

Deep East Texas Council of Governments



2009 Sub-Recipient Agreement
for
POLK COUNTY

Date of Award
September 29, 2009

1. Sub-Recipient Name and Address: 2. Prepared by: John E. McDowell 3. SAA Award Number: 09-SR-99008-03

Honorable John P. Thompson
Polk County Judge
Polk County Courthouse
Livingston, Texas 77351

4. Federal Grant Information
Federal Grant Title: Homeland Security Grant Program
Federal Grant Award Number: 2009-SS-T9-0064
Date Federal Grant Awarded to TDEM: August 1, 2009
Department of Homeland Security
FEMA Grant Programs Directorate
Federal Granting Agency:

5. Award Amount and Grant Breakdowns

Total Award Amount \$223,360.98	Note: Additional Budget Sheets (Attachment A): <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
	Base SHSP 97.073	Regional SHSP 97.073	Regional LEAP 97.073
	\$39,607.38	\$111,296.50	\$72,457.10

This award supersedes all previous awards. Performance Period: Aug 1, 2009 to Apr 15, 2012

6. Statutory Authority for Grant: This project is supported under Public Law 110-161, the Department of Homeland Security Appropriations Act of 2008.

7. Method of Payment: Primary method is reimbursement. See the enclosed instructions for the process to follow in the submission of invoices.

8. Debarment/Suspension Certification: The Sub-Recipient certifies that the subgrantee and its' contractors/vendors are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency and do not appear in the Excluded Parties List System at <http://www.epls.gov>.

9. Agency Approval

Approving DETCOG Official: Signature of DETCOG Executive Director:

Walter G. Diggles, Executive Director
Deep East Texas Council of Governments
210 Premier Drive
Jasper, Texas 75951

10. Sub-Recipient Acceptance

I have read and understand the attached Terms and Conditions.

Type name and title of Authorized Sub-Recipient official: Signature of Sub-Recipient Official:

Honorable John P. Thompson
Polk County Judge
Polk County Courthouse
Livingston, Texas 77351

11. Enter Employer Identification Number (EIN) / Federal Tax Identification Number: 12. Date Signed :

746001621 10/12/10

13. DUE DATE:
Signed award and Direct Deposit Form (if applicable) must be returned to DETCOG on or before the above due date.

TERMS AND CONDITIONS
2009 Sub-recipient Agreement

Parties to Sub-recipient Agreement

This Sub-recipient agreement is made and entered into by and between the Deep East Texas Council of Governments hereinafter referred to as "DETCOG," and the funds recipient, hereinafter referred to as the "Sub-recipient." Furthermore, DETCOG and the Sub-recipient are collectively hereinafter referred to as the "Parties." By this Sub-recipient agreement's execution, the Parties have severally and collectively agreed to be bound to the mutual obligations and to the performance and accomplishment of the tasks described in this Sub-recipient agreement. The Sub-recipient Agreement is only an offer until the Sub-recipient returns the signed copy of the TDEM Sub-recipient Agreement in accordance with the date provided in the transmittal letter and in the agreement.

Sub-recipient Purpose and Overview

Purpose and Overview. Sub-grant funds provided shall be used to provide law enforcement and emergency response communities with enhanced capabilities for detecting, deterring, disrupting, preventing, and responding to potential threats of manmade, natural disasters and acts of terrorism. The Sub-recipient agrees that all allocations and use of funds under this grant will be in accordance with the Homeland Security Grant Program Guidelines and Application Kit for that fiscal year and must support the goals and objectives included in the State Homeland Security Strategic Plan and the Urban Area Homeland Security (UASI) Strategies. The funds must be used to conform with the State Homeland Security Strategic Plan, follow the projects outlined in the approved investment justifications used to make the FY 2009 grant application and as described in the federal program guidelines found at www.fema.gov/pdf/government/grant/hsgp/fy08_hsgp_guide.pdf. Further, as outlined in the TDEM grant guidance, 2009 HSGP will focus on three objectives as the highest priorities. These three objectives are:

- 1) Measuring progress toward achieving the National Preparedness Guidelines; 2. Strengthening improvised explosive device (IED) attack deterrence, prevention, and protection capabilities; and
3. Strengthening preparedness planning. At least 25 percent of the total FY 2009 HSGP funding must be dedicated toward enhancing capabilities related to objectives 2 and 3 as identified above. The 25 percent requirement applies to the total award amount for each State across all four programs, not individual awards for SHSP, UASI, MMRS, and CCP.

Standard of Performance. The Sub-recipient shall perform all activities and projects entered into the SAA web-based grants management system approved by its Council of Governments (COG) and by the State Administrative Agency (SAA). The Sub-recipient shall perform all activities in accordance with all terms, provisions and requirements set forth in this Sub-recipient agreement and applicable Laws and Regulations, hereinafter referred to as "Exhibit A";

C. Failure to Perform. In the event the Sub-recipient fails to implement the project(s) entered into The SAA web-based grants management system, or comply with any of this Sub-recipient agreement's provisions, in addition to the remedies specified in this Sub-recipient agreement, the Sub-recipient is liable to TDEM for an amount not to exceed the award amount of this Sub-recipient agreement and may be barred from applying for or receiving additional Homeland Security Grant Program funds or any other federal program funds administered by TDEM until repayment to TDEM is made and any other compliance or audit finding is satisfactorily resolved.

TERMS AND CONDITIONS
2009 Sub-recipient Agreement

Reimbursement

Sub-recipient agrees to make no request for reimbursement prior to return of this agreement signed by the authorized Sub-recipient representative. Sub-recipient also agrees to make no request for reimbursement for goods or services procured by Sub-recipient prior to the performance period start date of this agreement.

A. Request for Advance or Reimbursement. The Sub-recipient shall submit to TDEM, a properly completed Local Purchase Submission Cover Sheet as often as actually needed. TDEM retains the authority to approve or deny amount requested and shall not make disbursement of any such payment until TDEM has reviewed and approved such a request. The Local Purchase Submission Cover Sheet shall be supported by documentation as referenced by the SAA web-based grants management system and subsequent policy updates.

B. Request for Advance Funds and Transfer of Funds. The Sub-recipient's requests for an advance of Sub-recipient agreement funds shall be limited to the minimum amounts needed for effective operation of their project(s) under this Sub-recipient agreement and shall be timed as closely as possible to be in accord with actual cash requirements. The Sub-recipient shall establish procedures to minimize the time elapsing between the transfer of funds from TDEM to the Sub-recipient and shall ensure that such funds are disbursed within fifteen (15) days or as soon as administratively possible.

C. Payment Contingent. Notwithstanding the provisions of Subsection A of this Section, payments under this Sub-recipient agreement are contingent upon the Sub-recipient's performance of its contractual obligations.

Interoperable Communication Project Compliance

DETCOG submitted a Request for Proposal entitled **DETCOG APCO P-25 Communications Infrastructure Project** and has awarded the Infrastructure communications Contract with NALCOM Wireless Communications, Inc. All FY2009 State Homeland Security (SHSP) and Law Enforcement Activity Program (LEAP) funding indicated on the Sub-Recipient Agreement as Regional SHSP and Regional LEAP funding must be used to complete the P-25 Communications Infrastructure Project and the VHF P-25 Digital Radio program. Each Jurisdiction that is Awarded Regional funding must comply with the Regional Interoperable Communications Plan (RICP) and install all Infrastructure Communications as engineered and in compliance with the DETCOG Contractual agreement with NALCOM. Any exceptions or changes to the communications equipment must be approved by the DETCOG before any changes are implemented.

Funding for Subscriber equipment (P-25 VHF Digital Mobile radios and P-25 Portable Radios) must be purchased with the funding indicated on the Sub-Recipient Agreement as Regional SHSP and Regional LEAP and this funding cannot be used for any other purpose. The Regional Advisory Taskforce voted and recommended to the DETCOG Board of Directors that all subscriber radio equipment will be purchased through the DIR state purchasing contract. Each Jurisdiction must comply with the following guidelines:

1. Submit a list of all Law Enforcement within their jurisdictions to be upgraded with the new P-25 subscriber radio equipment (mobile and portable radios) funding will be allocated according to the list

**TERMS AND CONDITIONS
2009 Sub-recipient Agreement**

submitted. Mobile radios will be submitted listing what wattage is needed (I.e. 110 watt trunk mount, 50watt trunk mount or 50watt under dash mount)

2. Each jurisdiction must purchase the exact number of Subscriber radios submitted, any changes or exceptions must be approved by DETCOG.
3. P-25 Digital Subscriber Radio Equipment was chosen as the standard equipment and each award. subscriber equipment was based on the figures listed below”

- 50watt under dash \$1,058.12
- 50watt trunk mount \$1,144.52
- 110w trunk mount \$2,367.64
- 5 watt Portable Radio \$967.00
(Includes high capacity battery, antenna, charger, speaker mike, and d-swivel holster)

The above listed cost include

Installation and programming for under dash = \$117.00

Installation and programming for Remote mount = \$132.00

Programming for hand held = \$25.00

Jurisdictions may purchase any subscriber equipment that they choose, however DETCOG will only allow the above stated amounts per radio, any additional cost over the standard amount must be paid by the Jurisdiction. Each jurisdiction must purchase the exact number of radios as stated on the equipment submittal list, not to exceed the total number of mobile and portable radios in the current day to day use. All subscriber Radio equipment must meet the below listed specifications without exception.

Minimum specs for the P25 Handheld

Must be listed on the Texas Department of Resources (DIR) Buy Board

- 5 Watts (136-174 MHz)
- 128 Zones / 512 Channels
- 14 Character Alphanumeric lighted dot matrix LCD
- 8 Programmable Function/LCD menu keys
- RSSI Indicator
- Transmit/Busy/Call Alert/Warn LED
- P25 Digital Conventional
- AMBE+2 Enhanced Vocoder
- Talk Group ID Lists
- Individual ID Lists
- Caller ID Display
- DES Encryption Module Available
- Rapid Charger
- Speaker-Mike
- Highest output battery

P25 Mobile Minimum specifications:

Must be listed on the Texas Department of Resources (DIR) Buy Board

- 50W VHF & 110W VHF under Dash and Remote Mount
- 128 Zones/512 Channels
- Backward compatible with Conventional Analog
- Dash or remote mount configurations

TERMS AND CONDITIONS
2009 Sub-recipient Agreement

- 14-character alphanumeric backlit LCD
- programmable function/menu keys
- Internal Speaker / External Speaker options
- P25 AMBE+2 Enhanced Full Rate VOCODER
- P25 DES Encryption Modules Available
- P25 Conventional OTAR Option

National Incident Management System (NIMS) and the Incident Command System (ICS)

Sub-recipients must have adopted and be implementing the National Incident Management System (NIMS) and the Incident Command System (ICS) at the local level. NIMS compliance for 2009 must be achieved by completing actions outlined in the NIMS Implementation Matrix.

A. Adoption. The jurisdiction or organization must have formally adopted NIMS as its incident management system through ordinance, court order, or resolution. A copy of the adoption document should be provided to the Preparedness Section of the Division of Emergency Management.

B. Implementation. The jurisdiction or organization must be implementing the principles and policies of NIMS/ICS, including these major requirements:

1. Identifying specific NIMS training requirements for local emergency responder and emergency management positions; then obtaining or providing required training, and documenting it. For further information on NIMS training, see http://www.fema.gov/emergency/nims/nims_training.shtm
2. Updating jurisdiction or organization emergency plans and procedures to address the NIMS/ICS organizational structure, major functions, concepts, policies, and procedures.
3. Utilizing NIMS/ICS for day-to-day all-hazard emergency response and during exercises.
4. Participating in local, regional, or intrastate mutual aid programs.
5. Maintaining an inventory of emergency response assets (Texas Regional Resource Network), and identifying key assets by resource typing standards developed by FEMA to facilitate multi-agency response. For resource typing information, see: <http://www.fema.gov/emergency/nims/rm/rt.shtm>
6. This is accomplished by registering with the Texas Regional Resource Network (TRRN) and updating the information regularly. Additionally, a certification form must be on file with TDEM for every county and local jurisdiction.
7. Complete the NIMS baseline assessment and develop a local NIMS implementation plan.
8. Participate in an all-hazard exercise program based on NIMS that involves responders from multiple disciplines and multiple jurisdictions.
9. All Primary jurisdictions must possess an independent NIMSCAST account.

For a more detailed description of these requirements, as well as other NIMS implementation requirements, see

http://www.fema.gov/pdf/emergency/nims/imp_mtrx_states.pdf

FY 08 NIMS implementation requirements must be completed by January 31, 2009.

Other Requirements (These requirements DO NOT apply to NSGP Sub-recipients)

A. During the performance period of this grant, Sub-recipients must maintain an emergency management plan at the Intermediate Level of planning preparedness or higher, as prescribed by

**TERMS AND CONDITIONS
2009 Sub-recipient Agreement**

TDEM. This may be accomplished by a jurisdiction maintaining its own emergency management plan or participating in an inter-jurisdictional emergency management program that meets the required standards. If TDEM identifies deficiencies in the Sub-recipient's plan, Sub-recipient will correct deficiencies within 60 days of receiving notice of such deficiencies from TDEM.

B. Projects identified in the SAA web-based grant management system must identify and relate to the goals and objectives indicated by the applicable 12 approved project investments for the period of performance of the grant.

C. During the performance period of this grant, Sub-recipient agrees that it will participate in a legally-adopted county and/or regional mutual aid agreement.

D. During the performance period, the Sub-recipient must register as a user of the Texas Regional Response Network (TRRN) and identify all major resources such as vehicles and trailers, equipment costing \$5,000 or more and specialized teams/response units equipped and/or trained using grant funds (i.e. hazardous material, decontamination, search and rescue, etc.). This registration is to ensure jurisdictions or organizations are prepared to make grant funded resources available to other jurisdictions through mutual aid.

Restrictions, Disclaimers and Notices

A. Approval of this award does not indicate approval of any consultant rate in excess of \$450 per day. Detailed justification must be submitted to and approved by TDEM/SAA prior to obligation or expenditure of such funds.

B. In cases where local funding is established by COGs, release of funds by TDEM is contingent upon regional funding allocation approval by the Sub-recipient's COG governing board.

C. Notwithstanding any other agreement provisions, the parties hereto understand and agree that TDEM's obligations under this agreement are contingent upon the receipt of adequate funds to meet TDEM's liabilities hereunder. TDEM shall not be liable to the Sub-recipient for costs under this Agreement which exceed the amount specified in the Notice of Sub-recipient Award.

D. Notice. All notices or communication required or permitted to be given by either party hereunder shall be deemed sufficiently given if mailed by registered mail or certified mail, return receipt requested, or sent by overnight courier, such as Federal Express, to the other party at its respective address set forth below or to such other address as one party shall give notice of to the other from time to time hereunder. Mailed notices shall be deemed to be received on the third business day following the date of mailing. Notices sent by overnight courier shall be deemed received the following business day.

Chief -Division of Emergency Management
Department of Public Safety
PO Box 4087 Austin, TX 78773-0220

Uniform Administrative Requirements, Cost Principals, Audit Requirements and Program Income

Except as specifically modified by law or this Sub-recipient agreement's provisions, the Sub-recipient

TERMS AND CONDITIONS
2009 Sub-recipient Agreement

shall administer the award through compliance with all Applicable Laws and Regulations, Exhibit A, but specifically with:

A. Administrative Requirements

1. 44 C.F.R. Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;
2. C.F.R. Part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

B. Cost Principles

1. 2 C.F.R. Part 225, Cost Principles for State, Local and Tribal Governments
2. 2 C.F.R. Part 220, Cost Principals for Education Institutions
3. 2 C.F.R. Part 230, Cost Principles for Non-Profit Organizations
4. Federal Acquisition Regulation Subpart 31.2, Contracts with Commercial Organizations

C. Audit Requirements – OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations.

Retention and Accessibility of Records

A. Retention of Records. The Sub-recipient shall maintain fiscal records and supporting documentation for all expenditures of Sub-recipient agreement funds pursuant to OMB Circular A-87, 44 C.F.R. § 13.42 and this Sub-recipient agreement. The Sub-recipient shall retain these records and any supporting documentation for the greater of three (3) years from the completion of this project's public objective (close of the Sub-recipient agreement), including program requirements and financial obligations, or the period of time required by other applicable laws and regulations as described in Exhibit A.

B. Access to Records. The Sub-recipient shall give the United States Department of Homeland Security (DHS), the Inspector General, the General Accounting Office, the Auditor of the State of Texas, TDEM, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, other papers, things or property belonging to or in use by the Sub-recipient pertaining to this Sub-recipient agreement including records concerning the past use of HSGP funds. Such rights to access shall continue as long as the records are retained by the Sub-recipient. The Sub-recipient agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act, Chapter 552, Texas Government Code.

C. Inclusion in Subcontracts. The Sub-recipient shall include the substance of this Section in all subcontracts.

Subcontracts

A. TDEM's Approval of Subcontract and Liability. The Sub-recipient may subcontract for performances described in this Sub-recipient agreement without obtaining TDEM's prior written approval.

TERMS AND CONDITIONS
2009 Sub-recipient Agreement

B. Sub-recipient Liability. In no event shall any provision of this Section be construed as relieving the Sub-recipient of the responsibility for ensuring that the performances rendered under all subcontracts comply with all of this Sub-recipient agreement's terms as if such performances rendered were rendered by the Sub-recipient. TDEM's approval under this Section does not constitute adoption, ratification or acceptance of the Sub-recipient's or a subcontractor's performance.

C. Applicable Law. The Sub-recipient shall comply with 44 C.F.R. § 13.1-13.52 and all applicable federal and state laws outlined in Exhibit A and local laws, regulations and ordinances related to making procurements under this Sub-recipient agreement.

D. Escrow Retainage for Construction Contracts. TDEM shall require Sub-recipient to maintain an escrow retainage of the Sub-recipient agreement funds budgeted for construction and rehabilitation in the amount of five percent (5%) of each construction and/or rehabilitation subcontract entered into by the Sub-recipient. Before the retainage fees for construction contracts are released, TDEM shall receive a complete and executed Certificate of Construction Completion and Final Wage Compliance Report and the Sub-recipient shall certify it has received as-built plans for this Sub-recipient agreement's funded construction activities.

Legal Authority

A. Signatory Authority. The Sub-recipient assures and guarantees that the Sub-recipient possesses the legal authority to enter into this Sub-recipient agreement, receive Sub-recipient agreement funds and to perform the services the Sub-recipient has obligated itself to perform pursuant to this Sub-recipient agreement.

B. Authorized Representative. The person or persons signing and executing this Sub-recipient agreement on the Subrecipient's behalf do warrant and guarantee that he, she or they have been duly authorized by the Sub-recipient to execute this Sub-recipient agreement on the Sub-recipient's behalf and to validly and legally bind the Sub-recipient to all contractual terms, performances and provisions.

Notice Of Litigation and Claims

The Sub-recipient shall give TDEM immediate notice in writing of:

1. Any action, including any proceeding before an administrative agency, filed against the Sub-recipient arising out the performance of any subcontract under this Sub-recipient agreement; and
2. Any claim against the Sub-recipient, the cost and expense of which the Sub-recipient may be entitled to be reimbursed by HSGP.
3. Except as otherwise directed by TDEM, the Sub-recipient shall furnish immediately to TDEM copies of all documentation received by the Sub-recipient with respect to such action or claim.

Indemnification

To the extent permitted by law, the Sub-recipient agrees to hold DETCOG and TDEM harmless and to indemnify DETCOG and TDEM from and against any and all claims, demands and causes of action of every kind and character that may be asserted by any party occurring or in any way incident to, arising out of or in connection with the services to be performed by the Sub-recipient pursuant to this Sub-

**TERMS AND CONDITIONS
2009 Sub-recipient Agreement**

recipient agreement.

Changes and Amendments

A. Written Amendment. Except as specifically provided otherwise in this Sub-recipient agreement, any alterations, additions or deletions to this Sub-recipient agreement's terms shall be made through Grant Adjustment Notices generated by the SAA web-based grants management system and executed by the Parties.

B. Authority to Amend. This Sub-recipient agreement's performances shall be rendered in accordance with the Act, Exhibit A, the assurances and certifications made to TDEM by the Sub-recipient and the assurances and certifications made to DHS by the State of Texas with regard to the operation of the HSGP. Amendments may further be amended by TDEM, during the period of this Sub-recipient agreement's performance as TDEM issues policy directives that serve to establish, interpret or clarify this Sub-recipient agreement's performance requirements. Such policy directives shall be promulgated by TDEM in the form of Information Bulletins and shall have the effect of qualifying this Sub-recipient agreement's terms and shall be binding upon the Sub-recipient as if written in the Sub-recipient agreement.

C. Effect of Changes in Federal and State Laws. Any alterations, additions, or deletions to this Sub-recipient agreement's terms that are required by the changes in federal and state laws or regulations are automatically incorporated into this Sub-recipient agreement without written amendment to this Sub-recipient agreement and shall become effective on the date designated by such law or regulation. Federal Emergency Management Agency (FEMA) periodically publishes Information Bulletins to release, update, amend or clarify grants and programs which it administers. FEMA's National Preparedness Directorate Information Bulletins can be accessed at <http://www.ojp.usdoj.gov/odp/docs/bulletins.htm> and are incorporated by reference into this sub-grant.

Headings

Headings and captions of this Sub-recipient agreement's sections and paragraphs are only for convenience and reference. These headings and captions shall not affect or modify this Sub-recipient agreement's terms or be used to interpret or assist in the construction of this Sub-recipient agreement.

Oral and Written Agreements

A. Prior Agreements. All oral and written agreements between the Parties relating to this Sub-recipient agreement's subject matter that were made prior to Date of Execution have been reduced to writing and are contained in this Sub-recipient agreement.

B. Exhibits. The exhibits enumerated and denominated in the agreement are hereby made a part of this Sub-recipient agreement and constitute promised performances by the Sub-recipient in accordance with the Sub-recipient agreement and the Exhibits.

C. Commissioner's Signature. This Sub-recipient agreement is not effective unless signed by the Chief of TDEM or by his authorized designee.

TERMS AND CONDITIONS
2009 Sub-recipient Agreement

VOL 56 PAGE 3482

Waiver

Any right or remedy provided for in this Sub-recipient agreement provision shall not preclude the exercise of any other right or remedy under this Sub-recipient agreement or under any provision of law, nor shall any action taken or failure to take action in the exercise of any right or remedy be deemed a waiver of any other rights or remedies at any time.

Venue

For purposes of litigation pursuant to this Sub-recipient agreement, venue shall lie in Travis County, Texas.