

August 14, 1997

Ms. Pat Morgan
Director, Office of the Executive Secretariat
U.S. Department of Housing and Urban Development
451 Seventh Street, SW, Room 10139
Washington, D.C. 20410-0500

Via Fax to (202) 619-8365

Re: Freedom of Information Act Request
Frank Destefano and Associates, Contracts DU-18355 & DU-18415

Dear Ms. Morgan:

Under the provisions of the Freedom of Information Act, please provide us with the following information regarding the two above referenced contracts with the Office of Community Planning and Development at HUD, which were let on January 3, 1994 and June 23, 1995, respectively:

- 1) The request for contract services, form HUD-720, completed for each of the contracts, including all attachments;
- 2) Any justifications for other than full and open competition, forms HUD-24012, completed for each of the contracts;
- 3) The request for proposals (RFP) for each of the contracts;
- 4) The actual contracts and all contract modifications issued;
- 5) Any documentation regarding analysis of potential or actual conflicts of interest due to Mr. Destefano's prior employment at HUD, including any waivers of any conflicts of interest;
- 6) Copies of all documentation prepared by the contractor for Congress, including but not limited to draft correspondence, reports, legislation or provisions of legislation;
- 7) For each item in #6 above, all documentation requesting the contractor to perform such documents, including the identity of the individual making the request;
- 8) Documentation of who within CPD was responsible for oversight of Mr. Destefano; and

FI-199281

8) Copies of all status reports submitted under this contract.

Please note that Ervin and Associates is not requesting the information for profit making activities. Therefore, any fees assessed for the processing of this request should be subject to the limitations on fees for non-commercial requesters.

Ervin and Associates agrees to pay up to \$50 for the processing of this request. If the anticipated fees are to exceed \$50, please call me at (301) 469-3422 to give me an opportunity to reformulate the request.

Very truly yours,
ERVIN and ASSOCIATES, INCORPORATED


David J. Ervin

ERVIN and
ASSOCIATES
~~INCORPORATED~~

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see p. 5

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Mr. Edward T. Stever, Jr
Contracting Officer
Administration Support Division
Office of Procurement and Contracts
451 Seventh Street, S.W.
Washington, DC 20410

Via Facsimile to (202) 708-2933

Ms. Pat Morgan
Director, Office of the Executive Secretariat
U.S. Department of HUD
451 Seventh Street, SW, Room 10246
Washington, D.C. 20410-0500

Via Facsimile to (202) 619-8365

Re: Response to Agency Protests
FOIA Request on Legal Services/Enforcement Activities
Required Debriefing Response
RFP Number DU100C000018570 - Legal Services

Dear Mr. Stever and Ms. Morgan:

This letter responds to both your August 14, 1997 response to our post-award protest of the above referenced proposal, as well as your post-award debriefing dated 8/21/97. We are combining these responses to consolidate all of our information requests in a single place and to simplify the processing of the post-award protest we expect to file with the General Accounting Office (GAO) relating to this procurement.

Since your retaliatory actions in processing this proposal are in violation of our First and Fifth Amendment Constitutional Rights, we also expressly reserve our rights to pursue the appropriate remedies relating to this proposal, as well as the two prior legal services contracts and the one prior enforcement contract, in the United States District Court for the District of Columbia. In the meantime, we want to collect the facts that tie these four procurements together so as to enable the GAO and the court to understand the full extent of HUD's procurement and use of legal services and enforcement activities. I am sure you understand how politically embarrassing and hypocritical it would be if HUD's much heralded enforcement initiatives against owners and managers were themselves somehow dirty.

As you know, the two previous legal services contracts and enforcement contract are currently the subject of a stay which was granted by Judge Bryant at the government's request, to prevent us from interfering with the ongoing criminal investigation by the United States Attorney's Office for the District of Columbia into these procurements through our discovery. Because of

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the similarities with the present procurement, including many of the same awardees, for these purposes, we must assume that this procurement is also subject to the stay. If this assumption is not correct, please confirm that with the United States Attorney's Office so that we can proceed accordingly.

To the extent that you do not answer any of the questions included in this letter as part of the required debriefing, please consider the unanswered portions as requests under the Freedom of Information Act, which is also incorporated into our discovery. If responded to under FOIA, we agree to pay up to \$100 to process this request. If the cost is greater than \$100, please contact me at 301-469-3410 so that we can evaluate ways to reduce the cost of processing this request. If provided as part of discovery; we agree to pay \$.08 per page. The bottom line, however, is that we are entitled to these answers using any of three separate mechanisms, and we fully expect to obtain the answers.

It is also important to remind you that under the FAR, a debriefing is required to be conducted, and presumably concluded, within 5 days. Considering the fact that you were advised to choose the written debriefing format over our objections, we would therefore expect a response to all questions raised in this letter no later than Wednesday, August 27, 1997.

It is also important that we express our objection that HUD chose to cancel the oral debriefing that HUD scheduled for 3:15 p.m. on August 20th in room 5266 at HUD. We are particularly upset that, in violation of our Fifth Amendment Due Process Rights, Ervin and Associates is being singled out by the Office of Procurement and Contracts for different treatment that being accorded to other contractors. Considering this, our first question is to request that HUD inform us as to how it chooses to conduct written rather than oral debriefings. Additionally, Amelia McCormick of your office told me that you were advised to conduct a written rather than oral debriefing for this procurement. We demand to be advised specifically who provided you with that advice, why it was provided, and what motivated them to provide it. Further, we request that you ~~provide us with the names of the individuals who advised you to conduct a written rather than oral debriefing on June 5, 1996 where HUD~~
~~has had the contract and oral debriefings and all procurements since June 5, 1996 where HUD~~
~~has had the contract and oral debriefings.~~ Please consider these our second and third questions.

As you know, I contacted Ms. McCormick about rescheduling the oral debriefing, which she told me had to be canceled because of scheduling problems. She then changed her mind and advised me that you refused to allow such an oral debriefing. I want you to consider the possibility that if you do not have the courage to meet face-to-face with anyone who might tell the truth about a procurement, it is obvious that you do not have the courage to stand up to political appointees who make a mockery of the procurement process. If OPC personnel do not have the guts to look a proposer in the eye to justify the legality of the procurement process, there is obviously something very, very wrong.

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I also want to remind you that we are still waiting, after numerous months, for a debriefing on the last legal services contract (legal services #2), including an explanation as to why your finding of technical unacceptability occurred immediately after we exercised our right to protest the legality of the enforcement contract. We continue to demand to know why the Deputy Assistant Secretary at the time, Helen Dunlap, directed the lawyer for the Financial Advisor to contact us to find out "what the hell" we thought we were doing by filing a protest. I find it very disconcerting that you apparently abdicated your responsibilities for supervising that procurement to Nelson Diaz, Helen Dunlap, and a subcontractor to the Financial Advisor. I also demand the [REDACTED] who are authorized to know the status of negotiations, including an answer as to how both Dunlap and Dunnells were brought into this group.

With respect to your response to our protest, I apparently must again remind you that a criminal investigation has been going on for over a year that specifically includes the legal services and enforcement contracts that you forced through the system in late 1995. I want to further remind you that a recent Inspector General's draft audit report identified 29 of 30 other major procurements in a sample as having problems. If that were not enough, Deputy Secretary Dwight Robinson has asked the National Academy for Public Administration to assist in a "top to bottom remake" of the contracting department, and HUD has found it necessary to hire Anne McCulloch in April to bring her much needed experience in procurements and ethics to the FHA. If you do not believe these actions represent sufficient information to support our allegations, then you are oblivious to what is going on around you, or alternatively, are participating in a coverup of these illegal activities. In either case, your arbitrary decision to dismiss our protest out of hand is inappropriate.

You must recognize that when you clarified the RFP by determining that non law firms were not to be excluded from the competition, you also became obligated to modify the evaluation criteria, but you chose not to do so. You then rationalized that we were technically unacceptable because we were not a law firm and did not act like a law firm. This is invalid.

Furthermore, the evaluation clearly ignored the documented success our firm has had for HUD in identifying equity skimming and implementing enforcement actions through the courts. Assistant Secretary Retsinas testified before Congress about our success in recovering over \$40 million on behalf of HUD. In fact, we were so successful that we were ordered by HUD to restrict our enforcement activities, including referrals to the IG and the identification of potential equity skimming of \$46 million and \$33 million in 1994 and 1995, respectively. We also identified over 800 owners who did not submit required financial statements, but HUD chose to follow up on less than 20 of them. We believe the reason HUD buried these problems was because some of those being identified as breaking the rules had powerful political connections. If you are not aware of it, I also want to remind you of the success we have achieved to date, and will continue to achieve, in the litigation that is rooting out corruption and favoritism at HUD.

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If, in the words of Judge Bryant, we can uncover the corruption within HUD, it is easy to do it outside of HUD

Lastly, I want to remind you that the Inspector General has already identified situations where HUD has illegally used its procurement process through the ranking of proposals or excluding us from competing to retaliate against our firm. As soon as the stay relating to the other suspect procurements, including financial advisory, due diligence, legal services and enforcement is lifted, we will conclusively prove that our allegations of contracting interference, favoritism and retaliation are not "mere speculation" as you contend, but a very accurate identification and disclosure of a series of illegal acts which have been allowed to occur by a procurement office that has "abdicated" its responsibility to oversee procurements and contracts with costly consequences.

By copy of this letter, I am requesting Secretary Cuomo appoint an independent party, possibly Ms. McCulloch or the new FBI Agent who was recently named to head up HUD's Enforcement Center, who can be honest and objective about HUD's history of procuring legal and enforcement services to objectively evaluate the merits of our Agency protest. Clearly your history and involvement in these procurements make you unsuitable to provide the required objective evaluation.

With respect to the debriefing, we find it extremely suspect that up to 5 of the law firms who were awarded contracts had also received awards under the prior highly suspect limited competition enforcement contract where the names of those chosen to receive contracts were selected personally by Diaz and Dunlap so as to prevent fair competition. This is particularly suspect given the fact that this was done while the legal services contract was in the process of being evaluated at the time. We, therefore, request the following information on these contractors:

- Please inform us which individual, Diaz or Dunlap, added each name to the list of firms identified to receive the RFP previously.
- Any other relationship between any member of any firm being awarded a contract in the first enforcement procurement and Diaz and/or Dunlap.
- Copies of all task orders issued to any of the above firms under the legal enforcement contract, including but not limited to, the firms on the attached list.
- Copies of any and all status reports identifying equity skimming and enforcement actions, including recoveries undertaken by any of these firms under the task orders.

*Mr. Housens
Enforcement ctr.*

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I am sure you are also aware of the fact that in the first legal services procurement, Nelson Diaz, then General Counsel at HUD, interfered in the Source Evaluation Board scoring to exclude Holland and Knight from a contract award. If this was done for political or personal purposes, it may have been improper if not illegal. Considering this problem, we request a copy of the justification for revising the Source Selection scores for that procurement.

So as to simplify your FOIA processing, we have attached a numbered list of the questions posed in this letter. Since each of these questions go directly to, as stated in FAR, "relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed in the process of excluding the offeror from the competitive range," we expect to receive reasonable responses to each.

Very truly yours,
ERVIN and ASSOCIATED, INCORPORATED

John J. Ervin / mro

John J. Ervin
President

cc: Secretary Andrew Cuomo

Attachments

Debriefing/FOIA/Discovery Questions

1. Provide documentation detailing how HUD chooses to conduct written rather than oral debriefings.

2. Provide documentation of specifically who provided you (Mr. Stever) with advice to conduct a written rather than oral debriefing, why it was provided, and what motivated them to provide it.

3. Provide all documents or justification which would describe situations since June 5, 1996 where HUD Headquarters conducted written debriefings, and all procurements since June 5, 1996 where HUD conducted oral debriefings.

4. Provide an explanation as to why Mr. Stever's finding of technical unacceptability on the legal services #2 procurement occurred immediately after we exercised our right to protest the legality of the enforcement contract.

5. Provide an explanation as to why the Deputy Assistant Secretary at the time, Helen Dunlap, directed the lawyer for the Financial Advisor to contact us to find out "what the hell" we thought we were doing by filing a protest on the legal services #2 procurement.

6. Provide the summary identifying those who are authorized to know the status of ~~negotiations on the legal services #2 procurement~~, including an answer as to how both Helen Dunlap and Dick Dunnells were brought into this group.

7. Identify the individual, Nelson Diaz or Helen Dunlap who added names to the list of firms identified to receive the legal services #2 RFP, and the names they each added respectively.

8. Provide information regarding any relationship between any member of any firm being awarded a contract in the first enforcement procurement and Nelson Diaz and/or Helen Dunlap.

9. Provide copies of all task orders issued to any firms under the legal enforcement contract, including but not limited to, the firms on the attached list.

10. Provide copies of any and all status reports identifying equity skimming and enforcement actions, including recoveries undertaken, under the task orders, by any of the firms awarded contracts under legal services #2.

11. Provide documentation as to why the Minority/Woman Owned Business bonus evaluation points got dropped from the legal services procurement.

- ✓ 12. Provide the Department's evaluation of the significant weaknesses or deficiencies in our proposal for this procurement.
- ✓ 13. Provide the overall evaluated cost and technical rating of all awardee's and our proposal.
- ✓ 14. Provide the overall ranking of each offeror.
- ✓ 15. Provide a summary of the rationale for the award.
- ✓ 16. Provide the names of all other respondents who fell outside of the competitive range and that were notified of such determination.