

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF FINANCIAL ASSISTANCE  
FEDERAL PROGRAMS BRANCH****Community Development Block Grant Program**

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**CDBG MANAGEMENT MEMORANDUM**  
**Community Development Block Grant Program - Memorandum Number 14-06**

**September 17, 2014**

**MEMORANDUM FOR: Non-Entitlement Jurisdictions Eligible for State Community Development Block Grant (CDBG) Program Grantees**

**FROM: Thomas Brandeberry, CDBG Section Chief**

**SUBJECT: State CDBG Program's Procurement Requirements for Grantees**

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The purpose of this management memo is to acknowledge, per 25 CCR 7120, the Department's adoption and use of 24 CFR 85.36 as its procurement requirements for the State's CDBG non-entitlement grantees. Those regulations can be found here: [http://www.hcd.ca.gov/fa/cdbg/manual/24\\_CFR\\_85.36\\_Procurement.pdf](http://www.hcd.ca.gov/fa/cdbg/manual/24_CFR_85.36_Procurement.pdf).

While the department continues to work on revising the Grant Management Manual Procurement Chapter (Chapter 8) to better align with 24 CFR 85.36, grantees should be aware of the following considerations when using "contracted employees".

Many small rural communities (grantees) do not have the internal resources to hire civil service employees (staff) to perform all tasks associated with the day-to-day operations of a city or county, and more particularly when utilizing CDBG funding. The services of an architect, engineer, accountant, or other professional may be needed to complete tasks typically performed by a civil service employee. Many of our grantees have contracted for these positions prior to receiving CDBG funding and may have completed the hiring process outside the federal procurement requirements of 24 CFR 85.36, which then results in a noncompliant procurement process if using CDBG funds.

Once a grantee receives a CDBG award letter and has an executed contract with the state, they may begin the process to clear general conditions pursuant to their Grant Agreement for the administration of the grant. If the grantee utilizes services of a previously contracted employee to perform CDBG-related tasks, such as clearing the general conditions for a CDBG activity, these expenses may be reimbursed with CDBG general administrative funds just as if they were using in-house staff.

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However, if professional services are required for the implementation of a specific CDBG activity, the federal procurement process involving a formal Request for Proposal (RFP) or Request for Qualifications (RFQ) must be followed and the existing “contracted employee” would not be eligible to submit a proposal for the project.

For example, if the grantee receives CDBG funding to complete the construction of a new water well, a RFQ procurement process would be required to hire an engineer for preparation of the plans and specifications for the project. The grantees’ existing contract engineer would be unable to bid on the CDBG-funded water project, as it would be considered a conflict of interest.

24 CFR 85.36(c)(1) requires that all procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 24 CFR 85.36. Some of the situations considered to be restrictive of competition include, but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business,
- Requiring unnecessary experience and excessive bonding,
- Noncompetitive pricing practices between firms or between affiliated companies,
- Noncompetitive awards to consultants that are on retainer contracts,
- Organizational conflicts of interest,
- Specifying only a *brand name* product instead of allowing *an equal* product to be offered and describing the performance of other relevant requirements of the procurement, and
- Any arbitrary action in the procurement price due to inside knowledge of the project and would not meet the definition of an open, fair and competitive procurement process and is considered a conflict of interest.

Another example is where the grantee is awarded CDBG funding to conduct a planning study, such as determining the ADA improvements which are needed within a city or county. If the grantee has an in-house staff person to complete the study, no procurement would be required because they are an employee. However, if the grantee has an existing contracted planner, that person would not be eligible to submit a bid to conduct the study, because there would be a conflict of interest. However, pursuant to CDBG Management Memo 13-05, the small purchase procurement method may be used to procure a consultant for a single study.

Pursuant to 24 CFR 570.489 (h)(5), exceptions to the conflict of interest requirement may be granted on a case-by-case basis. If a grantee would like to apply for an exception, please refer to the regulation cited above for the factors to be considered for exceptions and contact your CDBG program representative.