

## MEMORANDUM

### Policy Guidance

**MEMO: 21-02**

Issue Date: October 18, 2021

Effective Date: October 1, 2021

This Policy remains effective until it is amended, superseded, or rescinded.

Nebraska Department of Economic Development, 301 Centennial Mall South, Lincoln, NE 68509, [opportunity.nebraska.gov](http://opportunity.nebraska.gov)

**SUBJECT:** Procurement and Conflict of Interest

**PROGRAMS IMPACTED:** Community Development Block Grant (CDBG)  
Community Development Block Grant Coronavirus Response (CDBG-CV)

This policy memorandum updates the Nebraska Department of Economic Development's (DED or the Department) guidance concerning procurement and conflict of interest with the implementation of Community Development Block Grant (CDBG) funds. **The effective date of this policy memo is October 1, 2021.** The content of this policy memo reflects changes made by the Office of Management and Budget (OMB) to 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as amended on June 2, 2021.

These federal changes have the following impact to program(s) listed above:

#### I. PROCUREMENT STANDARDS

The OMB made revisions to 2 CFR Part 200. Revisions to this section included the federal procurement under grants standards to provide greater flexibility regarding the micro-purchase and simplified acquisition thresholds. These revisions had an impact on the delivery of the Nebraska CDBG Program. As part of the subrecipient agreement between the DED and the local unit of government, in Part II: Special Conditions for Release of Funds: *the subrecipient<sup>1</sup> must submit documentation to the Department evidencing adoption of the appropriate procurement standards in compliance with provisions of state and federal law.* The revisions made to 2 CFR Part 200 impact current and future subrecipients of CDBG funds. All open grants with unencumbered<sup>2</sup> grant funds must submit to the Department an updated Procurement Standards documentation within **45 days** of issuance of this policy memorandum. DED has created a template that is available on the Department's webpage.

#### II. PROCUREMENT AND CONFLICT OF INTEREST

In addition to these revisions to 2 CFR Part 200, the Department is also issuing guidance regarding conflict of interest and procurement relating to CDBG funds. DED, as the recipient of State CDBG funds, ensures that all local units of government (subrecipients) awarded CDBG funds carry out procurement regulations as indicated within 2 CFR Part 200, Subpart D and 24 CFR § 570.489 (g) *Procurement* and (h) *Conflict of Interest*. DED reviews and evaluates the local unit of government's procurement and conflict of interest at time of application and throughout the expenditure of CDBG funds.

<sup>1</sup> In prior contractual agreements, DED defines the subrecipient as "grantee".

<sup>2</sup> CDBG and local cost share match funds not under contract.

2 CFR § 200.112 states: “The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.”

DED further clarifies areas of procurement and conflict of interest within the Nebraska CDBG Administration Manual, Chapter 7. The Manual provides direction to ensure local unit of government applicants and subrecipients are in compliance with federal and state procurement requirements as services are being procured. A subrecipient receiving CDBG Program funds must comply with federal and state procurement requirements during the procurement process, including during the initial application process prior to award.

As the subrecipient is procuring for professional services, the appropriate competitive proposal method must be used. Each service<sup>3</sup> must be procured independently by the subrecipient and clearly identified as *separate* services so that firms/entities, submitting a proposal, indicate itemize costs and delivery schedules for each service separately. Where CDBG funds are being considered for a project, including where an application is not yet awarded CDBG funds, procurement standards must be followed and adequately documented. Oversight of program implementation must not be carried out by the same entity carrying out the project activities.

Subrecipients must take significant steps to **avoid conflicts of interest**. If the subrecipient selects an entity to implement a portion of the CDBG project, and that entity intends to submit a proposal for additional services, that entity cannot assist in the procurement process. If the entity did assist in the procurement process, this is a conflict of interest and would result in DED issuing a monitoring compliance *Finding*<sup>4</sup> to the subrecipient. When a *Finding* is issued, DED will determine if the cost associated with the services are disallowed from using CDBG funds or local matching funds identified within the subrecipient agreement. The subrecipient may be required to repay all CDBG funds associated with the conflict of interest to DED. In addition, DED may determine the local unit of government is not eligible to receive CDBG funds in the future.

Some engineering and/or architectural firms have the capacity to provide general administration on CDBG projects and engineer/design buildings or public facilities systems. DED has determined that it is a conflict of interest for the same firm to provide general administration services and engineering or architectural services on the same CDBG project. The use of a single firm for CDBG general administration and architectural, engineering and/or planning professional services is prohibited as a conflict of interest perceived or evident. As an additional point of clarification, the use of multi-services procurement and contracting remains prohibited.

Conducting procurement processes at time of application and prior to CDBG award does not remove the requirement to make use of internal controls. It is the subrecipient’s responsibility to comply with federal, state, and local statutes, regulations, and the terms and conditions of federal awards, including CDBG.

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<sup>3</sup> Service includes but not limited to: general administration, housing management, architectural or engineering services, construction management, planning.

<sup>4</sup> A deficiency in subrecipient performance based on a statutory, regulatory or program requirement for which sanctions or other corrective actions are authorized. Such sanctions or actions are generally subject to State discretion, within prescribed parameters.

### III. DISCUSSION

**a) When does this policy memorandum go into effect?**

This policy memorandum is effective October 1, 2021. This applies to any contract being executed between the local unit of government and entities providing professional services as described in Section II.

**b) If the local unit of government completed procurement and executed a professional services contract prior to October 1, 2021, what happens?**

DED will review the subrecipient's procurement procedures in place at application submission and also throughout project implementation as part of ongoing compliance monitoring. If the situation described in this policy memorandum occurred with the same entity being hired for general administration and engineering or architectural services, the Department will determine if a *Finding* or *Concern*<sup>5</sup> will be issued. As further discussed in the CDBG Administration Manual Chapter 14, sanctions may be applied. Such sanctions could include, but are not limited to, delay of payment of remaining funds, ability to secure future DED grants, or repayment of existing grant funds.

**c) The local unit of government (i.e., subrecipient) is a member of a Development District. The Development District developed the application and will also be providing general administration, is there a conflict of interest?**

No, per Nebraska Revised Statute Sections 13-1901 to 13-1907, Development Districts may be formed as a voluntary association by agreement pursuant to the Interlocal Cooperation Act and provide planning community and economic development, and technical assistance to local governments which are members of the district.

**d) The local unit of government (i.e., subrecipient) procured ABC & Partners for general administration, this firm also provides engineering services. The subrecipient issued an RFP for engineering services and ABC & Partners submitted a proposal, is there a conflict of interest?**

Yes, the use of a single firm for CDBG general administration and professional services for which an advanced degree is required, including architectural and engineering (A/E) or planning services, is prohibited and deemed a conflict of interest, perceived or evident. Even if ABC & Partners did not draft the RFP, it would be considered a conflict of interest for ABC & Partners to conduct the sort of project oversight that is necessarily involved with services provided by a CDBG Certified Administrator under a contract for general administration services.

Some A/E or planning firms have the capacity to administer CDBG projects and implement project activities (e.g., design buildings, produce planning documents, or engineer public facilities systems). DED has determined that it is a conflict of interest for the same firm to provide general administration services *and* A/E services on the same CDBG project. Thus, procurement for CDBG general administration by A/E firms, or any employee or principal, is considered a conflict of interest. General administration in those cases must be administered by a CDBG Certified Administrator that is not an employee or directly associated with the A/E firm. There may also be conflicts of interest in the areas of housing management, rehabilitation inspection, construction management, lead-based paint testing, surveying, or other areas. As an additional point of clarification, the use of multi-services procurement and contracting remains prohibited.

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<sup>5</sup> A deficiency in program performance not based on a statutory, regulatory or other program requirement. Sanctions or corrective actions are not authorized for concerns. However, DED should bring the concern to the subrecipient's attention and, if appropriate, may recommend (but cannot require) actions to address concerns and/or provide technical assistance.

#### **IV. CONCLUSION**

DED issues this memorandum to clarify DED's policy guidance for procurement and conflict of interest. **DED has determined that it is a conflict of interest for the same firm to provide general administration services *and* professional services for which an advanced degree is required, which includes architectural and engineering (A/E) or planning services, on the same CDBG project.** As part of ongoing program and project compliance monitoring, DED will also review housing management and construction management services for a potential conflict of interest.

This policy memorandum becomes effective October 1, 2021. The program documents located on the Department's website (<https://opportunity.nebraska.gov/cdbg>) has the most up to date policies for the CDBG program.