



U. S. Department of Housing and Urban Development
Office of Inspector General
New York/New Jersey Office
Jacob K. Javits Federal Building
26 Federal Plaza – Room 3430
New York, NY 10278-0068

MEMORANDUM NO. 2007-NY-0802

April 3, 2007

MEMORANDUM FOR: Nelson Bregon, General Deputy Assistant Secretary for Community Planning and Development, D

Edgar Moore

FROM: Edgar Moore, Regional Inspector General for Audit, 2AGA

SUBJECT: Community Development Block Grant Disaster Recovery Assistance Funds
Lower Manhattan Development Corporation, New York, New York

INTRODUCTION

Pursuant to a congressional mandate,¹ we performed the eighth in our series of ongoing audits of the Lower Manhattan Development Corporation's (LMDC) administration of the \$2.783 billion in Community Development Block Grant Disaster Recovery Assistance funds provided to the State of New York following the September 11, 2001, terrorist attacks on the World Trade Center in New York City. Based upon this work, we have a concern that warrants your immediate review. The issue is whether certain activities, for which funds have been disbursed and additional funds are planned to be disbursed under the Utility Restoration and Infrastructure Rebuilding (URIR) program, represent an appropriate expense of the program. Accordingly, we request that you determine whether the questioned activities conform to the intent of the program.

In accordance with U.S. Department of Housing and Urban Development (HUD) Handbook 2000.06, REV-3, within 60 days, please provide us for each recommendation in this memorandum, a status report on (1) the corrective action taken, (2) the proposed corrective action and the date to be completed, or (3) why action is considered unnecessary. Additional status reports are required at 90 days and 120 days after this memorandum is issued for any recommendation without a management decision. Also, please furnish us copies of any correspondence or directives issued because of this review.

¹ Conference Report to Accompany H.R. 3338 (Report Number 107-350, page 456).

Should you or your staff have any questions, please contact John Harrison, assistant regional inspector general for audit, at (212) 264-4174.

SCOPE AND METHODOLOGY

As part of our ongoing review of the Lower Manhattan Development Corporation's administration of the \$2.783 billion in Community Development Block Grant Disaster Recovery Assistance funds provided to the State of New York following the September 11, 2001, terrorist attacks on the World Trade Center in New York City, we reviewed disbursements for the URIR program during the period April 1 through September 30, 2006. During this period, LMDC disbursed \$1.2 million of the \$783 million in Disaster Recovery Assistance funds allocated to this program. We reviewed applicable laws, regulations, the partial action plan approved by HUD, and other program requirements and guidelines of the program. We also reviewed a URIR program amended partial action plan submitted for public comment on September 29, 2006, as well as the comments received. In addition, we examined documentation supporting disbursements and conducted interviews with program officials related to the program.

We performed our on-site work from October 2006 through February 2007 at LMDC's office located in lower Manhattan, New York, and the office of the Empire State Development Corporation, LMDC's parent and subrecipient for the URIR program in midtown Manhattan, New York.

BACKGROUND

HUD approves the allocation of the Disaster Recovery Assistance funds to specific activities via partial action plans. In each partial action plan, LMDC details the proposed expenditure of funds for specific activities. The plan is open to public comment for a minimum of 15 calendar days, after which LMDC submits the public comments and any revisions based upon the comments to HUD for approval. Once HUD approves the plan, it makes the funds available for the activity.

URIR Program Partial Action Plan S-2 Approved

LMDC submitted partial action plan S-2, "Utility Restoration and Infrastructure Rebuilding," to allocate \$750 million of the \$783 million appropriated by Congress² for damaged properties and businesses, including the restoration of utility infrastructure. The activities to be funded were considered to have particular urgency because LMDC reportedly determined that existing conditions posed a serious and immediate threat to the health or welfare of New York City and the individual residents of the city and other financial resources were not available to meet such needs.

To remain consistent with the congressional intent for the appropriation, the URIR program was structured to allocate funds that gave the highest priority to the restoration of destroyed utility infrastructure and to protect impacted businesses and residential customers from bearing the cost

² The 2002 Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States, Pub. L. 107-206.

of rebuilding. Accordingly, the program was designed to provide financial assistance directly to energy and telecommunications service companies for reimbursement of qualified emergency and temporary restoration costs and for permanent restoration. The \$750 million was proposed to fund the following cost categories:

Category	Purpose	Approved plan S-2 (millions)
One	Emergency and temporary service	\$ 250
Two	Permanent restoration and improvement	\$ 330
Three	Service interference	\$ 60
Four	Carrier neutral lateral conduit	\$ 50
Five	Redundant fiber	\$ 20
Six	Mandated improvements	\$ 25
	Program administration	\$ 15
Total		\$ 750

Cost categories one through six were listed in order of reimbursement priority so that payments for eligible costs for emergency and temporary response would be paid first, with additional funding flowing upward from the lowest priority category in which funds remained available. Category one costs, the highest priority, should have been incurred to stabilize service delivery, preserve public safety and public health, and construct the infrastructure necessary for temporary restoration of critical energy and communications services. Category two costs, the next highest priority, should have been incurred to permanently replace, restore, and enhance the equipment and infrastructure needed to deliver energy and telecommunications utility services. Category one costs are to be reimbursed up to 100 percent of actual uncompensated costs, while category two costs are to be reimbursed up to 75 percent.³ On this basis, HUD approved partial action plan S-2 on September 15, 2003. LMDC executed a subrecipient agreement with its parent, the Empire State Development Corporation, to administer the URIR program.

RESULTS OF REVIEW

An analysis is warranted to determine whether URIR category two costs incurred in connection with the southern site utility infrastructure should have been approved via the action plan process. Further, when the amended action plan S-2 is submitted for approval, the proposed additional southern site costs warrant careful review to determine whether they are costs that were contemplated by the original program and whether some of those planned expenditures more appropriately should be charged to another program.

Funds Allocated to Category Two Southern Site via Program Guidelines

The Empire State Development Corporation issued category two URIR program guidelines on April 15, 2004, and they were amended on June 30, 2005. The amendment outlined the provisions of category two, including reimbursement terms. The original and amended category

³ Except street-related work coordinated with New York City, which would be reimbursed at 100 percent.

two guidelines provide criteria for a utility provider to be eligible for funding under the program. The company should meet the following requirements: (i) it must be an investor-owned utility service provider that is regulated by the New York Public Service Commission, the Federal Energy Regulatory Commission, or the Federal Communications Commission; (ii) as of September 11, 2001, and continuing through the date of its application for assistance under the URIR program, it was operating and providing service in the area defined as the South of Canal Zone; (iii) it incurred substantial damage to its service delivery infrastructure; and (iv) it incurred expenses for permanent restoration of utility services and infrastructure improvements in the South of Canal Zone; and such expenses have not been reimbursed through insurance, governmental grants, legal claims, federal or state income tax credits, or other third-party sources.

The Empire State Development Corporation amended the guidelines on April 27, 2006, for the sole purpose of allowing reimbursement from the URIR program category two funds for the costs incurred in relocating utilities from the southern site and the permanent restoration of these utilities or enhanced utilities at the relocated sites. These costs were not to exceed \$50 million, and reimbursement ranged from 100 percent for work substantially completed before December 31, 2006, to 50 percent for that completed before December 31, 2007.

The implementation of the World Trade Center Memorial and Redevelopment Plan, including the redevelopment of the southern site, requires the reconfiguration of streets and the permanent relocation of utility infrastructure from the southern site. The southern site includes two adjacent parcels comprising four acres south of the original 16-acre World Trade Center site. The decision to expand the World Trade Center site to include the southern site was made by LMDC's board on June 2, 2004, as part of the final approval of the World Trade Center Memorial and Cultural Program. The parcels in this site were acquired in June 2005 to allow implementation of the revised World Trade Center Memorial and Redevelopment Plan. This area is to serve as open space at grade level and allow critical infrastructure to be built and connected to the World Trade Center site below grade. HUD approved this acquisition on October 6, 2005; in amended partial action plan nine. Consequently, the current planned development of the southern site was not envisioned at the time that partial action plan S-2 was approved in 2003.

LMDC allowed a utility provider to substitute \$7 million in costs that were disallowed in URIR category one claims as an advance to be used for activities related to the southern site. In addition, in January 2007, another disbursement was made to a second utility provider as an advance payment for activities related to the southern site in the amount of \$1.28 million. This accounts for a total of \$8.28 million expended on southern site activities under the URIR program as approved by LMDC through amended program guidelines.

LMDC, in coordination with its subrecipient for the program, developed guidelines to implement the funds allocated to the URIR program. The program guidelines provided for amendment from time to time in consultation with LMDC. LMDC officials maintain that the provision for amendment would allow for the inclusion of southern site utility relocation costs in the originally approved URIR program category two costs. However, as approved, partial action plan S-2 provided that any substantial amendment of the plan was to be made available for public review

and approval by HUD. A substantial amendment was defined as (1) the elimination of any of the activities identified in the plan, (2) any fundamental change in the eligibility criteria for funding under the plan, or (3) the addition of any activities not defined by the plan. Given that the majority of work connected with the southern site was not specified at the time the partial action plan S-2 was approved, there is ambiguity as to whether the addition of category two costs related to the southern site should be considered as the addition of activities not defined by the plan. Consequently, we have a concern as to whether this activity could be added to the program merely through amended program guidelines or whether it should have been approved via the action plan approval process.

Amended Partial Action Plan S-2 Not Submitted for Approval

On September 29, 2006, the Lower Manhattan Development Corporation released an amended partial action plan S-2 for public comment on its Web site. The proposed amended plan, among other actions, would

- Increase the funds allocated to southern site category two costs by \$30 million;
- Set aside \$25 million for the World Trade Center Memorial and Museum, including utilities and electrical and telecommunications systems; and
- Allocate any funds remaining after all categories have been paid to the World Trade Center site infrastructure.

The specifics of the proposed plan are

Category	Purpose	Approved plan S-2 (millions)	Proposed amended plan S-2 (millions)
One	Emergency and temporary service	\$ 250	\$ 250
Two	Permanent restoration and improvement	\$ 330	\$ 360
Three	Service interference	\$ 60	\$ 60
Four	Carrier neutral lateral conduit	\$ 50	\$ 20
Five	Redundant fiber and wireless (previously designated as redundant fiber)	\$ 20	\$ 20
Six	World Trade Center Memorial telecommunications and electrical systems (previously designated as mandated improvements)	\$ 25	\$ 25
	Program administration	\$ 15	\$ 15
Total		\$ 750	\$ 750

LMDC received two comments on September 29 and October 30, 2006. Those comments exhibited disagreement with the proposed amendments to the plan. Some of the concerns raised were that the amended plan eliminated the upward movement of funds; did not establish a

timetable for work to be completed in categories four, five, and six; and provided for the transfer of funds to another agency to disburse category six funds for purposes outside the scope of the program. As of February 27, 2007, LMDC had not submitted the plan to HUD for approval.

As noted previously, we have concerns as to whether the addition of costs related to the southern site should have received approval through the partial action plan process. The internal amendment of program guidelines affected the allocation of \$50 million in category two-approved costs to be used for the southern site, and the proposed amended action plan is requesting to increase this by \$30 million.

While the initial partial action plan did not require that category six funds be paid to investor-owned utility companies, the proposed amended action plan requests that the entire category six allocation be paid as a grant directly to the World Trade Center Memorial Foundation.⁴ The purpose of this grant is not specific, noting only that it is “for the World Trade Center Memorial and Museum including utilities and electrical and telecommunications systems.” Consequently, the proposed use of these funds should be specifically described before any approval, and in addition, depending upon what the exact intended use is, a determination should be made as to whether these costs should be paid from the funds that have already been allocated for the World Trade Center Memorial and Museum program.⁵

RECOMMENDATIONS

We recommend that HUD’s general deputy assistant secretary for community planning and development instruct LMDC to

- 1A. Provide documentation so that HUD can determine whether the southern site activity added via program guidelines meets the criteria necessary to be included as part of the initial URIR program’s objectives, and whether the utility work outlined for the southern site should have gone through the same action plan procedures as other activities. If the southern site disbursements do not meet the criteria of the program, the LMDC should be instructed to seek repayment of the funds already advanced.
- 1B. When the amended partial action plan S-2 is submitted for HUD approval, provide additional specifics as to the activity to be funded via the proposed amendments to the partial action plan so that a determination can be made as to whether it is consistent with the congressional intent for the URIR program.

⁴ The World Trade Center Foundation is a not-for-profit corporation established to honor the victims of the 1993 and 2001 terrorist attacks on the World Trade Center and promote the economic and cultural vitality of lower Manhattan through the development of cultural facilities at the World Trade Center site.

⁵ HUD has approved the allocation of \$ 594,017,180 for the World Trade Center Memorial and Museum program.

Appendix

HUD COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

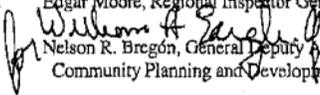
HUD Comments



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

MAR 30 2007

MEMORANDUM FOR: Edgar Moore, Regional Inspector General for Audit, 2AGA
FROM:  Nelson R. Bregón, General Deputy Assistant Secretary for
Community Planning and Development, D
SUBJECT: Community Development Block Grant Disaster Recovery
Assistance Funds
Lower Manhattan Development Corporation, New York, New York
Draft Internal Audit Memorandum, March 19, 2007

This is in response the draft internal memorandum on the above subject that you emailed to me on March 19, 2007. The draft internal memorandum focuses on funds provided to the Lower Manhattan Development Corporation (LMDC) for the Utility Restoration and Infrastructure Rebuilding (URIR) program administered by the New York State Empire State Development Corporation (ESDC). The issues you raise concern category two.

In its partial action plan S-2 for the \$750 million URIR program, submitted to and funded by HUD, it budgeted as follows:

1. Category One - Emergency and Temporary Service Response - \$250,000,000;
2. Category Two - Permanent Restoration and Infrastructure Improvements - \$330,000,000;
3. Category Three - Service Interference - \$60,000,000;
4. Category Four - Construction of Carrier Neutral Lateral Conduits - \$50,000,000;
5. Category Five - Construction of Redundant Fiber Connections to Critical Facilities - \$20,000,000;
6. Category Six - Mandated Infrastructure Improvements - \$25,000,000; and
7. Program administration - \$15,000,000.

Under category two, the partial action plan states:

"Category 2 - Permanent Restoration and Infrastructure Improvements - \$330 Million

Eligible costs under this category are those incurred to permanently replace, restore, and enhance the equipment and infrastructure to deliver energy and telecommunications utility services. Where appropriate and cost effective, infrastructure restoration using current technology will likely exceed the service quality and/or capacity of the pre-September 11, 2001 systems being restored. Technology advances over the past two decades have brought significant improvements in utility infrastructure capacity and capabilities, particularly in

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HUD COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

HUD Comments

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telecommunications. In certain cases, restoration of permanent service in Lower Manhattan will reasonably entail the replacement of some infrastructure with more modern or resilient technology options. These options may improve the system by increasing capacity, service quality and/or public safety as compared to September 10, 2001 levels, at a marginally higher cost than that of prior generations of equipment or other options. Alternatively, companies may desire to implement significant infrastructure improvements at a greater than marginally higher cost."

In September 2006, LMDC published an amendment for public comment. The amendment has not been submitted to HUD. With respect to category two, the amendment states,

"Category Two – Permanent Restoration and Infrastructure Improvements - \$360 million Category Two Guidelines has been amended to include the addition of the Southern Site Street Reconfiguration Plan as an eligible project and an increase of \$30 million in funds allocated to cover the Southern Site-related work, for a revised allocation of \$360 million. The Southern Site Project was added to assist redevelopment efforts at the site. It conforms to the permanent restoration purpose of Category Two. The filing deadline for Southern Site work is March 31, 2008."

Your draft internal memorandum proposed two recommendations for HUD to instruct LMDC to:

- 1A. Provide documentation so that HUD can determine whether the southern site activity added via program guidelines meets the criteria necessary to be included as part of the initial URIR program's objectives, and whether the utility work outlined for the southern site should have gone through the same action plan procedures as other activities. If the southern site disbursements do not meet the criteria of the program, the LMDC should be instructed to seek repayment of the funds already advanced.
- 1B. When the amended partial action plan S-2 is submitted for HUD approval, provide additional specifics as to the activity to be funded via the proposed amendments to the partial action plan so that a determination can be made as to whether it is consistent with the congressional intent for the URIR program.

Response to recommendation 1A:

This recommendation seems to focus on whether an activity is within the scope of the partial action plan. The southern site activity is already within the scope of the URIR program category two as described in the partial action plan S-2 quoted above that was submitted to HUD in 2003. The partial action plan S-2 does not list any specific projects.

LMDC/ESDC developed program guidelines for category two. Guidelines for category two were amended April 27, 2006, to distinguish southern site program assistance guidelines from other category two projects so the southern site assistance could be tracked separately. The guidelines and the southern site were within the scope and geography of the partial action plan S-2.

Comment 1

HUD COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

HUD Comments

Comment 2

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The southern site assistance is for costs to relocate utility infrastructure previously located in the southern site so that rebuilding can occur. Relocating utilities to allow construction is not unusual and as stated above is already within the scope of the partial action plan S-2 and the guidelines. Of the \$37 million currently estimated for the southern site assistance, only about \$5 million in invoices have been submitted for audit, and of that an advance of about \$1.2 million has been requested.

The premise in the draft internal audit memorandum is that LMDC added an activity that would trigger a "substantial amendment" as defined in the partial action plan. The term "activities" in the definition of substantial amendment in partial action plan S-2 refers to the six categories described in the partial action plan S-2, not to the individual projects, e.g. southern site assistance and numerous others, not described in the partial action plan S-2. Therefore, HUD does not see anything in the draft internal audit memorandum that would cause us to question the disbursement of funds for southern site assistance costs already provided within the \$330 million budgeted for category two.

Response to recommendation 1B:

Since LMDC has not submitted to HUD the amendment it published for public comment in September 2006, HUD believes that it is premature to make any recommendation regarding its content. Also, it is not clear why you are questioning consistency with Congressional intent. The statute states,

"That such funds may be used for assistance for properties and businesses (including the restoration of utility infrastructure) damaged by, and for economic revitalization directly related to, the terrorist attacks on the United States that occurred on September 11, 2001, in New York City and for reimbursement to the State and City of New York for expenditures incurred from the regular Community Development Block Grant formula allocation used to achieve these same purposes"

This language is quite broad and specifically includes restoration of utility infrastructure.

I hope that this response to your draft is helpful.

OIG Evaluation of HUD Comments

- Comment 1** HUD officials generally believe that the activities of the southern site fall within the definition of the initial action plan S-2. However, while the activity added by the amended program guidelines is within the broad geographic area referred to in the initial partial action plan, we believe that there is ambiguity as to whether this specific activity was envisioned when the initial action plan was approved. Therefore we question whether it constitutes a substantial amendment. Accordingly, to adequately conclude that this activity was properly approved solely via an internal amendment of program guidelines, HUD should document whether (1) category two costs had already been incurred for the restoration and improvement of utility infrastructure at the southern site, (2) relocation of the utility equipment due to subsequently planned construction is within the intent of the initial approved partial action plan, to restore and enhance utility service equipment destroyed on September 11, 2001, and (3) this utility work at the southern site should more appropriately be charged to the World Trade Center Memorial and Cultural Program.
- Comment 2** While the amended partial action plan S-2 has not yet been submitted to HUD for approval, we want to ensure that HUD will consider our concerns and require LMDC to identify the specific activities the grant to the World Trade Center Memorial Foundation will fund before the amended partial action plan is approved.