



U.S. Department of Housing and Urban Development
Office of Inspector General
Pacific/Hawaii District
450 Golden Gate Avenue, Box 36003
San Francisco, California 94102-3448

**Audit Memorandum
2002-SF-1801**

March 25, 2002

TO: Steven B. Sachs
Director, Community Planning and Development, 9AD

FROM: //SIGNED//
Mimi Y. Lee
District Inspector General for Audit, 9AGA

SUBJECT: Mayor's Office of Housing and Nonprofit Developers
Use of Various HUD Funds to Replace Geneva Towers
San Francisco, California

We completed a review of the use of HUD funds for the development of three housing projects in the Visitacion Valley neighborhood of the City of San Francisco: Heritage Homes, Britton Court, and John King Senior Community. The projects were built to replace housing lost through HUD's demolition of a multifamily project known as Geneva Towers. HUD funds included Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Program funds administered by HUD's Office of Community Planning and Development (CPD) and Section 202 and Property Disposition Upfront Grant funds administered by HUD's Office of Multifamily Housing.

We conducted the review at the Mayor's Office of Housing (MOH) and the offices of two nonprofit organizations, Mercy Charities Housing California (Mercy Charities) and Housing Conservation and Development Corporation (HCDC). Generally, we found no significant deficiencies, problems, or weakness in the systems and procedures used by MOH and Mercy Charities to administer HUD funds. However, HCDC did not establish written procedures for procurement of service contracts and the MOH did not adequately monitor HCDC's process for selecting a general contractor or development consultants. According to MOH officials, HCDC is not currently receiving any HUD funds from the City for development of multifamily housing projects.

BACKGROUND

Geneva Towers was a high rise subsidized multifamily property located in San Francisco's Visitacion Valley neighborhood. The Assistant United States Attorney (AUSA) indicted the owner of Geneva Towers as a result of an OIG investigation. Problems with Geneva Towers started in 1986 when the owner failed to maintain the complex. HUD foreclosed and assumed

ownership of the complex on June 6, 1991. Problems continued to plague Geneva Towers. In 1992, HUD considered a massive renovation of the site. The District HUD the Secretary's Representative at the time believed Geneva Towers should be torn down and replaced with new developments. Community support for the plan was strong as long as the fear of urban renewal was eliminated. Another concern was the need for expensive and time-consuming asbestos removal at Geneva Towers. In the end, HUD decided replacement was the best alternative.

The City of San Francisco and HUD entered into an agreement to develop replacement housing in Visitacion Valley.

On February 14, 1995, HUD and the City and County of San Francisco signed a Memorandum of Understanding (MOU) for the development and revitalization of Visitacion Valley. Among other things, the MOU committed HUD to: providing relocation assistance and Section 8 vouchers to the residents of Geneva Towers; allocating Section 8 funds for project based assistance for 150 units of family housing and 50-100 units of elderly housing; and ensuring bid documents for all HUD assisted construction in Visitacion Valley contained a plan to hire 30 percent of their total construction workforce from a designated pool of applicants from the neighborhood. In return, the City of San Francisco agreed to: lend \$1.5 million of its housing funds to a nonprofit housing development corporation to purchase the site known as 150 Britton Street for future affordable housing; work with nonprofit housing corporations to locate and obtain site control on Visitacion Valley properties appropriate for 50-100 units of elderly housing and a senior center; and work with nonprofit housing corporations to construct 300 units of new affordable family housing. Subsequently, HUD and the City, through the MOH, provided funds to nonprofit developers for the construction of three projects in Visitacion Valley.

HUD funds from CPD and Multifamily Programs came to \$24,148,139.

Mercy Charities developed Heritage Homes, 146 units of low-income family housing on the site Geneva Towers previously occupied. Mercy also developed John King Senior Community, a 91-unit senior project built with HUD Section 202 funds, San Francisco City bond funds, and San Francisco hotel tax funds. HCDC was the original developer of Britton Street Housing, a 92-unit low-income family project. HUD awarded both the CDBG funds and the HOME funds to the City and County of San Francisco through noncompetitive entitlement grants using formulas based on economic and census data. The CDBG and HOME funds used to develop the Geneva Towers replacement projects were administered through MOH, which passed the money on to the developers. HUD gave the Section 202 Capital Advance and the Property Disposition Upfront Grant directly to the developer. The following table summarizes the distribution of HUD funds for the various projects.

<i>DISTRIBUTION OF HUD FUNDS TO GENVEA TOWERS REPLACEMENT PROJECTS</i>	CDBG (CPD funds through MOH)	HOME (CPD funds through MOH)	SECTION 202 CAPITAL ADVANCE (Multifamily Programs directly to developer)	PROPERTY DISPOSITION UP FRONT GRANT (Multifamily Programs directly to developer)	TOTALS
Heritage Homes	\$2,518,799			\$6,270,000	\$8,788,799
Britton Court	\$2,276,600	\$5,679,840			\$7,956,440
John King Senior Community			\$7,402,900		\$7,402,900
TOTALS	\$4,795,399	\$5,679,840	\$7,402,900	\$6,270,000	\$24,148,139

On May 18, 1999, Bank of America, the source of an \$8,000,000 construction loan for Britton Court, issued a letter of default citing HCDC's failure to adequately staff or manage the project and the Bank's lack of confidence in HCDC's ability to complete it in a timely manner and within budget. As a result, MOH and HCDC enlisted Mercy's assistance to manage the development of the project. On June 23, 1999, HCDC and Mercy entered into a MOU to act as partners for completing the construction, rent-up, and ongoing operation of Britton Court. The MOU indicated Mercy would be the managing general partner with sole responsibility for managing the construction process through to timely completion. Mercy assumed sole responsibility for managing the construction budget, reviewing and processing construction disbursements, managing the accounting procedures and preparing financial reports, ensuring compliance with loan agreements and partnership agreements, and other necessary fiscal management tasks.

OBJECTIVES, SCOPE, AND METHODOLOGY OF REVIEW

Our overall objective was to determine if the City and County of San Francisco and the nonprofit developers used HUD funds efficiently and in accordance with applicable laws and regulations. Specifically, we looked at three affordable housing projects that were proposed as replacements for units lost when Geneva Towers was torn down. The projects were: Heritage Homes, Britton Court, and John King Senior Community. The review included: (1) pre-site work at OIG and HUD's offices; (2) on-site work at the City of San Francisco, including MOH, the Mayor's Office of Community Development, and the Human Rights Commission; and (3) on-site work at the offices of Mercy Charities and HCDC.

Our review covered program years from April 1, 1997 through March 31, 2000, and was conducted during the period February 2001 through August 2001. The review was conducted in accordance with generally accepted government auditing standards.

To accomplish our objectives we:

- ✓ Reviewed pertinent laws, regulations and OMB Circulars;
- ✓ Interviewed HUD staff and auditee staff;
- ✓ Reviewed MOH's and developers' procurement and grant administration processes;
- ✓ Reviewed grant and loan files at HUD and the auditees' offices; and
- ✓ Selectively tested construction disbursements to ensure that costs were allowable, fully supported and eligible.

In planning and performing our review, we considered the management controls over procurement, disbursements, and record keeping of MOH and the nonprofit developers in order to determine our auditing procedures and not to provide assurance on management controls. Management controls include the plan of organization, methods, and procedures adopted by management to ensure its goals are met. They include the systems for measuring, reporting and monitoring program performance.

We assessed the controls relevant to the auditees' use of HUD funds. For the assessment, we obtained an understanding of the design of relevant policies and procedures and whether they had been placed into operation. We tested disbursements to determine propriety and proper recording.

Generally, we found MOH and Mercy Charities to be in compliance with HUD requirements. However, HCDC did not establish adequate policies and procedures for procuring service contracts, and MOH did not ensure that subrecipient HCDC adhered to Federal procurement standards.

FINDING

The City and County of San Francisco Did Not Assure HCDC Adhered to Required Procurement Standards for the Award of Contracts

HCDC could not show what process it used to select three construction consultants for the development of Britton Court; an affordable family housing project built using CDBG and HOME Program funds. In the case of the general contractor, HCDC advertised and distributed a Request for Qualifications (RFQ), which described a selection process, but it did not follow the process. As a result, HCDC awarded the contract to the general contractor who scored highest in the second phase of the selection process. Thus, there is no assurance HCDC hired the construction consultants or the general contractor in a consistent or effective manner in accordance with Federal procurement standards, so as to provide open and free competition and ensure the awards were made to the offerors who were most responsive and advantageous in regard to price, quality, and other factors considered. These deficiencies occurred because MOH

did not adequately monitor HCDC's procurement process and HCDC lacks written procurement policies and procedures.

24 CFR Part 84 and OMB Circular A-110 provide requirements for procurement by grant recipients.

Title 24 of the Code of Federal Regulations (24 CFR), Part 84 and Office of Management and Budget (OMB) Circular A-110, Subpart C, provide identical Federal procurement requirements applicable to

nonprofit recipients of Federal funds.

The intent of the requirements is to ensure all procurement is conducted in a manner to provide open and free competition and awards are made to the offeror whose bid or offer is most responsive to the solicitation considering price, quality and other factors. (24 CFR 84.43 and OMB Circular A-110, Subpart C, Section 43)

All recipients are required to establish written procurement procedures. The procedures must ensure solicitations for goods and services clearly state the requirements the bidder must fulfill and all factors to be used in evaluating proposals. (24 CFR 84.44 and OMB Circular A-110 Subpart C, Section 44)

Procurement records and files for purchases in excess of the small purchase threshold shall include at a minimum: the basis for contractor selection; justification for lack of competition when competitive bids are not obtained; and the basis for the award cost or price. (24 CFR 84.46 and OMB Circular A-110 Subpart C, Section 46)

Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report. (24 CFR 84.53 and OMB Circular A-110 Subpart C, Section 53)

MOH did not adequately monitor subrecipients' procurement process.

The City and County of San Francisco, through MOH, awarded CDBG and HOME program funds to HCDC for the development of Britton Court. As required, the City established procedures to monitor subrecipients' process for the award of service

contracts. Although MOH performed substantial monitoring of HCDC's performance in other areas, including the progress of construction, MOH should have ensured HCDC adhered to required procurement procedures. MOH officials believed this was the sole responsibility of the City's Human Rights Commission, the City agency responsible for monitoring procurement for most City departments, including MOH.

MOH did not adequately monitor the procurement process as required, nor did it ensure HCDC had appropriate procurement procedures established. Thus, it did not fulfill its responsibility to ensure HCDC established or followed Federal procurement standards.

HCDC's experience in development of new housing did not include a project of the type or scale of Britton Court.

Although HCDC partnered with another nonprofit organization for the development of one condominium project and completed one

condominium project on its own, MOH believed Britton Court would be a leap to a different level of development. This was particularly important in his case, because MOH was concerned that HCDC lacked the capacity and experience in developing new housing of this type and scale. HCDC's primary programs did not include similar activities. Officials of MOH told us they had some concerns about HCDC's capacity to manage this project from the start but believed HCDC was ready for a chance to demonstrate increased capacity. When problems occurred during the construction phase, MOH was instrumental in bringing in a more experienced organization as managing general partner to bring the project back on track.

HCDC's written procedures did not address procurement of services.

HCDC's written policies and procedures did not include procurement of service contracts. HCDC hired three construction consultants, but did not retain procurement records to show a reasonable basis for contractor selection. If HCDC followed the

procedures it published in its RFQ, HCDC's records indicate it would have selected a different general contractor.

HCDC hired a new Executive Director in July 2001. He agreed HCDC should have clear written procedures for procurement. In response to our draft audit memorandum, HCDC's Board of Directors passed a resolution establishing policies for obtaining goods and services using Federal funds. The President of the Board has made a commitment to establishing written procedures that are consistent with Federal procurement standards.

HCDC did not follow the process described in its RFQ.

HCDC's RFQ for a general contractor stated the scores from Phase 1 (evaluation of submissions) and Phase 2 (interviews) would be combined to select the general contractor. However, HCDC did not combine

the scores. Instead, HCDC submitted only the Phase 2 scores to the City's Human Rights Commission. Based on those scores, Nibbi-Lowe was ranked the highest with 88.3 points. Roberts-Obayashi, with 85 points was second. If the two scores were combined in accordance with the stated provisions of the RFQ, Roberts-Obayashi would have been ranked the highest with a score of 87.8, and Nibbi-Lowe second with 77.8. When the spread from the lowest score to the highest was only 30 points, the ten-point difference was significant.

There is nothing inherently wrong with the process HCDC actually used to select the general contractor, in which the first round of scores was only the basis for a short list of candidates and the final selection was made based only on the second round of scoring. The problem was HCDC established and published one procedure and then changed the process halfway through.

Federal procurement standards were not followed, and HCDC is in violation of 24 CFR Part 84 and OMB Circular A-110 as indicated above. HCDC could not show how it hired the three construction consultants or why they were selected. HCDC relied on the consultants to manage the development process, including construction of the Britton Court project. Well into the construction process, investors and lenders insisted HCDC accept a more experienced partner to take over construction management and get the project back on track. MOH officials said the consultants were not only capable, but also necessary for the successful completion of the project

and the investors insisted on their retention. Nevertheless, here is no assurance services were obtained in the most effective manner, so as to provide open and free competition and ensure the award was made to the offerer who was most responsive and advantageous in regard to price, quality, and other factors considered. In the case of the general contractor, HCDC did not award the contract to the correct firm. Given the procedures it established, HCDC should have chosen Roberts-Obayashi who HCDC's selection panel rated significantly higher than Nibbi-Lowe.

The Director of MOH agreed MOH could develop better procedures to review and ensure subrecipients have adequate written procedures for administering HUD funds. He did not agree with our conclusion that the incorrect general contractor was hired. He explained the process HCDC actually used is consistent with the City's procedures and is acceptable under Federal guidelines. However, he acknowledged HCDC did not word the RFQ correctly. MOH does not believe there was a significant problem with the procurement. MOH feels HCDC's procurement error was a minor occurrence in the overall success of the development and steps have already been taken to prevent a recurrence. Officials from MOH said they made it clear to HCDC it needs to develop more capacity before MOH will approve any additional funds for multifamily development.

Until such time as HCDC establishes written procurement policies and procedures in compliance with Federal procurement standards, we believe HCDC should be restricted from HUD funding for multifamily development projects.

AUDITEE COMMENTS

MOH and HCDC provided written comments in response to the draft audit memorandum. The full text of MOH and HCDC's written comments is included in this report as Attachment A and Attachment B, respectively. We met with officials from both entities for an exit conference on March 11, 2002. In response to the auditees' comments, we have made changes to the audit memorandum that we considered appropriate.

Neither MOH nor HCDC disputed the facts as we reported them, but both generally disagreed that there was any ill effect from HCDC's procurement of services. The auditees made it clear they believe HCDC could not have hired better firms for general contractor and construction consultants. In the case of the general contractor, they do not believe there was any restriction of open and free competition, since the RFQ was openly published.

MOH agreed it would compile a manual incorporating both Federal and City procurement requirements for use in MOH-funded projects. The director believes MOH already has adequate monitoring procedures.

In response to our review, HCDC has already passed a board resolution establishing a policy that all procurements made with Federal funds will be in compliance with OMB Circular A-110, Subpart C.

OIG EVALUATION OF AUDITEE COMMENTS

We do not agree there was no ill effect as a result of HCDC's lack of written procurement policies and procedures. If an established process can be changed in the middle of the procurement, there is no assurance it cannot be changed just because someone did not like the results. If there was an overriding and justified reason for not hiring the contractor indicated by the process, this reason must be fully documented. In the case of the consultants, they may have been qualified and they may have performed at a high level of competence. However, there is no way to determine if there were better choices, if other contractors were considered, or why these firms were selected, because HCDC did not document the procurement process.

We concur with MOH's proposed action to compile a manual incorporating both Federal and City procurement requirements in order to establish and implement effective monitoring policies for subrecipient procurement activities.

Although HCDC has established a policy to comply with Federal procurement standards, we believe they still need to develop written operating procedures to successfully implement the policy.

RECOMMENDATIONS

We recommend the Director of CPD:

- 1A. Require MOH to establish and implement effective monitoring policies to ensure subrecipients implement and follow adequate procurement procedures and policies required by Federal laws and regulations; and
- 1B. Advise the City of San Francisco that it should not provide HCDC with additional CDBG and/or HOME funds for multifamily development projects until it can show that adequate policies and procedures are in place to assure compliance with Federal procurement standards.

Within 60 days, please give us a status report on the recommendations stating (1) the corrective action taken, (2) the proposed corrective action and the date to be completed, or (3) why action is considered unnecessary. Also, please furnish us copies of any correspondence or directives related to this review.

If you have any questions concerning this report, please call Joseph Chaves, Assistant District Inspector General for Audit at (415) 436-8101.

Attachment A - Auditee Comments – Mayor's Office of Housing

Attachment B - Auditee Comments – Housing Conservation and Development Corporation

Attachment C - Distribution

ATTACHMENT A

**MAYOR'S OFFICE OF HOUSING
CITY AND COUNTY OF SAN FRANCISCO**



WILLIE LEWIS BROWN, JR.
MAYOR
DARYL HIGASHI
DIRECTOR

February 21, 2002

Mimi Y. Lee
District Inspector General for Audit
Office of Inspector General
U.S. Department of Housing and Urban Development
450 Golden Gate Ave., Box 36003
San Francisco, CA 94102

Re: Draft Audit Memorandum
2002-SF-18XX
Use of Various HUD Funds to Replace Geneva Towers

Dear Ms. Lee:

Thank you for the opportunity to comment on the draft audit memorandum relating to the use of HUD funds for the development of Heritage Homes, Britton Court and John King Senior Community.

The City continues to believe that the errors that did occur in the procurement process for Heritage Homes, Britton Court and the John King Senior Community did not amount to a substantial non-compliance with the requirements of 24 CFR Part 84 and OMB Circulars A-110.¹ Your review did not find any errors in the procurement of general contractor and consultant services for Heritage Homes or the John King Senior Community.

As we have stated previously, the errors which may have occurred in the procurement process for Britton Court are the result of a lack of clarity and consistency in the application of the procurement criteria described in the Request for Qualifications (RFQ). We do not see, in the draft audit memorandum, a statement that the actual process violated specific requirements of 24 CFR Part 84 or the OMB Circulars. Rather, we understand the allegation to be that procedures that were developed in the RFQ to give effect to the requirements of 24 CFR Part 84 and the OMB Circular were poorly drafted and not followed in the selection process. In its selection of the contractor, HCDC used only the scores from the second round of evaluations which, while acceptable under federal procurement guidelines, is not the procedure described in the RFQ.

The general structure for oversight of procurement requirements used by the City consists of

¹ The HOME Regulations do not appear to contain any reference to OMB Circular A-110. 24 CFR 92.505(a) refers to 24 CFR Part 84 and OMB Circular A-122, "Cost Principles for Non-profit Organizations." To our understanding, the requirements of the relevant portions of these documents are substantially identical.

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1. Incorporating the 24 CFR Part 84 and OMB Circular requirements by reference into each funding agreement entered into between the City and subrecipients;
2. Reviewing requests for proposals and bidding packages developed by the subrecipients prior to soliciting proposals from contractors, architects, engineers, and other construction consultants to ensure that both City and Federal requirements are met; and
3. With the assistance of staff from the City's Human Rights Commission, reviewing procurement decisions to ensure that an equitable and fair selection process is conducted.

The draft audit memorandum recommends, in rather general terms, that MOH "establish and implement effective monitoring policies" to ensure that subrecipients are in compliance with federal procurement requirements. We believe that the structure described above does, in fact, establish the required policies. However, in order to address the issues raised in the draft audit memorandum, the Mayor's Office of Housing will undertake to compile a manual incorporating both federal and City procurement requirements for use in MOH-funded projects.

The manual will need to incorporate requirements for a variety of funding sources (CDBG, HOME, and local funds), not all of which will be applicable to any given project, making this task complex. However, we believe that this manual will substantially accomplish the Audit Memorandum's recommendation to establish and implement effective monitoring policies for subrecipient procurement activities.

We appreciate HUD's commitment to ensuring that San Francisco's projects meet all federal requirements and meet our joint goal of providing housing for our low-income residents. Please feel free to contact me at (415) 252-3210 if you have any questions.

Sincerely,


DARYL HIGASHI
Director

DH/JRL

ATTACHMENT B

**Housing Conservation & Development Corporation**

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February 21, 2002

Mimi Y. Lee
District Inspector General for Audit
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U.S. Department of Housing and Urban Development
450 Golden Gate Avenue, Box 36003
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**Re: Draft Audit Memorandum 2002 - SF-18XX:
Use of Various HUD Funds to Replace Geneva Towers, San Francisco, CA
Comments of Housing Conservation & Development Corporation**

Dear Mimi Lee:

We appreciate this opportunity to give you our comments, responses and recommendations on the draft Audit Memorandum insofar as they pertained to Housing Conservation & Development Corporation (HCDC)'s use of HUD funds for the development of the Britton Courts family housing project in San Francisco. In preparing this letter, we reviewed HCDC's files on this project and interviewed Darlene Williams, HCDC's Executive Director for most of the time period under review, Meea Kang, HCDC's Project Manager for this project for most of the relevant time period, and Natalie Gubb, HCDC's attorney for the project.

1. Reference: BACKGROUND, pages 2 and 3.

Our review of files found documents which show that the timeline and sequence of events stated in this section are missing some critical steps. HCDC's involvement in the development of the Britton Courts project preceded the February, 1995 MOU between HUD and the City and County of San Francisco.

Recommendation: Insert the following text at the end of the first paragraph of the Audit Memorandum: "In December of 1993, with the encouragement of MOH, HCDC began negotiating with the property owner to purchase the parcels on Britton Rd./Sunnyvale Avenue in the Visitation Valley neighborhood of San Francisco. In April of 1994, MOH approved and funded an initial Predevelopment Loan of \$75,000.00 to HCDC for the costs of environmental assessments, project feasibility studies and an appraisal of the Britton Rd./Sunnyvale Avenue parcels."

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2. Reference: FINDING, pages 4 through 7: Selection of General Contractor.

The draft Audit Memorandum's conclusions that HCDC did not follow its stated selection process and that HCDC awarded a contract to the wrong general contractor are not supported by the facts. The actual Request for Qualifications and Notice of Intent to Solicit Bids (RFQ) which was distributed to the developer community was dated August 6, 1997. A copy of this document is enclosed as Attachment No. 1. The RFQ clearly outlined the process of selection in three phases: (1) The General Contractor qualification packages would be evaluated by a selection panel using the scoring schedule presented on page 8 of the RFQ in order to arrive at a short list of three to five of the most qualified candidates; (2) The short-listed candidates would be interviewed and evaluated by the panel based upon the criteria stated on page 3 of the RFQ; and (3) One General Contractor or JV team would be selected by the panel based on the combined scores from Phase One and Phase Two. Staff from the San Francisco Human Rights Commission monitored the panel's grading of the qualification packages in Phase One and the panel's evaluation of the interviews in Phase Two. While Roberts-Obayashi had received the highest scores for its qualification package, Nibbi-Lowe was rated higher after the interviews. According to our recent interviews with HCDC's Executive Director and Project Manager at the time, the panel had concerns over the fact that Roberts-Obayashi was not a minority-owned business enterprise and did not joint venture with any MBE or WBE firm to further San Francisco's mandatory MBE/WBE participation goals. Also, Roberts-Obayashi had been the general contractor for HCDC on its recently completed Candlestick View development project, and at the time there were concerns raised about the quality of construction due to water infiltration into residential units through doors and windows and blow-offs of roofing shingles and that Roberts-Obayashi was not responding satisfactorily to requests from HCDC to promptly fix the defective work. The Human Rights Commission reviewed the scores and by its letter of November 7, 1997 recommended that Nibbi-Lowe be selected as the general contractor for the project. A copy of this letter is enclosed as Attachment No. 2.

Recommendation: The statements in the draft Audit Memorandum to the effect that HCDC did not follow its stated selection process in its selection of the general contractor should be deleted or corrected.

3. Reference: FINDING, pages 4 through 7: Selection of Construction Consultants.

The draft Audit Memorandum's conclusion that HCDC did not use appropriate procedures to hire three construction consultants is not supported by the facts. We understand

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that the three consultants referred to in this section of the audit were DeWitt Brock, Jaidin Consulting Group, and Michael Simmons.

DeWitt Brock was retained by HCDC to act as the Owner's Representative for construction management, and his contract included preconstruction services to set the stage for the construction management services to follow. HCDC did not have an in-house staff person with sufficient experience to handle these tasks for HCDC. On its recently completed development project called Candlestick View, HCDC had learned of the value of having an Owner's Representative supervise and manage the construction. DeWitt Brock has been the construction management person in the project architect's office on the Candlestick View project, and HCDC was impressed with his knowledge, skills, and diligence. DeWitt Brock had set up his own consultant firm, and HCDC retained him in January of 1998 at fee rate of \$75.00 per hour and with a not-to-exceed cap on the contract of \$10,000.00. HCDC considered this to be a personal services contract that did not require competitive bidding.

Jaidin Consulting Group was retained by HCDC for code research and permit facilitation for the Britton Courts project. This consultant firm was recommended by the project architects to assist in processing the many applications for governmental approvals and permits for this relatively large development project. San Francisco is noted for its complex code requirements and extended times for processing permit applications, and the availability of construction financing for the project be in hand in a relatively short time frame or else the funding would no longer be available. Jaidin Consulting Group was retained in July of 1998 with a written contract containing a fees schedule for the various professionals and support staff and with a not-to-exceed cap on the contract of \$12,000.00. This is a relatively small minority-owned firm that meets the local, state and federal goals of promoting the hiring of small firms and minority owned firms for work paid for from affordable housing funding. Jaidin Consulting Group in fact was very helpful in facilitating permit approvals for the project.

Michael Simmons was hired to perform the duties of the Project Manager for the Britton Courts development project as an independent contractor when HCDC's in-house Project Manager resigned to take another position while construction work was well underway. HCDC needed to get an experienced and effective Project Manager in place as soon as possible and could not afford to go through the usual time-consuming process of hiring a replacement person on staff. Michael Simmons was recommended to HCDC by the Executive Director of MOH. He had an impressive record of success as a project manager of affordable housing projects for nonprofit developers in San Francisco, and he had time available to provide needed project management services right away. He was retained in April of 1999 at a rate of \$75.00 per hour with a not-to-exceed cap of \$20,000.00 on his contract. He was a sole practitioner in a minority-

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owned professional firm that met the local, state and federal goals of promoting the hiring of small firms and minority owned firms for work paid for from affordable housing funding. Michael Simmons continued to be the Project Manager on a contract basis when Mercy Charities Housing California came in as managing general partner when the project construction was over 80 percent complete in order to close out the project.

The expenditures for these three consultants provided necessary services that augmented HCDC's in-house staff capabilities and assisted in the completion of the project. These costs were a good use of the funds made available by MOH for this project. While HCDC did not formally utilize the procurement procedures for purchasing services outlines in OMB Circular A-110, Subpart C, in effect HCDC's selection process for these consultants met the spirit of these regulations, since all three of these consultants were small businesses and two were minority-owned firms, they all were responsible contractors whose prior experience demonstrated that they possessed the ability to perform their tasks successfully under the terms of their contracts with HCDC for this project, and HCDC had performed its own cost and price analysis by checking around with other affordable housing developers to confirm that the fees being charged by these consultants for these services were reasonable and competitive.

Recommendation: The statements in the draft Audit Memorandum to the effect that HCDC did not use appropriate procedures to hire these three consultants should be deleted or corrected.

4. Reference: FINDING, page 6: HCDC Lacked Experience in Development of New Housing.

This section of the audit does not correctly state all the pertinent facts. HCDC was a co-general partner with BRIDGE Housing Corporation in its first project, the development and construction of Holloway Terraces, a development of affordable new housing units for first-time home buyers. HCDC was the sole developer in its second project, the Candlestick View condominiums project of new housing units for low and moderate income households with subsidies from the San Francisco Redevelopment Agency. Also, with the encouragement and funding support of MOH, HCDC was the sole developer of the planned Phelan Loop rental units project for low income seniors in the Ocean Avenue/City College neighborhood of San Francisco, which HCDC carried successfully through predevelopment to the construction loan and building permit stage but which was then blocked by a Citywide referendum vote that defeated affordable housing at that location. Further, HCDC had been encouraged by MOH to increase its capacity to manage the development of new affordable multifamily rental housing, and MOH encouraged

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HCDC to contract with experienced consultants to augment its in-house resources for the Britton Courts project.

Recommendation: This sub-section should be deleted from the final Audit Memorandum, since the conclusion that HCDC lacked experience in development of new housing cannot be supported by the facts.

5. Reference: FINDING, page 6: HCDC's Written Procedures Did Not Address Procurement of Services.

This section of the Audit Memorandum needs correction and augmentation. HCDC's written Administrative Procedural Manual states in Paragraph 2.D.: "All HCDC staff involved with a particular contract will comply with the policies and procedures of the funding agency from which the contract is granted." HCDC looked to MOH, the funding agency which provided the funding for site acquisition, predevelopment expenses, and a portion of the construction costs for the Britton Courts development project, to provide HCDC with oversight and guidance regarding how to implement any applicable federal regulations. HCDC submitted all documents prepared in connection with the selection of the project's architects, consultants, and the general contractor, such as RFQs and solicitations for proposals, to MOH for prior review, approval and advice. MOH and the San Francisco Human Rights Commission emphasized HUD's Minority Owned and Women Owned Business Enterprise goals, Federal prevailing wage requirements, and Federal local hiring goals and made sure that these Federal regulations were referenced in the RFQs for the project architects and the general contractor for the Britton Street Family Apartments project.

HCDC's current Executive Director was not interviewed by the Inspector General's staff person when he made available to the Inspector General's staff all the books, records and files for the project. He does not recall making the statements attributed to him on page 6 of the draft Audit Memorandum, and he would not have been in a position to draw such conclusions since he is not familiar with the history of how the consultants and general contractor were selected for the Britton Courts project or how Mercy Charities Housing California came into the project as managing general partner.

HCDC acknowledges that HCDC did not establish written procurement procedures that specifically incorporated the procurement procedure requirements of OMB Circular A-110, Subpart C. For this project, HCDC was not procuring goods, and HCDC's good faith understanding is that it was incorporating the pertinent Federal regulations into its selection

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process for the project architects and the general contractor under the guidance and oversight it received from MOH and the San Francisco Human Rights Commission. Neither MOH nor the San Francisco Human Rights Commission pointed out to HCDC that these Federal procurement procedures should have been established by HCDC in written form and should have been specifically referenced and utilized in selecting the consultants and the general contractor for this project.

Recommendation: This sub-section should be revised in the final Audit Memorandum to reflect the facts regarding HCDC's procurement policies and procedures as stated above. The reference to HCDC's Executive Director should be deleted as incorrect and not pertinent to the issued addressed in this section.

6. Reference: RECOMMENDATIONS, p. 6: Recommendation 1B.

This sub-section of the draft Audit Memorandum recommends that the City of San Francisco withhold additional CDBG and/or HOME funds for multifamily development projects from HCDC until HCDC can show that adequate policies and procedures are in place to assure compliance with Federal procurement standards.

The information gathered in the research leading up to the draft Audit Memorandum should be updated to reflect that HCDC's Board of Directors, in response to the draft Audit Memorandum, on February 19, 2002, adopted a Resolution which specifically establishes policies and written procurement procedures to assure compliance with Federal procurement standards for the use of any Federal funds in connection with future development projects. A copy of the Resolution is enclosed as Attachment No. 3.

Recommendation: This section should be revised in the final Audit Memorandum to state that the Inspector General's audit process resulted in the adoption by HCDC's Board of Directors of policies and written procurement procedures that assure compliance with Federal procurement standards for the use of any Federal funds in connection with future development projects. It is no longer necessary for the Audit Memorandum to recommend that the City and County of San Francisco should not provide HCDC with additional CDBG and/or HOME funds for multifamily development projects and instead should recommend that the City monitor HCDC's performance in following HCDC's established procurement procedures and policies required by Federal laws and regulations in connection with HCDC's future housing development projects which receive Federal funding through the City and County of San Francisco.

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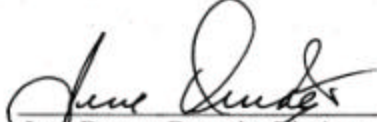
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7. Summary Conclusion.

This audit has resulted in HCDC's acknowledgment that it should have adopted written procurement policies and procedures in compliance with OMB Circular A-110, Subpart C, and utilized these procedures in securing services for its Britton Courts project. Further, this audit prompted HCDC to formally adopt the appropriate procurement policies and procedures by Board Resolution, and MOH will be vigilant in its monitoring of HCDC's performance in future development projects. As your office finalizes the Audit Memorandum, we recommend that you acknowledge these positive outcomes from the audit process and remove any stigma of accusation against HCDC which could present obstacles to HCDC's prospects to be a sub-recipient through the City and County of San Francisco of Federal funding for the development of affordable housing projects in the future.

Respectfully submitted,


Miriam A. Armstrong, President


Jesse Durazo, Executive Director

ATTACHMENT C

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