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CO#143887



COMMISSIONERS COURT
COMMUNICATION

REFERENCE NUMBER _____

PAGE 1 OF 27

DATE: 09/17/2024

SUBJECT: CONSIDERATION OF ENGINEERING CONTRACTS BETWEEN TARRANT COUNTY AND SHIELD ENGINEERING GROUP, PLLC FOR ENGINEERING SERVICES FOR 50TH YEAR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROJECTS

***** CONSENT AGENDA *****

COMMISSIONERS COURT ACTION REQUESTED

It is requested that the Commissioners Court consider Engineering Contracts between Tarrant County and Shield Engineering Group, PLLC for engineering services for 50th Year Community Development Block Grant (CDBG) projects.

BACKGROUND

On June 18, 2024, the Commissioners Court, through Court Order #143320, approved the Program Year (PY) 2024 Action Plan for the Community Development Department to fulfill U.S. Department of Housing and Urban Development (HUD) regulatory requirements for 50th year CDBG, HOME Investment Partnerships and Emergency Solutions Grant programs. The following projects are listed in the PY 2024 Action Plan for the Community Development Department Engineering Services for 50th Year CDBG projects and are eligible pre-award costs allowed under HUD's waiver of 24 CFR 570.200(h) per the attached Memorandum.

Per HUD guidelines under 2 CFR 200, letters of qualification from engineering firms were received and evaluated by the Community Development Department. The final recommendations for these projects are listed below:

Engineering Firm – Shield Engineering Group, PLLC

Project City - City of North Richland Hills

Engineering Fee - \$40,710.00

Project City - City of Kennedale

Engineering Fee - \$16,999.00

The Criminal District Attorney's Office has approved these contracts as to form.

FISCAL IMPACT

Funding in the amount of \$57,709.00 is available in grant B-24-UC-48-0001. Upon approval of a claim for payment under these contracts, funds will be drawn down from the U.S. Treasury through the U.S. Department of Housing and Urban Development's (HUD's) electronic transfer system to Tarrant County's bank account. Any delay in this transaction may impact the amount of interest earned by Tarrant County.

SUBMITTED BY:	Community Development	PREPARED BY: APPROVED BY:	Marguerite E. Allen James A. McClinton
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submission to the Owner the required report, sketches, and estimates, and upon the Owner's acceptance within 30 days after submission.

B. DESIGN PHASE COMPENSATION

Payment for services in the design Phase shall be made to the Engineer in a sum equal to seventy percent (70%) of the total lump sum.

Partial payments for services in the Design Phase shall be made monthly, in proportion to that part of the services in the Design Phase which has been accomplished as evidenced by monthly statements submitted by the Engineer to the Owner. Final Payment for services authorized in the Design Phase shall be due upon completion of these services.

C. CONSTRUCTION PHASE COMPENSATION

Payment for services in the Construction Phase shall be made to the Engineer in a sum equal to twenty percent (20%) of the total lump sum.

This sum will be paid in monthly installments in proportion to the construction work completed, based on the Engineer's estimate prepared for monthly payments to contractors, plus the actual value of all materials and equipment purchased or furnished directly by the Owner for the Project. Upon completion of all work authorized in the Construction Phase, the Engineer will be paid the remainder of the charge for this Phase.

4. CHARACTER AND EXTENT OF SERVICES

Engineer understands the Grantee must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Grantee's infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

The Engineer shall render the following professional services necessary for development of the project:

A. PRELIMINARY PHASE SERVICES

- (1) Attend preliminary conferences with the Owner and other interested parties regarding the Project.
- (2) Establish the scope, and advise the Owner, of any soil and foundation investigations or any special surveys or special testing which, in the opinion of the Engineer, may be required for the proper execution of the project; and arrange with the Owner for the conduct of such investigations and tests. (The performance of such investigations and tests are not a part of the Engineer's basic services, and compensation therefore is not included in the Basic Charge.)

Additional services shall be furnished or obtained only with written approval of the Owner, in which case compensation shall be determined at the time these additional services are required.

- (3) Perform the preliminary engineering services in connection with the Project and to set forth clearly the Engineer's recommendations in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the Owner. Services include but are not limited to preliminary layouts, sketches, and cost estimates for the Project.
- (4) Prepare and furnish the Owner two (2) copies of the written preliminary report, including preliminary layouts, sketches, and cost estimates. Also supply all utility companies with preliminary plans and cut sheet as applicable.
- (5) Inform utility companies in writing that they may be affected by the project so they may start planning to avoid conflict. Should the planned project be increased, or decreased utility companies will be notified immediately.

B. DESIGN PHASE SERVICES

- (1) Furnish the Owner, where required by the circumstances of the assignment, the engineering data necessary for applications for routine permits by local, state, and federal authorities.
- (2) Perform field surveys to collect information which, in the opinion of the Engineer, is required in the design of the Project.
- (3) Prepare detailed specifications and contract drawings for construction authorized by the Owner. These designs shall in all respects exemplify the application of sound engineering principles.
- (4) Prepare detailed cost estimates and proposals of authorized construction, which shall include summaries of bid items and quantities which will be based, wherever practical, on the unit price system of bidding.
- (5) Post Owner-approved contract documents and plans that will include notices to bidders and proposals on an approved digital website for distribution. Additionally, the Engineer will provide six (6) copies of approved plans for field use and up to five (5) unbound contract documents for execution. The Owner will furnish one set of "standard documents" and the applicable Federal Minimum Wage Rates for the Engineer's use in preparing the final documents.
- (6) Complete the design phase within three (3) months from the date of this Contract, including plans, specifications, all contract documents and preliminary review by Owner and utility companies, in keeping with the project funding limitations.

Failure to complete the plans and specifications within the three-month time limit for completions of these plans and specifications will result in liquidated

damages of \$50.00 per consecutive calendar day until these plans are submitted.

- (7) The Engineer, or its appointed survey consultant, will provide control staking consisting of setting lines and grades for the entire project. The staking will be completed during the preliminary review of the design/construction plans. This will ensure accuracy at the job site and speed up review and re-alignment of utilities in the field.
- (8) Provide a set of approved plans and specification to each concerned utility company with forecast of construction start date.

C. CONSTRUCTION PHASE SERVICES

- (1) Assist the Owner in opening of bids and provide the tabulation of bids to Owner and project city accompanied by investigation report of previous work record and references of low bidder. Provide Owner with information concerning low bidder and project city's recommended action on all proposals received.
- (2) Furnish general representations and observations of the work during the construction phase as follows: review shop drawings pursuant to the General Conditions of the Construction Contract; make at least three (3) visits per month to project site by office staff; review such work of testing laboratories as may be required by the Owner; keep the Owner informed of the progress of the work; and issue all instructions of the Owner to the Contractor.

It shall be the duty and responsibility of the Engineer to prepare change orders as required and review the application for payment submitted by the Contractor. The Engineer shall use due diligence to detect defects and deficiencies in the work of the Contractor and disapprove or reject work as failing to conform to both the Contract Documents and the plans and specifications.

- (3) Consult and advise the Owner, make recommendations to the Owner regarding materials and workmanship, and prepare and issue change orders with Owner's Approval.
- (4) Review for compliance with the information given by Contract Documents the samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of material and equipment and other data which the Contractor is required to submit and assemble written guarantees which are required by the Contract Documents.
- (5) Prepare, review, and certify monthly and final estimates for Owner's payments to Contractor(s) including verification of contractor's use of American-made products where required by the Build America, Buy America Act (BABA).
- (6) Conduct, in company with the Owner, a final inspection of the Project in compliance with the Contract Documents and make recommendations to the Owner regarding the completion and acceptance of the Project, in written form.

- (7) Revise contract drawings to provide record drawings of the completed Project and furnish one set of prints to the Owner. The Engineer will exercise the usual degree of care in preparing these drawings; but he shall not be required to guarantee the accuracy of the record drawings.
- (8) Advise the contractor of any and all specific instructions from the Owner pertaining to the Project.

5. AUTHORIZATION OF SERVICES. The Engineer is authorized to proceed with Preliminary Phase services for the Project upon execution of this Agreement. The Owner's authorization must be obtained prior to proceeding to each subsequent phase of services.

6. PERIOD OF SERVICE. This agreement shall be effective upon execution by the Owner and the Engineer and shall remain in force and effect until work is completed or terminated under the provisions hereinafter provided in Section 10.

7. COORDINATION WITH THE OWNER. The Engineer shall hold periodic conferences with the Owner, or its representatives, in order to obtain the full benefit of the Owner's experience and knowledge of existing needs and facilities, and to be consistent with its current policies and construction standards.

8. REVISION TO DRAWINGS AND SPECIFICATIONS. Engineer will make, without expense to the Owner, such revisions of the preliminary drawings as may be required to meet the needs of the Owner.

9. OWNERSHIP OF DOCUMENTS. Original documents, plans, designs, and survey notes developed in connection with services performed hereunder belong to and shall remain the property of the Owner. The Engineer may retain reproducible copies of such documents.

10. TERMINATION. A party to this Agreement may terminate the Agreement by giving the other seven (7) days' notice in writing. Upon delivery of such notice by the Owner to the Engineer, and upon expiration of the seven-day period, the Engineer shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the Engineer shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The Owner shall then pay the Engineer that portion of the prescribed charges which the services called for under this Agreement, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the Owner when and if this Agreement is terminated.

11. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE. The Engineer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, age, or national origin, including qualified disabled veterans and qualified handicapped individuals. Such action shall include, but not be limited to, employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. The Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the

provisions of this non-discrimination clause.

The Engineer shall keep such records and submit reports concerning the racial and ethnic origin of applicants for employment and employees as the Secretary of Labor and the Department of Housing and Urban Development may require. The Engineer agrees to comply with such rules, regulations, or guidelines as the Secretary of Labor and the Department of Housing and Urban Development may issue to implement these requirements.

12. CONFLICT OF INTEREST CLAUSES. Engineer represents that it presently has no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, and further agrees to the following clauses:

A. INTEREST OF MEMBERS OF COUNTY AND OTHERS. No officer, member, or employee of the County, and no public official of the governing body of the locality or localities in which the Project is situated or being carried out, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Project, shall participate in any decision relating to this Contract which affects his personal or pecuniary interest, direct or indirect, in this Contract or the proceeds thereof.

B. INTEREST OF THE CONTRACTOR. The Engineer covenants that he presently has no interest and shall not acquire any interest directly or indirectly which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The Engineer covenants that in performance of this Contract no person having any such interest shall be employed.

C. OFFICIAL NOT TO BENEFIT. No member of or delegate to the Congress of the United States of America shall be admitted to any share or part hereof or to any benefit to arise here from.

13. NOTICES, COMMUNICATIONS, AND ELECTRONIC TRANSMITTALS. Unless otherwise stated by the Owner, the Engineer may transmit, and shall accept Project-related correspondence in electronic media or digital format. Where required, original contract documents, drawings, and graphics, including but not limited to Shop drawings shall be provided in hard and digital format. Print media and communications under this Contract to be mailed or delivered to Owner shall be to the following address:

TARRANT COUNTY
COMMUNITY DEVELOPMENT DEPARTMENT
2501 Parkview Drive, Suite 420
Fort Worth, TX 76102

14. SUCCESSORS AND ASSIGNMENTS. The Owner and the Engineer each bind himself and his successors, executors, administrators, and assigns to the other part of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement, except as above, neither the Owner nor the Engineer shall assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party thereto.

This contract shall not be interpreted to inure to the benefit of a third party who is not a party to this contract. This contract may not be interpreted to waive any statutory or common law defense, immunity, including governmental and sovereign immunity, or any limitation of liability, responsibility, or damage of any party to this contract, party's agent, or party's employee, otherwise provided by law.

15. **GOVERNING LAW AND VENUE.** This Agreement shall be interpreted under the laws of the State of Texas. The venue for any lawsuit arising out of this Agreement will be the Fort Worth Division of the Northern District of Texas if the lawsuit arises in Federal Court or Tarrant County, Texas if the matter arises in state court.

16. **ANNUAL FISCAL CONDITION PRECEDENT.** The parties acknowledge and agree that the Tarrant County, Texas is a governmental entity subject to an annual budgetary process and restrictions on spending in conformity with that process and its approved budget. The parties further agree that, notwithstanding any other language or provision herein to the contrary, if for any reason funds are not budgeted expressly for this agreement for the County's fiscal years subsequent to that in which funds for this Agreement are first allocated, the County may immediately and without penalty terminate this Agreement; provided, however, that in no event shall such a termination be effective earlier than the expiration of the last date for which funds have already been so allocated under an existing, finally approved budget.

17. **FORM 1295 COMPLIANCE.** Engineer acknowledges and agrees that in accordance with Section 2252.908 (b) – (c) of the Texas Government Code, it has fully, accurately, and completely disclosed all interested parties on the Texas Ethics Commission's Form 1295 attached as "Attachment A".

18. **BOYCOTT AND ANTI-TERRORISM STATUTES.** Engineer verifies the acceptance and acknowledgement of the anti-boycott statutes as applicable by law and required by Chapters 2271, 2252, and 2274 Texas Government Code Verification as follows:

- (a) **Boycott of Israel Prohibited.** In compliance with Section 2271.001 et seq. of the Texas Government Code, Contractor verifies that neither it nor any of its affiliates currently boycott Israel and neither it nor any of its affiliates will boycott Israel during the term of this Agreement. "Boycott Israel" is defined in Section 808.001(1) of the Texas Government Code.
- (b) **Scrutinized Business Operations Prohibited.** In compliance with Section 2252.151 et seq. of the Texas Government Code, Contractor warrants and represents that: (1) neither Contractor nor any of its affiliates engages in scrutinized business operations in Sudan; (2) neither Contractor nor any of its affiliates engages in scrutinized business operations in Iran; and (3) neither Contractor nor any of its affiliates engages in scrutinized business operations with designated foreign terrorist organizations. "Scrutinized business operations in Sudan" is defined in Section 2270.0052 of the Texas Government Code. "Scrutinized business operations in Iran" is defined in Section 2270.0102 of the Texas Government Code. "Scrutinized business operations with designated foreign terrorist organizations" is defined in Section 2270.0152 of the Texas Government Code. Contractor further represents and warrants that neither Contractor nor any of its affiliates appears on any of the Texas Comptroller's Scrutinized Companies Lists.

- (c) **Boycott of Certain Energy Companies Prohibited.** In compliance with Section 2274.002 of the Texas Government Code (added by 87th Legislature, S.B. 13), Contractor verifies that neither it nor any of its affiliates currently boycott energy companies and neither it nor any of its affiliates will boycott energy companies during the term of this Agreement. "Boycott energy company" is defined in Section 809.001(1) (added by 87th Legislature, S.B. 13) and means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by subsection (A).
- (d) **Discrimination against Firearm Entities or Firearm Trade Associations Prohibited.** In compliance with Section 2274.002 of the Texas Government Code (added by 87th Legislature, S.B. 19), Contractor verifies that neither it nor any of its affiliates have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and neither it nor any of its affiliates will discriminate during the term of the Agreement against a firearm entity or firearm trade association. "Discriminate against a firearm entity or firearm trade association" is defined in Section 2274.001(3) (added by 87th Legislature, S.B. 19) and means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; the term does not include: (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship: (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

19. **SECTION CAPTIONS.** Each Section Heading under this contract has been supplied with a caption to serve only as a guide to the contents. The caption does not control the meaning of any section nor in any way determine its interpretation or application.

20. **PRIOR AGREEMENTS SUPERSEDED.** This contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the written subject matter.

21. **COMPLIANCE WITH LAWS.** In providing the services required by this Agreement, Engineer must observe and comply with all applicable federal, state, and local statutes, ordinances, rules, and regulations, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and non-discrimination laws

and regulations. Engineer shall be responsible for ensuring its compliance with any laws and regulations applicable to its business, including maintaining any necessary licenses and permits.

Both OWNER and CONTRACTOR agree to abide by all state and federal laws, statutes, and regulations applicable to the completion of the project described.

EXECUTED THIS 19th DAY OF August, 2024.

COUNTY OF TARRANT

OWNER

Tim O'Hare
(SIGNATURE) 9/17/2024

BY: Tim O'Hare

TITLE: County Judge

ATTEST: *[Signature]*

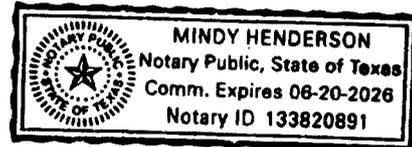
Shield Engineering Group, PLLC
ENGINEER

Jean-Marie Alexander
(SIGNATURE)

BY: Jean-Marie Alexander

TITLE: COO

ATTEST: *[Signature]*



Certification of Funds Available in the amount of:

Kimberly M. Buchanan **\$40,710.00**

Kimberly M. Buchanan, CPA
Tarrant County Auditor

Approved as to Form:

Craig Price

Criminal District Attorney's Office*

*By law, the Criminal District Attorney's Office may only approve contracts for its clients. We reviewed this document as to form from our client's legal perspective. Other parties may not rely on this approval. Instead, those parties should seek contract review from independent counsel.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2024-1202730

Date Filed:
08/19/2024

Date Acknowledged:
8/20/24

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Shield Engineering Group, PLLC
Fort Worth, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Tarrant County Community Development

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

B-24-UC-48-0001-48-80
Reconstruct 800LF of 6" clay tile sanitary sewer line with 6" PVC pipe in the 3700 Block of Matson Street

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Barnes, Craig H.	Fort Worth, TX United States	X	
	Alexander, Jean-Marie	Fort Worth, TX United States	X	
	Hill, Ryan	Fort Worth, TX United States	X	

5 Check only if there is NO Interested Party.

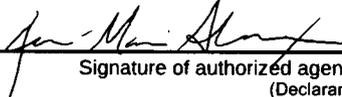
6 UNSWORN DECLARATION

My name is Jean-Marie Alexander, and my date of birth is 02/16/1974

My address is 8103 Shelton Drive, Fort Worth, TX, 76120, USA
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Tarrant County, State of Texas, on the 19th day of August, 20 24.
(month) (year)


Signature of authorized agent of contracting business entity
(Declarant)

If the grantee's files contain all other necessary documentation supporting the costs (described below for each program), the date of HUD approval for pre-award costs is the date of the written summary of citizen participation comments, or the grantee's program year start date, whichever is later.

Note: Pre-award costs are incurred at the grantee's own risk because reimbursement is contingent upon the availability of appropriated funds for FY 2024 in addition to the applicable conditions in this Notice. Any commitments or expenditures incurred by the grantee in excess of the funds provided by the grant and authorized under the applicable FY 2024 appropriations law would be the responsibility of the grantee to pay out of non-federal funds.

B. Specific Provisions: Entitlement CDBG Program

The Entitlement CDBG program regulations specify, at 24 CFR 570.200(h), the situations under which a grantee may be reimbursed for costs incurred prior to the effective date of its grant agreement. The provisions of this Notice will affect how grantees comply with the pre-award cost reimbursement requirements.

1. 24 CFR 570.200(h) defines the effective date of a grantee's agreement as the grantee's program year start date or the date that the Consolidated Plan/Action Plan is received by HUD (whichever is later). Under the provisions of this Notice, a grantee's Plan may not be submitted to (and thus received by) HUD until several months after the grantee's program year start date. This may negatively affect grantees' ability to incur pre-award costs.

Therefore, to assist affected grantees with pre-award costs, HUD has waived 24 CFR 570.200(h) in accordance with the attached memorandum (ATTACHMENT) to allow the effective date of a grantee's FY 2024 grant agreement to be the earlier of the grantee's program year start date or the date that the Consolidated Plan/Action Plan (with actual allocation amounts) is received by HUD. This waiver is applicable to any Entitlement CDBG grantee seeking to incur pre-award costs, whose Action Plan submission is delayed past the normal submission date in accordance with the terms of this Notice. An affected community applying this waiver shall document in writing the conditions giving rise to the need to use this waiver and maintain the documentation for HUD's review. Grantees' authority to make use of this waiver is only in effect until August 16, 2024, as that is the last date that a grantee may submit its FY 2024 Action Plan.

2. 24 CFR 570.200(h)(1)(i) requires that the activity for which the costs will be incurred must be included in a Consolidated Plan/Action Plan prior to the costs being incurred; grantee compliance with steps 4 and 5 under the general pre-award cost provisions stated in paragraph V.A. above will meet that requirement. However, grantees must also comply with §570.200(h)(1)(ii), which further specifies that the Plan must advise citizens of the extent to which the pre-award costs will affect future grants. CDBG grantees intending to incur pre-award costs are cautioned that option b. described in Section IV above is not likely to be a feasible alternative for them. HUD advises any



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

PRINCIPAL DEPUTY ASSISTANT SECRETARY
FOR COMMUNITY PLANNING AND DEVELOPMENT

MEMORANDUM FOR: All Community Planning and Development
Field Office Division Directors

FROM:

 12/21/2023
Marion McFadden, Principal Deputy Assistant Secretary, D

SUBJECT:

Availability of a Waiver of Community Planning and
Development Grant Program Requirements to Facilitate the
Ability to Incur Pre-Award Costs in FY 2024

PURPOSE:

This memorandum explains the availability of waivers of certain regulatory requirements associated with two Community Planning and Development (CPD) grant programs to facilitate the continuation of eligible activities and ongoing planning and administrative costs due to a delay by HUD in the receipt of annual appropriations for FY 2024. This memorandum covers the following CPD programs:

- Community Development Block Grant (CDBG), and
- HOME Investment Partnerships (HOME)

BACKGROUND:

HUD is issuing procedures to govern the submission and review of action plans for FY 2024 funding prior to the enactment of a FY 2024 appropriation bill. Grantees are advised not to submit a consolidated plan or action plan until the FY 2024 formula allocations have been announced. However, an action plan must be submitted to HUD no later than August 16, 2024.

The delay in the receipt of annual appropriations by HUD and implementation of these procedures for FY 2024 may have negative consequences for CDBG and HOME grantees that intend to incur eligible costs prior to the award of FY 2024 funding. Some activities might otherwise be interrupted, and grantees might not otherwise be able to use CDBG or HOME funds for planning and administrative costs of administering their programs.

NOTIFICATION PROCESS:

This waiver will apply to any Entitlement, Insular or Hawaii non-entitlement CDBG grantee and to any HOME participating jurisdiction whose program year start date for FY 2024 funding occurs during the period starting January 1, 2024, and ending October 1, 2024, or 60 days after HUD announcement of FY 2024 allocation amounts for formula program funding (whichever comes first). This waiver is available for use by any applicable CDBG grantee or HOME participating jurisdiction whose action plan submission is delayed past the normal submission date because of delayed enactment of FY 2024 appropriations for the Department. Any affected grantee taking advantage of this waiver shall document in writing the conditions giving rise to the need to use this waiver and shall maintain such documentation for HUD's review. This waiver authority is only in effect until August 16, 2024.

WAIVER AUTHORITY:

Without this waiver, some activities might be interrupted while implementing these procedures. In addition, grantees might not otherwise be able to use CDBG and HOME funds for ongoing planning and administrative costs of administering their programs. To address communities' needs and to ensure that programs can continue without disturbance, I find that good cause exists pursuant to 24 CFR 5.110 to waive the CPD program regulatory requirements set forth below.

WAIVER AVAILABILITY:

1. Pre-award Costs

Requirement: For CDBG, the effective date of the grant agreement is the program year start date or the date that the consolidated plan is received by HUD, whichever is later. These dates determine when a grantee may incur pre-award costs. For HOME, eligible administrative and planning costs may be incurred as of the beginning of the program year or the date the consolidated plan describing the HOME allocation to which the costs will be charged is received by HUD, whichever is later.

Citations: 24 CFR 570.200(h) (Entitlement CDBG program, the Insular Areas CDBG program, and for grants to non-entitlement counties in Hawaii) and 24 CFR 92.212(b) (HOME participating jurisdictions)

Explanation: The waiver of 24 CFR 570.200(h) will allow a grantee to treat the effective date of the grant agreement as the program year start date or the date that the consolidated plan/action plan (with actual allocation amounts) is received by HUD, whichever is *earlier*. HUD waives 24 CFR 92.212(b) to the extent necessary to permit eligible administrative and planning pre-award costs to be incurred as of the beginning of the program year or the date the consolidated plan describing the HOME allocation to which the costs will be charged is received by HUD, whichever is *earlier*.

Justification: HUD recognizes that some activities may be interrupted, and grantees and participating jurisdictions might not otherwise be able to use CDBG and HOME funds for eligible pre-award costs without this waiver.

Applicability: This waiver is in effect until August 16, 2024, and is transmitted with the "Guidance on Submitting Consolidated Plans and Annual Action Plans for Fiscal Year (FY) 2024."

Finally, I want to express my appreciation for your efforts to support the timely and effective use of CPD funds. Thank you.