

June 8, 2012

OFFICIAL OPINION 2012-2

Ms. Sherry Seiwert
Executive Director
Indiana Housing and Community Development Authority
30 S. Meridian St., Suite 1000
Indianapolis, IN 46204

**RE: Contract Administrator for Project-Based Section Housing Assistance Payments
Contracts**

Dear Director Seiwert,

You have requested an opinion as to whether the Indiana Housing and Community Development Authority (“IHCDA”) is the only housing agency authorized under Indiana law to serve as Contract Administrator for the Project-Based Section 8 Housing Assistance Payments (“PBCA”) Program in Indiana.

BRIEF ANSWER

Yes. IHCDA is the only public housing agency authorized by Indiana law to operate throughout the entire State. In turn, IHCDA is the only public housing agency in the state of Indiana with the requisite authority to carry-out the functions of a PBCA contract administrator.

ANALYSIS

The Project-Based Section 8 Housing Assistance Payments Program was created by the Housing and Community Development Act of 1974 and is administered by the US Department of Housing and Urban Development (“HUD”). The program offers housing assistance to eligible low-income families. Qualified entities in each state may apply to HUD to assist with the distribution of housing assistance payments in their jurisdiction. These entities are referred to as Contract Administrators for the Project-Based Section 8 Housing Assistance Payments Program.

To serve as contract administrator for the PBCA program an applicant must be a “public housing agency” (“PHA”) within the meaning of Section 3(b)(6)(A) of Section 8 of the United States Housing Act of 1937, 42 USC §1437f; and must have been “created under a statute that explicitly authorizes the entity to operate throughout the entire State in which the entity proposes to serve as PBCA or that evidences a legislative intent for such entity to have such authority.” *See e.g. Fiscal Year 2012 Notice of Funding Availability for the Performance-Based Contract Administrator Program for the Administration of Project-Based Section 8 Housing Assistance Payment Contracts*, Docket No. FR 5600-N-33 (“NOFA”), p.10. For the purposes of the PBCA program a “public housing agency” is defined as “any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities that is authorized to engage or assist in the development or operation of low-income housing ...” *See* 24 C.F.R. 5.100. A PHA is established by state law and its “authority and power to act derive from the State

law(s) under which it was created.” NOFA, p. 5. As mentioned above, the responsibilities of a contract administrator require the selected PHA have the statutory authority to operate state wide. In turn, determining which entity or entities are eligible to act as contract administrator in a given state depends on examining the governing laws of that state. In some states multiple state, local, private and even foreign PHAs may be qualified under state law, while in other states the pool of qualified entities may be smaller.

In Indiana, the IHCDA is the only public housing agency qualified under state law to serve as contract administrator for the PBCA program because IHCDA is the only PHA authorized to act throughout the entire state. IHCDA was created by Ind. Code § 5-20-1-3 as a “public body corporate and politic of the *state of Indiana*,” vested with powers necessary to address the state of Indiana's “need for safe and sanitary residential housing within the financial means of low and moderate income persons and families.” Membership of the authority is composed of the state treasurer, the lieutenant governor, the public finance director of Indiana’s finance authority and four appointees of the governor. All of these members hold state-level office or are otherwise appointed or designated by

an individual holding a state-level office. The authority is allowed under the statute “to maintain an office in the city of Indianapolis and at such other place or places as it may determine.” Ind. Code § 5-20-1-4(a)(19). Each of these provisions supports the notion that IHCDA is an entity vested with state-wide jurisdiction, created for purpose of addressing state-wide housing needs. The same is not true of other public housing authorities in the state, which take their power from local units of government under Title 36 of the Indiana Code.

Under Ind. Code § 36-7-18-4, a local “unit” (other than a township) can create a public housing authority if there is a need for such an agency “in the unit.” “Unit” is defined as a “county, municipality or township,” but townships are excluded from creating a PHA by Ind. Code § 36-7-18-4(a). A PHA created by a municipality may only operate inside the municipality or within a five mile radius. Ind. Code § 36-7-18-41(a). Likewise, a county housing authority may only operate within the boundaries of the county. Ind. Code § 36-7-18-41(b). By limiting their jurisdiction, these provisions exclude a PHA created under Ind. Code § 36-7-18-4 from serving as contract administrator for the PBCA program.

CONCLUSION

To serve as Contract Administrators for the Project-Based Section 8 Housing Assistance Payments Program, an entity must be a public housing agency and must be authorized by statute to operate throughout the entire state for which it intends to serve as administrator. Indiana Code § 36-7-18-41 expressly limits the jurisdiction of county and municipal public housing authorities to the local unit that created them. IHCDA is a “public body corporate and politic of the state of Indiana,” and is implicitly authorized by the provisions of Ind. Code Chpt. 5-20-1 to operate throughout the State. In turn, IHCDA is the only housing agency in the state of Indiana with the requisite statutory authority to serve as contract administrator for the PBCA program.

Sincerely,

Gregory F. Zoeller
Attorney General

Matthew J. Light
Chief Counsel