

ERVIN and
ASSOCIATES
INCORPORATED

FI-205308

1997 00 1191 - 1 P 3:514

September 25, 1997

*cdwright
9/20/97*
C. Diane Wright
Contracting Officer
U.S. Department of Housing and Urban Development
Office of Procurement and Contracts
451 7th Street, SW, Room 5258
Washington, DC 20410

Re: Solicitation Number DU100C000018548 - Asset Management Services Freedom of Information Request

Dear Ms. Wright:

We recently received notification from you that HUD has decided to cancel the above referenced Solicitation. This is another obvious example of the drastic measures HUD will take to ensure that Ervin and Associates, who has been blackballed by HUD, is prevented from being awarded any contract work from HUD. Please consider the following course of events:

- **August, 1996** - HUD officials recommend extension of Ervin's asset management contract.
- **August, 1996** - Chris Greer reverses the decision to renew the contract. Subsequently, Greer advises Reznick Fedder & Silverman that his issues with Ervin are personal.
- **September 20, 1996** - Ervin and Associates' Asset Management contract, providing essentially the same services as provided for in the Solicitation that was just canceled, is not exercised. HUD stated that the reason for this action was that there was not enough work under the contract.
- **November 15, 1996** - Less than 60 days after refusing to exercise the option on Ervin's Asset Management contract due to a lack of work, HUD issues RFP DU100C000018548 stating the need for Asset Management Services - the same as Ervin had been providing.
- **January 13, 1997** - Ervin and Associates submits its proposal to provide Asset Management Services under the subject Solicitation.
- **May 13, 1997** - Ervin and Associates is notified by HUD that it is in the competitive range and oral discussions were scheduled for May 28, 1997.
- **May 22, 1997** - Amendment 3 to the Solicitation is issued changing the pricing schedule and the Statement of Work. Ervin is instructed to be prepared to address these issues at the scheduled oral discussions.

25 30 15 ON BH 104
25 53 15 ON BH 104
RECEIVED 7315 Wisconsin Avenue • Suite 824 • Bethesda, MD 20814-3202
(301) 469-3400 • Fax: (301) 469-3453

- **May 23, 1997** - Ervin and Associates is notified that HUD must postpone the oral discussions scheduled for the following week due to "*scheduling difficulties*."
- **September 11, 1997** - 10 months after issuing the Solicitation, and after operating without any asset management contractor for almost a full year, HUD cancels the Solicitation due to "current reformation of the Department and the subsequent changing needs."

The above clearly demonstrates several issues:

- HUD canceled Ervin's Asset Management contract under the false premise that there was not enough work within the Department to necessitate this type of contract. In reality, the contract was canceled in retaliation for the lawsuit filed by Ervin, which coincidentally alleges contracting corruption, and because Ervin spoke out to the U.S. Senate Banking Committee staff about dramatic flaws in the April, 1996 Portfolio Reengineering Study. The fact that the failure to exercise the option on Ervin's contract was pretextual is borne out in that less than two months later the need for the services was suddenly great enough to issue an RFP. Furthermore, based on HUD's own evaluation criteria, this reprocurement would have been worth well over \$1 million to the successful contractor - more than the minimum required under Ervin's previous asset management contract.
- Ervin and Associates made the Best and Final stage, and HUD realized that based on Ervin's expertise and experience, there was no way they could justify not selecting Ervin for the contract without significant scrutiny by the courts. In the past, normal practice in such a situation would have been for HUD officials to simply intervene with the Source Selection Board and ensure that the recommendation was for the contractor that HUD officials wanted. We have documented evidence that this is exactly what HUD did in selecting a contractor to perform SWAT services, the three single family asset management demonstration contracts, and the due diligence and financial advisor contracts. However, because Ervin has brought these instances of contracting corruption to the light of day, HUD cannot afford the risk of being caught acting in this manner at this time.
- Because HUD saw that they were going to be left with no choice but to award this contract to Ervin, HUD canceled the procurement entirely. Initially HUD did not know what to do, so they postponed best and final oral discussions under the guise that HUD had "scheduling difficulties" which are generally easily overcome in a short time. However, after almost 4 months of trying to solve their "scheduling difficulties" HUD cancels the procurement due to "current reformation of the Department and the subsequent changing needs." This rationale is particularly absurd given the fact that at the pre-bid conference the reason given for needing this contract was due to the current reformation and the changing needs of the Department.

The undeniable fact is that HUD is managing a \$50 billion, two million one hundred thousand unit multifamily portfolio without any credible contracting assistance to conduct physical inspections, review annual financial statements, and without any asset management expertise. These problems combined with buyouts, consolidation of offices, relocation of enforcement functions and other internal disruptions, call into question HUD's ability to meet its essential governmental function of overseeing this portfolio.

The reformation of the Department and the subsequent changing needs are precisely the reasons this procurement was issued and is needed. It is dumbfounding that it is now the reason HUD canceled it.

Contracting practices at HUD of late have come under intense but legitimate scrutiny. HUD's Inspector General recently issued a draft report on contracting practices at HUD which concluded that "Departmental managers have for all practical purposes abdicated their procurement and contract oversight responsibilities with costly consequences." Of particular note is that the Draft Inspector General's Report intentionally omits mention of the most serious instances of procurement and note sale fraud, for which a criminal investigation for the past 15 months has been conducted by the U.S. District Court for the District of Columbia.

As you can clearly see we recognize the real reasons that HUD canceled this procurement, and it was not for the reasons stated. Instead, it was because HUD was in a position where they had no other alternative than to award a major contract to Ervin and Associates. We will not let HUD's retaliatory and possibly illegal actions in this procurement quietly fade away.

Please return all copies of the proposals submitted by Ervin and Associates in response to this Solicitation. Additionally, through this letter, we request under the provisions of the Freedom of Information Act any and all documents relating to the cancellation of this procurement. We agree to pay up to \$50 for such documents. Also please note we are waiting a response to our debriefing request sent to Philip Graham on September 17, 1997.

Very truly yours,

ERVIN and ASSOCIATES, INCORPORATED


John J. Ervin
President