



U.S. Department of Housing and Urban Development
Office of Inspector General for Audit, Region I
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Room 370
Boston, Massachusetts 02222-1092

Phone (617) 994-8380 Fax (617) 565-6878
Internet <http://www.hud.gov/offices/oig/>

Issue Date September 28, 2009

Audit Memorandum Number 2009 BO 1803

MEMORANDUM FOR: Robert L. Paquin, Director of Community Planning and Development,
1AD

FROM: John A. Dvorak, Regional Inspector General for Audit, Boston Region, 1AGA

SUBJECT: The City of Brockton, Massachusetts, Recipient, Building a Better Brockton, Inc.,
Lacked Sufficient Capacity to Effectively Administer Its Neighborhood
Stabilization Program

INTRODUCTION

In accordance with our goal to review and ensure the proper administration of Neighborhood Stabilization Program (NSP) funds provided under the Housing and Economic Recovery Act of 2008 (HERA) and/or the American Recovery and Reinvestment Act of 2009 (ARRA), we conducted a capacity review of the operations of the City of Brockton's (City) grantee, Building a Better Brockton, Inc. (recipient), which has responsibility for administering the City's NSP. Our objective was to determine whether the City and/or recipient had the capacity to effectively and efficiently administer its NSP under the provisions of the Housing and Economic Recovery Act of 2008 (HERA) and the American Recovery and Reinvestment Act of 2009 (Recovery Act).

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-3. Please furnish us copies of any correspondence or directives issued because of the review. If you or your staff has any questions, please contact Kevin Smullen, Assistant Regional Inspector General for Audit, at 617-994-8380.

METHODOLOGY AND SCOPE

Our review of the recipient was limited to gaining an understanding of internal controls over the administration of NSP funds and related activities. To meet our objective, we reviewed HERA and ARRA documentation and the approved funding agreement between the City and the recipient. We

also interviewed the recipient’s management and staff members and reviewed the recipient’s documentation such as policies and procedures, organizational charts, and job descriptions to obtain an understanding of the recipient’s internal controls. Our review of this documentation was limited to our stated objective and should not be considered a detailed analysis of all of the recipient’s internal controls or operations but only those controls or operations that would affect the administration of the NSP funding provided under HERA and ARRA.

We obtained assistance from the U.S. Department of Housing and Urban Development’s (HUD) Office of General Council (OGC) and Office of Community Planning and Development (CPD) for Region 1 to determine whether conflicts of interest existed among board members of the recipient, the nonprofit Brockton 21st Century Corporation (B21), and its subrecipients, and if so, what actions could be taken to address any conflicts. We performed our audit fieldwork from July through August 2009 at the recipient’s office in Brockton, Massachusetts. For this report, our work was not conducted in accordance with generally accepted government auditing standards; however, this had no effect on the significance of the conditions identified in this report. Under ARRA, inspectors general are expected to be proactive and focus on prevention; thus, this report was significantly reduced in scope to the items and conditions discussed in this report.

BACKGROUND

The City disbanded its Planning Department and Redevelopment Authority in May of 2008, and the city council approved the mayor’s decision to transfer development activities to a newly established nonprofit corporation, Building a Better Brockton, Inc. (recipient).¹ On July 1, 2008, by means of an administrative amendment, the City also transferred its Community Development Block Grant (CDBG) program operational responsibility to the recipient. However, the operational responsibility for the administration of the City’s HOME Investment Partnerships Program was assigned to the Brockton Housing Authority.

The City also established another nonprofit corporation, B21.² This entity was established to aggressively seek jobs and bring new businesses to the City. Both the recipient and B21 are co located in the same building and share the same staff. The chief executive officer (CEO) of the recipient is also the CEO of B21.

The recipient’s overall mission is to engage in development activities within the city. The recipient has responsibility for oversight of \$6.7 million, of which more than \$2.1 million is NSP funds under HERA (NSP-1).³ The recipient has also received \$1 million in NSP funding from the State of Massachusetts. In addition, the recipient has submitted an application for \$21 million in NSP-2 funding under ARRA.

The following is a list of federal and state grant programs that the recipient plans to administer:

Program	Federal/state funding
Neighborhood Stabilization Fund (NSP-1)	\$2,152,979

¹ The recipient was organized within Massachusetts as a nonprofit corporation on May 5, 2008, as an Internal Revenue Service 503(c)(3) nonprofit.

² B21 was organized within Massachusetts as a nonprofit corporation on March 24, 1994.

³ The NSP-1 grant agreement between HUD and the City was issued to the City in March 2009.

Community Development Block Grant (CDBG)	\$1,517,955
Neighborhood Stabilization Fund (NSP-State)	\$1,000,000
Energy Efficiency Conservation Block Grant (EECBG)	\$ 865,000
Homelessness Prevention & Rapid Re-Housing Program (HPRP)	\$ 610,110
Community Development Block Grant - Recovery (CDBG-R)	\$ 398,596
Economic Development Initiative (EDI – Special Purpose)	\$ 190,000
Total	\$6,734,640

The recipient proposed to use the NSP funds for the full range of allowable activities such as establishing financing mechanisms for purchase and redevelopment of foreclosed homes and residential properties, purchasing and rehabilitating homes and residential properties that are abandoned or foreclosed, establishing a land bank for foreclosed homes, demolishing blighted structures, and/or redeveloping demolished or vacant properties.

RESULTS OF REVIEW

Our review determined that the recipient did not have the capacity to effectively and efficiently administer its NSP. Specifically, the recipient lacked adequate internal controls over the areas of financial reporting and procurement and adequate staffing to administer the program effectively. In addition, we found potential conflict-of-interest issues among the recipient, its board members, and several of the subrecipients that would receive NSP funding. We are concerned about the recipient’s ability to administer potential NSP-2 funding⁴ until such time as it can satisfactorily address and demonstrate adequate controls over the areas of financial reporting, procurement, and staffing and the conflicts of interest described below.

Financial Reporting

The recipient needs to improve its internal controls over financial reporting in the areas of (1) financial management and record keeping and (2) direct and indirect cost allocations.

The recipient’s treasurer, who was also an outside contractor, maintained the books, records, and accounting system used to manage and track the recipient’s financial activities. None of the applicable detailed financial records were maintained at the recipient’s office location; they were kept at the treasurer’s office, located elsewhere in the City. The treasurer also had the sole responsibility for maintaining the recipient’s general ledger. In addition, our reviews of the recipient’s financial activities disclosed that the recipient had no formal process for reporting, reviewing, and reconciling the NSP-funded activities in the general ledger to subsidiary ledgers/records and other supporting documents.

The recipient’s allocation of direct and indirect costs between the CDBG entitlement program and the NSP-1 grant did not always ensure an equitable allocation of the costs.⁵ By direction of the CEO, the recipient’s direct costs (salaries) were allocated based on the number of hours worked on each activity, and indirect costs were allocated based on a formula of 75 and 25 percent for NSP and CDBG, respectively. However, the recipient could not provide documented

⁴ The recipient has filed an application for \$21 million in additional funding under NSP-2.

⁵ Allocation of costs is subject to the requirements of Office of Management and Budget Circular No. A-122, attachments A and B.

justification that supported the allocation of direct and indirect costs and thoroughly described the methodology for these allocations. In addition, if and when the recipient receives additional grants and awards of NSP funding under ARRA, the cost allocations for this new NSP funding may need to be adjusted accordingly to an acceptable allocation of cost for these funds. The justification for these adjustments will also need to be adequately supported with documentation. Any documented justification in support of the allocation of direct and indirect costs needs to be approved by the recipient's board.

Procurement

The recipient did not have the capacity to administer its own procurement actions. For procurement actions already taken, the recipient failed to properly document the source selection process and maintain a detailed history of its procurements. These conditions occurred because of its inexperience in administering HUD programs and, more specifically, the newly approved NSP.

In December 2008, the City, through the recipient, issued requests for proposals (RFP) to various local organizations and nonprofit entities for implementation of the City's NSP. In January 2009, the recipient received proposals from 10 respondents and ultimately approved seven of the proposals it received from subrecipients. However, for the RFPs identified above, the recipient could not provide documentation supporting the evaluation of the proposals received.

Recipient management indicated that the evaluations of the subrecipient proposals were later discarded. Management insisted, however, that evaluations of the subrecipient proposals performed were based on the evaluation factors outlined in the RFPs, state procurement laws,⁶ federal procurement regulations as defined by 24 CFR (*Code of Federal Regulations*) 85.36, and the recipient's own procurement policies. The records of these evaluations should have been retained, and typically these records would have included the rationale and justification for the method of procurement, the type of contract, the selection of the subrecipient, and the basis for the contract price.

The recipient must implement effective management controls over its process for procurement and contracting to ensure compliance with HUD requirements and regulations for the administration of its NSP funds. Based on our review, the recipient agreed to improve and strengthen its procurement policies and procedures.

Staffing

The recipient's financial management responsibilities were divided among the CDBG program manager, the CEO, and the treasurer. This arrangement did not allow a proper segregation of duties. The treasurer was an outside contractor who used commercial software (QuickBooks) to record payments and print checks. The City has access to HUD's Integrated Disbursement and Information System and Disaster Recovery Grant Reporting System to prepare financial reports for NSP and other HUD funds. The recipient was seeking a full-time accounting/compliance officer to consolidate all financial and accounting activities and responsibilities into one position. The accounting/compliance officer would direct, manage, and coordinate the administrative components of the recipient and B21 and ensure that budgets would be prepared and monitored,

⁶ Massachusetts General Law, -c 30B

expenditures would be consistent with budget authorization, and financial/accounting controls would function properly. The recipient did not have a position designated to fulfill HUD's requirements for financial reporting.

Conflicts of Interest

During our review, we obtained information indicating that certain recipient board members may have had interests in organizations and/or companies contracting with the recipient as subrecipients. Through the RFP process, as noted above, the recipient had solicited and received 10 proposals from local entities, seven of which were approved to receive NSP funding as subrecipients of the City. The subrecipient selection was determined by a three person panel that included the CEO who represented the recipient, a representative of the Brockton Housing Partnership (Partnership), and the mayor's office. The panel's recommendations were then presented to the mayor for final selection.

The Partnership is a membership organization made up of officials from several local banks and community organizations in the City and surrounding areas. NSP funding was awarded for two contracts to subrecipients that were Partnership members. Additionally, one member bank's vice-president was on the recipient's board, which could result in a conflict of interest if any of properties held by the bank were selected for redevelopment under NSP. In addition, two other recipient board members held management positions with two other subrecipients that were granted contracts. However, we did not find evidence that any board members had personally benefited from the contracts.

During the audit, we requested that HUD OGC for Region 1 review the various conflicts of interest. We also met with HUD OGC to discuss and present details of the conflicts of interest we identified. Based on the OGC review, we later discussed the conflicts of interest with Region 1's CPD Director and his staff. According to CPD officials, neither the recipient nor its board had requested an exception from HUD requirements regarding the conflicts of interest, nor had the recipient provided full disclosure to HUD, as defined by 24 CFR (*Code of Federal Regulations*) 570.611, of these conflicts of interest. On August 11, 2009, the CPD Director sent a letter to the mayor of Brockton stating that there were serious conflicts of interest between the recipient and its subrecipients and requested a review and clarification by the City concerning the conflicts of interest (see appendix A).

RECOMMENDATIONS

We recommend that the Director of HUD's Office of Community Planning and Development for Region 1 require the City to

- 1A. Implement adequate policies, procedures, and controls to ensure that NSP funds are used effectively and efficiently and in accordance with applicable requirements.
- 1B. Hire additional staff, as needed, to assist in administrating NSP to ensure that the City has sufficient capacity to effectively and efficiently administer program funds.

We also recommend that the Director of HUD's Office of Community Planning and Development for Region 1

2A. Perform additional monitoring and provide technical assistance to the City, as needed, to ensure that the City properly administers the NSP funding in accordance with federal requirements.

APPENDIXES

Appendix A

CPD LETTER TO THE CITY OF BROCKTON



U.S. Department of Housing and Urban Development

MASSACHUSETTS STATE OFFICE, NEW ENGLAND AREA
Office of Community Planning and Development
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street - Fifth Floor
Boston, Massachusetts 02222-1092

Fax (617) 565-5442

CPD website: <http://www.hud.gov/offices/cpd/communitydevelopment/index.cfm>

Honorable James E. Harrington
Mayor of Brockton
City Hall
45 School Street
Brockton, MA. 02301

AUG 11 2009

Dear Mayor Harrington:

SUBJECT: Conflict of Interest

In a recent meeting with HUD's Inspector General and HUD's Counsel, it has been brought to our attention that there may be serious potential conflict of interest issues between Build A Better Brockton and the subrecipients funded through the Neighborhood Stabilization Program (NSP). This is a potentially serious problem because it may, as you are currently constituted, impede your ability to carry out the program.

Although you may request an exception – see below - to the conflict of interest rules it appears from what we now know that it is highly unlikely that we would grant blanket approval of such requests. You should therefore begin thinking of how you would carry out your program in the event that exceptions are not approved.

Conflicts of Interest are defined at 24 CFR570.611: URL:
http://edocket.access.gpo.gov/cfr_2007/aprqtz/pdf/24cfr570.611.pdf

Applicability. (1) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, shall apply.

Conflicts prohibited. The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter...

Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed

official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds under this part.

The procedures for requesting an exception to the Conflict of Interest regulations are as follows:

Exceptions. Upon the written request of the recipient, HUD may grant an exception to the provisions on a case-by-case basis when it has satisfactorily met the threshold requirements.

Threshold requirements. HUD will consider an exception only after the recipient has provided the following documentation:

- (i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
- (ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law

Factors to be considered for exceptions. In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements, HUD shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

Whether an opportunity was provided for open competitive bidding or negotiation;

Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;

Whether the interest or benefit was present before the affected person was in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract,

Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

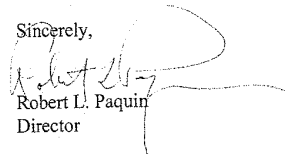
any other relevant considerations

CPD LETTER TO THE CITY OF BROCKTON

Paul Connolly, CPD Representative for the City of Brockton provided Build A Better Brockton the Conflict of Interest regulations and a copy of a CPD document outlining the threshold and consideration factors associated with Conflicts of Interest. As you continue to proceed with the NSP and other CPD programs, the Conflict of Interest regulations need to be applied in all subrecipient awards.

We are available to provide assistance in this matter should you decide the situation warrants collaboration. Should you have any questions or require additional assistance, please don't hesitate to contact Paul Connolly, Brockton's CPD Representative at 617-994-8592.

Sincerely,



Robert L. Paquin
Director

CC: Donald Walsh, CEO
Build A Better Brockton

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments



BROCKTON 21ST CENTURY CORPORATION
BUILDING A BETTER BROCKTON, INC.

INS - OIG
OFFICE OF AUDIT
BOSTON, MASSACHUSETTS
2009 SEP 16 AM 10:45

RECEIVED

September 9, 2009

U.S. Department of Housing and Urban Development
Office of the Inspector General for Audit, Region 1
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street
Boston, MA 0222-1092

Dear Inspector,

We have reviewed the audit findings as outlined in your September 4, 2009 report. We are in agreement with all of the findings and are pleased to report that these issues were also previously recognized by our organization and many steps have already been taken to correct the issues. A summary of the steps we have taken, or will take, to address your recommendations are as follows:

Comment 1

1 A. Adequate Controls

Building a Better Brockton, Inc is in the inception year of its existence and is in the final stages of creating a strong team to manage the organization. Funding of the organization, which has quickly grown from \$1.2M to \$6.7M, has caused some unexpected but manageable growing pains. As with any new organization and new staffing there is a learning curve as the abilities of the new staffing are assessed. As you saw during the audit and as noted below, our Board and Management has been proactive in solving many of the issues in your report and would appreciate having these facts incorporated into the findings.

In the early months, the Treasurer agreed to maintain the accounting records utilizing Quick Books offsite as the Treasurer operates an independent accounting firm that could be used for the start up time frame. The Office Manager was hired to perform bookkeeping duties and after several training sessions a complete copy of the accounting records were transferred to the BBB office. At that time, the records were to be maintained in tandem with the Treasurer's records until such time that the Office Manager became proficient with the maintenance of the Accounting records. The Executive Committee did not want the entire process released until the abilities of the Office manager had been determined. It became evident that the Office Manager was incapable of maintaining the records, especially as the requirements escalated with the increase in funding sources, so the Treasurer maintained the records until a suitable alternative was found. At the same time it became clear to the Executive Committee that we did not have the fundamental internal controls in place and the Executive Committee entered into a contract with Eric Kinsherf, CPA to prepare a review of the Internal Controls. The engagement letter was signed on July 15, 2009 and the report was issued on July 30, 2009, both of which are enclosed.

50 School Street ♦ Brockton, MA 02301 ♦ (508) 586-0021 ♦ Fax (508) 559-7582 ♦ www.brockton21.com

AUDITEE COMMENTS AND OIG'S EVALUATION

Comment 1

As a result of that report, the Executive Committee signed a contract with Mr. Kinsharf to create and implement the internal controls, policies and procedures and to monitor compliance on all expenditures. This will insure that all NSP funds are used effectively and efficiently and in accordance with applicable requirements. As evidenced by the request for payments, attached to this response, all payments have the proper approvals and are in compliance with HUD regulations and are also allocated to a particular budget line item.

1 B. Hiring Additional Staff

A new job has been created with the title, Director of Finance and Compliance, which will meet the higher level of financial and compliance needs suggested by Mr. Kinsharf and expected by the Executive Board and HUD. This position will be advertised in the upcoming days.

Once the new position has been filled and the internal controls have been implemented in the Organization, control over the accounting records will be on site at the Building a Better Brockton offices. This change will create a separation of duties and allow for a more independent review of the NSP and CDBG operations by the Board and its Treasurer.

In addition to these changes, the allocations of expenses had been under review by the Treasurer and Exec Board for a simpler and more accurate system. The old method of allocation has been discontinued and the CEO will receive 2 separate paychecks and all duties will be confined to the appropriate program's funding.

With the creation of the new position and the implementation of substantial new internal controls, our organization will have sufficient capacity to effectively and efficiently administer the program funds. Enclosed are copies of the Job Description along with a report on the implementation of the Internal Controls.

2A. Additional Monitoring

While we believe there was no undue bias in the awarding of NSP funds, we understand the concern over conflict of interest and are reviewing several different solutions to the issue. We appreciated discussing this issue with your office and will follow up with HUD to ensure that we meet all federal requirements and eliminate any perception of conflict of interest. We will submit a letter on the conflict of interest finding under a separate correspondence once we complete this review.

In closing, this completes our response to the findings of the audit and we believe that all the issues are either resolved or will be resolved in the near future as evidenced by our attachments and the new procedures that have been implemented. We would ask that the audit reflect our responses to the findings.

Comment 2

AUDITEE COMMENTS AND OIG'S EVALUATION

We appreciate the Inspector General's office sharing the results of the audit with Building a Better Brockton and our Executive Committee and are look forward to quickly resolve any concerns about the capacity of our organization to efficiently and effectively administer NSP funds.

Sincerely,



Don Walsh
Chief Executive Officer
Building A Better Brockton, Inc

OIG Evaluation of Auditee Comments

- Comment 1** The auditee provided additional attachments (documents in support of their response), and we reviewed this additional material in preparing our comments. We acknowledge that the auditee has agreed with our recommendations and will work with HUD's Office of Community Planning and Development to implement the required corrective action for all the recommendations in the report. HUD's Office of Community Planning and Development will make the management decisions regarding the corrective action for these recommendations.
- Comment 2** HUD's Office of Community Planning and Development will make the management decision regarding the corrective action that Building a Better Brockton, Inc.'s implements to resolve the conflict of interest. BBB will need to work with HUD on resolving this and the other recommendations in this report. HUD has the oversight responsibility for the administration of the program and for ensuring that it's administered according the federal requirements.