

# **CDBG-DR INFRASTRUCTURE PROJECT POLICIES**

(Revised 12-21-18)

The Infrastructure CDBG-DR Program encompasses the identification, design, permitting and construction of infrastructure projects as identified in the City's approved Action Plan. All infrastructure projects will be managed by the City of San Marcos Engineering and Capital Improvements Department.

## **ELIGIBLE PROJECTS**

Infrastructure projects to be designed and/or constructed using CDBG-DR funds shall be identified in the City's approved Action Plan or approved amendments and be located in a county that was presidentially-declared as a major disaster area.

All infrastructure projects will complete an evaluation and prioritization process and shall meet both the eligibility criteria and national objectives of the HUD CDBG-DR grant as outlined in 81 FR 39687 effective date June 17, 2016 and 82 FR 36812 effective date May 5, 2017 (Attachments A & B).

Compliance with national objectives will be documented using CDBG-DR-00-15A and all projects must be deemed eligible before CDBG-DR funding can be used.

Eligible infrastructure activities include the repair, replacement, or relocation of damaged public facilities and improvements to include, but not limited to, bridges, water treatment facilities, roads, sewers and water lines. Repair and replacement of buildings, contents and equipment as identified in Section VIII.D. of the City's Action Plan are not considered an eligible activity under this policy..

CDBG-DR funds may not be used to assist a privately owned utility for any purpose.

All infrastructure projects must comply with federal requirements identified in Attachment C.

## **U.S. ARMY CORPS OF ENGINEERS PROJECTS AND OTHER SOURCES OF DIASTER ASSISTANCE**

CDBG-DR funds may be used as a match contribution for another federal program; however no funds may be used for any activity reimbursable by, or for which funds are made available by FEMA or USACE.

Any project that proposes to use CDBG-DR funds as a non-federal match for a U.S. Army Corps of Engineers project is restricted in that match to \$250,000 or less.

In compliance with Section 312 of the Stafford Act no project may use CDBG-DR funding for a loss for which it has already received funding for that loss from another source. All projects will complete Form CDBG-DR OO 23-A Infrastructure – Duplications of Benefits Summary. This document will be updated if any additional funding is approved for the project to determine if there are new duplication of benefits. If duplication of benefits or over payment occurs, the duplicated funds will transfer into the CDBG-DR account in accordance with applicable HUD regulations.

## ACTIVITIES IN FLOODPLAINS

Construction of infrastructure projects in FEMA Special Flood Hazard Areas (SFHA) shall comply with all applicable Federal, State and Local laws regarding such construction. All activity within a SFHA will comply with the City's Flood Damage Prevention Ordinance (Attachment D) and the requirements from E.O. 11988 and its amendments in E.O. 13590.

All infrastructure projects shall demonstrate an improvement in flood risk.

## PROFESSIONAL SERVICES CONTRACTS

Professional services contracts for the design of CDBG-DR projects will be hourly not to exceed contracts with reimbursable expenses. A detailed fee schedule will be included in the contract and payment will be made based upon that fee schedule. Contracts will not be negotiated or paid upon a percentage complete by task basis.

## MONITORING OF INFRASTRUCTURE PROJECTS

Infrastructure projects shall be monitored within the Engineering Department through contract compliance, project expenditures and project schedules.

Monthly Consultant Payment Applications will be reviewed for compliance with the contract's detailed fee and project schedule. Rejected payment applications shall be saved in the project files and include on the rejected payment application, or within attached correspondence, the date and nature of the rejection. Digital files shall be clearly named to differentiate the rejected applications from those approved for payment.

City approved project schedule and budget changes shall be documented in a Project Change Log and include the following:

- Description of the change made
- Reason for the change
- Any ramifications resulting from the change; specifically stating if there is or is not a change to the overall project schedule and/or budget. And if there is a change how that change will be accomplished.

The Project Change Log will be included in the project file and updates will be provided to the Director and CDBG Program Manager.

Tracking of infrastructure project schedules and expenditures will occur through a quarterly update to the Non-Housing Expenditure Projection and will reflect any significant changes to the projected non-housing expenditures and schedule.

Any changes that require an Action Plan amendment will be made in conformance with Federal Register requirements.

Environmental compliance will be monitored through the use of the environmental review forms as provided in the Design Procedures Manual.

## FEDERALLY REQUIRED PROVISIONS FOR INFRASTRUCTURE PROJECTS

All project contracts and activities will be CDBG eligible according to 24 CFR 570.201 and 24 CFR 570.202 including the federally required provisions as stated below:

### NATIONAL OBJECTIVES

All activities funded with CDGB-DR funds must meet one of the CDBG-DR program's National Objectives: (a) benefit low- and moderate-income persons; (b) aid in the prevention or elimination of slums or blight; or (c) meet community development needs having a particular urgency, as defined in 24 CFR 570.208. The City certifies that the activities carried out with CDBG-DR funds will meet a National Objective.

### COPELAND ANTI-KICKBACK ACT COMPLIANCE

The City will comply with the requirements of 29 CFR Part 3 (the Copeland Act). The "Anti-Kickback" section of the Act precludes a City from inducing an employee -- in any manner -- to give up any part of his/her compensation to which he/she is entitled under his/her contract of employment.

### CONFLICTS OF INTEREST (24 CFR 570.611; 2 cfr 200.112 AND 200.318@24 CFR 85.35; and 24 CFR 84.42)

There are two sets of conflict of interest provisions applicable to activities carried out with CDBG funding. The first set, applicable to the procurement of goods and services by City's (funded applicants), is the procurement regulations located at 24 CFR 84.42 and 85.36. The second set of provisions is located at 24 CFR 570.611(a)(2). These provisions cover situations not covered by parts 84 and 85.

With respect to procurement activities, the City must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. At a minimum, these standards must:

(a) Require that no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the firm selected for an award:

- 1) An employee, officer, or agent of the City;
- 2) Any member of an employee's, officer's, or agent's immediate family;
- 3) An employee's, agent's, or officer's partner; or
- 4) An organization which employs or is about to employ any of the persons listed in the preceding sections.

(b) Require that employees, agents, and officers of the City neither solicit nor accept gratuities, favors, or anything of value from the City, or parties to sub-agreements. However, City may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.

(c) Provide for disciplinary actions to be applied for any violations of such standards by employees, agents or officers of the City.

With respect to all other CDBG-assisted activities, the general standard is that no employee, agent or officer of the City, who exercises decision-making responsibility with respect to CDBG funds and activities is allowed to obtain a financial interest in or benefit from CDBG activities, or have a financial interest in any contract, subcontract, or agreement regarding those activities or in the proceeds for the activities. Specific provisions include that:

- 1) This requirement applies to any person who is an employee, agent, City, officer, or elected or appointed official of the City, a designated public agency, or a City, and to their immediate family members and business partner(s).
- 2) The requirement applies for such persons during their tenure and for a period of one year after leaving the grantee or City organization.
- 3) Upon written request, exceptions may be granted by HUD on a case-by-case basis.

#### **CERTIFICATION OF ELIGIBILITY**

The City certifies that it will maintain active registration with the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p 189) and 12689 (3 CFR part 1989 Comp., p 235), "Debarment and Suspension".

(a) City certifies that its contractors are not presently debarred, suspended, or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program.

(b) City will furnish a copy of the certification in accordance with 24 C.F.R. Part 24 (Debarment and Suspension). The City and all contractors will be active and not debarred on the website, [www.sam.gov](http://www.sam.gov). and provide a copy of the certification to the City before the entity performs work under this contract.

The City must ensure that awards are not made to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" and the UAR. City will have each contractor and subcontractor complete an eligibility form in a format that is provided or approved by the City. This form will provide the information necessary to verify City eligibility.

#### **NON-COLLUSION CERTIFICATION**

The City certifies that, if a proposal was provided that resulted in a contract, that proposal was made without collusion with any other person, firm or corporation.

#### **BYRD ANTI-LOBBYING AMENDMENT**

(31 U.S.C. 1352) The City will not use Federal appropriated funds to pay any persons or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

**SECTION 3 COMPLIANCE**

The City will comply with Section 3 [These provisions are applicable to projects for which the amount of HUD assistance exceeds \$200,000 and the contract or subcontract exceeds \$100,000.]

- (a) The work to be performed under a Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The City will comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3.
- (c) The City agrees to include this Section 3 clause in every contract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the contractor is in violation of the regulations in 24 C.F.R. Part 135. The City will not contract with any contractor where the City has notice or knowledge that the contractor has been found in violation of the regulations in 24 C.F.R. Part 135.

**COMPLIANCE WITH RULES & REGULATIONS**

The City will comply with all of the applicable uniform administrative regulations related to the application, acceptance and use of federal funds as contained in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The City will be responsible for compliance and conformance with applicable federal and state laws, rules, regulations and codes, City permitting requirements, and city ordinances currently in effect. Federal and state laws, rules, regulations and codes include but are not limited to:

Workers Compensation laws;

- (a) Minimum and maximum salary and wage statutes and regulations, including but not limited to:

Fair Labor Standards Act of 1938, as amended;

Equal Pay Act of 1963, PL 88-38; and

All applicable regulations implementing the above laws;

- (b) Non-discrimination statutes and regulations, including but not limited to:

Title VII of the Civil Rights Act of 1964, as amended;

Section 504 of the Rehabilitation Act of 1973, as amended;

The Age Discrimination Act of 1975, as amended; and

all applicable regulations implementing the above laws;

(c) Licensing laws and regulations;

Compliance with Texas Accessibility Standards ("TAS") and ADA requirements, issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, or other applicable Texas law;

Requirements under the Architectural Barriers Act and the Americans with Disabilities Act set forth in 24 C.F.R. Section 570.614;

All applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C.7401-7671q), and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387, as amended, and Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PUB L 94-163, 89 Stat. 871) codified at 42 U.S.C.A. Section 6321 et seq.;

National Environmental Policy Act ("NEPA") including Environmental Protection Agency regulations (40 C.F.R. Part 15), applicable HUD regulations set forth in 24 C.F.R. Parts 50 and 58 including authorities cited therein, and National Historic Preservation Act of 1966, including Federal Historic Preservation Regulations (36 C.F.R. Part 800), which require environmental clearance of federal aid projects; and in connection with NEPA requirements, City is responsible for the preparation of NEPA documents required for environmental clearance of the Project covered hereunder; 24 C.F.R. Section 5.105, including applicable authorities cited therein, as well as applicable provisions of 24 C.F.R. Part 58, including Section 58.5 and applicable authorities cited therein and Section 58.6 and applicable authorities cited therein.

#### **AFFIRMATIVE ACTION – WOMEN-AND MINORITY-OWNED BUSINESSES (W/MBE)**

The City will take all necessary affirmative steps to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in CDBG-DR activities. The terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The City may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

Affirmative steps must include:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small and minority businesses, and women's business enterprises, are solicited whenever they are potential sources.

- iii. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce;
- iv. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- v. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.

#### **LABOR STANDARDS**

The City agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement.

The City agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The City shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

The City agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the City of its obligation, if any, to require payment of the higher wage. The City shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

#### **PROGRAM INCOME**

The City will accept and report program income to the federal government.

#### **FEDERAL FUNDING AND ACCOUNTABILITY TRANSPARENCY ACT (FFATA)**

Contracts equal to or greater than \$25,000 will be entered by the City into the Federal Service Reporting System as applicable. Information will be provided by the contractor to complete the compliance reporting for the Federal Funding and Accountability Transparency Act.

#### **LOBBYING**

The City hereby certifies that:

- (a.) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal

loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(b.) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

(c.) It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all contractors shall certify and disclose accordingly:

(d.) Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### **LEAD-BASED PAINT**

The City agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-DR-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

#### **FLOOD DISASTER PROTECTION**

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the City shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

#### **HISTORIC PRESERVATION**

The City agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

**RELIGIOUS ACTIVITIES**

The City agrees that funds will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization. The acquisition, construction, or rehabilitation of structures used for inherently religious activities is not allowable under this program.