

Eligibility of a City's Infill Housing Program

April 4, 1991

MEMORANDUM FOR: Raymond A. Harris, Regional Administrator -
Regional Housing Commissioner, 4S

FROM: Anna Kondratas, Assistant Secretary for Community Planning and Development, C

**SUBJECT: Eligibility of Site Improvements
Infill Housing Program
West Palm Beach, Florida**

This is in response to your memorandum of August 20, 1990, requesting an eligibility determination on lot improvements provided with Community Development Block Grant (CDBG) funds by the City of West Palm Beach, Florida, as part of a new, single-family housing construction project. You have also requested guidance on whether the City violated any procurement requirements when contracting for this work.

Site improvements

The lot improvements in question were carried out as part of the City's Infill Housing Program, a new housing construction project. Under this program, the City contracted with developers to build homes on 30 lots owned by the City, some of which would be sold to low- and moderate-income families. The City used over \$150,000 of CDBG funds to pay for all lot improvements including soil testing; grading; installing sprinkler systems, sidewalks and driveways; sodding; landscaping; connecting the sites to water and sewer lines; and the payment of impact fees. At the closing for the construction loan, but before final closing on the house, the City used CDBG funds to reimburse the developer for these lot improvements. Title to the property is transferred by the City to the homebuyer after a three-year period of occupancy in the home.

Headquarters' guidance on using CDBG funds to support new housing construction (Notice CPD 89-14) identifies site improvements made by grantees to publicly-owned sites under 1/2570.201(c) as one method in which CDBG may be used to reduce the cost of construction for private developers. Also, if the site has been conveyed to the developer, site improvements may be eligible if carried out by an eligible subrecipient in accordance with the requirements of 1/2570.204. However, such site improvements are considered to be those necessary to make a site suitable for construction. The lot improvements that were carried out as part of this project were done at best as part of, but principally after, construction of the housing structures was completed; they were not a prerequisite for construction to occur. Therefore, the lot improvements are considered part of the construction and would not be eligible under the CDBG program unless the construction itself were eligible.

Procurement of Improvements

Although we have determined that the lot improvements in question cannot be considered site improvements and, therefore, are not eligible under the CDBG program, we will still address your question regarding the procurement procedures used by the City.

Based on the background information and telephone conversations with your staff in the HUD Atlanta Regional Office and the HUD Jacksonville Field Office, it does not appear that proper CDBG procurement procedures were followed by the City to undertake the lot improvements. Neither the Request for Proposals (RFP) used by the City to select the builders nor the Selection Criteria used to evaluate the bids include lot improvements as part of the Infill Housing Program. Both the RFP and the Selection Criteria are based on the selling price of the homes, square footage, the quality of the construction, and the builder's experience; no consideration is given to the lot improvements. No formal bids were obtained for the lot improvements; instead, the builders selected for the construction of the houses were later reimbursed for any subsequent lot improvements.

The regulation at 24 CFR 85.36(c)(3)(i) states that all solicitations for bids must "incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured." It is vital that this requirement is met so that bidders are aware of all the work and materials involved with any given project, and that all bids can be evaluated on the same basis. Since the contractors were asked to carry out the additional work on the lots after they had been selected to build the homes, it does not appear that this procurement requirement was met.

It may be possible that in some situations all the work involved in the project need not be included in detail in an RFP if the work is considered "incidental" to the construction project. That is, if the City can show that it is likely that all of the contractors bidding on the project would have assumed that the additional work was an integral component of the Infill Housing Project, it may then be fair to assume that the bidders included such work in their bids. If the grantee cannot show this and the work was clearly distinguishable from the other construction work, then it should have been listed as a separate task in the RFP or handled under a separate RFP.

Therefore, if the improvements in question had been eligible site improvements, the grantee would be required to show how it complied with the rules for procurement. If the grantee could not do so, the HUD Jacksonville Field Office would need to make a finding on this portion of the activity and seek remedial action. Inasmuch as the improvements that were funded with CDBG are not eligible, the Field Office should make a finding on the eligibility of the activity and seek reimbursement from the City.

If you have any questions on this, please contact the Entitlement Communities Division on FTS 458-1577.

cc: Edwin Gardner, SC
cc:

CGBE: Miller 7282 CGBE: Buell 7282
CGBE: Broughman 7282 CGBE: Chron 7282
CGBE: Files (Region 4) CGB: Patch 7286

CU: 7233 COOF: Davis 7212
DUSFC: Gardner 7106

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