

# Selection of Consultants Using Multiple Funding Sources

June 4, 1992

MEMORANDUM FOR: Lana Vacha, Director, Community Planning and Development Division, 5.8C

FROM: James R. Broughman, Director, Entitlement Communities Division, CGBE

**SUBJECT: Selection of consultants using multiple funding sources**

This is in response to your memorandum of March 17, 1992, in which you requested a written opinion on a procurement issue raised by the City of Milwaukee involving the selection of consultants for projects using multiple funding sources. Specifically, you have asked whether consultant services to be provided on a HUD-assisted Nehemiah grant and paid for with Community Development Block Grant (CDBG) funds must be procured when the application the Nehemiah approval was based on included the consultants to be used.

Let me first address the guidance you mentioned as being issued in connection with drug elimination grants for public housing. We are familiar with that situation and the guidance provided in it by the Office of Procurement and Contracts (OPC). In that case, HUD's Office of Public and Indian Housing (OPIH) made a decision to award a grant based on information provided in the original application, which included the use of consultants. When later asked by the awarded Public Housing Authority (PHA) if it had to procure consultant services for work identified in the application, the OPIH sought advice from OPC. OPC advised OPIH that the arrangement between the PHA and the consultants should have been procured prior to the submission of the application because PHA's are required to follow 24 CFR Part 85. But, inasmuch as the OPIH approved the application with the consultants identified, such approval represented an acceptance of the PHA's approach and, therefore, competition for the consultant services need not be required.

In the case you have presented from the City of Milwaukee, the question has to do with a similar situation: HUD has approved a Nehemiah grant which included the use of consultants which were not selected through competition. The City is now asking if the consultants may be retained to provide assistance during project development since they were included in the application on which the Nehemiah grant was awarded with some or all of the consultant fees proposed to be paid with Community Development Block Grant (CDBG) funds.

In CDBG-assisted activities, 24 CFR 570.200(d) permits the use of consultants through an employer-employee relationship or through the use of procurement procedures to establish an independent contractor relationship. Therefore, for consulting services to be paid with CDBG funds, whether paid in whole or in part, the services of the consultant(s) must be obtained in accordance with the CDBG regulations. Whereas OPIH's earlier program decision was judged as affecting its subsequent procurement options, those decisions are not binding with respect to the inclusion of CDBG funds in the project.

Accordingly, if consultant services are used to carry out tasks and are to be paid for with CDBG funds, compliance with 24 CFR 570.200(d) and 570.502(b)(7) is required. In the future, if the non-profit initially procures the services of consultants in accordance with the procedures of OMB Circular A-110, Attachment 0 (or by a competitive process that meets the requirements of A-110), this will meet the requirements of 570.200(d)(2) and 570.502(b)(7); further action by the non-profit would not be necessary to comply with these requirements in order to use CDBG funds in implementing the project, if approved. However, the introduction of CDBG funds into the Nehemiah project makes the entire project subject to all of the requirements set forth in 570.200(a), which includes the need for the project to be eligible and to meet a national objective.

I hope this information is adequate to address the concerns you have raised. If you have additional questions, please contact the Entitlement Communities Division, FTS: 458-1577.