



Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT**

Deval L. Patrick, Governor ♦ Timothy P. Murray, Lt. Governor ♦ Tina Brooks, Undersecretary

**Massachusetts Community Development Block Grant (CDBG)  
Informational Memorandum [08-01]  
August 29, 2008**

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*Topic:* Procurement of services from Community Development Corporations (CDCs) for Administration and Implementation of CDBG Grants

*Issue:* CDCs are incorporated as c.180 private non-profit organizations. However, CDCs may meet the requirements of c.40F, which allows CDCs to act as quasi-public entities in specific circumstances. Requirements for procurement of services from CDCs by municipalities depend on the private or quasi-public determination as well as the nature of the circumstances and the role of the CDC.

*Guidance:*

1. CDCs that are organized in a manner that complies with the M.G.L. c.40F requirements (and many CDCs are NOT) can act in both private and quasi-public capacities. The circumstances and nature of the role define whether or not, for a particular situation, the CDC is operating as a private or a quasi-public entity. CDCs that do not meet the requirements of c.40F cannot assume the quasi-public role authorized by the statute. A CDC's articles of incorporation or bylaws will determine whether the CDC complies with the requirements of c.40F.

It is not just a matter of "deciding" that a CDC is quasi-public; it is a matter of agreeing that a CDC is organized to meet the requirements of c.40F and then whether or not it is acting in a quasi-public capacity. Such an assessment requires a look at the totality of the circumstances and nature of the particular situation and role of the CDC.

2. If a CDC is operating as a c. 40F quasi-public entity (generally, carrying out the functions of a government instrumentality), then that relationship may be contracted for without competitive bidding. However, having assumed the role as a quasi-public, the CDC also becomes subject to the requirements attached to public procurement (c.30B and/or c.149, for instance) for the contracting opportunities it is administering.

3. A CDC cannot use its dual nature to avoid all public procurement with respect to a given program by first claiming to be a public agency when it contracts with a locality to carry out public functions (administer a program), and then claim to be a private entity, and therefore exempt from public procurement requirements, in its award of funds under that same program.

4. If a CDC is operating in its capacity as a private nonprofit entity, then it is not subject to public procurement requirements (e.g. c.30B, c.149).

*Scenarios:*

The following scenarios are not all-encompassing but rather serve as possible examples of CDC procurement in the administration and implementation of CDBG grants.

Scenario One

The nature of the situation: A municipality would like to contract directly with a CDC to prepare a grant application or prepare an application and administer any CDBG grant awarded.

The role of the CDC: Act as the community in preparing and administering a CDBG grant.

Designation of the CDC: If the CDC is organized to meet the requirements of c.40F, and is acting in the place of the municipality, then the CDC's services are considered quasi-public. The municipality can contract directly with the CDC for either or both of these activities. If the CDC *is not* organized to meet the requirements of c.40F, then the CDC is considered private. The municipality has to procure for the CDC's services.

DHCD has determined that in order to avoid potential conflicts of interest, the CDC may not directly implement grant activities or deliver grant-funded services when it has either prepared an application or is the administering agency for a CDBG grant.

Scenario Two

The nature of the situation: A municipality would like to contract with a CDC to implement an activity or deliver services funded through a CDBG grant.

The role of the CDC: Act as a private entity to implement grant activities.

Designation of the CDC: Due to the role of the CDC in this scenario, the CDC is considered a private entity regardless of whether or not it is organized to meet c. 40F. The municipality has to procure for the CDC's services. If the CDC prepared or is administering the CDBG grant funds on behalf of the community, it is ineligible to implement any of the grant funded activities.

Please note: separate guidance will be issued regarding the procurement of public social services.

If you have further questions regarding this guidance, please contact your community's CDBG program representative at DHCD or DHCD's Office of Chief Counsel.