

ENFORCEMENT ACTION AGAINST SOUTH	§	BEFORE THE
TEXAS DEVELOPMENT COUNCIL	§	TEXAS DEPARTMENT OF
(CSBG CONTRACT 61190003061)	§	HOUSING AND COMMUNITY
	§	AFFAIRS
	§	

AGREED FINAL ORDER

General Remarks and official action taken:

On this 10th day of November 2021, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **SOUTH TEXAS DEVELOPMENT COUNCIL**, a political subdivision for the State of Texas (Respondent).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (APA), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by Tex. Gov't Code §2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by Tex. Gov't Code §2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

FINDINGS OF FACT (FOF)

Jurisdiction:

1. Respondent signed CSBG Contract Number 61190003061 on December 21, 2018. The period of performance under the CSBG Contract was January 1, 2019, through December 31, 2019.

Compliance Violations¹:

2. A monitoring review was conducted on April 19, 2021, to determine whether Respondent was in compliance with the CSBG Contract and all applicable state and federal statutes, regulations, and rules. The monitoring review resulted in three findings of noncompliance. Notifications of noncompliance were sent and a May 19, 2021, corrective deadline was set and multiple extensions were provided, however, the following finding was not corrected and remains unresolved:
 - a. Respondent failed to meet tripartite advisory board requirements, including:
 - i. There are tripartite advisory board vacancies exceeding 25% for greater than 90 days, which caused a loss of quorum, a violation of 10 TAC §6.212(b) limiting seat vacancies, and a violation of 10 TAC §6.214(e) setting the minimum quorum number in accordance with Subrecipient's bylaws, which currently require 50% of members to be present;
 - ii. Failure to provide documentation of election and/or selection materials for tripartite advisory board members who were elected or selected in 2008 and 2012, a violation of 10 TAC §6.210, which outlines selection procedures;
 - iii. Failure to hold required tripartite advisory board meetings; a violation of 10 TAC §6.214(a), which requires meetings to be held at least once per calendar quarter, and at minimum five times per year, and a violation of 10 TAC §6.210(b), which requires the CSBG grant to be administered through an advisory board that fully participates;
 - iv. Board bylaws do not specify which of all of the available methods for selection and/or election processes that the Subrecipient will follow for members of the low-income sector, a violation of 10 TAC §6.210(e)(2)(B), which requires the selected democratic procedure to be written in the advisory board's procedures; and
 - v. Training certificates were not received for one of the tripartite advisory board members, a violation of 10 TAC §6.214(c)-(d), which require all board members to receive training and maintain records at the Subrecipient level.
3. All violations listed above are considered unresolved at the time of this Order.

¹ Within this Agreed Final Order, all references to violations of TDHCA rules at 10 TAC Chapter 6 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code 2306.092.
2. The CSBG Contract is a Program Agreement as that term is defined in 10 TAC §2.102(11).
3. Respondent is a Responsible Party because it is subject to a Program Agreement. 10 TAC §2.102(12).
4. As a Responsible party, Respondent failed to meet multiple tripartite board requirements in Department rules including:
 - a. Respondent violated 10 TAC §6.212(b) in 2021 by having tripartite advisory board vacancies exceeding 25% for greater than 90 days.
 - b. Respondent violated 10 TAC §6.214(e) in 2021, by failing to meet tripartite advisory board quorum requirements under its own bylaws.
 - c. Respondent violated 10 TAC §6.210 in 2021, by failing to provide election and/or selection materials for tripartite advisory board members who were elected or selected in 2008 and 2012.
 - d. Respondent violated 10 TAC §6.214(a) and 10 TAC §6.210(b) in 2019, 2020, and 2021, by failing to hold required tripartite advisory board meetings.
 - e. Respondent violated 10 TAC §6.210(e)(2)(B) in 2021, by failing to include a selected democratic selection procedure in the tripartite advisory board's written procedures.
 - f. Respondent violated 10 TAC §6.214(c)-(d) in 2021, by failing to provide training certificates for one tripartite advisory board member.
5. Because Respondent has violated Department rules and has violated a Program Agreement with the Department to which Respondent is a party, the Department may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
6. An administrative penalty of \$2,500 is an appropriate penalty in accordance 10 TAC Chapter 2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Governing Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$2,500, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that on or before November 12, 2021, Respondent shall submit to the Department a copy of its updated bylaws for the tripartite advisory board, in its final form as intended to be presented for approval at Respondent’s December 8, 2021 Board meeting. The updated bylaws must, at a minimum, include the specific democratic process that Respondent will be following to democratically select and/or elect low income members in accordance with 10 TAC §6.210(e)(2)(B).

IT IS FURTHER ORDERED that Respondent shall address the remainder of the tripartite board violations as indicated at Exhibit 1 and submit corrections to the Department on or before April 1, 2022.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, addressing all violations as required at Exhibit 1, the satisfactory performance under this order will be accepted in lieu of the full assessed administrative penalty and the full amount of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the full administrative penalty in the amount of \$2,500 shall be immediately due and payable to the Department. Such payment shall be made by cashier’s check payable to the “Texas Department of Housing and Community Affairs” at the address below within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order.

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

IT IS FURTHER ORDERED that corrective documentation must be submitted via email to Ysella Kaseman and Rosy Falcon at ysella.kaseman@tdhca.state.tx.us and rosy.falcon@tdhca.state.tx.us, or via upload to a secure FTP server, which will be arranged by the Department if documents are too large to email. To request a temporary FTP server link, please contact Ysella Kaseman.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

Approved by the Governing Board of TDHCA on November 10, 2021.

By: /s/ Leo Vasquez
Name: Leo Vasquez
Title: Chair of the Board of TDHCA

By: /s/ James "Beau" Eccles
Name: James "Beau" Eccles
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 10th day of November, 2021, personally appeared Leo Vasquez, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

/s/ Kathleen M. Vale
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 10th day of November, 2021, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

/s/ Kathleen M. Vale
Notary Public, State of Texas

Exhibit 1

Instructions to correct noncompliance

All corrective documentation listed below must be submitted on or before 4/1/2022, via email to Ysella Kaseman and Rosy Falcon at ysella.kaseman@tdhca.state.tx.us and rosy.falcon@tdhca.state.tx.us, or via upload to a secure FTP server, which will be arranged by the Department if documents are too large to email. To request a temporary FTP server link, please contact Ysella Kaseman.

- A. Tripartite Advisory Board Roster: New members must be selected and/or elected (as applicable) and seated to fill vacancies for each sector as soon as possible, but no later than 4/1/2022. On or before 4/1/2022, provide updated roster showing no more than 24% vacancies of any of the public, private, or low-income sectors. Include all board member names, and identify each member sector, term length, and date seated.

A list of vacancies as of November 10, 2021. is at Exhibit 2.
- B. Election / Selection Materials for Tripartite Advisory Board members:
 - a. New 2021 / 2022 members: Provide election and/or selection materials on or before 4/1/2022 for each new member, which should include at a minimum, letters of recommendation, ballots, community meeting notifications, etc.
 - b. 2008 / 2012 members: No documentation required. There are no term limits set by the tripartite advisory board bylaws, which caused a violation of 10 TAC §6.210 relating to the production of (i) the 2008 election / selection materials for Eloy Vera, Reyna Guerra, and Ruben Chapa, and (ii) the 2012 election / selection materials for Sandalio Ruiz. This cannot be corrected due to age and unavailability of records resulting from document retention problems, but will not trigger payment of an administrative penalty under this Agreed Final Order. The Department has provided technical support regarding recommended improvements to prevent future findings of this type.
- C. Board meeting packets: On or before 4/1/2022, submit board meeting packets for all board meetings that take place between 11/1/2021 through 4/1/2022, including both Governing Board meetings and Tripartite Advisory Board meetings. At minimum, this must include the time stamped agenda and minutes.
- D. Tripartite Advisory Board Bylaws: On or before 4/1/2022, submit final and effective bylaws including a democratic selection procedure.
- E. Training Certificates: On or before 4/1/2022, submit training certificates for (i) Norberto Garza and (ii) all new Tripartite Advisory Board members selected or elected between 11/1/2021 through 4/1/2022.

Exhibit 2

Current Tripartite Advisory Board Membership Roster

ROSTER NOT AVAILABLE IN ACCESSIBLE FORMAT.

**INTENTIONALLY OMITTED FROM ONLINE VERSION OF THIS
ORDER.**