

ENFORCEMENT ACTION AGAINST
PORT CITIES RESCUE MISSION
MINISTRIES WITH RESPECT TO
EMERGENCY SOLUTIONS GRANT
PROGRAM CONTRACT
42110001517)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 19th day of February, 2015, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA”) considered the matter of whether enforcement action should be taken against **PORT CITIES RESCUE MISSION MINISTRIES**, a Texas nonprofit corporation (“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 Administrative Penalties 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

Jurisdiction:

1. During TDHCA Fiscal Year 2011, Port Cities Rescue Mission Ministries (“Respondent”) was awarded by the Board an allocation of Emergency Solutions Grants (“ESG”) Program funds in the total amount of \$105,557.00, to provide approved services necessary to help persons that are either homeless or at risk of homelessness.

2. Respondent signed ESG Contract Number 42110001517 on November 3, 2012 (the "Contract"). The period of performance under the Contract was October 1, 2012 through September 30, 2013.

Compliance Violations:

3. An on-site monitoring review was conducted on January 7 and 8, 2014, to determine whether Respondent was in compliance with the Contract and all applicable state and federal statutes, regulations, and rules. The monitoring review resulted in three findings. Notifications of noncompliance were sent and a February 28, 2014, corrective deadline was set, however, the following findings were not corrected before the deadline:
 - a. Respondent failed to ensure that three participants who received rental assistance were income eligible, a violation of Section 11 of the Contract, which requires Respondent to maintain documentation to establish and verify each participant's income in accordance with 24 C.F.R. §576.500(e). It is also a violation of 10 TEX. ADMIN. CODE §5.2009 (Recordkeeping), which requires Respondent to maintain records sufficient to determine compliance with the requirements of the ESG Program. Respondent provided rental assistance to three individuals with incomes that exceeded income limits; accordingly, the financial assistance provided to those individuals, totaling \$6,132.00, is considered a disallowed cost and must be reimbursed to TDHCA in accordance with Sections 3 and 21.C of the Contract, which require Subrecipient to repay disallowed costs to TDHCA from funds which were not provided or otherwise made available to Subrecipient under this Contract.
 - b. Respondent failed to properly reconcile reported expenditures to actual expenditures, a violation of Section 6.A of the Contract, which requires Respondent to comply with the uniform administrative requirements for non-profit organizations set forth in Office of Management and Budget ("OMB") Circular A-110 as implemented by 2 C.F.R. Part 215, and the uniform cost principles for non-profit organizations set forth in OMB Circular A-122 as implemented by 2 C.F.R. Part 230. It is also a violation of 10 TEX. ADMIN. CODE §5.2009 (Recordkeeping), which requires Respondent to maintain records sufficient to determine compliance with the requirements of the ESG Program, and 10 TEX. ADMIN. CODE §5.3 (Cost Principles and Administrative Requirements), which requires Respondent to follow OMB Circulars as interpreted by TDHCA. A finding for an unallowable expenditure occurred because Respondent provided rental assistance to a household and the check was voided due to insufficient funds, then reissued a month later. According to the check register provided to TDHCA as support documentation, the checks were reported on and reimbursed from both the March 2013 Monthly Expenditure Report and the April 2013 Monthly Expenditure Report, resulting in Respondent claiming an extra \$1,350.00 in disallowed costs that must be reimbursed to TDHCA in accordance with Sections 3 and 21.C of the Contract, which require Subrecipient to repay disallowed costs to TDHCA from funds which were not provided or otherwise made available to Subrecipient under this Contract.

- c. Respondent failed to ensure that expenditures were allowable costs in accordance with program requirements, a violation of 10 TEX. ADMIN. CODE §5.2002 (Purpose and Use of Funds), which outlines general categories of acceptable uses for ESG funding, a violation of 24 C.F.R. §576, and a violation of Sections 6.B and 6.C of the Contract which limit TDHCA's financial liability to Subrecipients to those eligible costs specified in 24 C.F.R. §576. The finding occurred when Respondent purchased furniture for a household in the amount of \$1,800.00 even though furniture was not an allowed cost under the Contract, TDHCA rules, or 24 C.F.R. §576. The full amount of assistance totaling \$1,800.00 is a disallowed cost and must be reimbursed to TDHCA in accordance with Sections 3 and 21.C of the Contract, which require Subrecipient to repay disallowed costs to TDHCA from funds which were not provided or otherwise made available to Subrecipient under this Contract.
4. All of the above findings remain outstanding at the time of this order, with disallowed costs totaling \$9,282.00.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TEX. ADMIN. CODE §2.
2. The Contract is a Program Agreement as that term is defined in 10 TAC §2.101(a)(4).
3. Respondent is a Responsible Party because it is subject to a Program Agreement (see 10 TAC §2.101(a)(5))
4. Respondent violated Section 11 of the Contract, 10 TEX. ADMIN. CODE §10.609, and 24 C.F.R. §576.500(e), by failing to ensure that all participants who received rental assistance were income eligible.
5. Respondent violated Section 6.A of the Contract, 10 TEX. ADMIN. CODE §5.3, 10 TEX. ADMIN. CODE §5.2009, OMB Circular A-110 as implemented by 2 C.F.R. Part 215, and OMB Circular A-122 as implemented by 2 C.F.R. Part 230, by failing to properly reconcile reported expenditures to actual expenditures, resulting in unallowable expenditures.
6. Respondent violated Sections 6.B and 6.C of the Contract, 10 TEX. ADMIN. CODE §5.2002, and 24 C.F.R. §576, by purchasing furniture, an expenditure that is not an allowable cost in accordance with program requirements.
7. Respondent violated 10 TAC §2.101(c) for failure to comply with provisions of the Contract.
8. Because Respondent is a Responsible Party who has violated rules promulgated pursuant to Tex. Gov't Code §2306, TDHCA is authorized to impose administrative penalties pursuant to Tex. Gov't Code §2306.041

9. An administrative penalty of \$1,000.00 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §2
10. Respondent is required to repay disallowed costs to the Department in accordance with Sections 3 and 21.C of the Contract, which require Subrecipient to repay disallowed costs to TDHCA from funds which were not provided or otherwise made available to Subrecipient under the Contract.

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 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 \$1,000.00, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall repay \$9,282.00 in disallowed costs in accordance with the payment schedule listed below, and as further described at Attachment 1.

IT IS FURTHER ORDERED that Respondent shall submit a \$2,500.00 portion of the disallowed costs to TDHCA on or before 3/2/2015.

IT IS FURTHER ORDERED that Respondent shall submit regular monthly payments to TDHCA beginning on 4/1/2015, in the minimum amount of \$753.56 to be applied toward disallowed costs.

IT IS FURTHER ORDERED that if Respondent complies with the payment requirements above and repays the full amount of disallowed costs, \$9,282.00, on or before 9/1/2015, 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 complies with the payment requirements above and repays the full amount of disallowed costs, \$9,282.00, after 9/1/2015 but on or before 12/1/2015, the satisfactory performance under this order will be accepted in lieu of 50% of the assessed administrative penalty, with a \$500.00 portion of the administrative penalty to be immediately due and payable to the Department, and the remainder to be forgiven. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" after the 12/1/2015 deadline and within thirty days of the date the Department sends written notice to Respondent.

IT IS FURTHER ORDERED that if Respondent fails to repay the full amount of disallowed costs, \$9,282.00, or fails to satisfy any conditions or otherwise violates any provision of this order, then the full administrative penalty in the amount of \$1,000.00 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" within thirty days of the date the Department sends written notice to Respondent

IT IS FURTHER ORDERED that all monthly payments and/or penalty payments shall be submitted to the following address:

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 the terms of this Agreed Final Order shall be published on the TDHCA website.

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Attachment 1

Monthly payment schedule

Month	Date due	Monthly Payment Amount Full penalty forgiveness goal	Monthly Payment Amount 50% penalty forgiveness goal
1	3/2/2015	\$ 2,500.00	\$ 2,500.00
2	4/1/2015	\$ 1,130.33	\$ 753.56
3	5/1/2015	\$ 1,130.33	\$ 753.56
4	6/1/2015	\$ 1,130.33	\$ 753.56
5	7/1/2015	\$ 1,130.33	\$ 753.56
6	8/1/2015	\$ 1,130.33	\$ 753.56
7	9/1/2015	\$ 1,130.37	\$ 753.56
8	10/1/2015	N/A	\$ 753.56
9	11/1/2015	N/A	\$ 753.56
10	12/1/2015	N/A	\$ 753.54
		\$ 9,282.02	\$ 9,282.02