


Memorandum
No. 12-0146

City Attorney's Office

To: Lee R. Feldman, ICMA-CM, City Manager

From: Harry A. Stewart, City Attorney/5037 

Date: September 24, 2012

Re: Your Memo No. 12-031, Dated September 20, 2012:
Commission Agenda Memo No. 12-2148 – Motion to Approve FY
2013 HOPWA Grant Funds – RFP No. 825-11034

With reference to your Memorandum No. 12-031 pertaining to Non-Housing Support Services HOPWA funding for Legal Aid Services of Broward County, Inc. and its subcontractor, Coast to Coast Legal Aid of South Florida (hereinafter collectively "Legal Aid"), I agree that conflicts of interest with the Program and problems with the Program's effective and efficient administration by the City in accordance with HUD mandated guidelines, can and may exist.

More specifically, Legal Aid's response to the City's RFP identifies, in relevant part, the following "activity" and "outcome:"

Provide legal services through advocacy, *pro se* assistance, counsel and advice, and/or representation.

Clients facing eviction, ***administrative proceedings to deny or revoke their subsidized housing***, or uninhabitable conditions, will receive advice, counsel and/or representation on their presenting problem.

Legal Aid's legal representation, as expressly defined in its response, has historically, and continues to include, legal counsel to, and/or the representation of, terminated program participants through the formal administrative process mandated by 24 CFR §574.310(e)(2), as a result of Program requirement violations or conditions of occupancy. Pursuant to HUD guidelines, "[a]ssistance to participants who reside in housing programs assisted under this part may be terminated if the participant violates program requirements or conditions of occupancy." Notably, as part of its response, and seemingly contrary to its statement of "activity" and "outcome". Legal Aid further asserts that it "adhere[s] to the client termination policy provided in HOPWA regulation 24 CFR 574.310(e) and the City of Fort Lauderdale's termination process," and that it "agrees that a Program violation by a client which is contrary to HOPWA regulations ***will result in immediate termination of the offending client from the Program.***"

In terminating assistance to any participant, the City "must provide a formal process that recognizes the rights of individuals receiving assistance to due process of law," which process at a minimum must include: (a) "[s]erving the participant with a written notice containing a clear statement of the reasons for termination;" (b) "[p]ermitt[ing] the participant to have a review of the decision, in which the participant is given the opportunity to confront opposing witnesses, present written objections, and be represented **by their own counsel**, before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and" (c) "[p]roviding prompt written notification of the final decision to the participant."

It is through this formal administrative process that the following conflicts arise, and the following problems are created with the City's effective and efficient administration of the Program:

First, the proposed legal counsel and representation would create a direct adversarial relationship and conflict of interest between one subrecipient, Legal Aid, and other subrecipients providing the housing at issue;

Second, a conflict of interest would be created since City, as the Program administrator, would be funding, , not only the arbiter of the legal/administrative challenge by the terminated participant , but the subrecipients which terminate and/or recommend termination of the participants, as well as Legal Aid, as counsel for the terminated participants in the adversary formal process.

Third, the funding of Legal Aid's representation of terminated participants and simultaneous funding of the subrecipient providing housing, would be an ineffective, inefficient, and counter-productive use of Program funds;

Fourth, Legal Aid's non-housing legal services in representing terminated participants against the City and the subrecipient housing provider, would be contrary to and inconsistent with Legal Aid's assertion and assurances that it "adhere[s] to the client termination policy provided in HOPWA regulation 24 CFR 574.310(e) and the City of Fort Lauderdale's termination process," and that it "agrees that a Program violation by a client which is contrary to HOPWA regulations **will result in immediate termination of the offending client from the Program**" --- as asserted, Legal Aid's proposed legal services activity and outcomes would be in direct contravention to the aforementioned statement of agreement;

Fifth, the funding of Legal Aid's non-housing legal services would serve to thwart or otherwise frustrate the City's ability to effectively administer the Program as envisioned by 24 CFR 574.300, which defines eligible activities for HOPWA funds as available to "eligible" persons, and would thwart or otherwise frustrate City's responsibilities pursuant to 24 CFR 574.500, which provides that "[g]uarantees are

responsible for ensuring that grants are administered in accordance with the requirements of this part and other applicable laws,” and that “[g]rantees are responsible for ensuring that their respective project sponsors carry out activities in compliance with all applicable requirements.” Legal Aid’s express non-housing legal services challenging terminations of Program participants would be benefiting non-eligible, terminated, participants of the Program, and would be inconsistent with the City’s obligations and responsibilities in funding financial assistance, housing, and supportive services programs that assist people living with HIV/AIDS and their families to locate, acquire, finance, and maintain appropriate housing.

HAS/mr

c: Susanne M. Torriente, Assistant City Manager
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