



Internal Audit Department

Audit Report 2013-9

Housing, Human, and Veteran Services Department

Florida Non-Profit Services, Inc., Conflict of Interest

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The files and draft versions of audit reports remain confidential and exempt from public records requests during an active audit under *Nicolai v. Baldwin* (Aug. 28, 1998 DCA of FL, 5th District) and §119.0713, Florida Statutes. Workpapers supporting the observations noted within this report are public record, and may be requested upon release of the final audit report.

Internal Audit provided the Audit Report draft to the Housing, Human and Veteran Services Department for management response on June 21, 2013. Kim Grant, Department Director, provided management's response on July 23, and a revised response on August 1, 2013.

Objective

The objective of the engagement was to determine whether a conflict of interest existed between this grant subrecipient and one of its vendors.

Scope

The review consisted of, but was not limited to, the following tasks:

- Reading the County's subrecipient agreement with FNPS for this HOME grant;
- Examining FNPS' eleven pay requests related to this HOME grant;
- Reviewing FNPS' HOME grant application;
- Researching Florida Department of State, Division of Corporations records;
- Reviewing 24 CFR 85.36, Procurement;
- Interviewing HHVS management and staff;
- Interviewing HUD personnel; and
- Reading HUD's May 21, 2012, Compliance Monitoring Report of HHVS.

Background

The National Affordable Housing Act of 1990 created the Home Investment Partnerships (HOME) Program. According to the U.S. Department of Housing and Urban Development (HUD) 2008 document, *Building HOME* (http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/training/materials/building), the program's objectives are to provide decent, affordable housing to lower-income households, to expand the capacity of non-profit housing providers, to strengthen the ability of state and local governments to provide housing, and to leverage private sector participation. The Board of County Commissioners (BCC) annually approves the One-Year Action Plan for expending HOME and other entitlement funds.

The HOME program requires participating jurisdictions to form partnerships, and one common type of partner is a Community Housing Development Organization (CHDO). Florida Non-Profit Services, Inc., (FNPS) is such a CHDO partner. On December 30, 2009, FNPS applied as a CHDO for a HOME grant "to fund \$30,000 of operational expenses for, and to increase the capacity of, our organization..." FNPS did not get funded in the 2010-2011 round because another entity earned a higher score. However, in March 2011 the BCC approved a substantial amendment to the One-Year Action Plan and then awarded FNPS \$37,707 on May 24, 2011. The grant scope stated that "The funding will cover costs associated with staffing for the CHDO which will include salaries and benefits for one (1) individual providing accounting/administrative services." FNPS had previously contracted with Real Estate Technology Corporation of Naples (RET) for administrative and accounting services on December 1, 2009. *Carl J. Kuehner signed that contract as Chairman of FNPS, and his wife, JoAnne M. Kuehner, signed for RET as its Chairman.*

The Department of Housing, Human, and Veteran Services (HHVS) approved payments to FNPS from this grant for “office and bookkeeping support.” Prior to the Finance Department’s January 2012 discovery of the conflict of interest between FNPS and RET noted above, four FNPS pay requests had been reimbursed a total of \$10,425.

In April 2012 the Miami field office of HUD conducted a monitoring of Collier County’s Community Development Block Grant (CDBG) and HOME Programs. One of the purposes of that review was to determine program compliance with applicable laws and regulations. HUD issued its Compliance Monitoring Report to HHVS on May 21, 2012. HOME Finding No. 5 — Violation of CHDO Certification, noted that the Chair of FNPS, who also was the President of one of FNPS’ vendors, received HOME Operating funds that were used to pay the salary of his secretary (Actually Controller of RET per her 2009 resume). It further stated that this was a violation of CHDO certification. (See Exhibit A for complete HOME Finding No. 5 and management’s comments.) The stated Corrective Action is: “In order to clear this monitoring finding, the County must determine the amount expended and reimburse its Line of Credit for HOME Operating funds expended in PY 2009 from non-federal funds within 30 days from the date of this letter.”

HHVS requested additional payroll records to validate the RET controller’s full 40 hour week, but FNPS indicated that such records did not exist. As explanation, the Chairman of FNPS emailed HHVS on September 19, 2012, that the HOME grant’s filing deadline was 12/31/09, while the related project (Esperanza Place) was scheduled from July 2010 to June 2011. The first date approved for grant funding was May 2011 (BCC approval 5/24/11, item 16.D.2). Prior to the HOME grant’s term, RET had paid its controller for all of her work associated with the Esperanza Place project. “Consequently, once funding was available, we viewed the monthly requisitions as partial reimbursement for the previously completed work, since the grant only had a one year term. If this approach was not appropriate, I apologize, but had there not been the 17 month delay, there would have not been any issue.” Regardless, FNPS knowingly submitted pay requests to HHVS for reimbursement *for work performed before the grant period began*. This called into question the veracity of the signed pay requests.

On September 24, 2012, the Collier County Attorney’s Office (CAO) sent a Notice of Default to the Chairman of FNPS. The letter charged FNPS with failure to comply with the terms of its agreement with Collier County. The letter noted that FNPS’ Chairman had informed County personnel on September 19, 2012, that FNPS “had previously presented certified requests for payment for accounting/administrative services that were rendered prior to the effective date of the Subrecipient Agreement and that you could not validate how much time had been spent on eligible services during the Term of the Agreement.” The letter stated that outstanding pay requests will not be processed and future payment will not be made under the agreement. Finally, the letter demanded the return of the \$10,425 of HOME funds already paid to FNPS, no later than November 30, 2012.

Through almost eight months of substantial effort involving research, communications, and meetings among HHVS, other County departments, and the Clerk’s Office, the Finance Department accepted FNPS check #2175 for \$10,425 on May 22, 2013.

Summary

This examination generated the following observations:

- Apparent conflict of interest: FNPS paid its chairman’s corporation for grant-funded services.
- Pay requests were submitted for work performed before the grant term.
- Timesheets of a Real Estate Technology employee were improperly approved.

- FNPS has been paying wages to a formerly unpaid volunteer in order to increase the capacity of this CHDO's key staff to carry out HOME-assisted activities.

Control over the awarding of grant funding would benefit from closer scrutiny of subrecipient and vendor relationships, and improved education of subrecipients regarding those relationships.

Observations

1) Apparent Conflicts of Interest: FNPS paid its chairman's corporation for grant-funded services.

In its subrecipient agreement (pg. 4, #19) with Collier County, FNPS agreed to comply with 24 CFR 85, which precludes real or apparent conflicts of interest at 24 CFR 85.36 (b)(3). This agreement also contains a Conflict of Interest prohibition (pg. 13, D.) that states in part "no person having any conflict of interest shall be employed by or subcontracted by the DEVELOPER/SPONSOR." The agreement defines DEVELOPER/SPONSOR on page 1 to mean Florida Non-Profit Services, Inc. Sub-contracts under this agreement (pgs. 6-7) require HHVS approval prior to execution, and must meet the minimum procurement standards set by the Collier County Purchasing Department, Florida Statutes, and the U.S. Department of Housing and Urban Development (HUD).

FNPS submitted eleven pay requests to HHVS that included billing statements from the employee, signed and approved time sheets, payroll summaries, payroll bank deposits, and invoices. Billing statements accompanying the first three pay requests billed to FNPS, and the remainder billed Real Estate Technology (RET), 900 Broad Avenue South #2C, Naples, FL 34102. All eleven invoices were from RET to FNPS.

a) The Florida Department of State, Division of Corporations, reflects that Carl J. Kuehner is President and Director of Real Estate Technology Corporation of Naples, located at 900 Broad Ave S, Unit 2C, Naples, FL 34102 US. It also reports that Carl J. Kuehner is Chairman of Florida Non-Profit Services, Inc. This appears to violate the conflict of interest provisions noted above. Further, HUD's May 21, 2012, Monitoring Report Finding No. 5 (Exhibit A) stated that this situation was a violation of CHDO certification.

b) FNPS contracted with RET for administrative and accounting services. Carl J. Kuehner signed that contract as Chairman of FNPS, and his wife, JoAnne M. Kuehner, signed for RET as its Chairman.

Recommendation:

- HHVS personnel must work to prevent both real and apparent conflicts of interest. They should take notice of subrecipient and vendor relationships, and when they perceive a conflict, act to prevent any non-compliance with applicable laws, rules and regulations.
- HHVS management should consider whether improved education of subrecipients regarding vendor relationships could enhance future compliance.

Management Response:

"Regarding the observations: Current management concurs with the interpretation that there is an apparent conflict of interest. Since the funds have since been repaid by the subrecipient, there is not even the possibility of there being monetary gain to any of the principles in this situation. It is also worthy of note that the outset of this arrangement was under a prior management team.

Management concurs with the recommendations. Current controls are in existence, including an attestation in the RFP or application to abide by 24 CFR 85 - Administrative Requirements for Grants and Agreements to State and Local Governments which precludes real or apparent conflicts of interest. Current controls also include citation of this regulation in subrecipient agreements, which are signed by the subrecipient indicating they will comply. These controls will continue. HHVS has worked in conjunction with the Grant Compliance Office of OMB to develop improved controls for the future, as follows:

- a) HHVS has already conducted a review with subrecipients at a Quarterly Partnership meeting of the key terms of subrecipient agreements, including the conflict of interest provisions. In addition, HHVS will prepare more specific training material on the topic of conflicts of interest and the applicable CFR's. This will be developed and reviewed with applicable HHVS staff, and will be presented in a training session at one of HHVS's Quarterly Key Partnership meetings with all partners that attend. Then, on an on-going basis the material will be reviewed with and signed by subrecipients, at the inception of the subrecipient agreement (since the applicable language is in the subrecipient agreement already).*
- b) Provide on-going review of parties to applications and possible conflicts when subrecipients are carrying out project activities. It will be incumbent on the grant coordinators and grant manager to review the parties to the agreements and review the associated regulations for their particular program to avoid the appearance of a conflict. These requirements will continue to be cited in the RFP, the agreements, and will be reviewed with all subrecipients at the outset of any new agreement, as noted above. HHVS will also review all monitoring tools and add emphasis to a review of conflicts of interest for all periodic monitoring visits.*

One final note: Management takes these concerns seriously, and accepts its duty to manage grants in a compliant manner. However, because conflict of interest is also measured by "appearance" (i.e., real or apparent) it is not always readily discernible. Consequently, it may not always be possible to gather enough information to assure this will not occur in the future. For example, it might never be known through reasonable management measures that a bid winner is a family member of the person in charge of procurement under one of our agreements. This is only raised by management as a practical matter, and not to diminish the importance of this compliance matter."

2) Pay Requests Were Submitted For Work Performed Before The Grant Term

FNPS submitted eleven pay requests to HHVS for HOME Grant reimbursement of office and bookkeeping support expense that it incurred with RET. According to Mr. Kuehner's email dated September 19, 2012, FNPS applied for this grant by December 31, 2009, for a project scheduled from July 2010 to June 2011. FNPS was not funded for the 2010-2011 award period due to its competitive award score.

Then on May 24, 2011, the BCC did approve this HOME Grant. The grant contract required all services to be completed prior to May 24, 2012. By then, FNPS' project had been completed, RET had paid its employee for her project-related work, and FNPS had paid RET for the employee's time. The FNPS 9/19/12 email noted above states: "Consequently, once funding was available, we viewed the monthly requisitions as partial reimbursement for the previously completed work, since the grant only had a 1 year term." The email went on, "If this approach was not appropriate, I apologize, but had there not been the 17 month delay, there would have not been any issue."

FNPS' Vice Chairman, Robert S. Wolfe, certified that the eleven pay requests had been drawn in accordance with the terms and conditions of the agreement between FNPS and Collier County. Mr. Wolfe also signed his approval of

all 23 employee-signed timesheets submitted with these pay requests. The RET employee also signed each one of the 23 detailed timesheets. The dates on all timesheets falsely indicated that the RET employee performed project-related work during the term of the HOME grant.

The inadequacy of control that allowed HHVS to accept these pay requests for “reimbursement for the previously completed work,” even though that work was subsequently discovered to have been completed before the grant period, resulted in serious grant non-compliance.

Recommendation:

- HHVS management should design and install controls to mitigate the potential for subrecipients to submit inaccurate pay requests.
- HHVS management should ensure that subrecipients understand their obligations to submit only accurate pay requests, and the penalties for not doing so.

Management Response:

“Management concurs with the recommendations. As the Finance Department sees evidence of, HHVS has vastly improved the processing of pay packets through our office over the last year. There is a much higher level of scrutiny in HHVS prior to submission to Finance, and often discussion with Finance prior to accepting a pay request; or prior to determining what is needed for a successful pay application. However, HHVS has coordinated with the Grant Compliance Office of OMB and intends to further improve the controls with the following actions:

a) Clarify and keep in front of the subrecipient the period of availability of funds and the period for which this particular pay request is covering by updating the Exhibit B “Request for Payment” with the following:

- *A notation as to the period of availability (the period for which funds may be expended)*
- *A statement such as “The Agency/Organization has incurred the indebtedness listed below between _____ and _____.”*

By signing the request for payment, the subrecipient is continually reminded of these dates and is attesting to their accuracy.

b) Monitor the work of the subrecipients, and perform a detailed pay request review. HHVS staff will confirm that the information submitted on the pay request did indeed occur as noted. This can take many forms including on-site monitoring or desk monitoring to confirm project activities are being completed.

c) Track the pay requests and their periods of indebtedness to assure no overlap. HHVS staff will add to their “workbooks” this information.

d) HHVS will add to the subrecipient orientation a one page summary explaining the period of availability, the importance of submitting only accurate pay requests and explaining the penalties for not doing so.”

3) Employee Timesheets Improperly Approved

FNPS contracted with Real Estate Technology Corporation of Naples (RET) for administrative and accounting services. The eleven pay requests that FNPS submitted for reimbursement contained 23 timesheets from an RET employee. Even though they were for work performed *before* the grant period, each of the timesheets bore dates

during the grant period. They also had the employee's signature and the approval signature of the Vice Chairman of FNPS. To approve timesheets dated within the grant period, one should have reason to believe that the dates and times are accurate.

The Vice Chairman of FNPS approved timesheets dated within the grant period that were for work before the grant period. This is an apparent falsification of requests for reimbursement.

Recommendation:

- HHVS management should ensure that subrecipients understand their obligations to validate documentation in support of pay requests. Subrecipients should not approve documents without ensuring that services have been performed in accordance with grant terms.

Management Response:

“Management concurs with the recommendation. As has been noted already, HHVS has dramatically improved its professionalism and success (as measured by returns from Finance) in the processing of pay requests. This has also required a substantial level of education and improvement on the part of subrecipients, which has been fostered by the new management team. Management works very, very hard to meet all requirements for accurate and compliant pay request processing, and will continue to do so, including on-going education of all subrecipients, as needed.”

4) Uncertainty of Achieving Funding's Capacity-Building Objective

The Scope of Services in this HOME Grant agreement describes the intended outcome of this funding as: “to provide funding to a Community Housing Development Organization (CHDO) in order to help increase its capacity.” The 2008 HUD document, *Building HOME*, says that CHDO's must have either experienced key staff who have successfully completed similar projects, or key staff who will use experienced consultants for planning and development activities, as long as there is a plan for the consultant to train the key staff. It further states, “Because the purpose of the CHDO capacity requirement is to build staff expertise, CHDOs must have their own professional staffs.” The key staff required to demonstrate CHDO capacity cannot be consultants not planning to train the CHDO's key staff.

According to FNPS' HOME Grant application and HHVS staff, FNPS previously had no paid personnel, but rather utilized unpaid volunteers. FNPS used these HOME grant funds to reimburse RET for the wages of a formerly unpaid volunteer.

Recommendation:

- HHVS should strive to ensure that future CHDO Operating awards define how stated grant purposes will be fulfilled.

Management Response:

“Regarding the finding, and reviewing the situation in hindsight, fair questions are raised. However, current management cannot firmly determine that this was a non-compliant approach. Per Building HOME, it is allowable for alternative staffing plans to be presented and approved, and FNPS did submit a plan. It may be worthwhile to note the HUD monitoring, which is cited in this audit, included a review of the entire CHDO file and the operating agreement and was not found to be in non-compliance for this area of concern. It is relevant to recall that due to

the ensuing circumstances, and since the funding has been repaid, no grant dollars will have been paid under this arrangement. The only point of raising this is that there is no lingering compliance concern for this particular situation.

Management concurs with the recommendation. In consideration of awarding any future CHDO operating dollars HHVS will ensure such dollars are awarded accurately, including seeking out technical assistance, should it be needed, to ensure compliance. In particular, if an alternative staffing arrangement were being considered in the future, management would obtain HUD technical assistance to assure full compliance.

In 2012 HUD dramatically strengthened the requirements for becoming certified as a CHDO. Consequently, Collier has only approved one organization for CHDO status at this time, and FNPS is not that organization.”

Conclusion

The Finance Department’s detection of FNPS’ conflict of interest and HHVS’ discovery of FNPS’ falsification of invoices, coupled with HUD’s subsequent Compliance Monitoring finding that FNPS may have violated its CHDO certification, raise the question of whether FNPS should be eligible for any future grant funding. Internal Audit’s observation #1 of an apparent conflict of interest casts doubt on the propriety of future awards to FNPS. Additional observations (#2 & #3) describe control weaknesses that escalate the risk of fraud. Finally, it isn’t clear how HHVS expected these funds to achieve grant requirements for building this CHDO’s capacity.

Repayment of \$10,425 does not excuse FNPS from knowingly submitting grant pay requests for work clearly and admittedly performed outside the time period of that grant.

Management Response:

“The internal auditor raises the question as to whether FNPS should be eligible for any future grant funding. HHVS has researched the regulations concerning HUD’s views, which, simply put, are that as long as an entity is not debarred, a participating jurisdiction may award grant funds. During the application process for any grant funds, the capacity and experience of any applicant is considered. HHVS has developed a risk matrix, based on HUD guidelines, that provides a tool and framework, along with other information provided in the application, for making these evaluations. As part of the capacity assessment, HHVS will take additional steps to increase awareness amongst applicants as to situations that can inadvertently lead to fraud, including discussion of related party agreements. This tool currently includes an evaluation of the application entities’ financial capacity as demonstrated by their prior two years of single audit (or equivalent if they do not rise to the level of being required to have a single audit), and also two years of monitoring reports from any other agency; such as the state, that may be monitoring their performance on grant funds. HHVS will enhance this tool by explicitly adding criteria for performance on County awards of HUD funds.”

Exhibit A

Finding No. 5 – Violation of CHDO Certification

Condition –

The County's CHDO, Florida Non-Profit Services, Inc., received HOME CHDO set-aside funds, and Operating funds. Based on a review of documentation provided, Carl J. Kuehner, Chair of the Board of Florida Non-Profit and President of Real Estate Technology, Corp., received HOME Operating funds of which was used to pay the salary of his secretary. This is a violation of the CHDO certification.

Criteria –

The regulations at 24 CFR 92.2(3) define a CHDO as "Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A community housing development organization may be sponsored or created by a for-profit entity, but:

- i. The for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm.
- ii. The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two-thirds of the board members; and
- iii. The community housing development organization must be free to contract for goods and services from vendors of its own choosing;

Cause –

It appears that County staff was not aware of the CHDO Certification criteria.

Effect –

The CHDO may be in violation of the conflict of interest regulations which could require reimbursement of funds.

Corrective Action –

In order to clear this monitoring finding, the County must determine the amount expended and reimburse its Line of Credit for HOME Operating funds expended in PY 2009 from non-federal funds within 30 days from the date of this letter.

Management's Comments:

"Regarding Exhibit A (HUD Monitoring Report), HHVS wishes to note that in one location Finding 5 states that there is a violation of the CHDO certification, and in another it states there may be a conflict of interest. Upon Finance first raising the question of a potential conflict of interest, HHVS took the initiative to bring the question of the conflict of interest to HUD to seek guidance. HHVS endeavors to transparently analyze and resolve any questions of compliance, and correct if non-compliance is discovered. HHVS continued to maintain contact with HUD Miami and have it in writing that the finding will be removed upon repayment of the funds in question. HUD Miami has been notified that repayment has occurred.

That being said, HHVS's view, after the HUD finding was issued, was that HUD may not have had all relevant facts when writing their finding, as the finding was not in all cases factually accurate and may have been citing two separate but related "issues." HHVS, along with the County Attorney's Office had been in the process of finalizing

a letter to HUD to ask for further consideration of and possible removal of this finding when the HHVS Interim Director discovered the much more significant issue: pay requests for work performed outside the grant period of availability had been submitted. When discovered, the Interim Director immediately contacted the Finance Director (and very shortly thereafter HUD) to begin discussing an appropriate course of action.”