



U.S. Department of Housing and Urban Development

Office of the Regional Administrator

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JUN 05 2019

Mr. Kenneth Fiola, Jr.
Executive Vice President
Bristol County Economic Development Consultants
139 South Main Street, Suite 400
Fall River, MA 02721-5306

Dear Mr. Fiola:

This letter responds to your complaint pertaining to the City of Fall River's Community Development Block Grant (CDBG) program. In accordance with HUD Handbook 5552.0 REV-2, HUD's Office of Community Planning and Development provided your letter of March 13, 2019 to the City of Fall River for review and comment. The City's response was received on April 12, 2019. We received a second letter from you on April 25, 2019. In your letter you expressed continued concern with the City's administration of the CDBG funds and also the complaint process followed by HUD. You asked my office to conduct a thorough and unbiased investigation into the issues raised in your letters and to direct the City to award the economic development contract to Bristol County Economic Development Consultants (BCEDC) for which you are the Executive Vice President.

The primary issues raised in your correspondence are as follows: (i) the potential "discriminatory" actions of the City of Fall River and the Fall River Community Development Agency (FRCDA) for the reallocation of CDBG funding for non-economic purposes and the failure of the City to utilize CDBG funding for job creation and retention purposes for low and moderate income people, (ii) the failure of the City to properly evaluate the two Economic Development applicants – the Fall River Redevelopment Authority (FRRA) and BCEDC, (iii) the City's violation of the conflict of interest provisions. Specific violations raised by you pertain to the FRCDA staff's role in the evaluation and determination of CDBG funding for the delivery of economic development purposes, participation of FRCDA staff in assisting FRRA, the designated subrecipient in the administration of the economic development activities, and Mr. Smith, an employee of the City and FRRA board member.

Issue 1: Potential "discriminatory" actions of the City of Fall River for failure to use CDBG funds in accordance with the approved annual action plan, reprogramming of funds and failure to show evidence of job creation and retention.

HUD has thoroughly reviewed the City's 2015 Consolidated Plan, related action plans and annual performance reports. Reviews are ongoing as part of the annual CDBG funding cycle commencing with the submission of the City's application, reporting of accomplishments in HUD's Integrated Disbursement and Information System (IDIS) and the annual performance reports. HUD works proactively and cooperatively with the City to ensure programs are administered in accordance with statutory and regulatory requirements and that performance and reporting deficiencies are addressed in a timely and appropriate manner. Based on our review

of the City's funding cycle, we found no evidence to suggest that the City had not followed proper procedure. FRCDA has followed its priorities as detailed in the Five-Year Consolidated Plan and its Citizen Participation Plan when developing the Annual Action Plan for the CDBG program. The FRCDA has clearly advertised public hearings and public comment periods and has provided citizens – especially low- and moderate-income citizens – of the planned activities, proposed budget and the actual outcomes as communicated through the annual performance report. The FRCDA followed the approved Citizen Participation Plan when reprogramming grant funds that were originally committed for job creation/job retention activities. The reprogrammed funds were advertised in the local newspapers and included in the Annual Action Plan. The public had the opportunity to attend two public hearings and the opportunity to comment on the proposed reprogramming of funding during the 30-day comment period. Other than the opposition expressed by your organization on March 7, 2018, no comments were received relating to the reprogramming of CDBG funding for public improvements. Public improvements are eligible activities that are designated as a high priority for the City. These activities provide a direct benefit to the low- and moderate-income residents of the City.

Your letter also states that in reprogramming of funds for public improvements, the city has failed to address economic development which is ranked as high priority in the City's 2015 action plan. We confirmed with FRCDA staff that economic development continues to be a high priority with no change in the services available to individuals and businesses seeking to create or expand within the City of Fall River. In the City's response, they provided a list of businesses that have received direct economic development services through FRCDA. FRCDA continues to report the accomplishments to HUD for job creation/job retention and area benefit programs (Storefront Improvement Program).

- Assisted Ocean State Job Lot with TIF – 16 fulltime retained, 9 created
- Assisted Millstone Medical with TIF – 271 fulltime retained, 100 created
- Assisted Korber Hats with MA EDIP
- Assisted 64 Durfee Street LLC with a TIE
- Assisted 2 small businesses with the potential to create 8 jobs
- Currently working on two other loan applications
- Assisted 9 businesses with Storefront Improvement Façade Grants
- Assisted 1 high tech business through the Make It Here Loan Program
- Assisted over 25 businesses with Economic Development Program information
- Developed Opportunity Zone Application
- Assisted with the development of the TDI Grant application to Mass Development
- Awarded planning grant from SRPEDD
- Assisted developers with adaptive reuse of vacant Duro Complex
- Grant applications for Gold Medal Commercial Rail Extension
- Assisted JDR Cable establish Wind Energy Manufacturing in Fall River
- Assisted Merrill Manufacturing establish high tech textile center @ Pepperell Mill
- Created HDIP expansion for Hanover Properties historic renovation
- Created King Philip Mill Market Rate Housing Overlay District

City staff confirmed that the above accomplishments have a direct correlation to CDBG funding and do qualify as eligible CDBG economic development services. The FRCDA included detailed information on the status of the economic development program in their Annual Plans and in their Consolidated Annual Performance Evaluation Reports. While the City clearly did not meet its stated economic development goals in 2017, a transition year, the City is on track to meet its goals for the 2018 program year. The FRCDA provided economic development services in 2017 and 2018 without subrecipient staff and minimum additional staff cost to the CDBG program. No funds were expended on salaries relating to economic development delivery for 2017 and in 2018. The FRCDA has not incurred or billed for any costs during this period. Based on our review, we have determined that the City followed proper procedure for allocating CDBG funds. Your letter did not allege, and we found no evidence that FRCDA discriminated against City residents based on any protected characteristics.

Issue 2: FRRA Application Evaluation. Failure of the City to disqualify the Fall River Redevelopment Authority's application for funding because they did not submit the required documentation.

The regulatory definition of a subrecipient under the CDBG program can be found at 24 CFR 570.500(c). As stated in that section of the regulations, a subrecipient is a public or private nonprofit agency, authority or organization receiving CDBG funds from the recipient to undertake activities eligible for such assistance under Subpart C of the regulations. Subrecipients can be designated by the grantee and do not have to be selected through a competitive process.

We reviewed the FRCDA Request for Funding application process. The FRRA is established under Massachusetts General Law Chapter 121 B Section 4 and Section 7. For the City's current Request for Funding application, eligible organizations can apply as either a City department or Nonprofit. Documentation requirements vary based on the organization type selected. Because FRRA is an independent public authority and had the option of applying as either a non-profit or City department, FRCDA categorized the applicant as a City department.

Based on the classification of the FRRA as a "City" department, the FRRA submitted the required documents including:

- Proposal Cover Sheet
- Proposal Narrative (Sections 1, 2 and 3)
- Budget and Budget Justification
- List of Board of Directors
- Authorization to Submit Request CEO/City Department Head & Board of Directors Application Certification
- Conflict of Interest Questionnaire

Considering the City's application process and documents, the fact that the City classified FRRA as a City department and did not submit documents pertinent to a non-profit would not automatically disqualify its application. The selection of a subrecipient is not a competitive process and the City's application provides flexibility for working with subrecipient entities in the development and submission of the application including obtaining the required documents. A grantee is under no obligation to fund a particular organization or even utilize a subrecipient to deliver services. However, if a subrecipient is selected, the City is responsible for training staff, managing and monitoring the CDBG funded programs and working with the organization to develop performance measures to improve delivery of the CDBG program to low- and moderate-income residents of the Community. The City has selected FRRA to assist in the delivery of the economic development services. However, it is our understanding that even though the City has entered into an agreement with the FRRA, no costs have been incurred for FRRA staff under the agreement. FRCDA continues to administer all aspects of the economic development programs and will continue to do so until such time that it determines that FRRA has the experience and capacity to carry out the program. We do not have any concerns over the capacity of the FRCDA employees to administer the City's CDBG funded economic development activities. To avoid future confusion with the application forms, FRCDA has informed HUD that it would add an "other" category for authorities in the 2020 funding cycle.

Issue 3: Failure to identify the apparent conflicts of interest of the FRRA application.

CDBG Conflict of Interest 24 CFR 570.611 regulations state that the general rule is that no persons described in paragraph C (the conflict of interest provisions 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) 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 decision making 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 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.

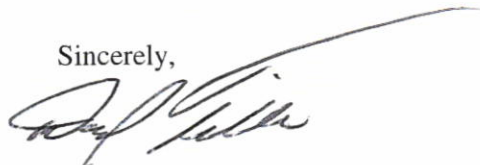
In your letter you indicate that Mr. Robert Smith, a FRRRA board member, is in violation of the conflict of interest regulation because Mr. Smith is employed by the City of Fall River as the Harbormaster and is compensated for his services. The conflict of interest regulation prohibits a person who is covered by the regulation from obtaining a financial interest or benefit from a CDBG assisted activity. As a City employee, Mr. Smith is a "covered person" under the regulation; however, we fail to see how Mr. Smith has a financial interest or benefit from the CDBG funding. In Mr. Smith's capacity as Harbormaster, Mr. Smith does not have any authority over operational or funding decisions made by the FRCDA pertaining to awarding of CDBG funding. To our knowledge, Mr. Smith has not applied for any CDBG financial assistance. Further it is our understanding that Mr. Smith does not have a financial interest in any contract, subcontract or agreement with respect to FRRRA (a CDBG-assisted activity) and Mr. Smith's business or immediate family ties either currently or over the past year do not have a financial interest in any contract, subcontract or agreement with respect to the City or FRRRA.

You also indicate that the current FRRRA CDBG application of record clearly indicates that the FRRRA will oversee and utilize two CDA employees to carry forward the FRRRA activities and that this clearly violates the HUD and FRCDA conflict of interest provisions. Again, a grantee and subrecipient share joint responsibility for carrying out permitted activities in conformance with applicable federal requirements and these roles and responsibilities can vary. The receipt of a salary and associated fringe benefits by a grantee, other city department, or a subrecipient employee covered under a subrecipient agreement to deliver a CDBG eligible activity, does not constitute a conflict of interest. It is also not a conflict for City staff to be employed by a subrecipient agency, i.e., senior services, recreation, neighborhood centers and the like, that receives CDBG funds as a subrecipient.

In conclusion, our review of the specific concerns you raised over the FRCDA's administration of the CDBG program as it relates to "discriminatory" acts, failure to achieve objectives, subrecipient selection process or conflict of interest for the delivery of economic development services did not reveal any matters that would warrant further review. Your request for HUD to direct the City to award the economic development contract to BCEDC is not within our authority. The dispute over whether the City provides funding to the BCEDC, the FRRRA or any other entity to administer the economic development programs is entirely a local matter which must be resolved at the local level.

If you have any further questions, please feel free to contact Robert Shumeyko, Director, Office of Community Planning and Development at 617-994-8350 or Robert.D.Shumeyko@HUD.gov.

Sincerely,



David E. Tille
Regional Administrator



U.S. Department of Housing and Urban Development

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MAY 28 2019

**Confidential and Privileged
Attorney-Client Communication**

MEMORANDUM FOR: Robert Shumeyko, Regional Director, New England Office of
Community Planning and Development

FROM:  Miniard Culpepper, Regional Counsel for New England

SUBJECT: Fall River CDBG Program - Response Letter to Kenneth Fiola

This responds to your legal review request (No. 19-722) in which you asked for legal review of a draft response letter to Kenneth Fiola, Jr., Executive Vice President of Bristol County Economic Development Consultants (BCEDC).

We understand that Mr. Fiola wrote HUD complaining about various issues with the Community Development Block Grant (CDBG) program in the City of Fall River, Massachusetts. We concur with your draft response letter to Mr. Fiola, subject to the following revision.

Mr. Fiola complained that the Fall River Community Development Agency (FRCDA) reprogrammed CDBG funds from economic development activities to public improvements, such as sidewalk repair, which he claims was "discriminatory" because it did not benefit low- or moderate- income residents. In your discussion of this issue, we recommend that you use quotation marks around the word "discriminatory" to indicate that this is Mr. Fiola's wording not HUD's and add a sentence to clarify that Mr. Fiola did not allege and HUD's review did not find evidence that FRCDA discriminated against city residents based on any protected characteristics.

Additionally, as you requested, we concur with your conflicts of interest analyses under 24 C.F.R. § 570.611 regarding Fall River Harbormaster Robert Smith, as well as the two FRCDA employees who performed certain activities for the Fall River Redevelopment Authority (FRRA).

Please contact us if you have any further questions.

cc:
David Tille
Nicholas White
Kara Norman
Laura Schiffer