

Determination of Eligibility and Waiver of Pre-agreement Costs for a Public Health Facility

July 28, 1995

MEMORANDUM FOR: Roberto Gomez, Acting Director, Office of Community Planning and Development, 6AD

FROM: Andrew M. Cuomo, Assistant Secretary for Community Planning and Development, D

SUBJECT: Community Development Block Grant Program - Request For Determination of Eligibility and Request for Waiver of Pre-Agreement Costs for a Public Health Facility, San Angelo, Texas

This is in response to a memorandum from Katie Worsham dated May 3, 1995, requesting an eligibility determination and waiver of pre-agreement costs for the renovation of a building to be used as a one-stop public health facility. The City does not currently own the building and will presumably use non-CDBG funds to lease the building and ultimately purchase it. The City proposes to use CDBG funds for the building's renovation at an expected cost of \$1,000,000 and has already allocated \$454,964 in FY 1995 CDBG funds. However, the City plans to begin construction in the Fall of 1995 and is willing to fund the \$543,036 difference from its general revenues. The City seeks approval to reimburse itself for the \$545,036 from its FY 1996 CDBG funds.

Eligibility Issues

The one-stop facility will include services provided by the City Health Department, the County Health Office, and some State offices such as the Youth Commission, the Texas Rehabilitation Commission, Commission on the Blind, and the Department of Human Services.

The Field Office expressed concern about the eligibility of State offices in the facility in light of §570.200(b)(1) which governs facilities containing both eligible and ineligible uses. The following information was provided on the services to be provided by the State agencies:

1. Youth Commission - The Youth Commission will provide training, guidance, and counselling for troubled youth.
2. Texas Rehabilitation Commission - The Rehabilitation Commission will provide direct services, training, and counselling to help individuals overcome physical and mental problems.
3. Commission on the Blind - The Commission on the Blind will provide services, programs and aids for the visually impaired. These include recordings, tapes, braille copy, and walkers.

4. Department of Human Services - The Department of Human Services will provide screening and program assistance for food stamps, Aid for Families with Dependent Children, and other services.

The State offices located in the public health facility are expected to provide direct services to low- and moderate-income residents and will not be used for political activities or the general conduct of government. The building will be located in a CDBG target area. Based on the description of the proposed uses, the activity does not appear to contain ineligible uses, and therefore is eligible for CDBG funding as a public facility as described at §570.201(c). The activity will require information on family size and income for each of the services to be provided and is expected to meet the national objective requirements of §570.208(a)(2)(i)(B), limited clientele.

In follow-up telephone conversations to discuss this proposed activity, the Field Office indicated that the State will pay fair market rent for office space and requested a determination as to whether the fair market rent paid by the State constituted program income. The regulations at 24 CFR 570.500(a) define program income as "gross income received by the recipient or a subrecipient directly generated from the use of CDBG funds." Note that subparagraph (a)(1)(iv) permits costs incidental to the generation of program income to be deducted from gross income that has been generated by the use or rental of real property that has been improved with CDBG funds. In this case, CDBG funds are being used to renovate the facility. Therefore, the fair market rent, less costs incidental to the generation of the income (e.g., expenses involved in maintaining and operating the property), would constitute program income. Because the activity is being partially assisted with CDBG funds, however, the fair market rent would need to be prorated to reflect the percentage that would constitute CDBG program income.

Pre-Agreement Waiver

The memorandum seeks a waiver of 24 CFR 570.200(a)(5), Cost Principles, and 24 CFR 570.200(h), Pre-Agreement Costs, to permit the City to reimburse itself in the amount of \$545,036 in Fiscal Year (FY) 1996 CDBG funds for the renovation of this public health facility.

Section 570.5 authorizes waivers of the CDBG regulations where it is determined that undue hardship will result from applying the requirement and where application of the requirement would adversely affect the purposes of the Housing and Community Development Act of 1974, as amended. According to the City, a delay or postponement in bidding until after April 1996 will result in higher construction costs and will delay access to health facilities for the City's low- and moderate-income residents.

Based on the information provided, I have determined that failure to grant this waiver will cause undue hardship and will adversely affect the purposes of the Act. Therefore, under the authority of 24 CFR 570.5, I hereby waive the limitations on pre-agreement costs at 24 CFR 570.200(a)(5) and 24 CFR 570.200(h) to permit the City to reimburse the general fund in the amount of \$545,036 from its FY 1996 CDBG funds for the renovation of the building which will be used for a public health facility.

This activity must be included in the City's proposed and final consolidated plans for FY 1996. In order for these pre-agreement costs to be eligible under OMB Circular No. A-87, this activity must be specifically set forth in the FY 1996 grant agreement. Item 8 on Form HUD-7082 dated April 14, 1993, that is available on HUD Forms or block 11.b of the pre-printed Form HUD-7082 dated August 1991 may be

used for this purpose. In conveying this waiver to the City, please advise the City that reimbursement is contingent upon the availability of CDBG funds and the activity being in compliance with the statutory and regulatory provisions in effect at the time of the award of the grant from which the funds are derived.

If you have any further questions, please contact the Entitlement Communities Division at (202) 708-1577.