



**Clare View Seniors Apartments, LP
Spokane, WA**

HOME Investment Partnerships Program



Issue Date: February 4, 2014

Audit Report Number: 2014-SE-1001

TO: Jack Peters, Director, Community Planning and Development, Seattle Office, 0AD

//signed//

FROM: Ronald J. Hosking, Regional Inspector General for Audit, 0AGA

SUBJECT: Allegations Against Clare View Seniors Apartments, LP, Had Been Corrected or Did Not Violate HOME Requirements

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our audit of Spokane Housing Ventures, Clare View Seniors Apartments, LP (hotline complaint number HL-2013-0804).

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at 913-551-5870.



February 4, 2014

Allegations Against Clare View Seniors Apartments, LP, Had Been Corrected or Did Not Violate HUD Requirements

Highlights

Audit Report 2014-SE-1001

What We Audited and Why

We reviewed a complaint against a project that was partially funded by the Office of Community Planning and Development's HOME Investment Partnerships program. Our objective was to determine whether the allegations in hotline complaint number HL-2013-0804 were valid. The complainant alleged that while Clare View Seniors Apartments, LP, was in the process of obtaining HOME funding through the State of Washington and the City of Spokane, it demolished two buildings on the site without paying or certifying Davis-Bacon Act wages, did not use a competitive procurement process, and had a conflict of interest with the general contractor.

What We Recommend

This report contains no recommendations, and no further action is necessary with respect to this report.

What We Found

Clare View Seniors Apartments, LP, did not always pay and certify Davis-Bacon Act wages appropriately. However, this deficiency was corrected before our review. We also determined that the developer did not use a competitive procurement process and was also the general contractor on this project. However, although other HUD programs require a competitive procurement process, HOME regulations do not require that the developer use a competitive procurement process, nor do they prohibit the developer from also being the general contractor.

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BACKGROUND AND OBJECTIVE

The HOME Investment Partnerships Program allocates 15 percent of HOME set-aside funds to eligible community housing development organizations (CHDO) for HOME projects. In February 2013, the City of Spokane and the State of Washington together loaned a total of \$1.9 million in HOME set-aside funds to Spokane Housing Ventures, a Spokane-approved CHDO, for the development of Clare View Seniors Apartments. Other funds for the project were obtained through the U.S. Internal Revenue Service Low Income Housing Tax Credit Program.

Clare View Seniors Apartments is a 61-unit multifamily project that was codeveloped by Spokane Housing Ventures, the general partner, and Whitewater Creek, the special limited partner. Whitewater Creek was also the general contractor of the project.

A hotline complaint alleged that while Clare View Seniors Apartments, LP was in the process of obtaining HOME funding through the State of Washington and the City of Spokane, it

- Demolished two buildings on the site without paying or certifying Davis-Bacon Act wages,
- Did not use a competitive procurement process, and
- Had a conflict of interest with the general contractor.

Our objective was to determine whether the allegations in hotline complaint number HL-2013-0804 were valid.

RESULTS OF AUDIT

Allegations Against Clare View Seniors Apartments Either Had Been Corrected or Did Not Violate HUD Requirements

The alleged complaints either had been corrected by Whitewater Creek, the special limited partner, co-developer, and general contractor, or did not violate HUD's HOME program requirements.

Davis-Bacon Wages

Whitewater Creek's subcontractor demolished two buildings on site without paying or certifying Davis-Bacon Act wages. However, Whitewater Creek paid the subcontractor employee the difference between the amount previously paid and the required Davis-Bacon wages. The subcontractor then retroactively certified that the appropriate Davis-Bacon wages had been paid.

Competitive Procurement Process

The CHDO (Spokane Housing Ventures) did not require Whitewater Creek, the general contractor, to use a competitive procurement process. Although other HUD programs require a competitive procurement process, HOME regulations do not require that the developer use a competitive procurement process.

The City of Spokane and the State of Washington did include these procurement clauses in their contracts with the CHDO and its limited partnership. Since HUD was not a party to these contracts, it could not enforce them. These contract provisions would need to be enforced by the City or State.

Conflict-of-Interest

The CHDO allowed Whitewater Creek to be both co-developer and general contractor for the project. Although other HUD programs require a specific process for approving conflicts-of-interest, HOME regulations do not prohibit the developer from also being the general contractor, nor do they require approval for that relationship.

Recommendation

This report contains no recommendations, and no further action is necessary with respect to this report.

SCOPE AND METHODOLOGY

We initially reviewed the complaint and information provided by complainant to determine whether the allegations were valid. When we determined that they were valid, we expanded our audit to include actions taken by the CHDO, developers, and general contractor.

To achieve our objective, we conducted interviews with

- The management and staff of HUD's Seattle Office of Community Planning and Development and management of the HUD headquarters Office of Community Planning and Development, Washington, DC;
- The management and staff of HUD's Office of Labor Relations, Seattle, WA, and Los Angeles, CA;
- The management and staff of the Spokane, WA, and Los Angeles, CA, offices of the U.S Department of Labor;
- The management and staff of Spokane Housing Ventures, Spokane, WA;
- The owners of Whitewater Creek, Inc., Hayden, ID; and
- ZBA Architects, Spokane, WA and three Spokane area contractors that were awarded subcontracts by Whitewater Creek.

We reviewed regulations and notices, including Federal Labor Standards, HOME regulations and administrative requirements for nonprofit organizations, and HUD guidance on CHDOs.

We also reviewed many documents provided by the auditee and the City of Spokane and State of Washington, including

- Timesheets and other supporting documentation sent to the City of Spokane, compiled by Whitewater Creek;
- Clare View Seniors Apartments grant agreements from the City of Spokane and the State of Washington;
- Spokane Housing Ventures policies and procedures, Clare View Seniors Apartments partnership agreements, and a memorandum of understanding from Spokane Housing Ventures; and
- Clare View Seniors Apartments subcontractor bids and general construction contract from Whitewater Creek.

We did not rely on computer-processed data for this audit. Instead, we traced or verified information for the allegations to supporting documentation, from which we drew our conclusions.

Our audit covered the period June 2010 through May 2013. We performed our work at Spokane Housing Ventures, 715 East Sprague Avenue, Suite 102, Spokane, WA, and the City of Spokane, 808 West Spokane Falls Boulevard, Spokane, WA, as well as HUD's Seattle Office of

Community Planning and Development, located at 909 First Avenue, Seattle, WA, from May through September 2013.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

INTERNAL CONTROLS

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined that the following internal controls were relevant to our audit objective:

- CHDO procedures for ensuring compliance with Davis-Bacon Act wage determinations.
- CHDO procedures for ensuring compliance with written agreements with respect to procurement and conflict-of-interest requirements.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

We evaluated internal controls related to our audit objectives in accordance with generally accepted government auditing standards. Our evaluation of internal controls was not designed to provide assurance regarding the effectiveness of the internal control structure as a whole. Accordingly, we do not express an opinion on the effectiveness of Clare View Seniors Apartments, LP's or Spokane Housing Ventures' internal controls.

Separate Communication of Minor Deficiencies

We reported minor deficiencies to the auditee in a separate management letter.

Appendix A

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

<u>Ref to OIG Evaluation</u>	<u>Auditee Comments</u>
	<p style="text-align: center;">Auditee (Spokane Housing Ventures) Comments to OIG Draft Audit Report Received December 12, 2013 via email</p>
Comment 1	<p>Comment 1.</p> <p>Under Highlights, page 1, <i>What We Audited and Why/What We Found.</i></p> <p>We strongly object to the inclusion of last sentence in the section; "Complainant alleged the development of Clare View Seniors Apartments was grossly mismanaged". This alleged statement was not substantiated in the audit finding. While we understand from the auditors that the wording came directly from the complainant, it is completely unfounded and therefore misleading and prejudicial to the report and damaging to Spokane Housing Ventures and Whitewater Creek.</p>
Comment 2	<p>Even more objectionable and misleading is the first sentence in the adjacent section heading, (page 1) What We Found, when the report states "We determined that while all of the alleged complaints against Clare View Seniors Apartment were valid, they were either corrected or were not enforceable....." There is nothing in the draft audit report that substantiates the alleged mismanagement. At best the draft audit report finds one minor discrepancy with respect to Davis-Bacon wage rates and makes absolutely no findings with respect to any other allegation.</p>
Comment 1	<p>We request that the phrase "grossly mismanaged " be deleted from the last sentence under What We Audited and Why and that the allegation be revised using the same language used to describe the three specific allegations of the complainant on pages 3 and 4 and throughout the remainder of the draft audit report. Further, we request that the draft audit report state that the allegations of mismanagement and the three alleged complaints about violations of HUD requirements were not supported by the audit and were not valid.</p>
Comment 2	<p>Comment 2.</p> <p>Page 4, Davis Bacon Wages/House Demolition</p> <p>As indicated in the draft audit report, there were two structures that were demolished on the site of the development and the demolition of these structures was the subject of the Davis Bacon (DB) issue. No other DB issues were found by the auditors. We believe that</p>

Ref to OIG Evaluation

Auditee Comments

we have fully and satisfactorily addressed this issue in our response to the auditors' requests and believe that adequate precautions and due diligence on the part of the Spokane Housing Ventures and Whitewater Creek to assure that DB requirements were met should result in the conclusion that this alleged DB complaint was not valid. At worst, there was a minor deficiency with respect to one employee.

In early 2012, the two structures were vacant and deemed a safety hazard and liability risk. Construction on 300 apartments was just being completed next door and a majority of the units were family apartments. The density of children in the area quadrupled and the abandoned homes were playground targets.

During the Opening/DB/HOME Spokane City meeting and discussion in September of 2012, wage reporting for the previously demolished house on the CVS site was discussed in detail. These discussions were directly with the appropriate City personnel, including staff and supervisors. Conversations included the issues of not having a wage decision for the development of the project at that point and all parties agreed that that as soon as we received the wage decision we would file the appropriate DB paperwork retroactively. At the meeting, we discussed also that the demolition contractor had completed larger DB demolitions in the area, worked on other DB jobs for us and was proficient in the DB process. Also at this meeting in Sept 2012, it was discussed that the City of Spokane was checking with HUD to determine the appropriate start date of the project. City staff was uncertain if DB would even apply to the demolition.

Once WWC received the wage decision in late 2012, we forwarded the wage rates to the demolition contractor and all necessary wages and benefits were paid and certifications were filed. One wage determination deficiency in one of the operators triggered an approximate \$600 reimbursement to the employee. Again, there were no other DB deficiencies reported by the audit and consequently we believe there was no validity to the allegation.

Comment 3.

Page 4, Competitive Procurement Process.

The audit report concludes that Spokane Housing Ventures, as a CHDO is not subject to HUD competitive procurement requirements and therefore there was no violation of HUD requirements. Since the purpose of the HUD audit is to determine whether HUD requirements were met, we believe that the audit report should conclude that this allegation was not valid. HUD does not have the expertise or authority to make findings with respect to non-HUD requirements.

We contend that the City of Spokane and State of Washington Housing Trust Fund were imposing what they thought were HUD mandated procurement requirements, when in

Comment 3

Ref to OIG Evaluation

Auditee Comments

Comment 3

fact there should have been exclusion in the agreement for CHDOs from this requirement consistent with HUD regulations. Consequently, to the extent the complaint alleged violation of HUD requirements, it was not valid. Further, although procurement processes are clearly not required by HUD for CHDOs, the Clare View Seniors project was appropriately bid in an open bid process by Whitewater Creek, Inc., utilizing HUD standards and supervised by the project architect.

Comment 4.

Page 4, Conflict of Interest.

The audit report clarifies that HOME requirements do not require CHDOs to comply with procurement and conflict of interest requirements and states that the conflict of interest requirement applies to the participating jurisdiction, not the CHDO. Consequently, the complaint alleging conflict of interest is not valid either.

Although conflict of interest requirements did not apply to Spokane Housing Ventures, the partnership between Spokane Housing Ventures and Whitewater Creek was in fact disclosed to both the City and the State on numerous occasions throughout the application and closing process. In addition, third-party cost estimates for acquisition and construction expenses were provided to the City and State by Spokane Housing Ventures, together with copies of all partnership and co-developer agreements.

OIG Evaluation of Auditee Comments

- Comment 1** We changed the wording of the report to refer to the three specific issues included in the complaint instead of the generalized allegation of mismanagement.
- Comment 2** We changed the wording of the report to more clearly state that the circumstances described in the complaint were correct but any noncompliance had already been corrected.
- Comment 3** HOME regulations do not require the CHDO to comply with competitive procurement processes and conflict-of-interest requirements. Therefore, we rephrased our report to more clearly say that the circumstance existed but did not violate HOME requirements.