BedfordLending

221(d)(4) Identity of Interest Requirements

When there is a relationship between the developer, GC, and/or architect in one 221(d)(4) transaction, the following is of note:

- If the general contractor owns more than 5% of the proposed mortgagor entity (ABC Apartments, LLC, etc.), retainage will not be released until the building secures certificate of occupancy.

- Regardless of whether a builder's profit is paid to the builder or the alternative "BSPRA" credit is utilized, the form of the construction contract (HUD-92442M – a PDF copy is publicly available online) must be **cost plus** and there will be a cost certification done near construction completion for both the mortgagor and general contractor.

- A borrower may pay an affiliated general contractor an actual builder's profit provided that:
    - a. The amounts of the fee are reasonable and customary;
    - b. The form of the construction contract is cost plus / fixed fee;
    - c. The mortgagor and General Contractor cost certify; and,
    - d. The amount of the fee is funded in the construction escrow established at initial endorsement.
    - e. The "BSPRA" credit cannot be paid in addition to a builder's profit, it is one or the other.

- If the project architect has a relationship with the owner and/or general contractor, they may not administer the construction contract (perform supervisory duties), however they can be the design architect of record. An independent architect must be utilized for the supervisory role. Additionally the design architect fee is treated as a non-mortgageable cost in this scenario.

The following considerations are also of note regardless of whether the GC has any ownership percentage of the mortgagor entity or relationship to other principals:

- In **all** HUD 221(d)(4) loans, the GC will be considered a principal in the transaction and will be subject to full mortgage credit review including an analysis of historical financial statements, and must meet a minimum working capital position based upon their current balance sheet and projects in progress (see last page for an example). Newly established or thinly capitalized GCs are unlikely to qualify as the GC of record.

- The general contractor must have prior experience with construction or rehabilitation of multifamily assets similar in size and scope with the proposed project (ideally with prior HUD financing experience), and should have bonding capacity.

- Regardless of a relationship between the owner and general contractor, the general contractor will not collect general overhead or builder’s profit if more than 50% of the construction contract is subcontracted to one subcontractor, material supplier or equipment lessor, or more than 75% of the contract is subcontracted with three or less subs, suppliers, or lessors.

ANALYSIS OF CONTRACTOR'S WORKING CAPITAL
Section 221d4 Program

Project Na[redacted]
Project No

Contractor: [redacted]

CONTRACTOR'S CURRENT ASSETS:

Name of Projects in Progress

(See Projects in Progress)

Cash:	$	2,137,145
Accounts Recievable	$	7,059,088
Costs and est. earnings in excess of billings	$	3,828,768
Prepaids & Investments	$	50,003
TOTAL CURRENT ASSETS:	$	13,075,005
Accounts Payable for Projects in Progress:	$	8,371,165
Billings in Excess of Cost	$	1,219,835
Other Accounts Payable: Accrued Exp.	$	-
TOTAL CURRENT LIABILITIES:	$	9,591,000
WORKING CAPITAL AVAILABLE:	$	3,484,005
<u>LESS</u> 5% of Work in Progress:	$	1,052,201
<u>EQUALS</u> Working Capital available for this Project:	$	2,431,804
<u>DIVIDED</u> by Construction Contract for this Project:	$	28,228,961
<u>EQUALS</u> % Working Capital Available: (Working Capital available must be at least 5% of the estimated contract amount for this project)		8.61%

Projects in Progress

Name of contract	Contract Amount	Percentage complete		To be billed
[redacted]	$ 6,422,564	68.00%	$ 4,367,344	$ 2,055,220
	$ 35,000,000	58.00%	$20,300,000	$14,700,000
	$ 17,870,000	76.00%	$13,581,200	$ 4,288,800
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
	$ -		$ -	$ -
	$ -		$ -	$ -
			$ -	
	$ 59,292,564	100%	$38,248,544	$21,044,020

[redacted]

Prepared by BEDFORD LENDING CORP.

[redacted]