Nashville Office is (615) 781-5318. If apprentices or trainees are to be used, the contractor must provide the grantee with a copy of the DOL certification of their program. Helpers are not permitted to be used on any CDBG funded project.

**NOTE:** *Overtime does not require the employer to pay time and a half on the fringe benefit portion of the wage. See, 40 U.S.C. § 3701 et. Seq. and is only applicable to contracts larger than \$100,000. See, 40 U.S.C. §329 (c).*

A waiver of the penalty (liquidated damages) in amounts less than \$500 may be granted by the Regional Labor Relations Officer. Waivers of the penalty in amounts of \$500 or more may be granted by the Headquarters Office of Labor Relations or the U.S. Department of Labor. Waivers can be recommended only if the violations were inadvertent, notwithstanding the exercise of due care. The prime contractor must also demonstrate the exercise of due care in preventing violations by subcontractors.

1. Payroll deductions cannot be made if they are not specifically provided for by law, unless authorization is obtained from the worker. *(For example, an unidentified payroll deduction is a method used by unethical contractors to get their workers to “kick back” a portion of their pay. This is a particularly common problem in times of high unemployment and in areas of minority concentrations. Unspecified payroll deductions should be treated as a serious discrepancy and should be resolved prior to contractor payments.)*
2. Explain debarment proceedings relative to Labor Standards and Equal Opportunity violations and requirements.
3. Correct any deficiencies involving incomplete Equal Opportunity forms, subcontractor certifications, eligibility verification, so that everything is in order, before construction begins.
4. Explain compliance review requirements such as grantee’s weekly review of the payrolls and employee interviews as well as the potential for TNECD to audit payrolls, timesheets, and check stubs.

#### **I.4 DAVIS BACON CONSIDERATIONS DURING CONSTRUCTION**

After construction has been initiated, several important tasks must be undertaken in order to comply with Davis Bacon labor standards regulations. These activities include: payrolls, employee interviews, and reports. In addition to Davis-Bacon applying to all construction contracts greater than \$2,000, Davis- Bacon also applies only to laborers and mechanics employed “directly at the site of the work.”

##### **I.3.a Davis Bacon Exemptions**

**Bona Fide Business Owners (Exempt Executive):** Pursuant to 29 C.F.R. § 541.101, a bona fide business owner who owns at least a bona fide 20-percent equity interest in the enterprise in which he or she is employed, regardless of type of entity, and who is actively engaged in its management as their primary duty, is exempt from the wage requirements of Davis Bacon. The business owner must also direct the work of two or more other employees in the business. In order to establish this exemption, the business owner must:

1. Submit weekly certified payrolls with the hours worked but may omit their own wage rate only.
2. The owner must provide the grantee (which is subject to monitoring by TNECD) with documentation which satisfies the above requirements. Documentation may include, but is not limited to: business incorporation documents, partnership agreements, tax statements, business licenses, notarized statements of interest, human resources statements attesting to management roles, any other documentation which conclusively establishes the employment relationship and economic realities.

**NOTE:** *If the business owner engages in activities which meet the definition of laborer or mechanic however, this exemption no longer applies (See 29 C.F.R. § 5.2).*

**Sole Proprietors:** If the business owner is a sole proprietor, the grant recipient must determine if that person is a true bona fide sole proprietor prior to contracting by obtaining the Federal Tax ID number and copy of the business license. A bona fide sole proprietor is exempt from Davis-Bacon entirely and is not required to submit a certified payroll for weeks in which he/she does not employ others in the performance of work on the contract/project. Any other employees brought on by the sole proprietor to perform labor or mechanic work will be subject to Davis-Bacon.

**Independent Contractors:** All laborers and mechanics classified as independent contractors or “1099 workers” are generally covered by Davis-Bacon and must be paid Davis-Bacon wages and listed on the contractor’s certified payroll record.

**Other Commonly Exempt Professions:** Lawyers; Teachers; Accountants; Pharmacists; Engineers; Actuaries; Chefs; Certified Athletic Trainers; License funeral directors or embalmers.

### **I.3.b Payrolls for Non-Exempt Employees (Davis-Bacon Applies)**

The proper procedures for submitting and checking payrolls must be closely followed. The failure of contractors to pay wages properly will result in adjustments to an employee's salary and may also result in financial penalties. Therefore, it is important that any discrepancies in payrolls be detected and corrected early. The following should be adhered to closely, with any questions directed to TNECD prior to continuing the project.

- Payrolls and written Statements of Compliance must be submitted weekly to the grant recipient by all contractors. The written statements of compliance must be signed by the owner, and officer, or a designated employee of the firm. If a designated employee is to certify the payrolls, authorization for this individual to supervise payment must be submitted with the first payroll.
- **Check the payrolls for accuracy** as soon as they are submitted (especially with the first few payrolls) on each job classification against the Davis-Bacon wage rates. The prime contractor shall be liable to all employees for any unpaid wages. The individual reviewing the payrolls shall ensure the following:
  1. The dates and days of the week have been entered on the payroll.
  2. Payrolls are sequentially numbered.
  3. Payroll number one (1) carries the contractor’s IRS Employer.
  4. Identification Number in the upper left corner of the front page.
  5. Each employee’s name, complete address, and last four digits of Social Security number are shown on the first payroll on which that employee appears.

6. Worker's classifications are listed on the prevailing wage determination. No substitutions are allowed. Wage classifications must be shown on every payroll. Since workers may perform more than on classification, the contractor must clarify what wages are being paid for each classification.
7. Wage rates paid to workers are equal to or exceed those rates listed on the wage decision for the appropriate classification.
8. For any apprentices or trainees listed, evidence of proper registration must accompany the first payroll upon which they appear.
9. The disposition of all required fringe benefits has been satisfactorily explained on the reverse of the payroll form.
10. Deductions taken are those permitted by law or are authorized in writing by the employee. One blanket statement is sufficient for deductions made on a regular basis.

A sample payroll can be found here: <https://www.dol.gov/whd/forms/wh347.pdf> .

#### **SCENARIO I:**

1. TNECD drafts a letter to the contractor to assess liquidated damages (Notice of Assessment). Any appeals will be sent to HUD-Labor Relations through TNECD. The contractor has 60 days to file a request for waiver or reduction.
2. A copy of the Notice of Assessment will be sent with a cover letter to HUD-Labor Relations containing this basic information:
  - a. Name and address(es) of involved contractor (*and subcontractor, if applicable*);
  - b. Company representative(s) present at the pre-construction conference;
  - c. Whether Labor Standards, including overtime provisions included in the contract/subcontract;
  - d. Whether an attempt was made by the contractor/subcontractor to conceal hours or otherwise circumvent law, and contractor's willingness to make restitution (along with promptness).

#### **SCENARIO II:**

1. Refer to No. 1 in Scenario I above
2. Refer to No. 2 in Scenario II above.
3. The contractor appeals and requests a waiver through TNECD;
4. TNECD transfers the appeal to HUD-Labor Relations. Deposit agreements will no longer be used for liquidated damage unless TNECD chooses to close the project prior to resolution of the appeal by HUD-Labor Relations.

#### **I.3.c Equipment Installation and Davis Bacon**

Installation costs exceeding thirteen (13) percent of the total equipment cost, makes the project subject to Davis-Bacon. If the cost does not exceed thirteen (13) percent and does not require demolition or alterations to the property, then it is not subject to Davis-Bacon.

#### **I.3.d Employee Interviews**

The person performing the employee interviews must be knowledgeable of construction trade practices and should understand that labor standards enforcement is an important contract requirement. Interviews should be conducted by the grantee or administrator regularly. No one from the employee's company should be present for the interview. A translator can be present if needed; the employee interview forms are also available in Spanish. As has been previously mentioned, the failure of contractors to comply with labor regulations may result in adjustments to an employee's salary and may also result in financial penalties; therefore, in order to ensure that the employee interviews are conducted properly, it is imperative that the following conditions are met:

1. Check the construction site for the appropriate job safety, equal opportunity and wage rate posters.
2. Conduct employee interviews with sufficient frequency to establish the degree of accuracy of records. These interviews should be representative of all classifications of workers on the project. TNECD generally recommends monthly interviews. However, interviews should be completed more frequently if issues arise.
3. The interview should take place on the job site. In the event that an interview cannot be conducted properly and privately on the job site, the interview can be undertaken at the employee's home, the agency's office, by mail or telephone.
4. Observe the duties of the worker before the interview is initiated to make certain that the employee's job duties correspond to their job classification.
5. Begin the interview by identifying yourself, clearly stating the purpose of the interview (to ensure the worker is being paid fairly), advising the worker that the information given is confidential, and their identity will be disclosed to the employer only with the employee's written permission.
6. Utilize the "Record of Employee Interview" (Exhibit I-3) in recording the employee interview. The interviewer should record what the employee says and pay particular attention to the employee's name, phone number, and permanent mailing address.
  - a. Verify the identification of the employee. One way to do this is to check the employee's driver's license (Note: It is not required for the employee to produce a driver's license or other identification, but it may be requested). The last date and the number of hours the individual worked on that particular project.
  - b. Be clear to the employee that these questions relate to work performed on this project only.
  - c. This information will be used to check against the certified weekly payrolls.
7. Record all wage classifications that the employee worked under on that day. The hourly rate of pay and pay stub. The interviewer should ensure the worker is quoting their gross hourly rate, not the "net" hourly rate. If the worker has a pay stub on hand, request to view it.
8. The worker must be paid at least the minimum required by the Davis-Bacon wage decision. If it appears that the worker is underpaid, the interview should question the worker and ask to see any records of payment. A follow-up interview should be scheduled to re-interview the employee.
9. Record all rates of pay if the employee is working under more than one wage classification.
10. It is important that the worker's description of their classification(s) be entered on the form.
11. Duties and tools used.

The above are some of the most important items on the interview form. The worker must be observed before the interview takes place and the actual tools being used for the work should be recorded on the interview form. Observed data is compared with the worker's statements and with payroll records to see if discrepancies exist. If there are discrepancies, further investigation and explanation are necessary.

Ensure the following are included on the interview form:

- Employee signature (to have the employee confirm their responses).
- Any comments by the reviewer should be recorded in the “Remarks” section. This section is also where the desktop review comments should be added. The person completing the desk to preview will examine payrolls from the last day the employee worked and compare job classifications, hours and pay reported in the interview, as compared to the payrolls. If there are no problems or discrepancies with the payroll review, write “review complete” in the “Remarks” section.
- Notate any discrepancies or restitution owed, as well as any remedial actions taken and report those to TNECD.
- The interview form should reflect the exact date on which the employee interview occurred. This will ensure accuracy when comparing the date of the interview against the relevant payroll.

### **I.3.e Common Errors to Avoid with Davis Bacon:**

- Assuming all employees paid a salary are not due overtime
- Improperly applying an exemption
- Failing to pay for all hours an employee is “suffered or permitted” to work
- Limiting the number of hours employees are allowed to record
- Failing to include all pay in calculating regular rate for overtime
- Failing to add all hours worked in separate establishments for the same employee when calculating overtime due
- Making improper deductions from wages that cut into the required minimum wage or overtime (i.e. shortages, drive-offs, damage, tools, uniforms)
- Treating an employee as an independent contractor
- Failing to account for different wage classifications even for fractions of hours on the payrolls
- Confusing Federal and State law

## **I.4 DAVIS BACON CONSTRUCTION COMPLETION REQUIREMENTS**

Inspection and acceptance of the work closeout of construction and making the final payment involve the completion of the following tasks:

- A certification of completion of work and a request for final payment should be submitted by the contractor to the grant recipient’s engineer/architect.
- Publication of Notice of Contract Completion.
- A final inspection should be arranged.
- A final inspection report should be submitted by the architect/engineer to the grant recipient.
- All labor compliance activities must be completed, including:
  - Viewing all weekly payrolls and statements of compliance;
  - Resolving all interview discrepancies;
  - Satisfying all equal opportunity requirements;
  - Receiving all contractor/subcontractor certifications;
  - Resolving all monitoring findings;
  - Resolving all claims and disputes involving the contractor;
  - Completing all files and filing as-built plans.
  - Submit a final Wage compliance Certification to TNECD (at closeout of contract)

## **I.5 LABOR COMPLIANCE EXHIBIT LIST**

- I-1 PROJECT WAGE RATE SHEET
- I-2 AUTHORIZATION TO MAKE OTHER DEDUCTIONS
- I-3 RECORD OF EMPLOYEE INTERVIEW (HUD-11)
- I-4 LABOR POSTERS
- I-5 REPORT OF ADDITIONAL CLASSIFICATION AND RATE (HUD-4230A)

# CHAPTER J:

## HOUSING REHABILITATION

## J.1 HOUSING REHABILITATION OVERVIEW

This chapter is designed to offer guidance in the operation of your housing rehabilitation program. This chapter provides programmatic guidance on the application and program processes, provides reference to federal and state statutory compliance requirements, and provides some sample documents to assist with program administration.

Your community must adopt a set of Policies and Procedures and have them approved by the State. The "sample" guidelines, forms, policies and procedures contained in this manual are intended for general use and to assist you with satisfying State and Federal requirements. You may adapt them to fit your particular needs. Any reference materials, forms, or recommendations are not intended as legal advice. You should seek legal representation if you need legal advice or assistance.

The TNECD wants your housing rehabilitation program to run smoothly and maintain compliance with all federal, state, and programmatic statutes and requirements. If you have any questions, problems, or concerns, please do not hesitate to contact us.

The Rehabilitation File Checklist (Exhibit J-12) and Individual File Checklist (Exhibit-13) should be used to ensure all necessary forms and documents are included in the grant file.

## J.2 ELIGIBILITY REQUIREMENTS

A community shall establish eligibility requirements within its program policies and procedures. These requirements must be announced publicly prior to accepting applications. The application process must be fair, impartial and open to public scrutiny. *See, TNECD's Fair Housing and Equal Opportunity Chapter for additional guidance on public hearing requirements and documents.*

In addition to the HUD mandated programmatic eligibility requirements, there are specific eligible and ineligible activities that CDBG housing rehabilitation funds may or may not be used for.

**NOTE:** *The following list denotes HUD-defined eligible activities and is not a guarantee of funding by TNECD for a particular activity type. Any questions regarding eligible activities or applications should be directed to TNECD.*

### **J.2.a Program Eligibility Requirements**

The following are minimum eligibility requirements when considering grant applications from homeowners (See, 24 C.F.R. § 570.202; See Also, HUD CDBG Chapters 2 & 4):

1. **Income:** The grant program must specify HUD's National Objective requirement that beneficiaries be low and/or moderate-income individuals. TNECD can assist the community in determining the correct income level. A homeowner applicant's income and expenses must be properly calculated to arrive at a gross annual household income. To qualify as low/moderate income, the household receiving the grant funds must be income verified at or below 80% of the County Median Income.  
**NOTE:** *Questions concerning included or excluded income for the purposes of calculating gross household income can be directed to TNECD.*
2. **Ownership:** The community must have proof of ownership by the prospective homeowner applicant indicating clear title to the property and occupation by the applicant for at least one year prior to the date the application was submitted to TNECD.

3. Owner-Occupied: Any dwelling to be rehabilitated shall be owner-occupied to be eligible.  
**NOTE:** *Duplexes are allowable for rehabilitation, as long as one household is below 80% of the area median income (See, 24 C.F.R. § 570.208(1)(3)).*
4. Location: The property must be within the approved target area (which will be identified by the community at the time of community's application to TNECD).
5. Property Condition: The property must be in violation of local housing codes with a determination made that the property justifies rehabilitation.

### **J.2.b Eligible Rehabilitation Activities**

The following is a general list of eligible rehabilitation activities. Special conditions, limitations, or approvals may be imposed by the contract between TNECD and a community.

1. Existing Code Violations: Existing housing code violations which have been determined by a qualified housing inspector and formalized in an individualized housing report, are allowable rehabilitation costs.
2. Incipient Code Violations: An incipient violation exists if, at the time of inspection, an element in the structure whether due to age, deterioration, wear, or normal usage, will deteriorate within the life the grant period and thus become code violations. These are eligible costs.
3. Permits and Fees: Costs necessary to cover items such as: building permits and related fees required to carry out the proposed rehabilitation work, are eligible costs.
4. Equipment: Rehabilitation funds may provide for the repair or purchase and installation of certain basic equipment necessary for the maintenance of the household in a safe, sanitary and healthy environment. This includes such items as: heating/air conditioning unit (1 per unit), hot water tank (1 per unit), electrical and sanitary fixtures, kitchen stove (1 per unit), refrigerator (1 per unit), cabinets and sinks. Purchase and installation is acceptable if there is no such equipment in the dwelling or if the existing equipment is unsafe, unsanitary or non- functional.
5. Disability-Related Rehabilitation Costs: A community must contact TNECD if it is considering providing new construction or housing rehabilitation services to a disabled individual. The work write-up must be approved by TNECD prior to bidding. The community should enlist the assistance of a qualified professional who is familiar and knowledgeable with the type of disability the homeowner has. That professional should demonstrate the expertise necessary to make appropriate, cost-effective, and federally compliant construction/rehabilitation proposals.
6. Energy Conservation: All costs associated with weatherization and energy conservation as determined by the housing inspector or TVA are eligible.
7. Emergency Repair: The repair of certain elements of a housing unit in emergency situations, such as repairs to a roof that is leaking, but the whole house is not rehabilitated, are eligible.
8. Lead-Based Paint Activities: All labor, inspection, testing and material costs related to Title X compliance are eligible.
9. Flood Insurance: The purchase of flood insurance for a period equal to the length of the grant is eligible if the property lies in a floodplain for which the community is participating in the national flood insurance program (See, 42 U.S. §4106(a) ).  
**NOTE:** *In all cases the amount of assistance may not exceed either 50% of the before-rehab value of the property, or 50% of the value before flood damage occurred without initiating the 8- step decision-making process found in 24 C.F.R. Part 55, Subpart C. The 8-step process is required for all projects classified as substantial rehabilitation (those exceeding the 50% threshold).*
10. Fire Alarms: All new construction shall include a hard-wired and battery operated smoke detector. All dwellings being rehabilitated shall include a hard-wired smoke detector and must include a battery operated smoke detector.

11. **Exterior Painting:** Exterior painting is an eligible cost when it is necessary to maintain a watertight exterior to the dwelling. Exterior painting and the addition of siding for cosmetic purposes are not eligible costs.
12. **Reconstruction:** The rebuilding of a structure on the same site in substantially the same manner without increasing the number of dwelling units is eligible. Any decrease in the number of units on a site may trigger compliance requirements with the “one-for-one replacement of low- income residential structures (See, 24 C.F.R § 42.375). The number of rooms per unit may be increased or decreased. Manufactured housing replacement with a new or standard unit of housing (manufactured or otherwise) is eligible.
 

**NOTE:** *Owner-Occupied Mobile Homes: In order to be eligible for replacement of mobile home, the owner must also own the land upon which the mobile home rests. In general, a mobile home owner is eligible for a new mobile home, manufactured home, or stick built home (whichever is most cost effective and reasonable).*
13. **Barrier Removal:** Costs to remove material and architectural barriers that restrict the mobility and accessibility of elderly and severely disabled persons to buildings and improvements are eligible for rehabilitation. Documentation will be required in the file to support the claimed disability.
14. **Landscaping, Sidewalks, and Driveways:** The costs of installation or replacement of landscape materials, sidewalks, and driveways is eligible only when such costs are *incidental* to other rehabilitation of the property.
15. **Water and Sewer Costs:** Costs of connecting existing residential structures to water distribution lines or local sewer collecting lines, when it is done as part of the rehabilitation of the property. Similarly, installation or replacement of a well-water system or septic waste- disposal system on private residential property is eligible as part of the rehabilitation cost of the dwelling.
16. **Safe Rooms:** CDBG funds may be used to construct a safe room or stormproof room for use as a tornado-safe shelter in a private home as a rehabilitation activity under 24 C.F.R. § 570.202.
17. **Other Eligible Rehabilitation Property Types:**
  - a. **Manufactured Housing:** when such housing constitutes part of the community’s permanent housing stock.
  - b. **Single-family residential property** which is also used as a place of business (which are required to operate the business) need not be considered rehabilitation of a commercial or industrial building, if the improvements also provide general benefit to the residential occupants of the building.

### J.3 INELIGIBLE REHABILITATION ACTIVITIES

In general, rehabilitation grants shall not be used for:

1. New Construction, or the finishing of unfinished space such as attics or basements;
2. Remodeling, cosmetic, or “General Property Improvements”;
3. Creation of a secondary housing unit attached to a primary unit;
4. Renovation of dilapidated out buildings (except for those outbuildings/detached garages posing a Lead-Based Paint hazard;
5. Costs of equipment, furnishings, or other personal property not an integral structural fixture, such as: window air conditioner or washer/dryer;
6. Materials, fixtures, equipment, or landscaping of a type or quality that exceeds that which is customarily used in the locality for properties of the same general type as the property to be rehabilitated or solely for cosmetic purposes.
7. The value of the homeowner’s sweat equity to rehabilitate their own property.

8. Installation of luxury items such as a swimming pool or sheds;
9. Purchase installation or repair of furnishings;
10. Rehabilitation work completed, and not submitted for environmental review, but would have otherwise required additional ERR compliance.
11. Payment for previous repairs.
12. Payment for rehabilitation work contracted for, or completed prior to the owner signing agreements with the community.
13. Payment for a labor costs to non-insured persons/contractors, of any non-licensed person/contractor, or any person/contractor that does not submit a bid or otherwise have a contract to perform labor on the property.

**NOTE:** *Always contact TNECD prior to construction on an activity if there is a question as to the activity's eligibility!*

## **J.4 HOUSING REHABILITATION PROGRAM PROCESS & GENERAL GUIDELINES**

### **J.4.a Housing Rehabilitation Process**

The following steps enumerate the general process for the housing rehabilitation program, although listed in a sequential manner, some steps may occur simultaneously:

1. The community submits a CDBG regular round application to TNECD for their housing rehabilitation project.
2. TNECD reviews, scores, and announces grant awards for housing rehabilitation.
3. Award letters are sent to communities chosen to receive housing rehabilitation grant funds.
4. The community submits the Environmental Review Record.
5. The community develops "Policies and Procedures" and submits them to TNECD for comment and approval.
6. The community adopts by final vote, the Policies and Procedures.
7. The community holds a public meeting to explain the "Policies and Procedures" and operation of the program.
8. Applications are taken from homeowners, income and ownership are verified.
9. The community completes a code inspection and work write-up, and obtains homeowner sign-off.
10. The community prepares a confidential cost estimate.
11. The community develops a priority list based on individual need and dwelling condition, and lists the order in which houses will be rehabilitated.
12. The community holds a pre-bid conference and discusses policies and procedures, code inspections, method of payment, and grievance procedures.
13. The bidders conduct on-site inspections.
14. Bids are received by the community and the contract is awarded to the low bidder. A copy of the contract and escrow request is sent to TNECD.
15. A pre-construction conference is held with the owner and contractor, where the rehabilitation contract is executed and a "Notice to Proceed" is signed.
16. The community makes periodic inspections of the work in progress.
17. A final inspection is conducted by the rehabilitation inspector with the owner and contractor in attendance. A final work write-up is created, if necessary.
18. The contractor's final invoice is submitted.
19. A "Notice of Completion" is executed, advertised, and recorded.
20. The contractor is paid.
21. The program continues until all selected house rehabilitation projects are completed.

22. The community notifies TNECD as the program nears completion.
23. Once complete, TNECD conducts a final monitoring visit.
24. Upon full completion and monitoring, all final invoices are submitted to TNECD.
25. The community follows TNECD's Closeout Chapter protocol including all required forms, supporting documentation, public hearing requirements etc., needed to formally close out the project/grant.

#### **J.4.b General Program Guidelines**

##### **Financial Assistance**

In the application to TNECD, a community will indicate the type of assistance it proposes to provide to eligible participants. These CDBG housing rehabilitation funds should be granted to eligible participants the community chooses and prioritizes from applications submitted by interested homeowners. All funds applied for by a community, and ultimately awarded to individual homeowners, must be properly aligned with the scope of the grant contract between a community and TNECD. Any changes to the scope must be approved by TNECD before acting upon them.

##### **Escrow Accounts**

The Community must set up an escrow account in order to ensure prompt payments to contractors. These escrow accounts cannot earn interest and are only to be used for the purpose of the grant-related housing rehabilitation. A Certificate of Escrow Account form (Exhibit J-11) must be completed for each property and placed in the respective individual case files.

##### **Terms and Conditions of Assistance**

A community must determine the amount of assistance for which a homeowner is eligible. This should be the amount necessary to bring the dwelling into compliance with appropriate code requirements. TNECD does not recommend the use of a "ceiling" or a fixed sum for housing rehabilitation grant amounts when publicizing the available grants.

##### **Repayment**

Grants shall be repaid in whole or in part if the property is sold within five years. Each year the owner remains in the house, part of the owner's obligation is forgiven. Repayment shall be structured based on a 20% reduction of the repayable amount each year for five years. A lien which includes the repayment structure shall be placed against the property and activated if the owner attempts to sell within five years.

In the case of death, ownership should pass to immediate family with repayment being deferred. However, if the heir(s) sell the dwelling within the same 5-year timeframe, the same repayment schedule is followed.

##### **Pre-Application Phase**

Prior to submitting an application to TNECD, a public hearing must be held to satisfy public notice requirements prescribed by HUD. Before the public meeting can be held, a public notice must be published in a local paper, at least 10 days prior to the meeting.

**NOTE:** *A copy of the ad must be submitted to TNECD with the application and retained in the file for future monitoring visits.*

Upon public notice, an invitation to the public hearing should be mailed, e-mailed, or hand delivered to each property owner and/or occupant. The public meeting should clearly explain criteria for homeowner eligibility, the method of ranking applicants, the roles and responsibilities of the contractor, homeowner and community, and thorough walk-through of the community's adopted policies and procedures.

**NOTE:** *A list of all public meeting participants and meeting minutes must also be submitted to TNECD with the application and then retained on file.*

### **Homeowner Participant Application Phase**

As described above, once a community has been awarded the grant and completed all required processes prior to grant administration, a community is ready to begin accepting applications from interested homeowners. The prior public meeting will have generated public interest, but additional letters may be sent to remaining project area residents/homeowners to elicit additional interest.

Upon initial contact by a prospective homeowner applicant, a community should briefly outline the program and eligibility requirements to the interested homeowner. If the initial screening reveals a likely eligible homeowner, an interview should be scheduled. The applicants should be asked to produce the following at the interview:

1. Warranty Deed for the property to be rehabilitated
2. Property Insurance Policy
3. Most recent real estate tax receipts
4. If self-employed, the prior year's tax returns and current financial statement
5. If employed, the prior year's tax returns or prior 12 months of wage statements, and /or completed/signed Employer Verification form for all employed members of the household for the previous 12 months.
6. Medical and/or extraordinary living expense records

The community should review the documentation with the applicant and facilitate completion of the Housing Rehabilitation Application/Family Survey (Exhibit J-1).

If an applicant is deemed ineligible based on household income, ownership, location, or who occupies the home, the applicant must be notified in writing (utilizing Exhibit J-2 or comparable form).

### **Initial Inspection Phase**

Upon receipt of all required documents, application, income and other eligibility verification, the initial inspection can be scheduled. The initial home inspection is the final component of establishing eligibility as it identifies the work to be undertaken on the home and establishes the basis for evaluating the acceptability of bids. The community's rehabilitation specialist (or otherwise qualified housing code inspector) along with the homeowner shall, conduct the initial inspection. The needed improvements to the property including all existing and potentially incipient code violations must be included in an initial housing inspection report.

The community must evaluate the report advice of the inspector and determine the feasibility of correcting all major code violations under the maximum allowable grant. Applicants whose property is not suitable for rehabilitation should be notified in writing, indicating the reasons, and a copy of such denial placed in the file.

### **Contract Award, Change Orders, Work Write-Ups, Bids, and Closeout**

#### **Contract Award:**

Following application approval, a grant agreement shall be signed between the community and the homeowner. This agreement should make clear the terms, amount, and type of grant award. It should include the grant repayment structure in the event of a sale before five (5) years, and detail what eligible activities will be performed using the grant funds. Upon entering into the grant agreement with a community, the homeowner shall enter into a rehabilitation contract with the contractor. The contractor must have provided proof of liability insurance prior to any contracting. Following receipt of satisfactory proof, a pre-

construction conference will be held at the applicant's home. A contract shall be provided for the homeowner's and contractor's review and signatures. The procedures to be utilized for inspection, change orders, grievance and closeout should be reviewed with the homeowner and contractor.

**NOTE:** *As with any contract, each party should understand their rights and obligations. Parties should consider obtaining independent legal counsel to ensure full understanding of their respective rights therein.*

### Work Write-Up and Cost Estimate

Properties deemed eligible for rehabilitation by the community are ready to begin the work write-up process and have cost estimates prepared (Exhibit J-3). The work write-up is the detailed analysis of the required housing rehabilitation work needed. The write-ups serve as the construction specifications and therefore; should be specific and complete.

After completion of the write-up, a cost estimate should be made on each item in the write-up. The cost estimate aids the community in evaluating the bid prices. The rehabilitation specialist should review the write-up/cost estimate with the homeowner and ensure the homeowner understands the repairs to be made along with the cost. The homeowner should then sign a statement accepting the repairs listed in the write-up and initial each page. In addition, all documentation regarding all materials, appliances, colors, etc. must be included with the write-up and each item must be initialed by the homeowner. The acceptance of the repairs to be completed at the pre-bid stage will eliminate confusion after construction/repair work begins.

### Bid Phase and Construction

The next step in the rehabilitation process is the initiation of the bid phase. As part of the bidding, interested contractors should complete the Contractor's Data Form (Exhibit J-4) to provide the community with general information such as experience, references, etc. Following all appropriate bid processes and awards, the Approval of Rehab Assistance (Exhibit J-5) should be completed and placed in the individual case file for each property.

### Change Orders

Change orders are alterations from the original contract that require a modification (an increase or decrease) in project cost, engineering charges, quantity, or schedule. Change orders must stay within the original scope of the project and require a justification of the need for the change. Change orders may be submitted to TNECD by the project administrator, engineer, or community, and they must be approved before any work or activity including the changes is done. If submitted by the engineer, grantees should ensure that the administrator has reviewed and approved the changes. A budget revision must be submitted after the change order is approved. Change orders are only appropriate if:

1. The proposed work or purchase has not been initiated;
2. A previously approved set of specifications is changed;
3. No new items are added that were not on the approved specifications, and
4. The aggregate amount of all change orders does not exceed 25% of the approved budget.

### Closeout

Upon completion of the Certificate of Final Inspection (Exhibit J-6); the contractor must submit all invoices for materials utilized during construction, along with statements from all subcontractors involved in the project. At the time of the submission of the final invoice for each property, the Final Invoice, Release of Liens, and Warranty (Exhibit J-7) should be completed by the appropriate parties and saved in the corresponding individual case file. Additionally, a contractor's final invoice, release of liens, warranty; and a contractor's "Non-Kickback Certification" must be included.

The community should ensure all documents are accurate and include proper signatures and date stamps. Furthermore, attention must be paid to any and all “Lien Waivers” to ensure all suppliers and subcontractors as identified, have released the project from any potential lien action. The homeowner should be supplied a copy of these documents as well. Final payment should then be made by the community to the contractor and a “Receipt of Final Payment” (Exhibit J-8) should be obtained. Upon acknowledgement of final receipt of payment by the contractor, the community may then proceed with the remaining process for closeout with TNECD.

## **J.5 LEAD-BASED PAINT**

### **J.5.a Overview**

In 1992, Congress enacted the Housing and Community Development Act of 1992. Title X of that Act, the Residential Lead-based Paint Hazard Reduction Act of 1992, is comprehensive lead-poisoning legislation. Title X defines lead-based paint hazards as “any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present on accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.” Title X established specific requirements for action in federally owned or associated housing that pre-date 1978. Section 1012 and 1013 of Title X are the regulations which set forth specific policies on lead-based paint hazard reduction in federally assisted and federally owned housing. The following provides guidance in following HUD lead-based paint regulations.

### **J.5.b Useful Lead-Based Paint Definitions**

**ABATEMENT:** Any set of measures designed to permanently (at least twenty years) eliminate lead- based paint or lead-based paint hazards.

**CLEARANCE EXAMINATION:** An activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and no soil or settled dust lead hazards exist in the dwelling unit or worksite. The clearance process includes a visual assessment and collection an analysis of environmental samples.

**INTERIM CONTROLS:** A set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based maintenance activities, and the establishment and operation of management and resident education programs.

**LEAD-BASED PAINT HAZARDS:** Any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.

**LEAD-BASED PAINT:** Lead-based paint means paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight.

**LEAD-BASED PAINT HAZARD:** Any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.

**LEAD-BASED PAINT INSPECTION:** A surface by surface testing of all painted, shellacked, or varnished surfaces to determine the presence or absence of lead.

**PAINT TESTING:** The process of determining, by a certified lead-based paint inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.

**RISK ASSESSMENT:** An on-site investigation must be conducted to determine the existence, nature, severity, and location of lead-based paint hazards; and the provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards.

**SAFE WORK PRACTICES:** Hazard reduction using approved methods of paint stabilization, occupant protection, specialized cleaning.

**STANDARD TREATMENTS:** A series of hazard reduction measures designed to reduce all lead-based paint hazards in a dwelling unit without the benefit of a risk assessment or other evaluation.

### **J.5.c Requirements For Rehabilitation Assistance (Subpart J Of Title X)**

Subpart J of Title X deals specifically with rehabilitation. The requirements in regard to lead-based paint are dependent on the cost of the rehabilitation. HUD designates three categories of rehabilitation:

1. property receiving less than or equal to \$5,000,
2. property receiving between \$5,000 and \$25,000, and
3. property receiving more than \$25,000.

Cost of the site preparation, occupant protection, relocation, interim controls, abatement, clearance and waste handling attributed to lead-based paint hazard reduction are not be included when.

#### **J.5.c.i Properties Receiving Less Than Or Equal To \$5,000 Per Unit**

1. Provide the household with a copy of the pamphlet “*Protect Your Family From Lead in Your Home.*” <https://www.epa.gov/lead/protect-your-family-lead-your-home>
2. Conduct paint testing of surfaces to be disturbed or presume the presence of lead-based paint. If testing shows the absence of lead-based paint, safe work practices and clearance are not required.
3. Implement safe work practices during rehabilitation and repair any disturbed paint.
4. After completion of rehabilitation, conduct clearance testing of the worksite. Clearance is not required if rehabilitation did not disturb painted surfaces greater than the following “de minimis” levels set forth by HUD:
  - a. 20 square feet on exterior surfaces
  - b. 2 square feet in any one interior room or space
  - c. 10% of the total surface area on an interior or exterior type of component with a small surface area, windowsills, baseboards, and trim.
5. Notify the household of the results of the clearance testing

#### **J.5.c.ii Properties Receiving Between \$5,000 And \$25,000 Per Unit**

1. Provide the household with a copy of the pamphlet *Protect Your Family From Lead in Your Home.* <https://www.epa.gov/lead/protect-your-family-lead-your-home>
2. Conduct paint testing of surfaces to be disturbed or presume the presence of lead-based paint. If testing shows the absence of lead-based paint, safe work practices and clearance are not required.

3. Perform a risk assessment in the dwelling unit receiving federal assistance and in associated common areas and exterior painted surfaces before rehabilitation begins. A visual assessment may be made if presuming the present of lead-based paint.
4. Perform interim controls and all lead-based paint hazards identified by the pain testing and risk assessment, as well as lead-based paint hazards created as a result of the rehabilitation work or use Standard treatments.
5. After completion of rehabilitation, conduct clearance testing of the entire unit and common areas, and ongoing lead-based paint maintenance.
6. Notify the households of the results of the clearance testing.

**J.5.c.iii Properties Receiving More Than \$25,000 Per Unit**

1. If the homeowner rehabilitation cost estimate exceeds \$25,000, call program management to discuss. Provide the household with a copy of the pamphlet: *Protect Your Family from Lead in Your Home*: <https://www.epa.gov/lead/protect-your-family-lead-your-home>.
2. Conduct paint testing of surfaces to be disturbed or presume the presence of lead-based paint.
3. Perform a risk assessment in the dwelling unit receiving federal assistance and in associated common areas and exterior painted surfaces before rehabilitation begins.
4. Abate all lead-based paint hazards identified by the paint testing and risk assessment and as well as lead-based paint hazards created as a result of the rehabilitation work.
5. After completion of rehabilitation, conduct clearance testing of the entire unit and common areas, as well as maintain ongoing lead-based paint maintenance.
6. Notify the household of the clearance testing.

**J.5.c.iv Steps and Other Items for Incorporating Lead-Based Procedures into Rehabilitation**

**Steps to Incorporate Lead-Based Paint Procedures in Housing Rehabilitation:**

1. Complete the initial walk through and work write-up.
2. Determine the estimated cost of repairs and the category into which the project falls.
3. Proceed with appropriate paint inspection/risk assessment, or presume the present of lead-based paint.
4. Incorporate measures recommended by the risk assessor, into the work write-up. Determine if relocation is necessary. The Status of Compliance with Lead-Based Paint Regulations (Exhibit J-9) should be completed as part of this step.
5. Put the project out to bid. (The bid sheet should differentiate between rehabilitation work and lead work. The costs of site preparation, occupant protection, relocation, interim controls, abatement, clearance and waste handling attributable to lead-based paint hazard reduction are not to be included in the hard costs of rehabilitation. The two totals will then be added together to arrive at a total bid amount.
6. Relocation of homeowner and furnishings, if applicable.
7. If interim controls or standard treatments are necessary, they must be performed by a person trained in accordance with 29 C.F.R. § 1926.59 (Hazard Communication) and either be supervised by an individual certified as a lead-based paint abatement supervisor or have successfully completed one of the following courses: a lead-based paint abatement supervisor or worker course accredited with 40 C.F.R § 745.225, The Lead-Based Paint Maintenance Program, or The Remodeler’s and Renovator’s Lead-Based Paint Training Program.
8. After completing work, clearance must be achieved. The Statement of Clearance (Exhibit J-10) must be completed for each affected property and submitted with the Certification of Completion and Final Inspection.
9. Move homeowner and belongings back into the home.

## **Standard Treatment**

There is an alternative to a risk assessment and interim controls when a project falls between \$5,000 and \$25,000 where a property owner may elect to bypass the risk assessment and proceed directly to a set of maintenance and repair activities that will eliminate, at least temporarily, any lead-based paint hazard that might be present. This is called “standard treatments.” The presence of lead-based paint can be presumed, followed by the implementation of standard treatments. Standard treatments include:

1. **Paint Stabilization:** All deteriorated paint on exterior and interior surfaces located on the residential property shall be stabilized or abated.
2. **Smooth and cleanable horizontal surfaces:** All horizontal surfaces, such as uncarpeted floors, stairs, window sills and window troughs, that are rough, pitted, or porous, shall be covered with a smooth, cleanable covering or coating, such as metal coil stock, plastic, polyurethane, or linoleum.
3. **Correction of dust-generating conditions:** Conditions causing friction or impact of painted surfaces shall be corrected.
4. **Bare residential soil:** Bare soil shall be treated, unless it is found not to be a soil-lead hazard.
5. **Safe work practices:** All standard treatments shall incorporate the use of safe work practices.
6. **Clearance:** A clearance examination shall be performed at the conclusion of any lead hazard reduction activity.

## **Qualifications**

An individual performing standard treatments must meet the training and/or supervision requirements of 24 C.F.R. § 35.1330(a)(4), trained workers or workers supervised by a certified lead- based abatement supervisor.

## **Occupant Protection**

This section establishes procedures for protecting dwelling unit occupants and the environment from contamination from lead-contaminated or lead-containing materials during hazard reduction activities.

1. Occupants shall not be permitted to enter the worksite during hazard reduction activities until after hazard reduction work has been completed and clearance, if required, has been achieved.
2. Occupants shall be temporarily relocated before and during hazard reduction activities to a suitable, decent, safe, and similarly accessible dwelling unit that does not have lead-based paint hazards, except if:
  - a. Treatment will not disturb lead-based paint, dust-lead hazards, or soil-lead hazards.
  - b. Only the exterior of the dwelling unit is treated, and windows, doors, ventilation intakes, and other opening in or near the worksite are sealed during hazard control work and cleaned afterward, and entry free of dust-lead hazards, soil-lead hazards, and debris is
  - c. Treatment of the interior will be completed within one period of 8 daytime hours, the worksite is contained to prevent the release of leaded dust and debris into other areas, and treatment does not create other safety, health or environmental hazards; or
  - d. Treatment of the interior will be completed within 5 calendar days, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, and treatment does not create other safety, health or environmental hazards, and the worksite and the area within at least 10 feet of the containment area is cleaned to remove any visible dust or debris, and occupants have safe access to sleeping areas, and bathroom and kitchen facilities.
3. The dwelling unit and the worksite shall be secured against unauthorized entry, and occupants’ belongings protected from contamination by dust-lead hazards and debris during hazard reduction activities. Occupants’ belongings in the containment area shall be relocated to a safe and secure area outside the containment area or covered with all seams and edges taped or otherwise sealed.

### **Acquisition, Leasing, Support Services or Operation (Subpart K)**

The purpose of Subpart K under 24 C.F.R. § 35, is to establish procedures to eliminate as far as practicable, lead-based paint hazards in a pre-1978 residential property that receives federal assistance under certain HUD programs for acquisition, leasing, support services, or operation. Acquisition, leasing, support services, and operation do not include mortgage insurance, sale of federally owned housing, project-based or tenant-based rental assistance, or assistance to public housing.

In cases where evaluation or hazard reduction (including paint stabilization) is undertaken, each grantee shall provide a notice to residents. A visual assessment is not considered an evaluation for purposes of this part. The grantee shall provide the lead hazard information pamphlet.

If a dwelling unit receives federal assistance under a program covered by this subpart, each grantee shall conduct the following activities for the dwelling unit and all common areas servicing the dwelling unit and the exterior surfaces of the building in which the dwelling unit is located:

1. A visual assessment of all painted surfaces in order to identify deteriorated paint;
2. Paint stabilization of each deteriorated paint surface, before occupancy of a vacant dwelling unit or where a unit is occupied, immediately after the receipt of federal assistance; and
3. The grantee shall incorporate ongoing lead-based paint maintenance activities into regular building operations;
4. The grantee shall provide a notice to occupants describing the results of the clearance examination.

### **Cost**

Costs of paint testing, risk assessments, and clearance testing will be paid as soft costs. There is an acceptable range of costs involving these activities. Please contact your specialist for cost approval prior to contracting for these services.

Expenses incurred conducting lead activities, interim controls, standard treatments, and abatement will not count towards the \$25,000 cap on rehab costs. These costs will count towards the subsidy limit.

### **Certification**

Lead-based paint inspectors, lead-based paint risk assessors, lead-based paint abatement workers, and lead-based paint abatement supervisors must be certified by the Tennessee Department of Environment and Conservation (TDEC).

A listing of these certified lead professionals is available from the TDEC office:

Tennessee Tower  
312 Rosa L. Parks Ave  
2<sup>nd</sup> Floor  
Nashville, TN 37243 (888) 891-TDEC (8332)

## **J.6 DEVELOPING PROGRAM POLICIES AND PROCEDURES**

A community must formally adopt a set of “Policies and Procedures” for the operation of the CDBG housing rehabilitation program. These will serve as guidelines for day-to-day operations of the program. It is important for citizens, elected officials and program administrators to be involved in the establishment of the policies and procedures.

When creating your program policies and procedures, be sure to address all required topics below. Remember, the policies and procedures must be approved by TNECD before they are formally adopted by the community.

The following are required topics which must be covered by any adopted “Policies and Procedures” for a housing rehabilitation program:

1. Purpose: There must be a stated purpose which sufficiently describes the goals of the program, including National Objective, and what activities will be undertaken to meet those goals and National Objective.
2. Authority: Indicate what legal authority (federal, state and local) that your program is presuming to operate under.
3. Condemnation: During the life of a CDBG program in a target area, a community must ensure no houses will be condemned and no persons will be forced to move permanently.
4. Program Resources: The funding sources available for the program as well as the length of time such funds will be available, must be specified.
5. Regulatory Authority and Forms: There are numerous laws, regulations, compliance certifications and other requirements which local governing bodies, contractors, sub-contractors, vendors, and applicants for rehabilitation assistance are required to abide by.

Requirements include, but are not limited to:

1. Equal Opportunity Provisions (See, 41 C.F.R. § 60.1.5 and Executive Order 11246). Including Documentation of: Documentation of Fair Housing Activity, Copy of Analysis of Impediments, Fair Housing Ordinance copy (if any), Section 3 Questionnaire and summary report, City/county hiring policies, policy of non-discrimination, contract/subcontract activity report, documentation of attempts to solicit participation from minority/female businesses, list of minority/female contractors, bid advertisement for construction, certification of equal employment opportunity, certification regarding debarment/suspension/ineligibility/and voluntary exclusion, subcontractor certification for Equal Employment Opportunity and Section 3.
2. Title VI of Civil Rights Act of 1964 Provisions
3. Section 109 of Housing and Community Development Act of 1974 Provisions
4. Section 3 Compliance Provisions: Section 3 is a provision of the Housing and Urban Development Act of 1968 which requires that programs of direct financial assistance administered by HUD provide, to the greatest extent feasible, opportunities for job training and employment to lower income residents. Further, to the greatest extent feasible, contracts in connection with these projects are to be awarded to Section 3 business concerns.
5. Age Discrimination Act of 1975 Provisions
6. Section 504 Affirmative Action for Handicapped Workers Provisions
7. Lead-based Paint Hazard Provisions (Title X)
8. Public Access to Records/Maintenance of Records Provisions
9. Conflict of Interest Provisions
10. Davis Bacon Wage Laws (if rehabilitating residential structure with at least 8 units or more).
11. Eligibility Requirements: The program policies and procedures should sufficiently define eligibility of the program and fully explain income, ownership status, dwelling location, and application requirements.
12. Prioritization of Applicants: Rehabilitation grants must be awarded to eligible applicants based on priority to those households which demonstrate the greatest need for housing assistance.
13. Rating System: The Community should have a rating system in place to ensure an objective standard by which to prioritize grant applicants.

14. Terms, Conditions and Considerations for Awards: The Community should set forth certain terms, conditions and considerations which are in effect for the program to include: grant maximum/minimum awards, financial assistance structure, repayment structure for any sale within 5 years of receiving a grant, inspection and monitoring requirements, and other requirements which further national objectives and goals.
15. Grievance Procedure: The Community should establish a grievance procedure to facilitate communication and dispute resolution as a means of resolving homeowner/contractor/community disputes in an effort to avoid litigation where possible.
16. Performance and Contracting: The Community must discuss the criteria for establishing a written contract between the homeowner and community which encompasses the program policies and procedures and all applicable laws and regulations. The homeowner should fully understand or obtain legal counsel to assist with any construction contracts in order to further ensure programmatic compliance. The contracts between community and homeowner or homeowner and contractor should speak to items such as: interest of public officials, kickbacks and discounts, eligible/ineligible activities, work write-ups, relocation/dilapidated dwellings, housing rehabilitation specifications, property inspections, homeowner consultations, clearly written specifications, insurance requirements, contractor licensure, invitation to bid and selection of successful bidder, and general contract award provisions.
17. Inspection, Closeout and Payment: The community should set forth parameters for inspections, progress of payment and final payment, escrow accounts, notice of completion 10-day requirements, and closeout requirements/procedures.
18. Lead-Based Paint Activities: The community must ensure that all housing rehabilitation activities comply with Title X and establish programmatic processes, policies and procedures which comply with, and further the requirements of Title X.

<b>J.7 HOUSING REHABILITATION EXHIBIT LIST</b>
--

- |      |  |
|------|--|
| J-1  | HOUSING REHABILITATION APPLICATION/FAMILY SURVEY |
| J-2  | INELIGIBLE FOR ASSISTANCE                        |
| J-3  | WORK WRITE-UP AND COST ESTIMATE                  |
| J-4  | CONTRACTOR'S DATA FORM                           |
| J-5  | APPROVAL OF REHAB ASSISTANCE                     |
| J-6  | CERTIFICATION OF COMPLETION/FINAL INSPECTION     |
| J-7  | FINAL INVOICE, RELEASE OF LIENS, AND WARRANTY    |
| J-8  | RECEIPT OF FINAL PAYMENT                         |
| J-9  | LEAD-BASED PAINT COMPLIANCE CERTIFICATION        |
| J-10 | LEAD-BASED PAINT STATEMENT OF CLEARANCE          |
| J-11 | CERTIFICATE OF ESCROW ACCOUNT                    |
| J-12 | REHABILITATION FILE CHECKLIST                    |
| J-13 | INDIVIDUAL CASE FILE CHECKLIST                   |

**CHAPTER K:**  
**GRANT ADMINISTRATION**  
**AND PROJECT MANAGEMENT**

## K.1 OPEN COMMUNICATION

The overall management and administration of the CDBG project essential to the timely progress and expenditure of grant funds. Open and frequent communication between the project representative and project administrator is one of the most important aspects. A clear line of communication best allows the project representative to understand the unique nuances each sub-recipient encounters, and will allow for issues, if they should arise, to be resolved expeditiously. The monthly reports are a good base-line, however, our office encourages frequent communication with project administrators.

## K.2 MONITORING

All CDBG funded projects will receive at least one on-site monitoring over the course of the grant. The TNECD monitoring plan states that CDBG project will be monitored at least once every three years. The length of each grant contract is three years; if a contract extension is grant, the project will be monitored again. Additional monitoring may take place on-site or TNECD may request documentation for a desk review.

Typically, monitoring occurs when construction has reached the 50% threshold or when equipment is delivered. It is imperative that the project administrator maintain a hard-copy of all documentation generated over the course of the project, including but not limited to ERR, plans and specifications, bidding and procurement acquisition, etc. These documents must be presented, and accessible to TNECD staff during monitoring visits.

When conducting monitoring, the TNECD project representative uses two workbooks that dictate the questions to be asked of the grantee and the documents to be reviewed. Sample documents are provided as exhibits to this chapter. TNECD recommends project administrators be familiar with these documents to ensure each monitoring is efficient and complete with limited to no findings.

- CDBG Monitoring Workbook (Exhibit K-1)
- CDBG Monitoring Labor Checklist (Exhibit K-2)

Monitoring may also be conducted electronically with a follow up site visit at a later date. The same monitoring workbooks will be used, and the same documentation will be reviewed for electronic monitoring. If electronic monitoring is the selected method, the project administrator will complete an online submission form and submit all required documentation here: <https://app.tnecd.com/>. Electronic monitoring also requires submission of two certifications that is not required for in-person monitoring:

- Electronic Monitoring Documentation Certification (Exhibit K-3)
- Electronic Monitoring Title VI Certification (Exhibit K-4)

Administrators must indicate on the status reports that a project needs to be monitored. These benchmarks, especially for construction, are not set in stone, and at times you may need to use some of your own discretion and intuition to help determine when monitoring needs to occur. In this instance, contact the project representative to determine the appropriate course of action. Here are some example scenarios:

- The project is well below 50% complete, and the admin has requested monitoring. This may be due to a short length of construction, or the contractor is moving quickly. In any event, the administrator should follow-up with the project representative to determine that scheduling monitoring is correct.

- The project is well below 50% complete, and the admin has not requested monitoring, but recognizes the project has a short length of construction, or the contractor is moving quickly. The admin should contact the project representative to determine if monitoring should be scheduled.
- The project has multiple contracts and the overall construction is below 50%, but one of the contracts is nearing completion or is complete. The administrator should contact the project representative to schedule a desk monitoring for the labor portion of the contract that is almost complete, then follow-up with the onsite monitoring visit at a later date.
- Projects must be monitored every three years. Our contracts are written for three-year periods, and this only becomes an issue if a project has been granted an extension request.

Once the project is monitored, TNECD will follow up with monitoring report letter that will details the areas that were monitored and any findings. Davis-Bacon Act violations concerning underpayments and/or misclassification of labor classifications.

## K.3 REPORTING

### **K.3.a Monthly Status Reports**

Each month, from the inception of the project to closeout, the administrator must submit a Monthly Status Report (Exhibit K-5), due no later than the 25<sup>th</sup> of each month. The Monthly Status Report should detail what has occurred and what will occur during the following month. These reports are crucial to the success of the project and enable a seamless flow of communication between project administrators and TNECD. TNECD understands that projects may be slowed or delayed for various reasons and requests that pertinent information about the causes of these delays, the timeline, and potential solution be included in the monthly report. If a project representative notices that same information has been included on the monthly report for two or months with no movement on project, don't be surprised to receive a phone call or an email asking for additional information.

### **K.3.b Annual Progress Report**

The report is due at the end of each calendar year for all open CDBG projects, per the grant contract requirement. This report takes the place of the monthly status report for December and includes many of the reporting items. However, this report asks that the grantee report on the progress over the course of the past year, not just the last month. Additionally, the grantee will be expected the report of the performance measures that were proposed in the grant application.

### **K.3.c Contract/Subcontract Activity Report (HUD-2516)**

As the direct recipient of HUD funds, TNECD is responsible for submitting several reports. One of these reports is the Semi-Annual Labor Report. This report consists of multiple data points concerning contracts that are awarded throughout the year and other labor-related items. The Contract and Subcontract Activity Report (Form HUD-2516) is how contract information is collected from CDBG subrecipients (city and county grantees) for this report.

Each grantee is required to submit an initial Contract and Subcontract Activity Report after the agreement made with the awarded bidder. This report should contain all contracts and subcontracts related to the grant, including prime and subcontractors, equipment vendors, and professional services, such as administration and engineering. TNECD also requests that an updated form be submitted anytime a new contract or

subcontract is added to project. When the TNECD project representative is preparing for the monitoring visit, he/she will request an updated report if the most recent report on file is more than 3 months old.

#### **K-4 BEST PRACTICES**

Part of administering a CDBG project effectively and efficiently is paying close attention to detail and addressing issues quickly. Here are some best practices to consider when administering a project:

- Remember that as the administrator, you are acting on behalf of the community. Communicate clearly and often with the other involved parties to make sure everyone is aware of deadlines and benchmarks.
- During the pre-construction conference, take the time to discuss the listed classifications in the applicable wage rate determination, and review with the contract to determine if additional classifications are needed.
- When conducting employee interviews, a good rule of thumb is to interview at least once a month while in construction. For a project that should take 120 days, this means four trips to conduct employee interviews.
- Make sure that all contractors and subcontractors on the project are represented when conducting employee interviews. This doesn't mean that they will also be on-site, but a sample of interviews of the employees of each should be on file when monitoring occurs.
- If a project includes multiple sources of funding, make sure TNECD is aware of the status on the other funds anytime there is a change.
- If a project includes multiple sources of funding, plan early for how the funding sources fit together, coordinate the process, and identify potential bottlenecks.
- Let TNECD help. If you are having issues with a funding partner, or you are having challenges obtaining a permit, etc., don't be afraid to ask TNECD for assistance.

HUD Exchange: Best Practices to Achieve Timely Performance

<https://www.hudexchange.info/news/cdbg-timeliness-and-best-practices-to-achieve-timely-performance/>

#### **K-5 ADMINISTRATION AND PROJECT MANAGEMENT EXHIBIT LIST**

- K-1 SAMPLE MONITORING WORKBOOK
- K-2 SAMPLE LABOR MONITORING WORKBOOK
- K-3 ELECTRONIC MONITORING DOCUMENTATION CERTIFICATION
- K-4 ELECTRONIC MONITORING TITLE VI CERTIFICATION
- K-5 MONTHLY STATUS REPORT FORM

# CHAPTER L:

## GRANT CLOSEOUT

## L.1 CLOSEOUT OVERVIEW

Project closeout is the process by which TNECD determines that all applicable administrative actions and required work prescribed by the grant have been completed in accordance with the terms and conditions of the CDBG contract as well as federal and state rules and regulations. The closeout report should provide a detailed summary of the outcome of the grant and should address any concerns or findings that have been resolved since monitoring. The information provided in the closeout report should be an accurate summarization of the records and files that have been maintained throughout the grant term.

The grantee will initiate the closeout procedures once:

- All project costs, except closeout and contingency, to be paid with CDBG funds, have been incurred,
- All work that is to be financed by CDBG funding and/or leveraged funds has been completed,
- All other responsibilities of the grantee outlined in the contract with TNECD have been met.
- The final request for payment from TNECD has been submitted.

A CDBG project includes an entire project that is completed using CDBG funds with or without other funds. A project cannot close out if only the CDBG-funded portion of a project is completed. The entire project must be complete.

All CDBG files must be kept for at least five years from closeout. If any litigation, claim, or audit is started before the end of the five-year period, the records must be kept until the action has been resolved. TNECD, HUD, and other federal or state agencies can complete an audit or monitoring visit after project is closed out. Additionally, TNECD may visit the project or access the files to complete a measurement and verification visit to assess long-term impact and effectiveness of the project.

Multiple closeout packages are available, and the type of activity completed will determine the package that is used. Certain documents will be included in all packages, but other documents may exist only in specific packages. Listed below are all of the documents, the descriptions, and the instructions for completion. Following the list of closeout documents will be the listing of closeout packages along with the documents that are in each.

Regardless of which closeout package is used, all CDBG projects must include a public closeout hearing. An advertisement detailing the date, time, and location of the closeout hearing must be published in a local newspaper no less than fourteen (14) days prior to the closeout public hearing. TNECD requests that a notice also be posted in a public forum and/or online (community's website, social media, etc.).

## L.2 CDBG PROJECT CLOSEOUT REPORT

The CDBG Project Closeout Report should be submitted online with all required attachments. The closeout report and supporting documents can be found on TNECD's website: <http://tn.gov/e cd/topic/cdbg-annual-and-final-report>.

Links to the necessary closeout documents for the type various types of CDBG projects are available for download at the end of the online report and as exhibits to this chapter. Upload links are also provided for submission of these documents along with the narrative report.

General project information along with the costs and funding information will be provided in the report. All leveraged funds should be reported including: local funds, in-kind or force account work, other federal funds (such as USDA-RD or ARC funds), etc., and document how much of the CDBG funds were used. The submission date of the final request for payment to TNECD, along with the amount of CDBG funds remaining after project completion and the date the undertaken project was completed, or the purchased equipment was delivered is also required. Any remaining funds will be recovered by TNECD and repurposed for other CDBG eligible activities.

A description of the accomplishments by the grantee comparing the project as proposed with the project as completed will also be given. This comparison is necessary for TNECD to fully understand how CDBG funds were used. For example, simply stating “A new water line extension” as the proposed project will be insufficient. If for any reason the project activity changed or differed from the proposed project in the application, be sure to explain how and why these changes occurred.

This form will also capture the number of beneficiaries (direct and/or indirect). The Low and Moderate Income (LMI) benefit numbers will need to be included to show how many LMI persons benefitted from the project compared to the proposed.

Be sure to fully complete the closeout report with detailed narratives and be sure to contact TNECD with any questions prior to submittal.

### **L.3 APPLICANT/RECIPIENT DISCLOSURE/UPDATE REPORT (HUD-2880)**

This form is a HUD required document that must be completed as part of any closeout procedure. This is the same form that is completed as part of the grant application; however, here the box beside “or an Update Report” will be checked. Part I should not be completed again for an “Update Report”.

TNECD requests that Part II and III be completed for closeout. Detailed instructions for completion of the document follow the form itself. Thoroughly read these instructions and complete the form as instructed.

### **L.4 SECTION 3 SUMMARY REPORT**

As recipients of CDBG funds, grants are required to account for the number of economic opportunities available to LMI persons as a result of the CDBG grant. This is accomplished as part of the online closeout process. Grants are required to report the following:

- Number of additional jobs created as a result of the CDBG-funded project
- Number of additional LMI jobs created as a result of the CDBG-funded project
- Total dollar amount of construction contracts as a result of the project
- Total dollar amount of non-construction contracts as a result of the project
- Number of awards and total contract amounts of construction contracts to Section 3 businesses
- Number of awards and total contract amounts of non-construction contracts to Section 3 businesses

## **L.5 CLOSEOUT PUBLIC HEARING SIGN IN SHEET**

The sign-in sheet should be used for the mandatory public hearing as part of the grant closeout process. The form asks for five pieces of information beginning with the attendee's name. The form should be completed in its entirety by all attendees. Additionally, the newspaper advertisement concerning the closeout public hearing, along with the minutes from the public hearing, should accompany this document.

## **L.6 FINAL WAGE COMPLIANCE: LABOR STANDARDS ENFORCEMENT REPORT**

This report will be included in closeout packages where the activity included construction activities. This report will verify all wages were paid in accordance with labor standards and according to the Davis- Bacon and related acts. Section I of the document contains five questions:

1. Project Name
2. Contract Number (CDBG contract number)
3. Prime Contractor Name and Address
4. Prime Contract Amount
5. Wage Decision Number (also any subsequent wage decision numbers used)

Section II contains five questions that will help determine whether or not workers were paid in compliance with labor standards. The answers to the questions on the report will determine whether additional information is needed. Please be sure to carefully read the instructions following the questions for guidance. Once all questions have been answered, the preparer must sign and date the document.

## **L.7 PERFORMANCE MEASURES**

The closeout report included reporting on the agreed upon performance measures to exhibit the success of the project. These measures come in the form of the outputs and outcomes presented by the grantee in the initial grant application. Each performance measure has a field for the proposed output or outcome and the actual output or outcome upon completion of the project. A box is also provided below the measures for the grantee to provide explanation to why the measures as proposed and as completed may vary. Slight variations are expected, but grantees should take care the thoroughly explains any large discrepancies.

Grantees are also required to list the number of beneficiaries proposed to be served in the application and the number of beneficiaries upon completion of the project. Grantees should also provide explanation to changes in these numbers. This explanation is especially important for direct beneficiary projects.

## **L.8 ADDITIONAL INFORMATION FOR EQUIPMENT PROJECTS**

CDBG projects that include purchase of equipment are required to complete some additional questions about the equipment purchased. For all items classified as a capital purchase (individual item purchases of \$5,000 or more), the following information is requested:

- A description of the equipment (include any brands, makes, and/or model numbers)
- The VIN or Serial Number of the equipment
- The permanent location (street address) where the equipment will be stored
- A checkbox indicating a copy of the proof of ownership is included

## **L.9 LINE EXTENSION BENEFICIARIES FORM**

This form will be used for water and sewer line projects and is similar to the Map Survey forms from the application. For this document the names, addresses and family size for all beneficiaries will be completed on the form. There are three installation questions which should be answered carefully. Be sure to include any supporting documentation with the closeout report. Examples of supporting documentation might include, for example, the completed/updated Map Survey Form with a bill for the tap installation as proof. Lastly, demographic information will need to be completed to account for any minority, disabled, elderly persons or female heads of household who are benefitting from the project. The LMI status for each household will need to be collected as well.

## **L.10 PERFORMANCE MEASURES FOR HOUSING PROJECTS**

Performance measures for housing projects are the only measures that are not fully captured in the online reporting form, due to the need for capturing of more demographic information that is required for other CDBG projects. This form captures the general objectives and outcomes of the project along with data to measure the performance of housing projects. Be sure to fully complete the demographics portion of the form regarding the beneficiaries including: race/ethnicity, minority persons, female head of household, elderly persons, and disabled persons. This document portion closely resembles the demographic categories in the Target Area Surveys that are used in the application.

## **L.11 HOUSEHOLD INCOME VERIFICATION FORM**

This document will be used for housing projects only and is designed to collect information for the households benefitting from a CDBG housing project. This form is an alternative to the Target Area Survey form submitted in the application; either document may be used. The document should be completed by the head of household only. The name, age, address, and gender for the head of household will need to be collected. Also, the number of persons in the household, along with the race of each person will need to be included. Other demographic information such as the number disabled persons, dependents, and elderly persons should be included as well. Lastly, the total annual household income and the project year should be included, with the date and resident signature certifying all the information is true.

## **L.12 CLOSEOUT EXHIBIT LIST**

- L-1 APPLICANT/RECIPIENT DISCLOSURE/UPDATE (HUD-2880)
- L-2 FINAL WAGE COMPLIANCE: LABOR STANDARDS ENFORCEMENT REPORT
- L-3 CLOSEOUT PUBLIC HEARING SIGN IN SHEET
- L-4 LINE EXTENSION BENEFICIARIES SUMMARY
- L-5 HOUSEHOLD INCOME VERIFICATION FORM
- L-6 PERFORMANCE MEASURES FOR HOUSING PROJECTS