

## **Private Industry Notification and Appeal Process**

In accordance with §361.014(b) of the Texas Health and Safety Code and 30 TAC §330.641, TCEQ Rules, a project or service funded under this program must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services.

To ensure that private entities providing recycling and solid waste services in the region are aware of the funding process, the COG shall take action as set forth as follows:

1. Prepare and maintain an up-to-date mailing list of all known providers of recycling and solid waste services within the region.
2. Seek information from the private sector regarding current recycling and solid waste services in the region, and organize that information by city, county, school district and/or special district for presentation to the SWAC.
3. Take steps to increase awareness among private service providers in the region about the grants program, to include adding private service providers to mailing lists to receive information concerning agendas, grant application summaries, and other notices about upcoming SWAC meetings.
4. Provide and promote the mailing list of private service providers to potential grant applicants for their use in seeking partnerships and/or verifying that a project proposal does not violate the statutory requirements regarding private industry.
5. Notify and encourage private service providers in the region to attend any public meetings held to discuss the plans of the COG for conducting a sub-grant program, and include discussion of the process for dealing with private industry concerns as part of the public meetings.
6. The COG is strongly encouraged to discuss with and obtain input from the private service providers on the types of projects that may be of most concern to the private service providers located in that region.
7. The COG shall provide notice of the availability of funding to the private service providers within the region and include in those notices information to explain the process for working with local governments and the COG to discuss and resolve any private industry issues.

To ensure that private entities providing recycling and solid waste services in the region have an opportunity to review potential projects, work with potential applicants, and provide input on the effect of those projects, the COG shall implement the following, to include incorporating applicable requirements in the sub-grant application standards, instructions, and forms:

1. Require applicants for funding to contact in person or in writing the known private providers of similar services which, at the time of the application development, are

providing services within the geographic service area that the project intends to serve, prior to making an application.

2. Require applicants for funding to inform the private service providers of the basic details of the proposed project and to consider any input and concerns from the private service providers about the project when completing the project proposal.
3. Encourage applicants for funding to meet directly with private service providers that may have a concern about the proposed project to attempt to resolve any concerns before an application is submitted.
4. Require applicants for funding to provide with the application information regarding recycling or solid waste services within the proposed geographic service area of the project being applied for, including: the names and telephone numbers of any known private entities providing similar or related services within that service area; a certification that the private service providers were notified of the details of the application; copies and/or summaries of any input and concerns raised by the private service providers; a summary of any meetings or discussions held between the applicant and the private service providers; an explanation of any changes made to the proposed project to address private service provider concerns; and an explanation of any remaining concerns that were not addressed and why the applicant determined that the concerns were not valid under the statutory requirements.
5. Notify in writing at least seven (7) days prior to the beginning of the period that applications will be available for public review, either as part of the original notice of the availability of funding or through a separate notification, the private service providers in the region of the availability of the project applications for review, the location for review, and the time period during which those applications may be reviewed. The notice letter or form shall include reference to the statutory and regulatory requirements regarding competitive advantage, and the process by which a private service provider may notify the COG of its concerns regarding a project.
6. As appropriate, contact any known private service provider for supplementary information.

The COG shall, in the process of selecting projects for funding, make a decision as to the eligibility of the project under the provisions of §361.014(b), Texas Health and Safety Code, and 30 TAC §330.641, TCEQ Rules. The process for making such eligibility decisions shall be established by the COG before the project selection process begins. In making a decision concerning the private industry requirements, the COG shall, at a minimum, conduct the following:

1. Accept written comments from private service providers regarding the project applications, and include those comments with the applications for review and consideration by the SWAC and the governing body of the COG.
2. To the extent time allows, and as deemed appropriate by the COG, seek to resolve issues of project eligibility, to include encouraging the applicant to work with the

private service provider to resolve the issues, before the project is considered by the SWAC.

3. If necessary, the COG may contact the TCEQ to discuss eligibility matters before consideration of the application by the SWAC.
4. Present all private industry concerns related to an application to the SWAC before the project applications are considered.
5. Allow for oral comments from a private service provider representative on a proposed project at the meeting of the SWAC where the projects will be considered. The COG may, but is not required to, restrict oral comments concerning that project to entities from which written comments had previously been received by the COG.
6. The SWAC shall make a determination pertaining to the private industry concerns before issuing its recommendations for the selection of applications to be funded. In making a decision concerning the eligibility of a project, the SWAC shall address the issues that were raised by a private service provider and shall provide in the record of the proceeding its specific reasons for either accepting or rejecting the private industry concerns.
7. The COG's governing body may direct that a determination by the SWAC that identifies a project which does not comply with the private industry requirements precludes further consideration of that project application. Alternatively, the governing body may reserve for itself the authority to make a final decision regarding a private industry concern. In either case, the COG shall establish clear responsibilities for making such decisions prior to beginning the project selection process. Such responsibilities should be identified in the SWAC by-laws.
8. Allow for oral comments from a private service provider representative at the meeting of the governing body where the projects will be considered. The COG may, but is not required to, restrict oral comments concerning that project to entities from which written comments had previously been received by the COG.
9. In making a decision concerning funding a project, the governing body shall provide in the record of the proceeding its specific reasons for either accepting or rejecting the private industry concerns.
10. Prior to submitting the project list for review by the TCEQ, the governing body shall inform in writing any private service provider submitting comments opposing a project, that the service provider may appeal in writing to the Authorized Representative of the TCEQ a decision of the governing body approving the selection of a project for funding, within ten (10) working days following receipt of the written notice, on the grounds that the project does not promote cooperation between public and private entities, or is readily available in the proposed project service area, or creates a competitive advantage over that private service provider in the provision of recycling or solid waste services.

The COG shall undertake any additional activities determined necessary by the SWAC and authorized by the COG's governing body to ensure that a funded project complies with §361.014(b), Texas Health and Safety Code, and 30 TAC §330.641, TCEQ Rules.

In order to allow for the consideration of and action upon an appeal that may be submitted to the TCEQ by a private service provider, the TCEQ and the COG agree to adhere to the appeals review process as follows:

1. The TCEQ will consider any written appeal received from a private service provider.
2. If the TCEQ determines that there are grounds for further consideration of the appeal, the TCEQ shall notify the COG in writing and by other appropriate means.
3. If so notified of the further consideration of an appeal by the TCEQ, the COG shall cooperate with the TCEQ and the appellate private service provider to resolve any problem issues.
4. The COG shall not proceed with any project which the TCEQ has notified the COG of a question or concern about that project until the TCEQ provides the COG written authorization to proceed with awarding funding to the project.
5. If the private industry issues are not resolved by the COG and the private service provider to the satisfaction of the TCEQ, the TCEQ will make a final decision concerning the eligibility of the project for funding. This decision will be communicated to the COG and the private service provider in writing. The COG may not provide funding for any project found to be ineligible by the TCEQ.

**Private Industry appeals must be sent to the following:**

CAPCOG  
ATTN: Ken May  
6800 Burlleson Road, Bldg 310, Suite 165  
Austin, TX 78754

OR

[Kmay@capcog.org](mailto:Kmay@capcog.org)

For comments or questions, please contact Ken May at (512) 916-6040 or [Kmay@capcog.org](mailto:Kmay@capcog.org)