

CONFLICT OF INTEREST PROVISIONS

SUMMARY OF RULES FOR CDBG CONTRACTORS

I. Introduction

Prospective CDBG contractors should carefully consider whether any of their activities may give rise to an improper conflict of interest situation. Conflict of interest situations that are not properly addressed can result in a loss of CDBG funding to the program and/or to the City, and in some cases can result in civil or criminal liability.

Organizations that are requesting CDBG funding should ask themselves the following questions:

- * Are any of my employees or board members...
 - a City employee or consultant who exercises CDBG-related functions as part of their City position?
 - a director of the Community Development District Board that will participate in the City's CDBG selection process?
 - a City Councilmember?

- * Are any immediate family members or business associates of my employees or board members...
 - a City employee or consultant who exercises CDBG-related functions as part of their City position?
 - a director of the Community Development District Board will participate in the City's CDBG selection process?
 - a City Councilmember?

- * Will any of my employees or board members receive a financial interest or benefit from CDBG funds (other than employee salaries or personnel benefits)? Will any immediate family members or business associates of my employees or board members receive a financial interest or benefit from CDBG funds (other than employee salaries or personnel benefits)?

- * To my knowledge, will my program or project have a financial effect on a City official or employee who exercises CDBG-related functions, or an immediate family member or business associate of such person? For example, will any of these persons be receiving rental payments, other business income, or program services from my program? Or, for example, do any of these persons own real property near the program or project site, and is it likely that my program or project will have an effect on neighboring real property values?

If you can answer "yes" to any of these questions, it is possible that there may be a conflict of interest. You should review the rules below to determine whether an actual conflict situation is raised, and, if so, what action needs to be taken to avoid a violation of the law. You should contact City staff immediately if you suspect that there might be an issue.

Each CDBG contractor will be required in its grant contract with the City to warrant and represent, to the best of its knowledge at the time the contract is executed, that they are not aware of any improper conflict of interest circumstances as described below. Also, the contract will obligate contractors to exercise due diligence to ensure that no improper conflict situations occur during the contract.

A number of federal, state, and City conflict of interest laws will govern activities that are funded with CDBG funds. The following are the major rules summarized here:

- * HUD conflict of interest regulations (24 CFR 570.611 and 24 CFR Part 85, Subpart 36).
- * The California Political Reform Act (Gov't. Code 87100 to 87500), and implementing regulations (2 CCR 18700 to 18703).
- * California Government Code Section 1090, et seq.
- * Oakland City Charter Article XII.
- * City of Oakland Conflict of Interest Guidelines for the Allocation of CDBG Funds (adopted September 28, 1993).

Excerpts from some of these laws and others are included as an attachment to this summary.

II. City Officials, Their Family or Business Partners Benefiting from CDBG Projects.

HUD rule. The HUD conflict of interest rule prohibits any "covered person" associated with the City (as defined below) from obtaining a financial interest or benefit from a CDBG assisted activity or contract, or the proceeds under any such contract, during that covered person's tenure with the City and for one year thereafter. A "covered person" is defined by HUD as any employee, agent, consultant, officer, or elected or appointed official of the City who, with respect to CDBG-funded activities under the contract: (a) exercises or has exercised any functions or responsibilities; or, (b) is in a position to participate in a decision-making process; or, (c) is in a position to gain inside information. City staff members or consultants who exercise the above roles or function with respect to the CDBG activity are considered "covered persons." For purposes of the CDBG program, a "covered person" specifically includes any member of the Oakland City Council, or any director of any Community Development District Board that reviews and makes recommendations on the funding for the contract, whether or not that Councilmember or director actually participated in the review or recommendation. "Covered person" may also include members of other City boards and commissions, if that board or commission has exercised functions or decision-making with respect to the CDBG activity.

Under the City's Guidelines, "financial interests or benefits" include, but are not limited to, salaries, consultant fees, commissions, gifts, sales income, rental payments, investment income, or other business income. Program services that may have monetary value to the recipient are also considered a "financial benefit." Thus, for example, a City employee who prepares a CDBG contract or a City official who sits on a City board that reviews a CDBG funding proposal may not receive rent payments or other income from the contractor while that person remains with the City and for one year after that person leaves the City.

The HUD rule further prohibits anyone with "family or business ties" to the covered public official from receiving a financial interest or benefit. The City's Guidelines define "family ties" to include a spouse, brother, sister, parent or child of the public official, and define "business ties" to mean a general partner or joint venturer of a public official.

State law. State law may prohibit a CDBG District member or City employee who has or had a financial interest in a CDBG contract or program activity from participating in the City's decision to fund the program or project.

Financial benefits covered by state law could include indirect effects such as the spillover effects of a CDBG program or project on the value of real property owned by City official that is located near the program or project site. This could be a particular concern for projects or programs that involve the use of CDBG funds to make significant capital improvements to real property, such as projects involving new construction or substantial rehabilitation of housing or commercial property. This normally affects property owned by a City official within 500 feet of a CDBG project. For property leased by a City official, look to whether the project will either (1) change the City official's use or enjoyment of the leased property, or (2) the project will increase or decrease the official's annual rent by 5%.

Another state law requires that any public official of the City who is an employee or a member of the board of directors of a CDBG contractor, even a non-compensated director, should publicly recuse him/herself from participating in any discussions relating to the CDBG grant-making process. Failure of the person to recuse him/herself *before* the discussions begin may disqualify the organization's application for funds.

For example, if one of your employees or board members is also a director of a Community Development District Board, she should recuse herself from any of the CDBG board's consideration of CDBG grants. If she does not and the CDBG board awards your organization a grant, your organization will be disqualified from receiving the grant.

III. Interests of persons associated with the contractor.

The HUD rule also addresses financial interests that are held by certain persons associated with a CDBG contractor. The HUD rule prohibits any "covered person" associated with the contractor from obtaining a financial interest or benefit (with the exception of the use of CDBG funds to pay salaries and other related administrative and personnel costs) from a CDBG assisted activity or contract, or the proceeds under any such contract, during that covered person's tenure with the contractor and for one year thereafter. A "covered person" is defined by HUD as any employee, agent, consultant, officer, or elected or appointed official of the contractor who, with respect to CDBG-funded activities under the contract: (a) exercises or has exercised any functions or responsibilities; or, (b) is in a position to participate in a decision-making process; or, (c) is in a position to gain inside information. This rule extends to those with whom the covered person has "family or business ties" (as defined above). This rule would, for example, prohibit certain employees or directors of a CDBG contractor from using CDBG funds to pay for rent on property owned by that employee or director, as well as family and business associates of that person.

CDBG proceeds should also not be used in any self-dealing transaction within the meaning of the California Corporations Code involving a material financial interest of a director of the contractor, unless such a transaction is expressly permitted or considered valid under the Corporations Code.

IV. Remedies and sanctions.

The CDBG grant contract provides that if a CDBG contractor fails to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the improper conflict situation, the City may (1) suspend CDBG payments, (2) terminate the contract, (3) require reimbursement by the contractor to the City or to HUD of any amounts already disbursed, and/or (4) bar future CDBG funding of the contractor by the City. In addition, the City may suspend payments or terminate the contract in the event HUD suspends or terminates its grant to the City for conflict of interest reasons, or in the event the City reasonably determines that an improper conflict of interest situation may arise from payments under the contract. This could happen whether or not the contractor is responsible for the conflict of interest situation.

**ATTACHMENT TO SUMMARY OF CONFLICT OF INTEREST RULES
FOR CDBG CONTRACTORS**

EXCERPTS FROM RELEVANT LAWS

1. Oakland City Charter.

Section 1200. Conflict of Interest. No officer of the City may participate on behalf of the City in any transaction or activity in which he has a conflict of interest, as such conflict is defined by State Law. The penalty for violation of this section shall be as provided by State Law.

2. The California Political Reform Act.

Government Code § 87100. No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Government Code § 87103. An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family, or on:

- (a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$2,000) or more.
- (b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$2,000) or more
- (c) Any source of income...aggregating five hundred dollars (\$500) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.
- (d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- (e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

3. California Government Code Section 1090.

Government Code ' 1090....[C]ity officials or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall...city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

Government Code ' 1091. (a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member...if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the

officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the...votes of the officer or member with the remote interest.

(b) As used in this article, "remote interest" means...

(1) That of an officer or employee of a nonprofit corporation.

Government Code ' 1091.5(a). An officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:

...(7) That of a non-salaried member of a nonprofit corporation, provided that such interest is disclosed to the body or board at the time of the first consideration of the contract, and provided further that such interest is noted in its official records.

4. HUD Conflict of Interest Regulations.

24 CFR ' 570.611. (b) Conflicts prohibited. Except for the use of CDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities..., or who are in a position to participate in a decision making process or to gain inside information with regard to such activities may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to CDBG assisted activity, or with respect to proceeds of the CDBG activity, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or sub-recipients who are receiving funds under this part.

5. OMB Circular No. A-102.

7. Code of Conduct....No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds, if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- a. The employee, officer or agent;
- b. Any member of his immediate family;
- c. His or her partner; or
- d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The grantee's officers, employees or agents shall neither solicit nor accept gratuities, favors of anything of monetary value from contractors, potential contractors, or parties to sub-agreements.