

F. ECONOMIC DEVELOPMENT

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F. ECONOMIC DEVELOPMENT

Introduction

This section presents the special requirements that apply to Economic Development projects as a part of the Louisiana Community Development Block Grant Program. Economic Development projects can take several forms. First of all, a project may consist of a loan to a business to procure such items as land, commercial-industrial facilities, commercial-industrial equipment, or inventory. Economic Development projects may consist of a loan to a business to finance construction of on-site development. Economic Development projects may also take the form of grants to local governments to purchase land, buildings, etc. or for public infrastructure improvements to assist a business.

Economic Development projects are subject to the same federal provisions as housing and public facility projects. However, due to different types of activities and participants, certain provisions become more important or apply differently.

This section refers to other sections in the Handbook that apply to most Economic Development projects and lists additional requirements. It also discusses areas that are particular to Economic Development projects.

The text discusses the requirements of each task, references required forms and cites examples of work contained in the supporting materials.

Task F-1: Program Administration

Items previously discussed in the Program Administration Section of the Handbook are also applicable to administering an Economic Development program. Following preliminary approval of a project, some application revisions may be requested such as a new performance schedule or a revised cost summary form. The same documents which must be submitted to this office in order to obtain a release of funds for other CDBG programs, i.e. environmental review record, anti-displacement resolution, community development plan, signature cards, depository cards, et cetera, must also be submitted for ED programs. In addition, other documents which pertain only to ED programs will be required to obtain a release of funds. These documents and other requirements for the Economic Development program are discussed in this Section.

After the local governing body receives an authorization to incur cost for planning and administration, the State will send the local governing body a contract (State contract) which details the responsibilities of the assisted business (“developer”) and the local governing body. The local governing body will develop a Written Agreement between it and the developer incorporating the provisions of the State contract (24 CFR 570.506 (b)(5)). The Written Agreement will either be in the form of a Two Party Agreement for infrastructure projects or a Three Party Agreement for projects that provide direct financial assistance in the form of a loan. **Exhibit F-1** contains a

sample written agreement. The shaded portions of the sample written agreement are pertinent to a loan and must be used only for the Three Party Agreement. The local governing body can develop a Two Party Agreement from the sample by removing the shaded portions. This is only a sample since each project is unique and the local governing body has some latitude in negotiating the best possible arrangements with the assisted business. There are basically three requirements for either form of the written agreement. The written agreement must set forth at a minimum the following:

1. All basic activities and responsibilities as established in Contract Exhibits A, B, C, and D of the Grant Agreement (Contract between the State and the Local Governing Body).
2. Specification of all related federal and State provisions and regulations as included in Contract Exhibit F of the Grant Agreement.
3. A statement to the effect that the agreement is contingent upon a release of funds, thereby avoiding any environmental concerns.

In addition to the written agreement, other evidentiary materials must be submitted to this office. Contract Exhibits C and D of the Grant Agreement outline all required evidentiary materials that must be sent to this office. Local governments are allowed one hundred and eighty (180) days from the date of the Authorization to Incur Cost to submit all evidentiary materials.

Some items of evidentiary materials that are commonly submitted include but are not limited to the following:

1. Written Agreement - This is a legally binding agreement between the developer and the local governing body, (and the State for a Three Party Agreement) which specifies all parties' responsibilities in implementing the ED project. As indicated earlier, this document should contain all provisions outlined in the State Contract. This document should contain provisions which protect the local governing body and the State as well.
2. Mortgage Agreements – (*Loan projects only*) Security is required for all CDBG loans and fully executed mortgage agreements must be submitted to this office. See the LCDBG ED staff for samples of these documents.
3. Evidence of Developer's Private Investment- Fully executed loan agreements with bank, public entities, et cetera, which indicates the dollar amount and terms of the loans, must be submitted. Depending on the source of the Developer's financial commitment, documentation of the evidence will vary. **Exhibit F-2** provides a sample Evidence of Developer's Commitment.
4. A resolution establishing authority of persons to enter into the Written Agreement and other legal documents on behalf of the corporation. See **Exhibit F-3** for a sample resolution.
5. Certification of Legally Binding Agreements - The local governing body's legal counsel certifies the genuineness of the above referenced documents and the authority of all parties to sign the documents. Further, it states that the documents constitute a valid and legally enforceable contract under the laws of the State of Louisiana and is in conformity with the LCDBG Grant Agreement/Contract (**Exhibit F-4**). It is important for your attorney to be

actively involved in this process due to potential liability faced by the local governing body.

As indicated earlier, the above represents some of the evidentiary materials required to be submitted to the State prior to release of funds. However, other documents specified in Section A of this Handbook must also be submitted in order to receive a release of funds.

Economic Development projects must comply with all environmental review requirements discussed in Section A (**Task A-2**). One of the common problems noted with an Economic Development project is that a finding of "Categorical Exclusion" (24 CFR Part 58.35) is made in many cases where inappropriate. This is most common where it is argued that the project may be categorically excluded due to only a minimal change in use, size, capacity or location, et cetera and because it is consistent with the allowed use of the site, et cetera. These determinations are difficult to make and require an in depth analysis of the proposed changes. You must closely follow the regulations in making the determination. Please contact your Local Government Representative prior to making a finding of categorical exclusion for an Economic Development project.

The most important fact to consider regarding Economic Development projects and environmental review is that no project activities (other than "Exempt" activities) may be undertaken or EVEN LEGALLY OBLIGATED from the time the application is submitted until all project activities are environmentally cleared. No monies may be reimbursed with LCDBG funds except those costs relating to engineering and planning. See **Exhibit F-5** for a listing of common questions regarding Release of Funds.

Once your project has received the Notice of Approval of Evidentiary Materials and Release of Funds, you may submit a Request for Payment. This process is described in Section A. However, most Economic Development projects have conditions set forth in the State contract that must occur before funds are drawn. Usually the conditions involve expenditures of private sector funds and accumulation and presentation of invoices. Be especially careful in following the provisions of the State contract.

If all conditions of the State contract are met and a draw request is granted, a financial management system must be in place to receive and account for LCDBG funds (**Tasks A-3 and A-4**). If the Economic Development project involves a loan to a business, a loan closing should be held for presentation of the check to an appropriate company representative, if needed. Prior to the loan closing, security documents such as mortgages, promissory notes, loan agreements and/or security agreements must have been signed. These documents must be prepared by your City/Parish attorney. If examples are needed, they are available from the State. Funds for equipment will be requested by the local government when the equipment is received and invoiced. If you have questions, contact your grant representative.

It is important that all economic development loans be secured as soundly as possible and that the repayment schedule and all requirements set forth in a Three Party Agreement are understood clearly by the payer and payee. Your bank or attorney should be able to produce a payment schedule with principal and interest clearly delineated. The State will prepare a revised payment schedule for recipients if the actual drawdown deviates from the program schedule. Be sure to follow all LCDBG contract requirements and provisions identified in the State contract. One very important requirement is the submittal of quarterly financial reports. These reports are due no later than 30 days after the end of the quarter. For instructions, see **Task F-10**

Section A also discusses the subject of procurement. Economic Development projects often involve the private sector party procuring services such as engineering. Private sector entities are not subject to the provision of 24 CFR 85.36 even when the activity is financed with federal funds. However, all contract provisions apply to public sector procurements.

In addition, there are citizen participation requirements outlined in **Task A-13** which the grantee must comply with. Finally, Equal Opportunity and Fair Housing requirements are also part of Economic Development program administration (**Tasks A-11** and **A-12**). Grantees must insure that they comply with all the provisions contained in their Statement of Assurances.

Task F-2: Public Facilities

The requirements discussed in Public Facilities, Section B, pertain to construction work financed in whole or in part with LCDBG funds. This section therefore applies to Economic Development projects. The only difference is that 24 CFR 85.36 does not apply if the construction contract is between the private sector party and the contractor. All other provisions regarding applicability of labor and equal opportunity standards do apply. Therefore, the format and contents of the contract must be basically the same as those provided in Public Facilities, Section B. The contract oversight requirements, such as posted construction sites, employee interviews, payroll reviews, et cetera, are the same.

Task F-3: Acquisition

The Acquisition Section presents the requirements that apply to real property acquisition in connection with LCDBG financed projects. Therefore, this section is important to many Economic Development projects, especially those involving new infrastructure construction or site acquisition.

The most important consideration for Economic Development recipients is whether the Uniform Act (Act) applies to any part of the project.

There are two similar but different instances when your project must follow the Act requirements.

First, the Act will be triggered if the public entity, i.e., a city, parish redevelopment agency or any other entity which has legal power to expropriate land and acquire privately held property under Louisiana law, is acquiring the property with LCDBG funds, whether the activity is funded wholly or in part with Block Grant funds.

Second, the Uniform Act can in most instances be triggered when a private company, which does not have expropriation power, acquires property with LCDBG funds or private funds, prior to or after the award of a LCDBG Award, knowing that the success of their business depends on the receipt of LCDBG funds.

Prior to any purchase of real property by the local governing body or the developer, contact the Office of Community Development. This will avoid costly time delays and/or disallowed costs associated with the economic development program.

When you contact OCD about acquisition, we will advise you of your responsibilities regarding the Uniform Act and instruct you on how to proceed. You will also be given a copy of the HUD

Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition as a guide for you to initiate the proper steps in the Uniform Act process.

The above applies for easements or servitudes (excluding construction easements) that you may need to acquire in conjunction with your program.

Task F-4: Relocation

Relocation refers to the physical movement of people, families, businesses, whether commercial or industrial, and farm operations as a direct result of activities in connection with any LCDBG project. The requirements for Relocation are discussed in the Relocation Section of the Handbook. Regardless of who or what is being relocated within your project, you should meet with the state staff as early as possible in the application development to deal with this complicated process. Again, the State will provide you with HUD's Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition for your benefit in accomplishing this task.

Task F-5: Davis-Bacon and Related Acts

Public Facilities, Section B, provides information regarding labor provisions applicable to LCDBG projects. It is important that the City/Parish staff read section B if their project involves construction. Generally, the question of Davis-Bacon applicability to public facility projects is quite clear, and public funds are budgeted for the extra costs that may pertain to covered projects.

The question of applicability takes on greater significance when dealing with economic development projects since the private sector portion of the project can be affected financially by labor provision applicability to the entire project. 42 USC 5310 states that Davis-Bacon wage rates must be paid to laborers or mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with LCDBG assistance. If construction is not involved, Davis Bacon requirements will not apply.

Equipment - HUD has provided the framework to determine whether Davis-Bacon and related labor provisions apply to the installation of equipment, and if its application to equipment will trigger Davis-Bacon to other parts of the project. The policy is provided in **Exhibit F-6**. For your guidance, the following opinions have been written by HUD in response to LCDBG inquiries:

1. LCDBG funds to be used to purchase furniture, fixtures, maintenance equipment, televisions, telephone equipment and registration equipment will not necessitate the application of Davis-Bacon wage rates. This applies if the equipment analysis provided by the developer does not show any installation costs.
2. Department of Labor considers Davis-Bacon coverage of equipment to depend to a great extent on whether the installation of the equipment in question involves more than an incidental amount of construction work.
 - a. As an example, installation costs of \$68,338.80 were found to be more than incidental for \$402,000 of LCDBG financed equipment. Therefore, Davis-Bacon rates were applicable to laborers and mechanics involved in installation of the equipment.

- b. Installation costs of \$29,388.80 were found to be incidental for \$402,000 of LCDBG financed equipment. Therefore, Davis-Bacon rates were not applicable to laborers and mechanics in that project who were involved in installation of the equipment or in the construction of the physical plant in which it would be located.
3. Where LCDBG was used to finance equipment, the following items were believed to trigger Davis-Bacon: time clock with card racks, overhead crane system/hoist, air lines and fire extinguisher. The reason for this was the attachment to the building.
4. According to the U. S. Attorney General, Section 110 (Davis-Bacon Act) does not require the payment of prevailing wages with respect to installation where federal funds are provided exclusively for the purchase of equipment and not for its installation.

Every effort must be made to address the equipment issue during the application process. If LCDBG funds are to be used to purchase equipment, an equipment analysis form must be submitted to this office. **Exhibit F-7** is a copy of this form. All LCDBG financed items of equipment must be listed. A determination will be made based on the particular listing. Should the items of equipment change or the amount of installation required increase, the determination may not be valid. Therefore, changes in the items will generally not be permitted. Should a change become necessary and be considered appropriate, the project will require a formal Program Amendment and a re-evaluation of the equipment analysis forms.

Site Preparation - LCDBG financed work on-site will trigger Davis-Bacon. This matter is constantly undergoing scrutiny by HUD and the Department of Labor. The State will try to keep LCDBG recipients as informed and protected as possible.

Task F-6: Closeout

Closeout is addressed in Section H of this handbook. Many Economic Development projects can move to closeout fairly quickly due to the fact that many involve a one-time draw. ED projects may not be conditionally closed out until all funds (private, public and local) have been expended, all jobs created, low-mod employees verified and the projects monitored by the State. In addition, all monitoring and audit findings must be resolved and if the project involves a loan, payments must be up-to-date. See Section H for closeout forms and instructions.

Please pay particular attention to the following items in the Program Completion Report (PCR):

1. The amount of total private and public investment in a project must be listed in the PCR and documented in project files. Before grant award is made, the total financial package is judged and the need for LCDBG assistance determined. Therefore, it is very important that a recipient be able to document that all financial injections in the project have been accomplished. Documentation may take the form of loan agreements, construction contracts, invoices, payrolls, audits, canceled checks, etc. A project cannot be closed until all other funds in a project are expended. If all investment has not been made, the project must remain open with periodic reporting. Under the circumstances where the private investment is very large, an amendment to the Grant Agreement may be approved to lower the amount of other funds required.
2. In economic development projects, a recipient must report the number of jobs created/retained as direct beneficiaries. **Task F-8** discusses documenting jobs. A grant

may not be closed until all jobs are created/retained and the National Objective met.

3. The PCR must include a report of any repayment. This is addressed in **Task F-7**.
4. The PCR must include reporting of family income level, beneficiaries by race, sex, ethnicity, household size, sex and handicapped persons (24 CFR 570.506 (g)). Your reporting arrangement with the respective participating company should make this clear early in your negotiations.
5. In the PCR Section, the housing opportunities form which specifies action taken to further fair housing and increase housing opportunities for lower income households must be completed by the Economic Development recipient. It applies to the community rather than the project.

It is very important that projects be closed in an expedient manner to avoid threshold problems. Final closeout of a contract is issued only when all activities are completed. This means the results of the project are achieved, including compliance with a national objective (all low and moderate income job creation/retention), an audit covering all LCDBG expenditures, PCR, and Certificate of Completion are approved. In addition, when a project involves a loan, all loan payments must be up-to-date.

Task F-7: Program Income/Revolving Loan Funds

Program income (repayment) is money earned by a City/Parish that is generated by the use of LCDBG funds distributed by the State. Examples of program income are: (1) payments of principal and interest on loans made using LCDBG funds; (2) proceeds from the lease or disposition of real property acquired with LCDBG funds; (3) interest earned on LCDBG funds held in a Revolving Loan Fund (RLF) account; and (4) interest earned on any program income pending its disposition.

Program income earned by a City/Parish while it is participating in a Community Development program is subject to the requirements of the Housing and Community Development Act of 1974, as amended, and Subpart I of Part 570. (Requirements of the Act include among other things, addressing a national objective and compliance with procurement, equal opportunity, environmental, labor standards regulations and the Uniform Act.) In the case of loan repayments, these shall be continually remitted to the State until the loan has been retired. In the case of lease payments being received from a building purchased, constructed, or renovated, in whole or in part with LCDBG funds, the pro-rata percentage payment will be payable to the State based on a fair market valuation of the leasehold. This "fair market value" shall be considered at least to be the value of the LCDBG contribution amortized over 20 years at no interest. These lease payments will continue to be due to the State until the grant is repaid. Lease payments will not be due; however, when the building is vacant.

Any other program income earned as a result of the LCDBG Program will either be retained by the local governing body or submitted to the State. The Office of Community Development must be contacted for instructions regarding income as soon as the local governing body becomes aware of the income or of the possibility that program income will be received.

Task F-8: Program Benefit/Tracking Job Requirements

To be eligible for LCDBG assistance, an activity must address the objective of benefiting low and moderate-income persons. In the case of Economic Development projects, persons benefiting will be those hired or retained by the company assisted by LCDBG funds. Since these persons must complete an application for employment, they will be direct beneficiaries.

For an activity that creates jobs, the grantee must document that at least 51 percent of the jobs are held by, or were made available to low and moderate-income persons. (24 CFR 570.483(b)(4))

Obtaining this information is crucial to documenting project eligibility. The income information provided will determine if the Low-Moderate-Income (LMI) Benefit claimed in your application has been met. Even if all jobs cannot ultimately be filled, the LMI requirements stated in the LCDBG Contract must be met. It is important that the company, to avoid possible eligibility problems, clearly understands and agrees to these requirements as early in the application process as possible. These requirements should be included in the written agreement (24 CFR 570.506(b)(5)).

Exhibit F-1, Attachment B is a sample Survey Form for used in collecting information on persons hired or considered for employment. Survey forms must be kept on file by the company and made available to the State or the City/Parish if requested. **Exhibit F-1**, Attachment C, is an Employee Characteristics Record, where the individual information is compiled showing required employee characteristics such as job title and household income. Please note that employees can be denoted by code if you prefer, to protect their privacy. The employee forms and the Employee Characteristics Record must be kept in the LCDBG files.

Just as for Housing and Public Facilities projects, it is your responsibility to determine specific statistical information on those persons benefiting from the project. According to 24 CFR 570.506(g)(2), beneficiaries must be documented as to race, national origin, age, sex, head of household, and handicapped status. Some of this information cannot be obtained prior to or as a condition of employment. Therefore, once hired, all employees must be surveyed.

Task F-9: Financial Reporting Requirements

Both the State contract and the written agreement between the local governing body and the Developer contain periodic financial reporting requirements. It is crucial to the monitoring process of any LCDBG Economic Development Grant that the State receives financial reports within the required timeframe from the Developer in order to assist the local governing body in performing its monitoring function. Quarterly reporting will be submitted on the Sources and Uses Report. See **Task F-10**. It is equally important that the local governing body ensure that the Developer employs a Certified Public Accountant that can meet the reporting requirements.

For the year-end financial statement the State requires from the developer either a complete unqualified opinion or a reviewed statement with a detailed profit and loss statement, balance sheet, statement of changes in financial position, and all required footnotes. Compiled financial information will not be acceptable for the required annual financial report. Your State contract and the written agreement will specify whether an audited year-end financial statement or a reviewed statement is required. Recipients should be aware of statements in the accountant's letter to management such as:

"A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or

reviewed the accompanying financial statements and, accordingly do not express an opinion or other form of assurance on them. Management has elected to omit substantially all of the disclosures and the statement of changes in financial position required by generally accepted accounting principals."

Statements such as the above can be indicators of less reliable, missing, and possibly distorted information.

Preferably the accountant's letter to the management for the annual financial report should contain language similar to the following:

"We have examined the balance sheet of XXX Corp as of July 31, 2007, and the related statements of income, retained earnings, and changes in financial position for the year then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. In our opinion, the financial statements referred to above present fairly the financial position of XXX Corp as of July 31, 2007, in conformity with generally accepted accounting principals applied on a basis consistent with that of the preceding year."

Not all businesses can afford the expense of an audit. In those cases where a business cannot afford an audited annual financial report and your State contract and the written agreement allows for a review statement, a reviewed statement may be acceptable. In this case the accountant's letter to management would contain language similar to the following:

"We have reviewed the accompanying balance sheet of XXX Corp as of July 31, 2007, and the related statements of income, retained earnings and changes in financial position for the year then ended, in accordance with standards established by the American Institute of Certified Public Accountants. A review consists principally of inquiries of company personnel and analytical procedures applied to financial data. It is substantially less in scope than an examination in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion.

Accordingly, we do not express such an opinion. Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with generally accepted accounting principals."

A reviewed statement must include all the required footnote disclosures. The footnotes disclose such critical information as: the basis for the inventory valuation, depreciation methods, maturity and debt structure, and related party transactions (loans to and from stockholders, etc.).

It is incumbent upon the local government to know what kind of audit report is acceptable and take the necessary steps to ensure that the specific kind of audit report required is produced by the business and is provided to you on an annual basis.

The local government should ensure that the terms of engagement between the developer and his accountant require more than just a compilation for the annual report.

Task F-10: Sources and Uses Report

Due to the impossibility of frequent monitoring visits by the State LCDBG-ED staff, it is necessary that the local government which has received these LCDBG-ED funds report regularly on the developer's progress. The LCDBG State contract and written agreement established the periods when the reports are due. This requirement is closely monitored. Failure to submit this report in a timely manner can result in negative consequences to the local government/business.

The sources and uses reports must be filed jointly with the quarterly financial report that is required of the developer. The use of this report will assist the local governing body in carrying out its contractual responsibilities. It will allow the State to keep up to date on the developer's progress, to ensure that the money is being spent as scheduled, and that the jobs needed and promised are being created as quickly as possible.

The reports will be required every quarter. The first quarter begins with the date of the first draw from the State. The first reporting period will coincide with the next federal and State quarterly reporting period of 3-31, 6-30, 9-30, or 12-31. The report will be due 1 month after the end of the first reporting period and every 3 months thereafter. (For example, if the first payment request is paid on August 10th then the first report is due before the end of October.)

Timely submission of those reports will assist local and State governments to ensure that the program funds are being effectively and efficiently used. It is the best way for both levels of government to stay abreast of the developer's progress. This process will create an early warning system that will allow both levels of government to assist the developer if unexpected problems arise, which could alter his/her schedule of events as approved in the application and in the contract between the local government and developer. Without this reporting system a particular project could get so far behind that contractual conditions could not be met by the developer or the local government. To avoid any potential liability all communities providing assistance to for-profit entities must ensure that this contractual obligation is strictly observed. A copy of this report is shown in **Exhibit F-8**.

Task F-11: Record Keeping

Refer to **Task A-16** in this handbook. For further questions related to the record keeping in this area, please call your Local Government Representative at the Office of Community Development at (225) 342-7412 and reference 24 CFR Section 570.506.

Task F-12: Loan Default Policy

Representatives of many local governments have asked about their monetary liability in case of a loan default by a developer who was assisted with LCDBG funds through their local governments. This is a very appropriate concern of local officials, since the Department of Housing and Urban

Development (HUD) does monitor the State's use of LCDBG funds and can require that funds not appropriately spent be repaid by the recipient.

In order for the local government to fulfill its responsibility, and not face potential monetary

liability, it must make a "good faith effort" to ensure that the project is successfully developed as outlined in the application package/contract. Briefly summarized, the local government's responsibilities are:

1. to maintain records of total and low-to-moderate income employment;
2. to monitor the financial condition of the business;
3. to inform the State in a timely manner of any difficulties with the project;
4. to take the proper legal remedies to recover the LCDBG investment, if the business becomes insolvent or fails to comply with contract requirements; and,
5. to pursue the appropriate legal action in the event of fraud or other illegal activities.

It is HUD's position that the local government should act as a responsible creditor, both in servicing loans and instituting the proper legal proceedings in the event of default.

In case of a default, a committee consisting of the Program Director, Local Government Representative, Economic Development Staff, the Division of Administration's (DOA) attorney, and Commissioner will review the local government's grant performance as it pertains to the above mentioned criteria.

Each member of the committee will report to the Commissioner on the local government's performance. The committee will then meet to discuss the findings and make a recommendation concerning the disposition of the case.

Before the State relieves a local government of any potential monetary liability, the local government will have to demonstrate substantial progress in recovering the LCDBG funds from the project.