

SECTION 18 – SUBRECIPIENT SELECTION AND/OR PARTNERSHIP AGREEMENT REQUIREMENTS

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OVERVIEW

This section describes the procedures and requirements involved in using a subrecipient to administer CDBG-funded activities, or in using a partner that has a vested interest in the CDBG funded activity awarded to the CDBG grantee. This section incorporates applicable procurement, civil rights and record keeping requirements. For a complete understanding of CDBG requirements for specific compliance areas, please refer to those sections of this handbook.

DEFINITION OF A SUBRECIPIENT

A subrecipient is a non-profit agency or organization that is provided CDBG funds by a CDBG grantee for their use in carrying out agreed-upon, eligible activities. The subrecipient is accountable to the grantee, having administrative or other responsibilities. Subrecipients could include community action agencies, housing authorities, economic development councils or councils of government.

NOTE: A subrecipient differs from a contractor. A contractor is selected through a competitive procurement process and is paid CDBG funds by the grantee in compensation for specific services. The subrecipient is subject to the same administrative requirements as those described in this handbook for the grantee. These requirements are generally not applicable to contractors.

DETERMINING WHETHER TO USE A SUBRECIPIENT

Grantees must first determine whether it is appropriate and beneficial to use a subrecipient, instead of using city/county staff or procuring professional services. In judging whether to use a subrecipient, the grantee should consider the:

- Nature of the activity
- Proposed scope of services
- Grantee's capacity and experience
- Local organizations that are potentially qualified
- Possibility of any potential conflicts of interest

Define the Scope of Services

It is recommended that the grantee define the nature and extent of the services required. This written document should contain the proposed plan for carrying out the CDBG-funded activity. This document will ultimately serve as the scope of work in the subrecipient agreement.

SELECTING A SUBRECIPIENT

If it is determined to be appropriate and beneficial to use a subrecipient, the grantee then selects a subrecipient. The grantee must determine the most suitable approach to selection based on local circumstances and the nature of the CDBG-funded activity. A variety or combination of approaches can be used, including:

- Renewal or expansion of agreement with existing subrecipient,
- Negotiation of services with qualified local organization,
- Informal or formal survey by grantee of local organizations' qualifications and/or
- Formal Request for Statements of Qualifications (RFQs) or Requests for Proposals (RFPs) as described in Section 5.

Develop Selection Criteria

Regardless of the selection approach used, it is recommended that the grantee develop written selection criteria. By clearly defining selection criteria, the grantee will ensure the necessary qualifications are considered and the selection process is fair. Selection criteria can include:

- Prior or existing relationship with the grantee,
- Geographical proximity,
- Experience implementing the proposed activity,
- Knowledge of the CDBG program and requirements,
- Qualified staffing and/or
- Organizational strength and stability.

Check for Federal Eligibility

When entering into an agreement with the subrecipient, the grantee must determine the subrecipient is eligible to receive federal funds. Throughout the contract period, the grantee must verify that the subrecipient is not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any Federal department or agency (24 CFR Part 24). Grantees can use this website <https://www.sam.gov/SAM/> to check federal eligibility. Grantees must document the status of eligibility in the grant file and provide the CDBG Project Manager with documentation showing the date eligibility was verified.

Standards of Conduct

The grantee, as well as the subrecipient, must have a written Standard of Conduct which safeguards against conflict of interest by its officers, employees, subcontractors and agents in the selection, award or administration of contracts supported with CDBG funds. A sample is available in Section 7, Attachment 7-K.

SUBRECIPIENT AGREEMENT

Once selected, the grantee must execute a written agreement with the designated subrecipient. If properly written and executed, the subrecipient agreement can be both a management tool for the grantee and an orientation and educational document for the subrecipient. A sample Subrecipient Agreement is provided (Attachment 18-C) and is strongly recommended to be used. If you develop your own agreement, at a minimum it must include:

- Scope of Service
- Budget
- Deed of Trust, if applicable
- Intended Beneficiaries
- Method of Payment
- Performance Schedule
- Termination Clause
- Required Federal Standard Provisions
 - General CDBG Compliance, including the requirements of Title 24 CFR Part 570
 - Title VI of the Civil Rights Act of 1964 Clause (Attachment 18-B)
 - Access to Records Clause (Attachment 18-B)
 - Section 109 Clause (Attachment 18-B)
 - Age Discrimination Act of 1975, as Amended Clause (Attachment 18-B)
 - Section 504 of the Rehabilitation Act of 1973, as Amended Clause (Attachment 18-B)
 - Conflict of Interest Provision (Attachment 18-B)
 - Annual Audit Requirement Clause, referencing 2 CFR 200.501
 - Davis Bacon, if applicable (see Section 8)
 - Public Law 101-336 American with Disabilities Act of 1990 (Attachment 18-B)
 - Section 3 of the Housing and Community Development Act of 1968 (Attachment 18-B), required only for prime and subcontracts over \$100,000
- Monitoring and Evaluation Criteria
- Record Keeping
- Insurance Requirements
- Indemnification Clause
- Program Income Requirements, if applicable
- Use and Reversion of Assets or Disposition of Property, if applicable

To avoid difficulties commonly associated with subrecipient agreements, the grantee should review the document line-by-line with the subrecipient's key officials and staff as part of an orientation at the beginning of the CDBG-funded project. Both grantee and subrecipient representatives are to attend the CDBG Management Handbook trainings.

The working relationships and responsibilities between the grantee, a contractor or subrecipient and the project manager must be established in order to effectively administer a CDBG grant. Attachment 18-A describes these relationships and lists the responsibilities attached to the grantee, a contractor or subrecipient and the CDBG project manager.

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Amendments to the subrecipient agreement may occasionally be necessary, if there are changes in the scope or schedule of work. Neglecting to formally amend the agreement to reflect the current understanding of the subrecipient responsibilities places both the grantee and the subrecipient at risk. In addition, it is recommended that the grantee consult their CDBG project manager regarding the nature of any proposed amendments to the subrecipient agreement.

COST ELIGIBILITY

All subrecipients are subject to the federal cost principles applicable to 2 CFR 200 found at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl. If a situation arises in which the eligibility of a certain purchase is not clear, contact the CDBG Project Manager for guidance.

MONITORING SUBRECIPIENT PERFORMANCE

If a grantee must have a system in place to determine the subrecipient's compliance with relevant CDBG requirements. The CDBG financial management, procurement, civil rights, handicap accessibility, equal employment and record keeping requirements described in this handbook accompany the receipt of CDBG funds and apply to subrecipients as well as the grantee. Subrecipients involved in project administration are encouraged to attend CDBG Management Handbook training.

The scope of work within the subrecipient agreement can provide the basis for monitoring and evaluating subrecipient performance by specifically identifying performance measures. The grantee must track the subrecipient's progress through regular status reports or meetings. Reimbursements to the subrecipient must reflect the timely performance in accomplishing these measurable objectives and be supported by documentation of eligible expenses.

RECORD KEEPING AND REPORTING

The grantee must collect and maintain documentation of the subrecipient's performance and compliance with CDBG requirements.

Beneficiary Data

It is recommended the grantee and subrecipient develop a system up front to collect data on the beneficiaries of the CDBG-funded activity(s). Public Services Grants report this beneficiary data quarterly (Attachment 4-H). Other CDBG-funded activities receiving assistance during the CDBG contract period report this data annually (Attachment 4-D). All grantees report beneficiary data at the end of the contract in the Contract Closeout Report (Attachment 16-A).

COMPLIANCE MONITORING PROCESS

The CDBG project manager will review the subrecipient agreement to ensure that it includes the required contract items and federal provisions. The grantee must provide oversight and monitor the subrecipient throughout the project.

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DEED OF TRUST - SUBRECIPIENT

All non-profit subrecipients shall enter into a Deed of Trust with the grantee for any facility constructed, acquired, or rehabilitated in whole or in part with CDBG funds. The Deed of Trust shall require the subrecipient to operate the facility for the original purpose (for which it received CDBG funds) until at least ten (10) years after the latest of (a) acquisition, or (b) final completion of rehabilitation or construction or until the return of all CDBG funds used for the project. The Deed shall be executed within thirty (30) days of acquisition or substantial completion of any construction activity. The subrecipients shall keep the property free and clear of all other charges, liens, or encumbrances impairing the security of the Deed.

DEFINITION OF A PARTNER

A partner is a non-profit agency or organization that has an interest in the CDBG funded activity awarded to the CDBG grantee, such as:

- The partner is the owner of the real property that was acquired or improved in whole or in part with CDBG funds.
- The partner's role is managing the facility (for example Senior Center or a Food Bank), may contribute funding to the grantee, contribute non-budgeted items, or other responsibilities.

Partners could include community action agencies, housing authorities, economic development councils and councils of government. Procurement by partners could trigger additional requirements. Contact your CDBG project manager for more information.

PARTNERSHIP AGREEMENT

A sample partnership agreement is provided (Attachment 18-D) and is strongly recommended to be used. If you develop your own agreement, as a minimum it must include:

- Scope of Service
- Budget funding provided to grantee, if applicable
- Deed of Trust
- Intended Beneficiaries
- Record Keeping
- Insurance Requirements
- Indemnification Clause
- Use and Reversion of Assets or Disposition of Property, if applicable
- Required Federal Standard Provisions
 - General CDBG Compliance, including the requirements of 2 CFR 200
 - Title VI of the Civil Rights Act of 1964 Clause (Attachment 18-B)
 - Access to Records Clause (Attachment 18-B)
 - Section 109 Clause (Attachment 18-B)
 - Age Discrimination Act of 1975, as Amended Clause (Attachment 18-B)
 - Conflict of Interest Provision (Attachment 18-B)
 - Public Law 101-336 American with Disabilities Act of 1990 (Attachment 18-B)

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DEED OF TRUST - PARTNER

All non-profit partners shall enter into a Deed of Trust with the grantee for any facility constructed, acquired, or rehabilitated in whole or in part with CDBG funds. The Deed of Trust shall require the partner to operate the facility for the original purpose (for which it received Community Development Block Grant funds) until at least ten (10) years after the latest of (a) acquisition, or (b) final completion of rehabilitation or construction or until the return of all CDBG funds used for the project. The Deed shall be executed within thirty (30) days of acquisition or substantial completion of any construction activity. The partner shall keep the property free and clear of all other charges, liens, or encumbrances impairing the security of the Deed.

LIST OF REFERENCE MATERIAL

Attachment 18-A----- Responsibilities between Grantee/Subrecipient/Commerce

Attachment 18-B----- Required Federal Standard Provisions

Attachment 18-C----- Sample Subrecipient Agreement

Attachment 18-D----- Sample Partnership Agreement