

Legal Opinion: GCH-0091

Index: 2.230

Subject: Comprehensive Grant: Ethical or Legal Violations

March 1, 1994

Ms. Jacqueline Aamot
1349 F. Street, N.E.
Washington, D.C. 20002

Dear Jackie:

This is in response to your facsimile of November 3, 1993 and as a follow-up to our telephone conversation. Please excuse my delay in responding to your request for a legal opinion regarding possible legal or ethical violations involved in a public housing agency's (PHA) selection of two separate companies under the same corporate umbrella who have responded to two separate Requests for Proposals (RFP) issued by the PHA.

Your letter indicates that the PHA has issued an RFP for a consultant to function essentially as the PHA's staff for purposes of managing all aspects of the Comprehensive Grant process. Company A's management arm, an incorporated entity, is responding to the RFP. The PHA's Five-Year Plan identifies one activity for FY 1994 as asbestos removal in one property, and is proceeding to develop an advertisement for an asbestos abatement contractor. Company A's maintenance arm, with a separate incorporation, is licensed for asbestos abatement and is planning to bid on that work. The PHA is also planning to put several of its projects under private management. Because the work has administrative and financial components as well as property management, maintenance and security, Company A plans to respond, offering the services of its various corporations as appropriate. If the selection process is competitive, you have asked if there are any ethical or legal considerations that would preclude the award of all three contracts to Company A and/or its components, and whether the work as Comprehensive Grant consultant would raise the presumption of inside information.

PHA procurements are governed by 24 CFR Section 85.36. In addition, PHAs are to have procurement procedures which reflect applicable State and local laws and regulations and conform to applicable Federal law. 24 CFR Section 85.36(b)(1). The general conflict of interest restriction is that agents (Company A's management corporation in this case) of grantees (PHA in this case) shall not participate in selection, or in the award or administration of a contract supported by Federal funds (Comprehensive Grant in this case), if a conflict of interest real or apparent, would be involved. 24 CFR Section 85.36(b)(3). A real conflict of interest would be involved, and Company A's management corporation must recuse itself from the selection, award or administration of contracts with other Company A corporations. In addition, all procurement transactions must be conducted in a manner providing full and open competition. Organizational conflicts of interest are considered restrictive of competition. 24 CFR Section 85.36 (c)(1)(v). For example, the management corporation should avoid designing the contract

requirements for contracts which would be bid on by other Company A corporations. Organizational conflicts of interest could result if the specifications were so detailed as to be satisfied by only a Company A corporation or a Company A corporation may be the lowest bidder because of the circumstances and information held by the management corporation, as a result of restricted requirements or by virtue of their previous participation.

I hope this is helpful in reviewing potential conflict of interest situations.

Sincerely,

Michael H. Reardon
Assistant General Counsel
Assisted Housing Division