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98-FW-201-1813

MEMORANDUM FOR: Elinor R. Bacon
Deputy Assistant Secretary
Office of Public Housing Investments, PT

FROM: D. Michael Beard
District Inspector General for Audit, 6AGA

SUBJECT: Developer Selection
St. Thomas HOPE VI Grant
New Orleans, Louisiana

In response to a private citizen's confidential complaint, we reviewed the Housing Authority of New Orleans' (Authority) selection of Creative Choice Homes (CCH) as the developer for the St. Thomas HOPE VI Grant. The complainant said one of the members of the selection committee may have received a house and a job in return for selecting the developer. We could not substantiate the exchange. However, we did find sufficient cause for HUD to reject the selected developer. The problems with the developer resulted from the Authority's proactive interpretation of resident participation. The Authority lost control over the selection because it allowed five individuals on the eight-member selection panel who were not Authority employees. Further, Creative Choice Homes' interaction with certain members of the selection panel and St. Thomas residents constitutes both a perceived and actual conflict of interest.

We performed the review in New Orleans from January through April 1998. To achieve our objectives, we interviewed selection committee members, Authority officials, HUD officials, a HUD consultant, the selected developer, and community leaders. We reviewed procurement files, legal correspondence, consultant's memoranda, and other related documentation. We also reviewed the scoring process and scores given the competing developers by selection committee members. Our period of review generally covered from June 1997 through April 1998, although we extended the period when appropriate. The Authority provided written comments dated June 25, 1998, to the recommendations and findings in the draft report. These are included verbatim as Appendix A to this report without their referenced attachments. We have included appropriate excerpts and an evaluation of the Authority's comments in this report. We also discussed the draft with Authority personnel and their external counsel on June 30, 1998. In general, the Authority disagreed with the conclusions of the draft and our recommendations to HUD. However, the Authority did not provide any written or verbal information that would cause us to deviate from our initial conclusions.

Background.

After requesting developers to submit their qualifications, the Authority convened an eight-member selection panel. The Authority had the St. Thomas Resident Council (Resident Council) select three resident representatives, and had the St. Thomas Irish Consortium Channel (Irish Consortium)¹ select another. The City of New Orleans provided one panel member, and Authority employees were the remaining three panelists. The panel met once to review and score the submissions and to select the top five competing developers. Seven days later, the panel then interviewed the five finalists, and then scored the finalists to select the developer.

Selection Panel Composition is Flawed.

Panel membership deviates from policy.

The Authority departed from its procurement policy when placing non-employees on the panel. Its procurement policy states, “For complex contracts or contracts of significant dollar amounts, an evaluation committee shall be established consisting of the Procurement Director, User Department and other appropriate organizational representatives.” The HOPE VI contract was both significant and complex since it is worth at least \$25 million and would include partnerships, development fees, and mixed financing. Thus, the Authority’s policy precluded non-organizational representatives on the committee.

HUD Handbook 7460.8, REV-1, *Procurement Handbook for Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs)*, also provides guidance regarding selection panels. It states, “Successful procurement by [Housing Authorities] will depend on the staffing of the procurement functions with people qualified by training and experience.” Because participation on a selection panel is a procurement function, it should be appropriately staffed.

Impaneled residents have an inherent conflict of interest.

The Request For Qualifications (RFQ) specified that each developer must include and explain a 35 percent goal to employ Disadvantaged Business Enterprises and lower income residents of the public housing developments as trainees and employees to the greatest extent feasible, in each phase of the work to be performed. Since residents would be receiving the jobs, there is an inherent conflict of interest when residents are placed on the panel. That is, the Authority risks that the residents might not choose the best developer, but instead will choose the developer that offers residents the most jobs. In fact, when a resident panelist was asked whether CCH had made any promises, the panelist replied that it had made no specific promises to her, but it had offered jobs for the community. She stated, “That’s what we were looking for. For our people to get jobs.” Although all developers offered to fulfill their Section 3 requirements, CCH was the only developer that offered jobs as liaisons.

¹ The Irish Consortium was formed when the Resident Council: “requested a commitment to ‘a process of power-sharing in decision making, accountability to residents, and addressing institutional and individual racism.’ ” The Irish Consortium is made up of the Resident Council, area social service agencies, and other community service groups. The Resident Council has veto power over the Irish Consortium.

Non-employees have No Fiduciary Duty to the Authority.

Including non-Authority employees on selection panels exposes the Authority to risk. The Authority exercises a degree of control over its employees that helps assure that they act in their employer's best interest. With employees on the panel, the Authority will also be better able to ensure procurement regulations such as confidentiality and impartiality are followed. In contrast, the Authority cannot ensure that non-Authority employees follow such rules because they have no such fiduciary duty to the Authority. The Authority also lacks penalties to sanction panel members if they violate procurement rules such as conflict of interest provisions.

Resident panelists may not have represented a majority of residents.

The Authority permitted the Resident Council to select three representatives to be on the selection committee but did not monitor how the Resident Council selected its representatives. Although the Resident Council stated that the representatives were nominated, seconded, and voted upon, it was unable to provide documentation such as a Board resolution or minutes of its meetings. Therefore, we are not sure that the resident representatives were truly representative of the St. Thomas community.

The residents chosen to represent the community included a Board Member of the Resident Council, the President of the Resident Council, her niece and, as an alternate, her niece's husband, the Vice President of the Resident Council. The President of the Resident Council was unable to attend the first selection and the alternate took her place. As a result, a married couple was allowed on the selection committee.

The Authority stated that the relationship would have no effect on the scores. The panelists were required to complete their scores each day without consulting each other. Thus, the married panelists would not be able to influence each other's scores.

However, the married panelists could have affected each other's scores. They had 7 days between the two meetings to discuss their scores. Further, during the second selection session, the technical adviser felt that the resident panelists' scores did not accurately reflect what the resident panelists thought about each developer. Consequently, the panelists discussed how they felt about each developer and then re-scored all the developers. Thus, the married panelists may have influenced each other's scores.

Selection of the Developer was Flawed.

The residents did not appear to have the technical expertise to be on the panel. The technical advisor stated that it expressed concern to HUD and the Authority regarding whether it could impart the knowledge necessary for persons unschooled in complex contracting to be on the panel in the limited time it had to train them.² Based on our discussions with panel members and our review of the scoring sheets, we believe that the resident panelists did not fully understand the procurement process.

The Authority had two different scoring sessions. During the first session, the selection evaluation panel reviewed the ten different responses to the RFQ. The panel scored each response based on six evaluation factors. These factors included:

- Understanding of program/concept (10 points),
- Disadvantaged Business Enterprise/Section 3 plan (15 points),
- Successful large-scale residential master planning experience (20 points),
- Experience of key personnel (15 points),
- Successful experience with other large-scale residential development and affordable housing - governmental and non-governmental (35 points), and
- References (5 points).

The Authority then invited each of the five highest-scored developers for a 45-minute interview. During the second session, the selection panel used both the written responses to the RFQ and the interviews to score the five developers based on the same evaluation factors provided above. The three Authority employees split between Corcoran Jennison and CCH. All of the resident representatives and the Irish Consortium representative selected CCH.

There were a number of anomalies that occurred during the selection process. First, one of the three Authority employees was unable to attend the morning and afternoon session for the first scoring. Her scores were not used to determine the top five respondents. The City employee who attended the first session was unable to attend the second session. He sent a replacement. Rather than using the substitute, the Authority used the City employee's first scores again in the second session. Finally, events that occurred during the scoring process indicated that the resident panelists did not fully understand the process.

² The technical adviser stated that it had provided approximately 32 hours of training.

Resident panelists' scores were not typical of experienced panelists.

Generally, the scores of the two Authority employees who attended both sessions did not vary significantly.³ The resident panelists' scores, however, increased considerably for CCH. Further, the scores increased in each evaluation factor (see list above). CCH was ranked number five in the first scoring session. It went from fifth place to first place in the second session. The resident panelists increased CCH's scores by 197%, 28%, and 51%.

Selection Panel Member	Percent Variance Between First and Second Session for CCH
Irish Consortium Representative	+25%
Resident	+197%
Resident	+28%
Resident	+51%
Authority Employee	First session scores did not count.
Authority Employee	+15%
Authority Employee	+5%
City Employee	Used first session scores for second session. Therefore, variance is 0%.

When asked why they increased their scores for CCH, all three resident panelists replied that CCH was the only developer that offered to pay pre-development costs. They also stated that CCH seemed to be better able to work with the community. Later, two of three resident representatives added that CCH offered jobs to the community. Based on these answers, the resident panelists should have increased their scores in two categories at most, Understanding of Program Concept and Disadvantaged Business Enterprise/Section 3 Plan. CCH was willing to work with the community and therefore understood the program. CCH was willing to provide jobs for the community and therefore had a good Section 3 plan. However, as stated above, the resident panelists increased their scores in all categories including: Large Scale Master Planning Experience, Key Personnel, and Experience with Other Affordable Housing. Thus, it appears that the resident panelists increased their scores in categories that should have been unaffected.

Residents did not fully understand how to score developers.

The technical advisor believed that the resident panelists did not understand how to score the developers. When all the developers had been interviewed and scored, the panel members began reading off their scores. The technical advisor stated that, for each developer, the scores had too much variation between the panel members. Specifically, the Authority employees' and resident panelists' scores were very different. The technical advisor believed that a good selection process did not have such variation. Accordingly, the technical advisor called a halt to the process, and the panelists discussed each developer.

³ One contractor's score was decreased by 16% by an Authority employee. Another contractor's score was increased by 15%. Other than those two instances, Authority employees' scores did not vary between scoring sessions by more than 5%.

Based on the discussions, the technical adviser concluded that the scores did not reflect how the resident panelists felt about the developers. For instance, a resident panelist might state that he thought a developer was very good for a category but only give the developer 2 of 15 points. Because of this, the technical advisor defined what was an acceptable range of what to score in the category (i.e. 12 to 15 points for very good, 8 to 12 for average, etc.). The Authority then had the resident panelists re-score the developers based on these ranges.

Resident panelists use a non-evaluation factor to select CCH.

All three of the resident panelists stated that payment of pre-development costs was a factor in selecting CCH. Yet, pre-payment of pre-development costs is not an evaluation factor. Consequently, it appears that other developers were eliminated due to panel members using an evaluation factor that the Authority had not required. Therefore, it appears that competition was unnecessarily restricted.

The Authority incorporates 24 CFR §85.36 (c) (3) into its procurement policy. It states that: “Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations: . . . (ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.”

Regarding competition, the Authority’s procurement policy, which is based on 24 CFR §85.36(c)(i), states that the Authority shall conduct all transactions in a manner providing full and open competition. A condition restricting competition includes placing unreasonable requirements on firms which may reduce their ability to qualify or to do business with the Authority.

Relationships Create Appearance of Conflict of Interest.

While we could not substantiate the quid pro quo allegation that the married couple received a house in exchange for their vote on the panel, it was true that they purchased a home and that there exists sufficient connections among the parties to create at least an appearance of conflict of interest. A non-profit organization, Community Resource Partnership (CRP), sold the house and the purchase took place within 2 months of the panel members selecting CCH. The following connections exist and create an appearance problem:

- ⇒ CRP had asked to be on the selection panel, but the Authority denied their request.
- ⇒ The President of CRP is also the CEO of the bank providing the mortgage to purchase the resident panelists’ house. Other banks had declined the loan, and the loan did not conform with the lending bank’s loan policy. Further, the lending bank had declined to loan the panelists approximately the same amount for a different home the year before.
- ⇒ The panelists applied to the bank 2 days after the selection panel’s first meeting.
- ⇒ The loan documents show the President of CRP as referring the panelists to the bank.

- ⇒ The Resident Council's attorney is a board member of CRP.
- ⇒ A Director of CRP is also president of the Irish Consortium.
- ⇒ After the panel selected CCH, the Authority held a retreat to discuss the development. In addition to inviting the Resident Council, the Irish Consortium, and CCH, the Authority also invited CRP.
- ⇒ At the aforementioned retreat, the Director of CCH suggested that CRP rehabilitate houses in the St. Thomas area for the revitalization (minutes of the retreat are attached at Appendix B).

CCH Benefits from Residents' Position.

Once selected, CCH aligned itself with the residents to gain support in its negotiations with the Authority. It hired and paid a selection panel member to work as a liaison between CCH and the Resident Council. Further, it tried to separately negotiate a memorandum of understanding between CCH and the Resident Council without the Authority. Finally, because of the slow negotiation process, CCH's resident liaison called a St. Thomas resident meeting and warned that there would be a march if an agreement was not signed.

CCH makes unrealistic assurances to residents.

Generally, developers earn between 8 to 10 percent of development costs for development fees. Yet CCH has stated that it could get 15 percent on this development. The assurance of a higher development fee would appeal to the Resident Council because CCH has made the Resident Council a partner in the developer entity. CCH proposed that, as partner, the Resident Council would earn a percentage of the developer fee. Therefore, the higher the fee, the more money the Resident Council would have been paid. *This arrangement contrasts with the Authority's Request for Qualifications, which envisioned the Authority and the Resident Council as partners.* The Authority has since prepared a Development Agreement that stipulates that all fees shall be split between the Developer Entity (CCH and the Resident Council) and the Authority. CCH has stated that it will receive all funds from the Developer Entity's share.

CCH separately negotiated with the residents.

CCH benefited from the Resident Council's unawareness of business morays and negotiated with the Resident Council without the Authority. The Resident Council should not have entered into any agreements without the Authority. In fact, in 1996 the Resident Council signed a memorandum of understanding with the Authority stating this.

However, CCH followed a pattern of meeting separately with the residents. Specifically, without the Authority, CCH: (1) hired a resident selection committee panelist⁴—the individual who purchased a home from CRP; (2) proposed that the Resident Council be a partner with CCH in the development entity; (3) tried to enter into a memorandum of understanding with the Resident Council; and (4) on more than one occasion, met with the Resident Council and its attorney.⁵

It appears that CCH has resident support. In fact, it appears that the Resident Council has directed its attorney to write on behalf of CCH. In a letter to HUD's Assistant Secretary for Public and Indian Housing, the Resident Council's attorney writes, "From [the Resident Council's] point of view, it and CCH have done everything asked of them; it is [the Authority] and it's consultant's (sic) that are the stumbling block." In a letter where the Resident Council's attorney informs the Authority she has been retained, she also makes the following queries involving CCH:

The second paragraph under "Pre-development Expenses" discusses reimbursement to CCH from "closing proceeds." At what point in the time line is such a closing contemplated?

What is the precedent for [the Authority's] receipt of any portion of the developers' fee and/or cash flow if it is not the development entity nor will it provide any guarantees?

CCH participated with the residents of St. Thomas in a rally. The Authority and CCH could not come to an agreement on many issues for several months. The resident liaison hired by CCH stated that he became frustrated by the lack of progress between the Authority and CCH. Hence on March 11th of this year, CCH's resident liaison called a rally at St. Thomas. According to an article in the New Orleans newspaper the *Times-Picayune*, CCH's Director "flanked" the resident leaders and "applauded as they spoke of marching if the deal with his company is not signed." The Resident Council President stated that "residents will march and won't cooperate with moving plans if the housing authority does not conclude its negotiations with Creative Choice Homes . . ." CCH's Director told the newspaper that one of the unresolved issues is the fee for CCH (news article attached at Appendix C). Thus, CCH appears to have benefited from the rally.

CCH and Non-Authority Panel Member Violate Conflict-of-Interest Provision.

⁴ The resident liaison currently states that the Resident Council and not CCH has hired him. However, in correspondence written to the Authority, CCH stated that it had hired the former resident to fill the Development position promised in its interview. The Resident Council's attorney also writes that CCH hired the former resident for the same reason.

⁵ The Resident Council hired an attorney because, when CCH and the Resident Council proposed they be partners, the Authority's attorney decided that he could not ethically represent both the Authority's interests and the Resident Council's interests. The Resident Council's attorney is also the Vice President of Operations for Community Resource Partnership (CRP). The Authority has stated that it plans to pay her fees out of Comprehensive Grant funds. Per HUD, this is an ineligible expense.

Four months after being selected as the developer, CCH hired the resident panelist who purchased the house from CRP. That hire violated 24 CFR §85.36(b)(3)⁶ and the conflict-of-interest article of the HOPE VI grant agreement.⁷ CCH stated that it hired the former resident based on the recommendation of the Resident Council President (a relative by marriage) and one other influential community member. The Authority acknowledged that it had not explained the concept of fiduciary duty to the selection panelists. It is the Authority's responsibility to convey the fiduciary duty to the panel members. However, even if the Authority did explain panel members' fiduciary duties, it still lacks remedies for non-organizational panel members who do not adhere to their fiduciary duty.

CCH also did not have a fiduciary duty to the Authority. CCH and the Authority agreed to this when the two included the following language in their Memorandum of Understanding:

Section 5.3. Relationship of the Parties. Except as otherwise explicitly provided herein, nothing in this MOU shall be deemed to constitute any party hereto a partner, agent or legal representative of any other party hereto or to create any fiduciary relationship between or among such parties.

Notwithstanding its lack of fiduciary duty, CCH was responsible for ensuring that HUD's regulations and the grant agreement were not violated. Part IV of the Request for Qualifications (RFQ) states, "Respondent's submission in response to this RFQ shall constitute acceptance by the Respondent of the terms and conditions of the RFQ (paragraph 4.2 Acceptance of RFQ)." Further, the RFQ states, "The Respondent agrees to comply with relevant and applicable laws and regulations (paragraph 4.5 Compliance with Applicable Laws and Regulations)." Hence, by submitting its response to the RFQ, CCH was bound not to violate HUD's regulations and the provisions of the grant agreement including conflict-of-interest provisions.⁸

Per the Authority, CCH never officially notified the Authority regarding the employment of the resident panel member. Instead the Authority discovered the employment during a meeting

⁶ Section 85.36(b)(3) in relevant subparts states: "No employee, officer or agent of the grantee or subgrantee 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]n organization which employs or is about to employ, any of the above, has a financial interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements."

⁷ Article XIII states: "no person who is an employee, agent, consultant (but excluding an independent contractor), officer, or elected or appointed official of the Grantee and who exercises or has exercised any functions or responsibilities with respect to activities assisted under this HOPE VI grant, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter. . ."

⁸ Although §85.36(b)(3), according to its plain terms restricts only the behavior of the Authority and its employees and agents, CCH expressly agreed to abide by the regulation when it responded to the RFQ. Moreover, the spirit of §85.36(b)(3) would likewise appear to refrain CCH's behavior. In that regard, the resident would not have violated the regulation if CCH had not offered him employment.

between CCH and the Authority nearly a month after CCH hired the selection committee member. Even though the Authority was not aware of the violation beforehand, the Authority is still currently in violation of its grant agreement because of this conflict. The Authority has subsequently requested a retroactive conflict-of-interest waiver.

In requesting the exception, the Authority argues that: (1) hiring the selection panelist permitted CCH an essential degree of expertise to the Revitalization Plan that would not otherwise be available; (2) an exception allows the panelist, a former resident, to receive the same benefits as other residents of the neighborhood; (3) refusal of the exception creates an undue hardship by penalizing the selection panelist for taking an active role in the revitalization; (4) the potential conflict did not impede open competitive bidding and negotiation; and (5) the selection panelist has withdrawn from his decision making responsibilities. We disagree with some of the Authority's conclusions. CCH did not need to hire the selection panelist to obtain expertise. Nor does the refusal create an undue hardship since it only enforces the known conflict-of-interest provision. The position was not offered on a competitive basis to all the residents; therefore, the selection panelist is receiving greater benefits than other residents because of his participation. Further, it is not clear whether the conflict of interest impeded open competitive bidding and negotiations. Finally, the selection panelist "withdrew" from "decision making responsibilities" when other residents noted he was no longer a resident and he ceased being a member of the Resident Council. However, CCH hired him while he was still on the Resident Council, but not living in St. Thomas.

Authority Believes It Acted Appropriately.

The Authority believes that the inclusion of residents on the selection panel is in accordance with the spirit of the HOPE VI Program. Including them recognizes their contributions in acquiring this HOPE VI grant. One Authority official has stated that there would be no St. Thomas HOPE VI grant if it were not for the residents.

The Authority also believes that HUD should accept responsibility for many of the problems with the St. Thomas procurement. HUD has no rules prohibiting residents from participating in selection panels. Moreover, HUD selected and required the Authority to use a technical advisor to help prevent mistakes. The Authority relied on this adviser to ensure that the procurement was proper. Per the Authority, the technical adviser was responsible for ensuring that selection panel members were properly trained. This would include notifying selection panel members of their fiduciary duties.

The Authority has stated that it has tried to improve the procurement process. It has provided documentation that it is now requiring resident panel members to sign disclosure statements. It is also stressing to residents their fiduciary duties as panel members.

We recognize that HUD shares some of the responsibility for problems the Authority has encountered. However, the Authority should not have deviated from its own rules prohibiting non-employees on selection panels. Further, HUD does have rules regarding qualifications of selection panel members. And though the technical advisor was responsible for ensuring that

selection panel members were trained, it is unreasonable to expect the technical adviser to teach any person complex financial concepts and procurement processes in 32 hours.

HUD Oversight Needs Improvement.

By not instituting a formal policy on resident involvement, HUD contributed to the Authority's problems. The HOPE VI NOFA encourages resident participation, but does not specify the extent of the participation. The Grant Agreement also provides a minimum level of participation which essentially states that the residents must be given notice of changes. The Authority has stated that it believes that its inclusion of residents on the selection panel reflected the spirit of HOPE VI. HUD needs to articulate a formal policy which includes a minimum and maximum level of resident involvement.

HUD also required the Authority to cease procurement activities until HUD hired a technical adviser. The technical adviser cautioned HUD of imprudent decisions the Authority was making. HUD either ignored the advisor or did not assert its position strongly enough with the Authority. For instance, the technical advisor recommended against the Authority requiring that contractors up-front the development cost. When HUD approved the Request For Qualifications (RFQ) for the St. Thomas developer, it sent a letter that stated it found the Authority's actions unwise but would not usurp the Authority's local prerogative.⁹

HUD's approval of the RFQ is silent acceptance of some of the issues reported. The make-up of the selection committee and the veto power given to the residents were specifically spelled out in the RFQ. For Instance, in the RFQ, the Authority included "St. Thomas Resident Council Requirements." One of the requirements, titled *5.2 Recognition of St. Thomas Resident Council*, states:

All substantive meetings involving any aspect of the new St. Thomas and its redevelopment must take place with official participation from the St. Thomas Resident Council or its designees. Any changes or modifications to any part of the agreed upon Revitalization Plan will be made only with [Resident Council] input and consent. [The Resident Council] shall approve, in writing and have legally certified, the development partner's responsibilities and obligations before any work can begin on the new St. Thomas.

The Authority gave the Resident Council the power to halt the revitalization process if the Resident Council does not approve of changes or modifications. In the minutes of a retreat to discuss the St. Thomas revitalization, the following statement was recorded:

HUD will tell [the Authority] how to do things and [the Authority] must bring [the Resident Council/Irish Consortium] to the table with them and see to it that HUD doesn't make the decisions. [An Authority official] acknowledged that this was already clearly true, that many discreet decisions will be a potential for this kind of

⁹ HUD's lack of official policy on residents and the use of technical advisers will be discussed further in the National HOPE VI report to be released later this year.

situation where HUD attempts to engineer the decisions. He questioned what the analysis could tell him about managing external accountability as a gatekeeper. The response he got from the [Resident Council/Irish Consortium] group was that the ultimate (sic) he needed to bring the community to those decisions and not permit HUD to make them. Ultimately, the decisions should be made by the Tenants who will turn the money down if it is not going to do any good to the community, which means it must not only revitalize the community but must support the self-determination of the community (minutes attached at Appendix B).

Had HUD commented on the issue of resident involvement when it approved the RFQ, it may have given the Authority guidance on what it felt was an appropriate level of involvement.

The Authority Should Re-Procure the Developer for the St. Thomas HOPE VI Grant.

As summarized below, the Authority's procurement for St. Thomas does not conform with accepted practices. For the reasons stated, the Authority should re-procure the developer for St. Thomas and HUD should take appropriate administrative action against CCH.

- The Authority disregarded HUD Handbook and its own procurement regulations regarding selection panel composition.
- The Authority relinquished control of a \$25 million HUD grant to non-Authority personnel.
- The non-Authority personnel have no fiduciary relationship with the Authority .
- Selection panel anomalies:
 - Inherent conflict of interest.
 - Married panelists.
 - Non-Authority panelists did not fully understand the scoring process.
 - Non-Authority panelists used a non-evaluation factor to select the developer.
- CCH apparent and actual conflict of interest:
 - CCH used the residents to pressure the Authority to sign a contract.
 - CCH hired a selection panelist, in violation of the grant agreement, without the Authority's knowledge.
 - Ties exist amongst CCH, CRP, selection panelists, and Resident Council.

Although HUD and CCH contributed to the problems surrounding the procurement, the Authority is ultimately responsible for ensuring that it carries out its grant in accordance with its procurement policy and grant rules and regulations. The Authority's procurement policy states that the Authority will not be bound to any contract, commitment, or expenditure that violates the provisions of the procurement policy as the use of non-Authority employees did. Further, the selection panels' use of non-evaluation factors and its lack of understanding on how to score the developer may have unfairly restricted competition which violates federal procurement regulations. Finally, CCH's employment of the selection panelist caused the Authority to be in violation of its HOPE VI grant agreement.

Authority Comments and Office of Inspector General Evaluation of Comments.

Below are excerpts from the Authority's written comments. The verbatim comments are included as Appendix A.

Selection Panel Composition Flawed. The Authority presents several arguments to justify the panel composition and deviation from its procurement policies.

Evaluation. The panel composition of three Authority employees and five non-employees meant the Authority did not control procurement of a \$25 million contract. Thus, the panel composition was flawed.

Selection of the Developer was Flawed. The Authority states there may have been anomalies, but the report does not find that those anomalies led to a regulatory or statutory violation. The Authority says the selection should not be disturbed.

Evaluation. The panel's use of a non-evaluation factor does violate federal procurement regulations.

Relationships Create Appearance of Conflict of Interest. The Authority states the report does not establish even an appearance of a conflict of interest.

Evaluation. We disagree.

CCH Benefits from Resident's Position. The Authority said we made an overstatement by saying developers generally earn between an 8 to 10 percent development fee. Further, the Authority states the report says the developer's fee was an evaluation criterion. They also contend the Request for Proposals stated the Resident Council would enter into a partnership with a private developer. Finally, the Authority noted it did not condone CCH's attempt to exclude HANO from the negotiating process.

Evaluation. Our generalized statement regarding fees is based on HUD's HOPE VI experiences. We did not represent the developer's fee was an evaluation criterion. The Authority quotes from the *Background* section of the Request for Proposals to assert it called for a partnership between the Resident Council and the developer. That section relates prior history and discusses a plan

involving a \$40 million HOPE VI grant that HANO did not get. In the section *Project Scope*, ownership is set forth at paragraph 2.6 which says: “Its is expected that the legal entity for the proposed project will be limited partnership, of which the STRC and HANO will be a co-general partner.”

CCH and Non-Authority Panel Member Violate Conflict of Interest Provision. The Authority acknowledges CCH did not follow “proper procedures”. However, the Authority says it is not in violation of the grant agreement because the Development Agreement is not yet final.

Evaluation. We added additional language citing the Code of Federal Regulations to clarify our position regarding the violation of the grant agreement.

The Authority should Re-Procure the Developer for the St. Thomas HOPE VI Grant. The Authority states that nothing in the report supports a conclusion to re-procure, that HUD approved the process, that the Authority did not give control of the grant to non-authority personnel, and that inclusion of residents is authorized and encouraged by regulation.

Evaluation. We remain convinced the Authority should re-procure the developer and noted in the report that HUD is not blameless. While the Authority may feel it did not surrender control of the grant, the fact remains it only had three members on the eight-member panel. While federal regulations encourage resident participation, nowhere does it mention voting membership on selection panels, much less control of one.

Recommendations

We recommend that HUD:

- 1A. Not grant the conflict of interest waiver.
- 1B. Direct the Authority convene a new panel consisting of Authority employees and re-procure the developer.
- 1C. Direct the Authority to provide the residents with an opportunity to advise the panel on the selection of the developer.
- 1D. If appropriate, take administrative action against CCH.

We will make additional recommendations regarding program issues (e.g., resident participation) in the national HOPE VI report.

pages 15 - 25

pages 26 - 40

Thursday, March 12, 1998

The Times-Picayune

Residents issue ultimatum on St. Thomas deal

By Leslie Williams
Staff Writer

The leader of the St. Thomas public housing complex's Resident Council and others issued a warning Wednesday night.

If the Housing Authority of New Orleans does not close a deal with a developer to redesign the complex, there will be trouble.

Resident Council President Barbara Jackson said residents will march and won't cooperate with moving plans if the housing authority does not conclude its negotiations with Creative Choice Homes Inc. of Palm Beach Garden, Fla. The company was selected from 10 others to steer the multimillion-dollar redesign of the complex from a dense collection of apartments to a collection of single-family homes and town homes.

Felton White, a technical adviser to the Resident Council and a former resident, also said residents would take their case to the media if the deal was not signed by Wednesday.

Brenda Breaux, acting executive director of the authority, said she had no prior knowledge of Jackson and White's gathering, which attracted about 400 residents and neighbors.

She insisted the authority is as committed to a new St. Thomas as the residents.

"We're negotiating a business deal, and negotiating it in the best interest of the housing authority," Breaux said. "We're not going to negotiate it in the press."

At the meeting Wednesday, Vince Lane, project director for Creative Choice Homes, flanked Jackson and White and applauded as they spoke of marching if the deal with his company is not signed.

Initially, the two gave Friday and Monday as the deadline, but extended that to Wednesday after they learned Mayor Marc Morial is out of town. Jackson said she wanted to give the mayor an opportunity to resolve the problem before the residents begin their campaign.

Lane said one of the unresolved issues is the fee for his company. Paster Torin Sanders, president of the St. Thomas Irish Cannel Consortium who joined Jackson and

White Wednesday to complain about the deadlock, said another unresolved issue is an item that would give his consortium control over several million dollars for the project as opposed to the housing authority.

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