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Tangen

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OFFICE OF
CITY ATTORNEY

Department of Neighborhood Services
Inspectional services for health, safety and neighborhood improvement

Martin G. Collins
Commissioner

Schuyler F. Seager
Deputy Commissioner

July 8, 2002

Attorney Grant F. Langley
City Attorney
200 East Wells Street, Room 800
Milwaukee, WI 53202

L	CDSB	PF	OEGS
GFL		7/10/02	
TO: Tangen			
W		7/10/02	
(IF LESS THAN 15)			⊙
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Dear Attorney Langley:

SUBJECT: Opinion of Conflict of Interest

The Department of Neighborhood Services and Neighborhood Improvement Development Corporation (NIDC) is seeking an opinion as to whether or not a conflict of interest exists in regard to the sale of its rehabilitated property located at 2423 W. Kilbourn to eligible homeowners.

Damieon Ellzey and Andre Pratt-Ellzey, husband and wife, submitted an application to participate in the Community Homes Program on February 16, 2002. The Administrative Specialist reviewed their application and determined they met the eligibility requirements of the Federal HOME Program under which the properties are rehabilitated and sold to income eligible households.

As part of the standard marketing of the Community Homes properties, the Ellzey's were included in mailings of the homeownership opportunities in addition to invitations to open houses. On June 10, 2002, they attended an open house for the properties at 2423 and 2433 W. Kilbourn. Having an interest in the properties, they entered their name in the lottery to purchase the properties. They were the third family drawn from 2423 W. Kilbourn and eleventh family drawn for 2433 W. Kilbourn.

As the attached NIDC Production Marketing/Sales Procedure outline states, if more than one applicant expresses an interest in a property, NIDC proceeds to the lottery system to select the homeowner. All interested party's names are put into a hat and drawn at random by an individual not associated with the Program. Each name is numbered and put in order for first drawn to last. The individual/household will be called in the order drawn to ask if they are interested in writing an Offer to Purchase. If they say "yes", an Offer is written. If they decline, the next person on the list is called, and so on, until an Offer is written.

1053-2002-2038

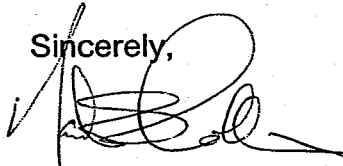
Attorney Grant F. Langley
July 8, 2002
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In this case, the first person drawn decided this property was not for her and after soul searching, decided to decline. The second person on the list did not wish to write an offer, stating the property wasn't big enough for her. That brought us to the next family on the list, the Ellzey's.

The potential for a conflict exists because Mr. Ellzey is a Code Enforcement Inspector II within the Department of Neighborhood Services. Also, Mrs. Ellzey is the daughter of Alderman Marvin Pratt. Even though they had no input into NIDC's HOME funding or the acquisition and rehabilitation of the properties, according to the Conflict of Interest Statement attached, NIDC seeks to assure compliance with the federal, state and local law and regulations governing its funds.

If you have any questions, or need additional information, please contact Judith Allen of my staff at 286-8601.

Sincerely,



Martin G. Collins
Commissioner

Attachments

c: Yolanda J. Mack, Executive Director of
Neighborhood Improvement Development Corp.
Juanita Hawkins, Director
Community Block Grant Administration



Department of Administration
Community Block Grant Administration

John O. Norquist
Mayor

David R. Riemer
Director

Juanita Hawkins
Administration—Block Grant Director

TO: City Departments and Community-Based Organizations

FROM: Juanita Hawkins, Director *Juanita Hawkins*
Community Block Grant Administration

RE: Federal Conflict of Interest Regulations

DATE: April 12, 2002

As you know, the expenditure of City of Milwaukee Community Development Block Grant Funds (CDBG) or HOME funds appropriated to your department/organization must comply with all federal, state and local law and regulations governing these funds.

The attachment summarizes Federal Conflict of Interest provisions relative to CDBG and HOME funds. Please take a few moments to review these and make your staff and board members aware of such.

A full reading of the federal regulations is set forth in 24 CFR, Part 570 (CDBG) and 24 CFR, Part 92.356 (HOME) and is included in your contract or interdepartmental cooperation agreement with the City of Milwaukee.

The Community Development Block Grant Administration welcomes your questions or concerns as an essential element in promoting and strengthening contract compliance with the federal, state and local law and regulations. Please feel free to direct any questions to me or CBGA's program officers.

Conflict of Interest Regulations Applicable to CDBG and HOME Funding

Persons Covered

1. Employees of the City of Milwaukee
2. Employees of subrecipient organizations (including Board members)
3. Agents of the City
4. Consultants of the City
5. Officers of the City
6. Elected officials of the City
7. Appointed officials of the City
8. Designated public agencies of the City
9. State Recipients (HOME regulations)

No Persons (identified above)

- who exercise any functions or responsibilities with respect to CDBG or HOME activities, or
- who have exercised any functions or responsibilities with respect to CDBG or HOME activities, or
- who are in a position to participate in a decision making process, or
- who are in a position to gain inside information with regard to such activities

Prohibition

- may obtain a *financial interest* from a CDBG or HOME assisted activity, or
- obtain a *benefit* from a CDBG or HOME assisted activity, or
- have a *financial interest* in any contract, subcontract, or agreement with respect to a CDBG or HOME assisted activity, or with respect to the proceeds of the CDBG or HOME assisted activity
- either for themselves or
- those with whom they have business or immediate family ties,
- during their tenure or for one year thereafter.

Employees of both the City and Employees of Subrecipient Organizations that receive CDBG or HOME funds:

Before any employee who exercises or has exercised any functions or responsibilities with respect to CDBG or HOME activities, or who is in a position to participate in a decisionmaking process or gain inside information with regard to CDBG or HOME activities, is permitted to avail himself or herself of a financial interest or benefit from programs funded with those grants, or is permitted to enter into any contract or agreement relating to such activities, the City, on behalf of the employee, is required to first seek an exception to the conflict of interest regulations from HUD.

City Employees: Any City employee who exercises or has exercised any functions or responsibilities with respect to CDBG or HOME activities, or who is in a position to participate in a decisionmaking process or gain inside information with regard to CDBG or HOME activities, and who wishes to participate in a program funded with CDBG or HOME funds, should first seek a confidential advisory opinion from the Ethics Board. In order to seek an exception from the HUD conflict-of-interest regulations, an employee must provide an opinion of the City Attorney that the relationship at issue does not violate state or local law.

Any other City Employee described above whose position involves activities related to a grant-funded program in which he or she wishes to participate should seek a confidential advisory opinion from the Ethics Board *before* participating in the program.

paint debris shall be disposed of in accordance with applicable Federal, State or local requirements. (See e.g., 40 CFR parts 260 through 271.)

[53 FR 34456, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988; 61 FR 11481, Mar. 20, 1996]

§ 570.609 Use of debarred, suspended or ineligible contractors or subrecipients.

The requirements set forth in 24 CFR part 5 apply to this program.

(The above streamlined text replaced the following language:

Assistance under this part shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor or subrecipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR part 24.)

[53 FR 34456, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 61 FR 5209, Feb. 9, 1996]

§ 570.610 Uniform administrative requirements and cost principles.

The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of 24 CFR part 85 and OMB Circulars A-87, A-110 (implemented at 24 CFR part 84), A-122, A-133 (implemented at 24 CFR part 45), and A-128² (implemented at 24 CFR part 44), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR parts 84 and 85 are set forth at § 570.502.

[53 FR 34456, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 57 FR 33256, July 27, 1992; 60 FR 56916, Nov. 9, 1995]

§ 570.611 Conflict of interest.

(a) *Applicability.*

- (1) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 84.42, respectively, shall apply.
- (2) In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its subrecipients

² See footnote 1 for §570.200(a)(5).

to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to § 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to §§ 570.203, 570.204, 570.455, or 570.703(i)).

- (b) *Conflicts prohibited.* 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 assisted under this part, or who are in a position to participate in a decisionmaking process or 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 a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such financial interest or benefit during, or at any time after, such person's tenure.
- (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 of subrecipients that are receiving funds under this part.
- (d) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.
- (1) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:
- (i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
 - (ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.
- (2) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient

administration of the recipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

- (i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;
- (ii) Whether an opportunity was provided for open competitive bidding or negotiation;
- (iii) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- (iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;
- (v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;
- (vi) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- (vii) Any other relevant considerations.

[53 FR 34456, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 57 FR 27120, June 17, 1992; 60 FR 56916, Nov. 9, 1995]

§570.612 Executive Order 12372.

- (a) *General.* Executive Order 12372, Intergovernmental Review of Federal Programs, and the Department's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.
- (b) *Applicability.* Executive Order 12372 applies to the CDBG Entitlement program and the UDAG program. The Executive Order applies to all activities proposed to be assisted under UDAG, but it applies to the Entitlement program only where a grantee proposes to use funds for the planning or construction (reconstruction or installation) of

Production Marketing/Sales Procedure

Acquire/Rehab/Resell:

1. Marketing of the property will begin when the rehabilitation of the property is at least 80% complete.

Marketing methods:

- Community Homes Homeownership List
- Phone inquiries /
- Signs on properties with telephone number
- Internet/intranet
- Word-of-mouth
- Mailing to Home Buying Counseling Agencies
- Homeownership Fairs

2. Property is added to the "Homeownership Opportunities" List.
3. The list is mailed monthly (or when changed significantly) to eligible applicants.
4. A list of potential homeowners is maintained in the ACCESS production file for drive-by telephone inquiries and response to the mailing.
5. Potential homeowners are called for an open house.
6. New applicants are given the option of a private house showing.
7. If more than one applicant expresses an interest in a property, staff implements the lottery system.
8. All people who attend the open house are told to enter their name in the "hat" if interested in purchasing.
9. All names drawn from the "hat" are numbered in order of drawing. (The list is maintained in the property file.
10. The persons are called in order (one being first) and asked if they would like to write an Offer to Purchase. If so, they schedule an appointment to come in and do so. If not, the next person on the list is contacted to write an Offer. The Admin. Specialist continues this process until reservation to place an Offer is complete. In some cases, a secondary Offer will be taken if the household placing an Offer is questionable.

Lottery Drawing 2423 W. Kilbourn

d. 6-12-02

Monique Brisco #1 - NO 6-14-02

Norma Peterson #8

Greg Hunter #5

Debra Nelson #2 - offer 6-17-02 - Rejected. 6-17-02

Angela Jones #7

Yvonne Jones #6

Dameon & Andrea Ellzey #3 - offer 6-17-02 - Accepted. (pending)

Tonya Gordon #9

Latosha Harper #4

Robin Brisco #2 x2 #1

Debra Nelson ^{NO} Yes!!! #2

DAMEON & Andrea Ellzey (yes) #3