

June 11, 1998

Audit Related Memorandum
No. 98-NY-202-1804

MEMORANDUM FOR: Joan Spilman, Director, Office of Public Housing, 2CPH

FROM: Alexander C. Malloy, District Inspector General for Audit, 2AGA

SUBJECT: Rochester Housing Authority
Lead Based Paint Prevention Program
Rochester, New York

SUMMARY

We have completed a limited review of the Rochester Housing Authority's (RHA), Rochester, New York lead based paint prevention program. This review stemmed from a complaint received by your Office. Specifically, the complainant alleged that the RHA did not follow the U.S. Department of Housing and Urban Development (HUD) procurement requirements when it hired contractors to perform lead based paint testing. The primary objective of our review was to determine the validity of the complaint. Our review disclosed that the complaint has merit.

We found that the RHA procured lead based paint services from contractors without requesting proposals from other contractors and without always issuing written contracts. As a result, the RHA cannot be ensured that the best quality services were obtained in the most economical manner. RHA staff told us that an error was made by not following the HUD procurement requirements. In our opinion, this is a serious error. The RHA's lead based paint program was funded through HUD's Comprehensive Grant Program (CGP). Although, the RHA has essentially completed its lead based paint program, we are concerned that the RHA may not be following the HUD procurement requirements regarding other activities funded through the CGP. Therefore, we recommend that HUD should not release any further CGP funds, until the RHA establishes procedures that will ensure that the RHA complies with HUD procurement requirements. Also, we recommend that you advise the RHA that if future lead based paint contracts are not procured in accordance with HUD's requirements that the Buffalo Field Office will take administrative actions against the RHA.

Our review also disclosed that the RHA did not properly notify all of its Spanish speaking tenants of the hazards of lead based paint. As a result, some tenants may not have been fully informed of the risks associated with lead based paint. RHA staff told us that the RHA was not aware that the applicable notifications were in Spanish.

BACKGROUND

The Lead Based Paint Poisoning Prevention Act, as amended, requires Public Housing Authorities (PHA) to establish procedures to eliminate as far as practicable the immediate hazards of lead based paint. HUD's Lead Based Paint Poisoning Prevention Notification, Handbook 7487.1, requires that when the PHA conducts its periodic unit inspections, it should visually inspect units for defective paint surfaces in those family projects constructed prior to 1978. If defective paint surfaces are identified, PHAs are required to treat (abate) these surfaces by covering or removing the defective paint.

In addition, HUD Handbook 7487.1, requires that all tenants living in units constructed prior to 1978 should be notified of lead based paint hazards. The Handbook has examples of these notifications in both English and Spanish. Also, the Handbook requires PHAs to encourage tenants who have children under the age of 7 years to be tested for elevated blood levels.

OBJECTIVE, SCOPE AND METHODOLOGY

The objective of our review was to determine whether the RHA complied with HUD's requirements regarding the procurement of services to prevent lead based paint hazards. The lead based paint prevention program consists of testing for lead based paint and if found, abating the lead based paint surfaces. The RHA hired contractors to test for lead based paint and hired other contractors to abate the lead based paint. Our review was primarily focused on two contractors (Buffalo Testing Laboratories and Paradigm Environmental Services) hired to test for lead based paint and hired to monitor the RHA's abatement activities. Our review was performed between December 1997 and March 1998 and covered the period of January 1, 1993 through December 31, 1997. Where appropriate the review was extended to include other periods. During the review, we interviewed RHA staff, and we reviewed the RHA's accounting records, method of procurement, and lead based paint prevention files. In addition, we reviewed the actions taken by the RHA to notify all of its tenants of the lead based paint hazards.

RESULTS

1. Lead Based Paint Services Were Not Properly Procured.

Our review disclosed that the RHA did not procure lead based paint services from the Buffalo Testing Laboratories (BTL) and the Paradigm Environmental Services in accordance with HUD procurement requirements. As a result, the RHA can not be ensured that the costs were reasonable, or that the services were procured in a manner that will withstand the public scrutiny test.

HUD Procurement for Public and Indian Housing Authorities, Handbook 7460.8, paragraph 4-3 provides that if the services exceed \$25,000, the PHA should either use the sealed bidding method or the competitive proposals method. Paragraph 2-5 provides that for engineering services the competitive proposals method is more appropriate. Under the competitive proposals method, both technical and price factors are considered. The process begins with the PHA describing its needs

in a statement of work, publicizing the upcoming procurement (e.g., advertising in local newspapers or journals), preparing an independent cost estimate and a technical evaluation plan to analyze any proposals received. Next, the PHA prepares a solicitation know as a request for proposals which identifies the technical and price evaluation factors and the format for submitting these factors. Finally, the PHA sends the request for proposals to the respondents who answered the public notice and to any contractors that are on the PHA's mailing list.

When proposals are received, they are not publicly opened. Instead they are kept confidential. The primary reason for not having a public opening for competitive proposals is that there are multiple award factors, as compared to sealed bidding where price is the only selection factor. After proposals are received, the PHA evaluates the proposals from both a technical and price standpoint, documents the evaluation in a written report, and establishes a competitive range of contractors who have a reasonable chance of receiving the contract. A separate negotiation session is then conducted with each contractor in the competitive range to discuss both technical and price issues.

In December 1992, RHA requested proposals from contractors to perform lead based paint testing. At this time six contractors responded to the proposal. The RHA awarded the contract to BTL for \$26,400. The RHA and BTL signed a contract to start testing on January 19, 1993 with a testing completion date of May 19, 1993. After the contract expired, there were two remaining projects that needed to be tested.

Despite the expiration of the contract, the RHA continued to use BTL at the remaining two projects. Our review disclosed that the RHA used BTL without requesting other proposals from other contractors and without issuing a written contract. According to RHA staff, other proposals were not requested and another contract was not issued because BTL had done about 80 percent of the RHA's lead based paint testing and it made good business sense to maintain consistency and continue with BTL.

Our review also disclosed that during the period January 19, 1993 through December 31, 1997, the RHA paid BTL \$566,040 (\$539,640 over and above the \$26,400 contract amount). This amount not only included payments for the lead based paint testing at the two additional projects mentioned above, but RHA also hired BTL as a consultant to monitor RHA's abatement activities. For example, once BTL confirmed that lead based paint existed, the lead based paint had to be eliminated (abated). BTL made site visits to the projects to collect samples and determine if the contractors hired by RHA to eliminate the lead based paint (abatement contractors) were in compliance with their contracts.

During our review we also determined that another entity known as Paradigm Environmental Services, received a significant amount of payments from RHA. We found that during the period September 1993 and December 31, 1997, RHA paid Paradigm \$118,846. This work was done without seeking other proposals to verify the validity of the cost and also without issuing a written contract to Paradigm.

RHA staff told us that RHA hired Paradigm Environmental Services in the early 1990s to perform air monitoring as part of RHA's lead based paint prevention program. According to RHA staff in

September 1997, a Paradigm representative approached the RHA staff and inquired whether Paradigm could perform some of the work for RHA that BTL was performing. RHA staff told us that RHA accepted Paradigm's offer and decided to split the work between BTL and Paradigm.

When we inquired as to why RHA hired the above mention contractors without seeking other proposals and without issuing written contracts, RHA staff told us among other things that an error was made by not following HUD procurement guidelines. In our opinion, this is a serious error. The RHA's lead based paint prevention program was funded through HUD's Comprehensive Grant Program (CGP). Although, RHA has essentially completed its lead based paint program, we are concerned that RHA may not be following the HUD procurement requirements regarding other activities funded through the CGP. Therefore, we believe that the Buffalo Field Office needs to take action to prevent these procurement deficiencies from occurring in the future.

AUDITEE COMMENTS

The RHA's Executive Director agreed that a serious error occurred. The Executive Director stated that the RHA has contracted with an outside consulting firm to review RHA's procurement policy. The Executive Director went on to say that to withhold CGP dollars from the RHA would only serve to slow down the progress which has been made in meeting the primary focus of improving living conditions at RHA.

OIG EVALUATION OF AUDITEE COMMENTS

We believe that a serious error occurred and HUD should not release any additional CGP funds until the RHA demonstrates that it is complying with HUD's procurement policies. Therefore, we believe that our recommendation should remain as stated.

RECOMMENDATIONS

The non compliance of HUD's procurement requirements requires that HUD take immediate action; therefore, we recommend that you:

- 1A. Not release any additional CGP funds until the RHA establishes procedures that will ensure that the RHA complies with HUD's procurement procedures.

We further recommend that you:

- 1B. Advise the RHA that if future lead based paint procurement contracts are not procured in accordance with HUD requirements that the Buffalo Field Office will take administration actions against the RHA.

2. Tenants Are Not Properly Notified of Lead Based Paint Hazards.

The RHA has not taken the correct measures to properly inform all tenants of the hazards of lead based paint. For units built before 1978, HUD's Lead Based Paint Poisoning Notification Handbook, 7487.1 requires that tenants should be provided with a copy of the notification: *Watch Out for Lead Based Paint Poisoning Notification Prevention*, dated November 1997. This notification is included in the Handbook as Appendix 1 (English) and 1A (Spanish). Our review disclosed that many families residing in the RHA units speak Spanish as their primary language but the RHA only provided these tenants with the English version of the notice and did not provide these tenants with the Spanish version. In addition, HUD Directive Number 96-92 Lead Based Paint Disclosure Rule, requires that the RHA provide its tenants with copies of the 1995 Environmental Protection Agency notification entitled: *Protect Your Family From Lead In Your Home*. Again, we found that the RHA was not providing its tenants with the Spanish version of this notice. We told the RHA staff of the requirements and the RHA staff stated that they were not aware of the Spanish versions of the notifications. We believe that not providing the Spanish version of the required notifications to Spanish speaking tenants may have resulted in some tenants not being fully informed of the risks of lead based paint poisoning.

AUDITEE COMMENTS

The RHA Executive Director said that his staff assured him that they had no recollection of having received HUD Handbook 7487.1. Also, the Executive Director said that the RHA did not violate any requirements because most of the RHA's abatements were done prior to the November 1997, Handbook's publication date.

OIG EVALUATION OF AUDITEE COMMENTS

Prior to the November 1997 version of HUD Handbook 7487.1, there was a version issued in November 1987 and this version also required that PHAs provide all tenants with a copy of Appendix 1 or 1A (Spanish version of Appendix 1).

RECOMMENDATION

We recommend that you require the RHA to:

- 2A. Maintain a supply of Spanish versions notification of: "*Watch out for Lead Base Paint Poisoning Notification Prevention*" and the notification "*Protect your family From Lead in Your Home.*" Also, ensure that all Spanish speaking tenants are provided a copy of the notifications .