

Note On This Document:

This Q&A document was not originally produced for the 2013-2014 CDBG Affordable Housing Application. It was produced for a different, but related, CDBG process conducted by the City of Providence. It is provided to prospective applicants for City of Providence CDBG Affordable Housing funds as additional guidance and information to the issues related to CDBG funding of affordable housing activities.

Questions from West Elmwood Housing: Anthony Dipietro, CEO

1. At the top of page 3 under HOME Program activities it states that “additional detail on projects will be required for those seeking funding for this type of activity.” Can you describe the details and process that will be required to access and use funds under the HOME Program?

These are not set at this time. In general, HOME requires more detail on planned rents or sales, incomes of beneficiaries, and restrictions on future sales in order to address the HOME “affordability period.” CDBG applies ongoing restrictions on rental property only, and less detail is generally needed.

2. Information on Page 3 tries to draw a distinction between 2 types of eligible costs, “subrecipients operating programs” which are service-based and “developers building projects” which are also service-based, and are also property-specific. In order to fully understand this distinction, my questions are:
 - a. Must subrecipients tie their program activities to specific addresses on their timesheets and records?

Each hour charged by subrecipients need not be connected to a specific address if they are considered activity delivery costs (ADCs). However, all costs must be tied to a national objective and eligible activity. So, there needs to be a list of beneficiaries and a list of addresses served. Timesheets and other cost documentation are then tied to the program or project serving those addresses and beneficiaries. Note that CDBG project costs, as opposed to ADCs, must be tied to specific addresses.

Note also that subrecipients must demonstrate and employ cost allocation methods that clearly identify the correct portion of costs borne by CDBG, including timesheets and other allocation methodologies.

- b. Must they meet other minimum standards in documenting their costs, and if so, can you describe these?

Not clear what information is being sought in this question. See previous question. Also, the federal standards may be found in the relevant CDBG guidebooks and regulations, and in the OMB circulars on costs. References are in the guide that was distributed. The City has the option to apply more rigorous standards for any particular invoice, activity or sub-grantee.

- c. If subrecipients’ activities are related to projects that will not be completed under the current agreement (i.e., completion date is more than a year out), are these costs reimbursable under a current year’s subrecipient agreement?

Yes, though the costs are subject to repayment if compliance is not demonstrated in a timely manner. The burden is on the subrecipient to demonstrate how and when compliance will be achieved and to implement adequate safeguards to ensure success in that regard.

3. It appears from this document that all eligible developer activities are also eligible under a subrecipient agreement, while the reverse is not true, because a developer agreement only applies to rental property where the developer will be the long-term owner. Can you describe how this understanding is accurate or inaccurate?

Your interpretation is accurate – except that we now have guidance that entities developing property they own – for sale to homebuyers or for rental – can qualify as developers. See the new document “Guidance on Developer, Subrecipient and Contractors.”

4. It appears that a major difference between developer and subrecipient roles is that an organization can only collect a developer fee under a developer agreement; a subrecipient cannot.

See below

My questions are:

- a. Is there an equivalent fee for subrecipients, e.g., a construction management fee that can be negotiated for each project, just as a developer fee can be negotiated?

There is no equivalent fee for subrecipients, but each actual project or activity delivery cost may be specifically documented and reimbursed. See also the next answer.

- b. Can a subrecipient still collect a developer fee for projects supported with HOME funds?

No, and given the new guidance, this question is probably not relevant as entities acting as developers under HOME will also be developers under CDBG. Entities acting as developers may charge developer fee on the development activity. In no instance will an entity be a developer and a subrecipient for the same activity. In the event that an entity carries out a subrecipient activity, such as housing counseling, and is also a project developer, those two activities would be considered completely distinct from one another and the funding completely separate. See the new “Guidance on Subrecipients, Developers, and Contractors”.

5. On Page 4 it states that under a subrecipient agreement, CDCs must define the number of eligible units at the start of the year. Can you describe what will happen to the award amount if actual production at the end of the year is either higher or lower than the agreed number of units?

Budget and production plans are part of the contract. Changes to the contract require notice and renegotiation. Any such change must be communicated at the earliest possible time and a contract modification executed. Other than that, failure to meet contract terms represents a default that will be addressed according to the terms of the contract. Note that this requirement would apply to developers as well.

6. On Page 4 it states that a developer fee under a developer agreement “is negotiated based on the size and complexity of the project and is paid out only in stages commensurate with completion of project tasks.” Can you describe in more detail the process of negotiating these fees, and the way the stages of payout will be determined?

Standard procedure would be for the developer to submit the project plan with all costs and projected revenue. Any proposed fee should reflect the level of effort needed to bring the project from conception to fruition, the payment of other fees and charges, the project’s ability to support the cost, and industry standards. The City will evaluate the reasonableness of each cost and inform the developer if more information is needed, or a different financing/compensation structure must be proposed.

An example of stages-of-completion payout for developer fee would be 25% at construction start, 35% at construction completion, 40% at full rent up or all sales closed. In some cases developer fee must be deferred and is subject to the project generating excess revenue.

7. At the top of page 5, to draw a distinction between subrecipient and developer roles, it states that “being a developer requires that every dollar be tied to a specific eligible project and ultimate beneficiary.” Can you clarify how this is not also the case for subrecipients?

See answer for 2.a, above.

8. At the top of page 5 it states that the subrecipient role “brings with it much greater rigor in how funds are used and documented and places restrictions on the organization as a whole.” My questions are:
 - a. Can you describe the rigors that will be subjected to these funds in terms of required accounting standards and backup?
 - b. Can you describe what is meant by “restrictions on the organization as a whole”?

Subrecipients will definitely be required to allocate funds to specific line items and specific activities, document procurement procedures associated with a cost, allocate revenue to determine program income for various funding sources, or been required to meet certain audit requirements. See 24CFR84 and 85, OMB circulars A-122 and A-133, and the subrecipient monitoring guide listed in the resources list.

9. The top of page 5 states that “to perform in both roles...the standard for accounting and separation of costs is very high.” My questions are:
 - a. Can you describe how the standards would be higher than the individual standards for a subrecipient, or the individual standards for a developer? Stated another way, the document makes it sound like the sum is greater than the parts in terms of the accounting work required; can you describe specifically how or why this would be the case?

Given the new Guidance on Subrecipients, Developers and Contractors, this question is no longer applicable, and the City’s Housing Guide has been changed to reflect the new Guidance.

10. The bottom of page 5 states that “administrative and planning costs” are not allowable if not tied to eligible housing units. My questions are:
 - a. Are these costs allowable if they can be tied to eligible housing units?

No. At this time, Providence is not able to provide funds for administration and planning. All CDBG funds must be tied to the actual delivery of eligible programs or projects.

- b. If so, what backup would be required?
 - c. If allowed at all, are they allowable under either or both of the 2 roles?

Questions from Providence Revolving Fund: Clark Schoettle and Kim Smith-Barnett

Reference – Page 4 – Category One. The last sentence of the first paragraph says “These funds may only be used in relation to CDBG or HOME funded projects and projects must meet the CDBG eligibility criteria.”

It is our understanding that the projects/addresses just had to be CDBG – ELIGIBLE, but not necessarily use CDBG or HOME Funds in the project. We are thinking of our loan program, which we want to contract with the City as a Sub-Recipient. This one sentence seems to indicate we wouldn't be able to do that, since there are no federal funds in those projects. We would like clarification on that. We have a CDBG loan pool from 1986 – would that count as an eligible use of funds?

Alert: We have received further clarification on this question from HUD and the guide has been revised. The use of CDBG funds as activity delivery funds to deliver an activity is eligible as long as the underlying activity (such as a loan program) is documented as meeting all of the CDBG eligibility criteria.

Page 4 – last sentence on the page “ Aside from that being....”

I think we thought we'd have to tie every activity with a subrecipient agreement to an address. If we only want to use the CDBG dollars from a subrecipient agreement for staff time reimbursement – is the first sentence on Page 5 really all that onerous? “i.e. much greater rigor in how funds are used and documented and places restrictions on the organization as a whole”...

Subrecipients are required to allocate funds to specific line items, document procurement procedures associated with a cost, allocate revenue to determine program income for various funding sources, or been required to meet certain audit requirements. Subrecipients will definitely be required to do all of these things. See 24CFR84 and 85, OMB circulars A-122 and A-133, and the subrecipient monitoring guide listed in the resources list. Remember also that any project or activity touched with the CDBG funds must document full compliance with the CDBG rules – national objective, eligible activity and all of the associated other federal requirements.

Page 3 – if we make a loan to a developer for a rental project – is that an eligible activity under our proposed Sub-Recipient agreement?

That can be eligible assuming that all compliance criteria are met. Note that it is important to determine the status of the developer (long-term owner? Non-profit?) and word their loan agreement appropriately.

Questions From Community Works RI: Bert Cooper, Executive Director

1. How does this contract either enhance or diminish the possibility of using other CDBG funds in a future deal such as a LIHTC deal?

We see no reason why this contract would affect another, separate activity with segregated cots.

2. For clarification- does a multi-family with 2-less than 80% AMI units and a market rate Home Ownership qualify under both a Sub-recipient and/or Developer agreement?

This project could be eligible under both designations if the developer owns the property during development.

3. How do we negotiate a developer fee? What is the process and what are the criteria/guidelines for establishing a fee?

Standard procedure would be for the developer to submit the project plan with all costs and projected revenue. Any proposed fee should reflect the level of effort needed to bring the project from conception to fruition, the payment of other fees and charges, the project's ability to support the cost, and industry

standards. The City will evaluate the reasonableness of each cost and inform the developer if more information is needed, or a different financing/compensation structure must be proposed.

4. For new construction (allowable by both Sub-recipient and Developer Activities)-what is the definition of the “right conditions” that would allow support and other “non-construction costs” and what is an example of other non-construction costs?

ALERT: We have recently received further guidance on this question, the Guide has been revised, and the answer is more restrictive than we originally thought. Activities that may be carried out in conjunction with new construction are specifically limited to:

acquisition carried out in conjunction with the City (§570.201(a) and (b)). Where appropriate, the City can also support new construction with certain activities on publicly-owned property. See HUD CPD Notice 07-08. Use of Community Development Block Grant (CDBG) Program Funds in Support of Housing.

Note the “feasibility analysis”, though listed in the Guide is not one of these activities. Project management is also NOT an eligible cost.

Note also that the allowed activities are permissible in support of rental housing as well.

5. What would be the recommended approach for ensuring that we are covering our real estate development and administrative staff positions required to complete the development of properties? Is there an expert we can talk to as we consider the best approach given the needs of the organization?

It is important to recognize that organizations first must assure the accurate tracking and projection of costs to specific line item activities. Financial failure is most often associated with the cross-subsidization of unfunded long-term activities (like administration or property management) by short-term revenue producing ones (like sales revenue, developer fee or one-time grants). It is essential that all project portfolios be internally sustainable, and that the administrative budgets be realistic. Number one recommendation when seeking funding is to recognize and charge all project costs realistically.

The current scope of work for ICF does not include technical assistance to nonprofits and developers except as it is incidental to working with the City. However, it is not out of the question that HUD would authorize expanding that scope once it is clear that the existing scope of work will be addressed. We invite you to write a formal request for technical assistance giving a reasonable level of detail regarding your needs.

6. If, as a sub-recipient, we must define the number of units to be completed at the beginning of the agreement, when would we anticipate knowing what we would be able to access in HOME funds, as this would drive, in part, thinking/planning concerning our unit production?

The City is making every effort to address this question.

7. What are the implications for organizational cash flow and invoicing to the city as a Sub-recipient as opposed to Developer? Ie. When would CWRI be able to invoice under each type of agreement?

We do not foresee any difference in how invoices would be processed.

8. Can we change designations after the first or second contract year?

Yes, as long as the funded activities are clearly separate, and the costs are clearly segregated.

9. Are there implications to being a Sub-Recipient with respect to other federal funding for a project? Does being a Sub-recipient better position an organization for future federal funding?

This depends on the activities you wish to carry out going forward. If you act solely as a developer, there is probably no advantage to subrecipient status. If you seek to deliver a broad range of programs, then demonstrating your ability to act as a subrecipient and comply with those standards may be advantageous.

10. As a Sub-Recipient, what is the ability to charge developer fee to other federal funding programs such as State HOME Program?

Entities acting as developers may charge developer fee on the development activity. In no instance will an entity be a developer and a subrecipient for the same activity. In the event that an entity carries out a subrecipient activity, such as housing counseling, and is also a project developer, those two activities would be considered completely distinct from one another and the funding completely separate. See the new "Guidance on Subrecipients, Developers, and Contractors".

11. As a Sub-Recipient, once we charge salaries, does that mean we can't charge future developer fees on projects developed during the term of the CDBG contract?

Entities acting as developers may charge developer fee on the development activity. In no instance will an entity be a developer and a subrecipient for the same activity. In the event that an entity carries out a subrecipient activity, such as housing counseling, and is also a project developer, those two activities would be considered completely distinct from one another and the funding completely separate. See the new "Guidance on Subrecipients, Developers, and Contractors".

12. Program Income Requirements-where are the subparts where this guidance can be found? Does this refer to participant eligibility or to the treatment of income obtained through program activities?

These requirements pertain to income obtained through program activities. The rules for CDBG are at 570.500 and 570.504

Questions from SWAP: Carla DeStefano, Director

1. Is this starting July 1, 2012?

All CDBG funds have been subject to the rules indicated here since program inception and will be rigorously monitored and enforced for all expenditures after July 1, 2012. HUD and the City are working out the compliance issues, with your help, on funds expended prior to that date.

2. Though CDBG limits the new construction component until all the CBDO qualifications are met, HOME does not preclude new construction so I am assuming (more than a question) that you will develop an approach that allows new construction through the HOME program.

The City is still developing the guidelines for the use of HOME funds. It will be up to applicants to propose good, feasible projects that fit the Consolidated Plan and can be shown to have an overall positive impact on the affordable housing market.

3. Is the decision to limit CDBG to owner occupied rehab units for rental property a City policy decision or a HUD requirement? Though we have had very limited use of CDBG for rehab in the past, we have used it on properties that we own (and rent) or are part of a LIHTC development in which we are the general partner and not just houses for sale to owner occupants.

Any limits regarding the types of property addressed stem from the CDBG regulations. It appears you may have misunderstood the City's statements regarding allowable activities. Rehab of both owner-occupied and rental housing is permissible within the rules and City policy.