



U.S. Department of Housing and Urban Development
Office of District Inspector General for Audit
Capital District
800 North Capitol Street, N. W.
Suite 500
Washington, DC 20002

Audit Memorandum
No. 2001-AO-0801

February 13, 2001

MEMORANDUM FOR: Melquiades R. Martinez, Secretary, S

[Signed]

FROM: Sandra G. Elion, District Inspector General for Audit, Capital District, 3GGA

SUBJECT: FY1998 Fair Housing Initiatives Program
National Focus Education and Outreach Competition
Washington, DC

We have completed a limited review of the FY 1998 Fair Housing Initiatives Program (FHIP) National Focus Education and Outreach cooperative agreement awarded to Consumer Action of San Francisco. This review was performed as a result of allegations disclosed during our review of the Use of Fair Housing Initiatives Program Funds (Audit Memorandum No. 00-AO-174-0801, dated July 6, 2000). The allegations were that the Chief of Staff of HUD significantly changed the statement of work during the negotiations, after Consumer Action had been selected as the grantee. More specifically:

- The negotiation process may have resulted in unfair competition because the final negotiated statement of work was materially different from the activities in Consumer Action's application;
- During negotiations, officials from the Secretary's office tried to steer the project requirements to BBDO, the contractor for the Federal Housing Administration (FHA) media campaign;
- The Secretary's office directed BBDO to perform oversight of Consumer Action's media campaign but BBDO did not separately bill for this function; and
- The Secretary's office required Consumer Action to develop fair housing storyboards before the grant was signed.

We concluded that some of the allegations were valid and that the Secretary's office exercised undue influence over the Fair Housing and Equal Opportunity (FHEO) staff responsible for awarding and administering the cooperative agreement awarded to Consumer Action.

During our exit conference on January 17, 2001, the Office of General Counsel (OGC) submitted HUD's official response to our draft audit report. We summarized OGC's written comments after the finding and included the complete text in Appendix A.

Within 60 days, please give us a status report on each recommendation made in the report. The status report should be prepared in accordance with Appendix 6 of HUD Handbook 2000.06, REV-3 and should include the corrective action taken, the proposed corrective action and the date completed, or why the action is considered unnecessary. Also, please give us copies of any correspondence or directives issued because of this review.

Appendices

A – OGC Comments

B – Distribution List

OBJECTIVE, SCOPE, and METHODOLOGY

Our objective was to evaluate the process used to award and administer the FY 1998 FHIP National Focus Education and Outreach project to the extent necessary to determine if the allegations were valid.

To substantiate the allegations, we:

- Reviewed applicable FHIP laws, regulations, and program documentation;
- Reviewed FY 1998 FHIP applications and selection results;
- Reviewed e-mails of FHEO and Consumer Action officials; and
- Interviewed officials from FHEO, OGC, Office of Healthy Home and Lead Hazard Control, Public Affairs, Consumer Action, the Hastings Group, BBDO, and Vanguard Communications.

We conducted our review from July through October 2000 and reviewed project activities for the period January 1999 through August 2000.

BACKGROUND

In the FY 1998 National Competition SuperNOFA, FHEO allocated \$2 million of FHIP funds for a national education and outreach project. The project's general and specific requirements were defined in the application kit. Applicants that competed for the funds had to design a coordinated national education campaign to provide fair housing information to the public including historically under-served populations such as new immigrants, and educate all persons about their fair housing rights. FHEO advised the potential applicants that products developed under the national project should be in at least three languages other than English. In addition, FHEO required that each applicant's final products, or deliverables, must include public service announcements (PSAs) for radio and television, posters, and other graphic materials.

In January 1999, the FHEO staff selected Consumer Action of San Francisco as the recipient of the \$2 million cooperative agreement based on its proposal to conduct a multi-focused, national project targeted primarily for new immigrants and under-served populations. Consumer Action was one of six applicants competing for this cooperative agreement.

Although Consumer Action was selected in January 1999, the Grant Officer did not sign and execute the cooperative agreement until July 22, 1999. The performance period, initially established as March 1, 1999, through August 31, 2000, has been extended through May 30, 2001.

The Secretary's Office Used Undue Influence In The Cooperative Agreement Awarded to Consumer Action

The focus and scope of the \$2 million FHIP project was significantly changed after Consumer Action had been selected to receive the award. This condition occurred because the Secretary's office used undue influence over the FHEO grant officials. As a result:

- HUD did not maximize the opportunity for full and open competition as required by the HUD Reform Act of 1989;
- Actual expenses for the PSA campaign exceeded budget and some funds were used inefficiently;
- Some planned project activities could not be implemented due to insufficient funds;
- The targeted population did not receive timely fair housing information; and
- The project completion date was delayed for about 9 months.

SuperNOFA Awards Process

According to Section 102(a) of the HUD Reform Act of 1989, before the Department can solicit an application for assistance, it must publish a notice in the Federal Register describing the application procedures. Also, not less than 30 calendar days before the submission deadline, the Department must publish selection criteria in the Federal Register. Part 4.3 of 24 CFR Subtitle A, states: "Selection criteria includes, in addition to any objective measures of housing and other need, project merits, or efficient use of resources, the weight or relative importance of each published selection criterion as well as any other factors that may affect the selection of recipients." HUD published the National Competition SuperNOFA in the Federal Register on April 30, 1998.

HUD Changed Scope After Selection

HUD significantly changed the focus and scope of the \$2 million FHIP cooperative agreement after FHEO selected Consumer Action to conduct the National Education and Outreach Project.

FHEO selected Consumer Action for the award based on its proposal to conduct a multi-focused, national project targeted primarily for new immigrants and under-served populations. Consumer Action designed a project that emphasized an educational campaign including developing PSAs; providing fair housing rights information; and outreach to industry, Community-Based Organizations (CBOs), and media at the grassroots levels. To produce the deliverables that FHEO required, Consumer Action proposed to:

- Produce two satellite-supported townhall meetings;

- Develop multi-language fact sheets;
- Train representatives of CBOs; and
- Develop print, radio, and television PSA's in English, Spanish, and three Asian languages.

HUD's Chief of Staff and a Senior Advisor to the Secretary (hereafter referred as the Secretary's office) afforded disparate treatment to Consumer Action during the FHIP negotiation process by changing the focus of the cooperative agreement and not re-advertising or considering the other applicants based on the new criteria. During the negotiation process (after the award selection and announcement but prior to signing the agreement), the Secretary's office insisted on three major changes in the project's focus.

The first major change was to shift the project's focus to a celebrity-based mass media PSA campaign. To comply with the Secretary's office's requirements, Consumer Action entered into a contract with Edward James Olmos, a well-known Spanish-speaking actor. The celebrity-based approach cost \$180,000, over four times what Consumer Action estimated this deliverable would cost.

The second major change was the elimination of Consumer Action's Fair Housing Advisory Council. We believe this change was significant because it eliminated the opportunity for Consumer Action to obtain the technical assistance needed from fair housing organizations and CBOs to address fair housing rights and information. In addition, these fair housing organizations and CBOs could not disseminate HUD's fair housing rights information to the public. Consumer Action recognized its limited experience with fair housing rights information and proposed to establish the Fair Housing Advisory Council. The purpose of the Council was to assist Consumer Action in improving its understanding of fair housing issues, provide information regarding the target audience's attitudes and how to address audiences of protected classes, and to assist with media outreach activities.

The Technical Evaluation Panel (TEP) also recognized that Consumer Action did not have any fair housing experience and recommended to the Assistant Secretary of FHEO that Consumer Action partner with organizations that possessed a greater knowledge of fair housing issues. According to Consumer Action, the Fair Housing Advisory Council was never formally established because HUD wanted Consumer Action to focus on the PSAs.

The third major change increased the number of planned townhall meetings from two satellite meetings to five townhall meetings. Specifically, the Secretary's office required Consumer Action to conduct five town meetings in five different cities across the country.

The Secretary's office adversely impacted the intent of the SuperNOFA's competitive process by changing the project requirements without notifying the general public and allowing applicants an opportunity to submit applications in response to these new requirements. According to FHEO officials, the priority and percentage of funds devoted to grass roots and media activities were changed in the final negotiated statement of work and budget. FHEO officials also

acknowledged that the Secretary's office changed Consumer Action's project focus and the emphasis was no longer on reaching immigrants and the under-served populations. HUD's operating procedures for this cooperative agreement were barely within the perimeters of the concept of fair competition, prescribed in the HUD Reform Act of 1989. Consequently, other potentially qualified applicants were not afforded an opportunity to submit applications that were consistent with the Secretary's office's newly defined needs. And, a number of eligible applicants may have been unnecessarily and unfairly eliminated from the competition for scarce FHIP funds.

Secretary's Office Changed the Project's Pre-approved Focus and Deliverables

Changes in the project's focus occurred because of undue influences by the Secretary's office. Specifically, the Secretary's office:

- Required Consumer Action to demonstrate competency **after** being competitively selected by the TEP;
- Directed Consumer Action to incur costs during the negotiation process, prior to the signing of the cooperative agreement;
- Circumvented the Government Technical Representative's (GTR) authority over deliverables;
- Directed an FHA contractor to review Consumer Action's deliverables;
- Relieved the GTR of official duties, changed the Fair Housing Month agenda, and assigned an unauthorized person to perform the GTR's responsibilities;
- Provided conflicting verbal instructions to Consumer Action; and
- Directed Consumer Action to provide deliverables that were subsequently rejected.

Consumer Action Required to Demonstrate Competency

After being selected through HUD's competitive award process, Consumer Action was put into a position of having to demonstrate that it was equal or superior to Madison Avenue advertising firms, such as BBDO. According to Consumer Action's Executive Director, Consumer Action had to literally fight "tooth and nail" for its funds. To demonstrate its competency, the Secretary's office required Consumer Action to research and develop storyboards, creative concepts, sample scripts, and print ads for the Secretary's office's review. The Executive Director also said that HUD viewed the development of graphics and storyboards as part of the negotiation process. The Executive said this process did not "feel" like a negotiation and HUD's actions impacted the award process by delaying the start of the project.

Secretary's Office Caused Consumer Action to Incur Pre-award Project Costs

The Secretary's office directed Consumer Action to incur at least \$61,433 of costs to develop fair housing storyboards and other elements of the fair housing campaign before the cooperative agreement was finalized. However, to ensure that Consumer Action was compensated for work completed during the negotiation (February through July 1999), the FHEO Grant Officer made the effective date of the cooperative agreement March 1, 1999, rather than the award date of July 22, 1999. HUD's practices of having potential recipients incur cost before completing the negotiation process is not a good business practice because it presents a potential financial risk for both the recipients and HUD. The recipients may be at financial risk if the incurred costs cannot be recovered because of an unsuccessful negotiation. HUD could incur a financial obligation before executing a legally binding document.

Secretary's Office Circumvented GTR's Authority

FHEO's Guidebook for Monitoring Fair Housing Initiatives Program Grant Agreements states that the role of the GTR is to review and approve materials developed by the recipient and to assure consistency with the Fair Housing Act and the tasks in the statement of work. FHEO directed Consumer Action to send all completed deliverables to the GTR for review and approval. However, the Secretary's office circumvented the GTR's approving authority by verbally amending the process and insisting upon reviewing and approving Consumer Action's materials and deliverables. These changes created an undocumented and unstructured approval process.

Consumer Action's cooperative agreement documents did not show the Secretary's office as a reviewing or approving official. According to Consumer Action, there was nothing in the cooperative agreement award documents that specified the role of the Secretary's office. In fact, the statement of work required deliverables to be submitted to the GTR for approval. The GTR approved Consumer Action's products but final approval was contingent upon the Secretary's office. Obtaining product approval from both the GTR and the Secretary's office made the process inefficient. Specifically:

- Deliverables sent to the Secretary's office were frequently misplaced or sat for weeks awaiting approval; and
- Instead of requiring Consumer Action to produce a deliverable for review and approval before proceeding to the next task, HUD allowed Consumer Action to continually produce deliverables despite the risk of rejection and incurring unnecessary expenditures.

The Secretary's office's imposed, unstructured and undocumented approval process also caused delays in Consumer Action meeting deliverable due dates specified in the statement of work, an increase in staff hours worked, and limited project funds to be wasted.

Deputy Assistant Secretary's Unauthorized Contracting Actions

The Deputy Assistant Secretary for the Office of Public Affairs (DAS) may have circumvented the acquisition process by personally soliciting the services of BBDO. Specifically, the DAS informally tasked BBDO to review the PSA Consumer Action developed featuring Edward James Olmos. Without properly executing a contract task order, the DAS submitted Consumer Action's PSA script for radio and TV to BBDO for review and recommendations. The BBDO representative stated that she initially refused to review Consumer Action's PSA without a task order but when the DAS made a second request, she made a cursory review of the PSA then assigned the review task to her creative staff. We confirmed that BBDO had an existing contract with FHA (Contract DU100C000018363) to perform services in support of marketing repossessed single-family HUD houses. We also confirmed that BBDO did not have a contractual obligation to support FHEO or the Office of Public Affairs. Some of the services under the terms of the contract required BBDO to perform analyses of current marketing campaigns, conduct market research, and develop marketing plans for HUD single-family properties.

We also did not find any evidence that the DAS was authorized to obligate HUD or enter into a contract with BBDO. Under Federal Acquisition Regulation (FAR) §1.601, only the contracting officers and other designated high-level officials may enter into contracts. A request for services by an unauthorized government official, which are subsequently performed and provide a benefit to the Government, can give rise to a contract implied-in-law, also called a quasi-contract. Claims for payment on a quasi-contract may be paid if the contract is ratified under FAR §1.602-3, "Ratification of Unauthorized Commitments." In this case, there had not been a ratification of the work performed by BBDO when it reviewed Consumer Action's campaign. Therefore, the contracting officer may need to initiate a review to determine whether the contract action should be ratified.

We concluded that Public Affairs diverted resources from FHA to support FHEO's program by requiring BBDO to perform these unauthorized services. Moreover, this action by the DAS raises the following concerns:

- Was the action contrary to the advice of OGC, which indicated that FHEO could not enter into a contract with BBDO because FHIP funds had to be awarded as a grant?
- Is the Government liable for these services?
- Was the service performed as a gift to FHEO staff?
- Does the contractor believe the Government demanded free services for continued good will?
- Will this arrangement impact the impartiality of HUD officials in their future decisions?

HUD Chief of Staff Relieved GTR of Duties

Within days of unveiling the April 2000 Fair Housing Month activities, the Chief of Staff relieved the GTR of his official duties, changed the rollout agenda, and assigned an Office of Public Affairs official to perform the GTR's responsibilities.

The national education and outreach PSA was a major component of HUD's Fair Housing Month activities. During the week of April 10, 2000, the GTR was scheduled to perform essential duties in order to facilitate the unveiling of the national education and outreach PSA campaign on April 14th. The GTR's specific duties included:

- Finalizing all program activities with Consumer Action and conducting a walk-through at the University of California at Los Angeles, the host site for the Fair Housing Townhall Meeting; and
- Providing oversight and monitoring of the unveiling of the PSA for compliance with the cooperative agreement requirements.

However, the Chief of Staff relieved the GTR of his duties a day before the unveiling of the PSA campaign to the general public. She then directed the GTR to return to Washington, DC, and sent an employee from Headquarters Office of Public Affairs to Los Angeles to provide Consumer Action with specific instructions on how to perform under the cooperative agreement.

In addition, the DAS instructed the Hastings Group (Consumer Action's sub-grantee) to change the agenda the GTR had previously approved. Specifically, the DAS removed the Dean of the University of California at Los Angeles Law School from making the welcoming remarks and removed the Assistant Secretary for FHEO from introducing the PSA campaign and introducing Edward James Olmos at the Townhall Meeting. The GTR convinced the DAS to allow the Dean of the Law School to give the welcoming remarks. However, the Secretary's Representative from San Francisco replaced the Assistant Secretary for FHEO as HUD's official spokesperson for these Fair Housing Month activities.

The Secretary's office's assumption of the GTR's responsibilities was an inappropriate act. According to the Grant Officer the GTR may not delegate his duties and responsibilities to someone else without putting the delegation in writing. The Grant Officer never received a written request to delegate the GTR's duties and responsibilities to someone else.

Secretary's Office's Verbal Instructions Conflicted with Cooperative Agreement

The Secretary's office provided verbal instructions to Consumer Action that were in conflict with FHEO requirements which resulted in numerous changes to the project and amendments to Consumer Action's statement of work. According to HUD Handbook 2210.17, REV-2, Discretionary Grant and Cooperative Agreement Policies and Procedures, Chapter 5-11, HUD has no right to unilaterally direct changes to the recipient's project and the Grant Officer is responsible for negotiating and executing amendments to existing awards.

Although cooperative agreements are not governed by as stringent requirements as those in the FAR for contracts, we concluded that the practice of personnel outside of the acquisition process

providing verbal instructions to the recipient is an unacceptable business practice. Such a practice leads to inefficient use of limited resources, misinterpretation of requirements, and inconsistent instructions with little legal recourse for the Department.

FHEO officials informed us that the Secretary's office and Public Affairs' interaction with Consumer Action was to ensure that its PSAs were consistent with other on-going HUD media campaigns. In our analysis of the event described below, we considered FHEO's explanation in assessing the potential impact of the Secretary's office and Public Affairs on Consumer Action's project activities.

- After the GTR instructed the Hastings Group to proceed with the radio PSAs, on October 25, 1999, the Chief of Staff ordered the GTR to issue a verbal stop work order to Consumer Action until the GTR met with the Chief of Staff at 4:00 p.m. the same day. The Hastings Group assumed that they had misinterpreted the GTR's instruction and thus apologized. However, the Chief of Staff's scheduled meeting, on October 25, 1999, was an attempt to devise a plan to divert education and outreach and the Office of Healthy Home and Lead Hazard Control projects to BBDO. The Chief of Staff, OGC officials, and various officials from FHEO and Lead Hazard Control met to discuss the legality of diverting funds from these competitively awarded cooperative agreement programs to a contract with BBDO. The Secretary's office's efforts to move the competitively awarded funds from FHEO and Lead Hazard to a contract with BBDO were unsuccessful.
- The Secretary's office's next approach was to have Consumer Action focus the campaign on paid advertising. Consumer Action provided the Secretary's office with numerous examples of why a paid advertising campaign was an inappropriate way of carrying out this project activity. More importantly, this request for a paid advertising campaign by the Secretary's office directly contradicted the requirement published in the FY1998 National Competition SuperNOFA Application Kit which states: "Deliverables must include Public Service Announcements (PSAs) for radio and television, and posters and other graphic materials". PSAs were the only form of eligible advertising activity outlined in the SuperNOFA.
- Next, the DAS started communicating directly with the Hastings Group and approving their deliverables. Specifically, on January 20, 2000, the DAS approved rewrites for radio and television PSAs and authorized Hastings to take them into the production phase. The DAS was present during the filming of the National Education and Outreach PSA featuring Edward James Olmos but after reviewing the film clips expressed dissatisfaction with the results. The DAS instructed Hastings to reshoot the PSA without consulting the GTR or considering the impact on the budget.

Based upon our analysis of the conditions stated above, we concluded that the Secretary's office's and Public Affairs' interactions with Consumer Action went beyond ensuring consistency with the other HUD media campaigns. Their interaction changed the project focus and resulted in micro-managing Consumer Action's activities.

Secretary's Office Rejected Deliverables FHEO Previously Approved

Although FHEO officials told Consumer Action that it could not deviate from the approved statement of work, the Secretary's office rejected required products. From March through December 1999, Consumer Action submitted concepts and deliverables to the GTR and the Secretary's office. However, the Secretary's office sent Consumer Action conflicting instruction causing it to proceed with agreed upon tasks listed in the statement of work only to later have the concepts and deliverables eliminated or rejected.

Limited project funds were used inefficiently because Consumer Action's production of deliverables was not contingent upon the GTR's or the Secretary's office's review and approval before proceeding to the next task. As a result, Consumer Action continually produced deliverables despite the risk of rejection and incurring unnecessary expenditures. We estimate that Consumer Action spent at least \$200,000 unnecessarily. For example:

- The Secretary's office either did not address deliverables when they were provided or declared deliverables to be unacceptable.
- The Secretary's office insisted that celebrity talent be used in the PSA in order to have the look and feel of other HUD advertising campaigns even though Consumer Action's initial statement of work did not include costs for a celebrity talent in the PSAs. As a result, Consumer Action dropped some proposed products to free up money for the PSA.
- The Secretary's office eliminated or dropped deliverables specified in the cooperative agreement such as the Fair Housing Advisory Council and print ads.
- The Secretary's office totally rejected Consumer Action's Asian PSA even though FHEO had approved it.

As a result of the Secretary's office's undue influence:

- HUD did not maximize the opportunity for full and open competition as required by the HUD Reform Act of 1989;
- Actual expenses for the PSA campaign exceeded budget and some funds were used inefficiently;
- Some planned project activities could not be implemented due to insufficient funds;
- The targeted population did not receive timely fair housing information; and
- The project completion date was delayed for about 9 months.

HUD did not maximize the opportunity for full and open competition because all qualified organizations were not allowed to bid on HUD's revised requirements. HUD changed the focus of the project to a celebrity-based PSA. In order to ensure full and open competition, we believe that HUD should have opened this specialized requirement to organizations having the required expertise.

The Secretary's office involvement also caused the grantee to expend funds for PSA activities that substantially exceeded the estimated amounts. Consumer Action believed that \$298,000 of the project funds could have been put to better use. Over 50 percent (\$180,000) of the \$298,000 was for the celebrity-based media campaign even though Consumer Action estimated \$40,000 for the talent portion of PSA activities.

Consumer Action was also unable to implement some planned project activities because funds had to be diverted to pay for the celebrity-based PSA and the Secretary's office disapproved of planned activities such as the print PSA. Consequently, these planned activities were not included in the campaign.

As a result of the Secretary's office's undue influence, the target population did not receive fair housing information timely and the project completion was delayed from September 2000 to May 2001. According to Consumer Action officials, the cooperative agreement performance period was extended nine months because HUD essentially prevented any work from moving forward during March through December 1999. During this time, Consumer Action submitted concepts and produced products that were either not addressed or unacceptable to HUD.

HUD COMMENTS

The Deputy General Counsel for Programs and Regulations provided the Department's written response to our draft memorandum report. HUD does not dispute that delays occurred in the approval process for the deliverables called for in the grant agreement. HUD, however, does not agree with many of the audit's specific conclusions regarding procedural irregularities. In addition, HUD states that the report does not mention "...the fact-undisputed by OIG investigators during their interview-that HUD's administration of the grant resulted in a higher quality advertising campaign than that which was originally conceived by the grantee."

HUD's response to our report is arranged in two sections. They are: Audit Report Contains Unfair Characterizations and HUD Responses to Substantive Criticisms.

Audit Report Contains Unfair Characterizations

HUD stated that the draft report did not support the OIG's use of the following terms:

- **“unfair competition”** - According to HUD, the OIG audit findings do not support a conclusion of “unfair competition” in the ordinary sense that one applicant may have been unfairly favored over another in a competition. HUD also states that there was no evidence that the Secretary's office had any involvement in the award of the grant.
- **“steer”** - According to HUD, the OIG has no support for suggesting that HUD tried to “steer” the grant from Consumer Action to BBDO. HUD stated that the Secretary's office simply asked OGC to determine whether it was permissible to consolidate the grant funds under a single contract. HUD questions the management significance of this finding and whether the OIG is advocating that HUD management should not have sought permission to consolidate

the grant funds under a single contract. HUD's position is that, given that the request for legal review did not delay the administration of the grant, there is no justification for the OIG's mentioning this as a finding.

- **“perform oversight”** - According to HUD, it is a gross exaggeration to suggest that BBDO was asked to “perform oversight” of the media campaign. HUD contends that BBDO, Public Affairs officials, and Consumer Action representatives held a single conference call to discuss ideas for the advertising campaign. HUD believes this call, which the parties estimated lasted no longer than one hour, hardly constituted “oversight” of the Consumer Action campaign.

Responses to Substantive Criticisms

HUD states that during the negotiation process some changes occurred to the scope of work, including the priority and percentage of grant funds devoted to grass roots and media activities. HUD believes these changes were policy decisions that were management's to make and that the OIG implicitly conceded that these changes were legal, when it stated, “HUD's operating procedures for this grant were barely within the perimeter of the concept of fair competition, prescribed in the HUD Reform Act of 1989.” HUD also interprets this statement as evidence that HUD's administration of the grant was legal. HUD believes that the OIG raised the spectra of illegal conduct without actually concluding that it exists.

Finally, HUD's response included the following statements:

- HUD should not be faulted for requiring a grantee to demonstrate its competency prior to finalizing a grant award; and
- HUD believes that the claim that BBDO “diverted resources” from the FHA is belied by the fact that BBDO never requested payment. At most, there was a request for services by an unauthorized HUD official.

OIG EVALUATION OF HUD'S COMMENTS

Overall, we disagree with the majority of HUD's comments. We continue to stand by our conclusions that the Secretary's office changed the focus and scope of the \$2 million FHIP project after it had been competitively advertised and exercised undue influence over the FHEO grant officials. We believe the Secretary's office's actions diminished FHEO's ability to properly administer the award and the affected applicants' trust and confidence that HUD maintains the highest standards of integrity, efficiency, and fairness in its competitive award process. Since HUD did not follow its established policies and procedures for grant awards, HUD lacks assurance that the competitive award process is administered with integrity.

We made the following requested changes to the report: (1) clarified the report to show that some of the complainant's allegations were valid; (2) deleted the word “awarding” from the finding caption; and (3) substituted “full” for “fair” in describing the type of competition required

by the HUD Reform Act. The terms “unfair competition,” “steer,” and “performed oversight” were part of the specific allegations presented to us rather than the OIG’s characterizations of the awards process. Normally, the OIG includes a synopsis of the specific allegations to help define the scope of review and assure the complainants that their concerns are addressed adequately.

Regarding HUD’s specific comments on the administration of the FHIP cooperative agreement awarded to Consumer Action, we offer the following rebuttal statements:

- Our review did not include an evaluation of the quality of HUD’s or Consumer Action’s advertising campaign. Instead, we evaluated the process used to award and administer the FY1998 FHIP National Focus Education and Outreach Competition.
- We disagree with HUD’s statement that there is no evidence that the Secretary’s office had any involvement whatsoever with the grant award. As specified in the FY 1998 SuperNOFA, negotiation is a component of the application selection process that occurs before an award is approved. Therefore, since the Chief of Staff and a Senior Advisor to the Secretary not only participated in the negotiation process, but instructed the grantee to perform specific tasks during the negotiation process, the Secretary’s office was technically involved in the award process.
- We do not take exception to HUD’s seeking legal advice regarding the possibility of consolidating the grant funds under a single contract. However, we disagree with HUD’s statement that the legal review did not delay the administration of the grant. Coincidentally, on October 25, 1999, the same day that the legal review took place, FHEO’s GTR instructed Consumer Action to temporarily stop work and the project activities were delayed for at least 30 days.
- In addition, we found numerous e-mails and documents showing HUD’s contact with BBDO was more than just a single conference call, as HUD indicated. We identified at least 25 e-mails between the Chief of Staff, OGC, Public Affairs, and FHEO officials during November 1999 through January 2000 that pertained to getting BBDO involved with Consumer Action’s media campaign. Moreover, BBDO’s representative confirmed that the DAS faxed FHEO’s PSA documents to her on January 14, 2000, and BBDO provided written comments and recommendations to the DAS on January 20th.

HUD’s action to have Consumer Action demonstrate competency also raises a question regarding the extent to which an applicant must go to prove the technical merits of its proposal. If all applicants must spend their resources, prior to receiving awards, to convince the TEP that they are the most efficient at accomplishing the award’s objectives, the intent of the negotiation process is subverted. To ensure integrity, HUD should clearly define the specifications before encouraging applicants to commit resources in anticipation of an award.

- We agree with HUD’s statement that an unauthorized official made a request for services relating to the cooperative agreement. We disagree, however, with HUD’s inference that BBDO did not receive compensation for its services relating to the FHIP grant. BBDO billed FHA Contract DU100C000018363 for the services rendered to FHEO; such services are

unallowable under the FHA contract. Therefore, we are recommending that HUD have a Contracting Officer determine whether the FHA contract should be ratified.

Recommendations

We recommend that the Secretary:

- 1A. Review these matters and make a determination for addressing the improprieties identified in this report. Improprieties include changing project scope after selecting recipients, circumventing the GTR's authority, directing unauthorized contracting actions, and causing recipients to incur pre-award project costs and other excess costs.
- 1B. Implement a corrective action plan for preventing these improprieties from recurring.
- 1C. Direct HUD's Office of Procurement and Contracts to determine whether FHA Contract DU100C000018363 with BBDO should be ratified.

Auditee Comments



U.S. Department of Housing and Urban Development
Washington, D.C. 20410-5000

OFFICE OF GENERAL COUNSEL

January 17, 2001

MEMO TO: Sandra Elion, District Inspector General, Capital District, 3GGA

FROM: Kevin M. Simpson, Deputy General Counsel, Programs and Regulations,
CB *KMS*

SUBJECT: Preliminary Response to Audit of FY 1998 Fair Housing Initiatives
Program National Focus Education and Outreach Competition

The above-captioned audit reviews allegations made concerning the administration of a FHIP grant to Consumer Action of San Francisco. HUD does not dispute that there were delays in the approval process for the deliverables called for in the grant agreement. HUD does not agree, however, with many of the audit's specific conclusions of procedural irregularity.

In addition, HUD has concerns that some of the conclusions go beyond the actual findings of the report and fails to discuss these events in context. Completely unmentioned is the fact – undisputed by OIG investigators during their interviews – that HUD's administration of the grant resulted in a higher-quality advertising campaign than that which was originally conceived by the grantee. The draft audit report unfairly stigmatizes any involvement of personnel besides the GTR in ensuring that the grant deliverables met the agency's needs. GTRs are entitled to draw on other expertise within the agency in order to perform their grant administration functions, but the draft audit report repeatedly describes such practices in the most negative terms possible.

I. Parts of the Audit Report Contain Unfair Characterizations

Specifically, HUD feels the following terms are unsupported:

"Unfair competition"

The IG audit findings do not support a conclusion of "unfair competition" in the ordinary sense that one applicant may have been unfairly favored over another in a competition. Instead, the audit report concludes that HUD may not have enjoyed all of the benefits of a competitive application process because of changes made to the grant

Appendix A

requirements after the award of the grant. We recommend that this language be changed to reflect your findings: post-award changes in negotiated statement of work may have undermined benefits of competitive application process. In particular, the statement on p. 4 that “the Secretary’s Office Used Undue Influence Awarding . . . the Consumer Action Grant” is grossly misleading and must be deleted. There is no evidence that the Secretary’s office had any involvement whatsoever with the award of the grant.

“Officials from the Secretary’s office tried to steer the grant requirements to BBDO.”

There is no support for the suggestion that HUD tried to “steer” the grant requirements to BBDO. Officials from the Office of General Counsel, not the Secretary’s office, conducted a review of whether the FHEO grant could be combined with other public advertising campaigns, including the one being administered by BBDO, and concluded that such post-award consolidation was not possible. No other action was taken and it is unfairly perjorative to describe HUD’s legal review as an effort to “steer” the grant to BBDO. It is also misleading and incomplete to say that “the Secretary’s office’s attempts to move the competitively awarded grant funds from HEO and Lead Hazard to a contract with BBDO were unsuccessful.” This description strongly implies that the Secretary’s office did much more than it did, which was simply inquire into whether it was permissible to consolidate the grant funds under a single contract.

In addition, we question the management significance of this finding. Is OIG saying that HUD management should not have sought legal review of whether it was possible to administer the grants in a consolidated fashion? Given that the request for legal review did not delay the administration of the grant, there is no justification for mentioning this as a finding.

“The Secretary’s office directed BBDO to perform oversight of Consumer Action’s media campaign, but BBDO did not bill separately for this function.”

It is a gross exaggeration to suggest that BBDO was asked to “perform oversight” of the media campaign. A single conference call was held with BBDO, HUD OPA officials, and Consumer Action representatives to discuss ideas for the advertising campaign. This call, which the parties estimated lasted no more than one hour, hardly constituted “oversight” of the Consumer Action campaign.

Appendix A

II. HUD Responses to Substantive Criticisms

HUD has attempted to respond to the specific chronology laid out by the audit report. In some instances, because many of the people involved in these events is no longer employed by HUD, we have been unable to offer a complete response, but do not concede that the audit report's description of specific circumstances is correct.

HUD Changed Scope After Grantee Selected

During the negotiation process leading to the finalization of the grant award, some changes occurred to the scope of work, including the priority and percentage of the grant funds devoted to grass roots and media activities. OIG suggests these changes were "significant" because OIG believes the additional emphasis on public service announcements and town hall meetings was ill-advised, but HUD believes that those changes were policy decisions that were management's to make. OIG implicitly concedes that these changes were legal by opining that "HUD's operating procedures for this grant were barely within the perimeter of the concept of fair competition, prescribed in the HUD Reform Act of 1989." In other words, HUD's administration of the grant was legal. HUD objects to raising the spectre of illegal conduct without actually concluding that it exists.

Secretary's Office Changed the Grant's Pre-approved Focus and Deliverables

OIG characterizes the changes in the grant's focus because of "undue influence" by the Secretary's office. HUD acknowledges that there were some communication issues, but disagrees that the influence it asserted was "undue."

Grantee Required to Demonstrate Competency

HUD should not be faulted for requiring a grantee to demonstrate competency prior to finalization of the grant award. It is appropriate to decline to conclude a grant award if it is determined during the negotiation process that the grantee cannot carry out the purposes of the grant.

Secretary's Office caused grantee to incur pre-award project costs

OIG suggests that it is not good business practice to have potential grantees incur costs before completing the negotiation process because of the potential for financial risk for both the grantee and HUD. HUD disagrees that the agency was placed at financial risk by asking the grantee to prepare storyboards for review.

Secretary's Office circumvented GTR's authority

Consistent with long-standing agency practice, the Office of Public Affairs was included in the approval process for any deliverable that involved public communications

Appendix A

explicitly associated with HUD. This is a good practice that adds consistency to public service campaigns and improves their quality. HUD concedes that delays occurred, but the delays to which the OIG points are not necessarily the result of an “undocumented or unstructured” approval process. These same delays are capable of occurring even within the confines of a documented and structured approval process.

DAS’s Unauthorized Contracting Actions

This emphatic heading in the IG audit report is followed by the more modest factual statement that the DAS “may have” circumvented the acquisition process. In fact, no contracting action was performed. At most, there was a request for services by an unauthorized official for which BBDO never requested payment. The DAS never obligated HUD or entered into a contract with BBDO. Since BBDO never requested payment, there is no justification for initiating a review “to determine whether the contract action should be ratified.” HUD also believes that the claim that BBDO “diverted resources” from the FHA is belied by the fact that BBDO never requested payment. In addition, since no FHIP funds were ever provided to BBDO, the action was not contrary to the advice of OGC that FHEO could not enter into a contract with BBDO.

Appendix B

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