

LOCAL GOVERNMENT NEWS

From the Local Government Projects Office



June 2013

Are signed child support certifications required in contractor bid documents?

The Texas Family Code restricts companies from receiving state funds if the company owners are delinquent in paying child support. Since TxDOT's local government projects program is a reimbursement program, this applies to local government-let projects that include state or federal funding (TxDOT reimburses the local government with state funds prior to being reimbursed by FHWA with federal funds).

Contractors working on transportation projects must certify that no child support payments are due and submit a list of the names and Social Security numbers of all individuals, partners, shareholders or owners with an ownership interest of at least 25 percent of the business. For TxDOT-let projects, this documentation is required prior to contract execution. However, for local government-let projects, state law requires this certification and documentation be submitted as part of the bid proposal.

Prior to approving the contract documents and issuance of a state Letter of Authority, TxDOT district personnel should confirm the bid proposal package includes this required information. According to state law, if a bidder fails to submit the certification statement and the ownership list as part of its bid, the bid is non-responsive and should not be considered for award. It is the local government's responsibility to verify the documentation is received and to retain it. There is no requirement for the documentation to be forwarded to any other entity.

If the local government determines or is informed that an individual or business entity holding a contract is ineligible to receive payment, the local government may (but is not required to) terminate the contract. This requirement does not apply to projects with no state or federal funds.

Right-of-way requirements for LG projects

When a local government receives TxDOT funds, it is important to remember that certain requirements must be followed for purchasing right-of-way land. The local government must follow TxDOT's procurement process, policies and forms in acquiring the title to the property and comply with the requirements of the federal and state funding program that is the source of the funds.

For example, if state funds are utilized in any portion of the project, then state processes, policies, procedures and forms must be followed, in addition to the requirement to comply with Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (and amendments thereto as required by the Texas Property Code, Section 21.046).

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The requirements for complying with the Act are specified in TxDOT's **Right-of-Way Division (ROW)** manuals. LG and TxDOT project personnel should familiarize themselves with the responsibilities for right-of-way acquisition and relocation assistance for each party as defined in the project Advanced Funding Agreement.

Checklists for complying with the Act are included in LGPO's Summary of Best Practices – Local Government Projects, which is available on the TxDOT website at <http://www.txdot.gov/inside-txdot/office/local-government-projects.html> and on CDs that have been distributed to the districts.

Storm water compliance for local lets

Recent correspondence between TxDOT and the Environmental Protection Agency (EPA) concerning compliance with storm water requirements has confirmed that local government-let road construction projects are exempt from following TxDOT's Environmental Management System (EMS).

In response to that confirmation and with the EPA's permission, the Environmental Affairs Division revised Section 5 of the EMS Manual to exclude local government-let projects from its applicability.

The local government is responsible for obtaining and complying with required environmental permits. The local government must use specification(s) that ensure its compliance with the recently renewed Texas Pollutant Discharge Elimination System Construction General Permit TXR 150000 (CGP) for storm water discharges. For example, regarding the recently renewed CGP on a local-let project, the local government, its contractor or both normally will be the primary operator(s) and will be required to submit a notice of intent (NOI) to the Texas Commission on Environmental Quality.

For local-let on-system projects, TxDOT will be considered a secondary operator if it has the ability to approve or disapprove changes to construction plans and specifications. Secondary operators are regulated under the CGP but are not required to submit a NOI if a primary operator at the site has submitted a NOI. Secondary operators must post a site notice at the construction site and meet other CGP requirements.

For local-let off-system projects, TxDOT will not be considered either a primary or a secondary operator.
