audit report
OFFICE OF INSPECTOR GENERAL

Issue Date
January 19, 2000
Audit Case Number
00-FW-201-1001

TO: Chet Drozdowski
Director
Office of Public Housing, 6HPH

FROM: D. Michael Beard
District Inspector General for Audit, 6AGA

SUBJECT: Housing Authority of the City of New Orleans
Executive Monitor Contract with Moten & Associates
New Orleans, Louisiana

We performed an audit of the Executive Monitor's contract with Moten & Associates. The purpose of the review was to determine whether: (1) the Executive Monitor properly procured the Moten & Associates contract; (2) Moten & Associates charged only eligible and supportable costs; and (3) the contract provided measurable benefits to the Housing Authority of New Orleans.

The report contains two findings requiring follow up actions by your office. We will provide a copy of this report to the Housing Authority of New Orleans, Tulane, and Moten & Associates.

Within 60 days, please furnish this office, for each recommendation in this report, a status on: (1) corrective action taken; (2) the proposed corrective action and the date to be completed; or (3) why action is not considered necessary. Also, please furnish us copies of any correspondence or directives issued related to the audit.

Please call William Nixon, Assistant District Inspector General for Audit, at (817) 978-9309 if you or your staff have any questions.

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Executive Summary

We performed an audit of the Executive Monitor's contract with Moten & Associates.[1] The Executive Monitor contracted with Moten & Associates to perform various technical services to improve the Housing Authority of New Orleans (HANO) operations. Our audit objectives included determining whether: (1) the Executive Monitor properly procured the Moten & Associates contract; (2) Moten & Associates charged only eligible and supportable costs; and (3) the contract provided measurable benefits to HANO.

The review disclosed both Andersen Consulting and the Executive Monitor violated federal regulations in obtaining the services of Moten & Associates.[2] Further, Tulane paid $427,074 in ineligible and unsupported costs, including $421,760 for unsupported labor and $5,314 in ineligible travel costs. Neither HANO, the Executive Monitor, nor Moten & Associates could provide satisfactory evidence that Moten & Associates completed the tasks it was paid to perform. Consequently, we could not determine whether HANO derived a measurable benefit from the Moten & Associates contract.

We recommend that your office: recover the $5,314 paid for ineligible travel; determine and recover any amounts paid for work not performed or duplicative work; require the justification of additional work to be performed and require concrete deliverables and a performance delivery schedule; and monitor subsequent work performed.

We presented our findings to the Executive Monitor and officials of Tulane and HANO at an exit conference on November 22, 1999. At the conference, HANO provided written comments disagreeing with our findings. On December 3, 1999, Tulane provided its written comments disagreeing with our findings. We considered the responses in preparing our final report. We have summarized the Agency's responses for each finding and included the complete responses without attachments as Appendix C (Tulane) and Appendix D (HANO).

[1] Due to long time systemic problems, HUD and the City entered into a Cooperative Endeavor in February 1996. The Cooperative Endeavor removed the existing Board of Commissioners and appointed an Executive Monitor, as the Acting Assistant Secretary's designee, to fulfill the duties of Board of Commissioners. The Executive Monitor was an official from Tulane University.

[2] We reviewed Andersen's procurement of Moten & Associates to determine the validity of the Executive Monitor's assertion that Andersen had properly procured Moten & Associates. A proper procurement would have included an assessment of Mr. Moten's skills and a determination of how much the services should cost.

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Abbreviations

HANO	Housing Authority of the City of New Orleans
HUD	U.S. Department of Housing and Urban Development
OIG	Office of Inspector General
OTAR	Office of Troubled Agency and Recovery

Introduction

The Mayor of New Orleans and the former Secretary of the Department entered into a "Cooperative Endeavor Agreement" in February 1996 to manage the Housing Authority of New Orleans (HANO). This arrangement was unprecedented. The Secretary agreed to the partnership with the Mayor to avoid a contested HUD takeover of HANO.[3] Under the Cooperative Endeavor Agreement, the Mayor and the former Secretary agreed to take all necessary actions to improve HANO and the quality of life of HANO residents.

Under the Cooperative Endeavor Agreement, HUD replaced HANO's Board of Commissioners with HUD's Assistant Secretary for Public and Indian Housing. The Mayor and the former Secretary agreed on an Executive Monitor to oversee HANO's recovery and serve in the Assistant Secretary's absence. That person was Mr. Ron Mason, Tulane University's Counsel. The former Secretary allowed Mr. Mason to continue his relationship with Tulane University despite the obvious conflict of interest. (As part of the HANO recovery, Tulane was awarded noncompetitive multimillion dollar contracts for Resident Initiatives and Campus of Affiliates.) The former Secretary improperly waived[4] the conflict of interest saying: "Mr. Mason is aware of the conflict potentials and, I am confident will conduct himself so as not to present even the appearance of impropriety. I further note that under the executive monitor services agreement to be executed by HANO, Mr. Mason will be required to recuse himself from any arrangements involving Tulane University."

HUD provided the funds for the Executive Monitor and his staff through a technical assistance grant agreement with HANO. In addition, HUD hired Andersen Consulting (Andersen) to provide HANO with technical support services including developing a short and long-term plan to improve HANO's operations.

At the urging of the Executive Monitor, Andersen subcontracted with Moten & Associates. When Andersen's contract expired, the Executive Monitor retained Moten & Associates under its agreement. Emmet Moten established Moten & Associates in 1996 as a real estate consultant firm. Emmet Moten is its sole employee. Previous to forming Moten & Associates, Mr. Moten worked in redevelopment for local governments and a national corporation.

HANO maintains its records at 4100 Touro Street.

Audit Objectives, Scope, and Methodology

Our audit objectives were to determine whether: (1) Andersen and the Executive Monitor properly procured the

[3] At a congressional hearing in July 1996 the former Secretary stated: ". . . the mayor informed me that if negotiations successfully produced a meaningful partnership agreement that would work from a New Orleans standpoint, then he would work to ensure that the board of commissioners would deliver possession of HANO to HUD without litigation, without protest, without obstruction, as subsequently occurred. It was a peaceful transformation."

[4] See Audit Memorandum 96-FW-201-1802, Housing Authority of New Orleans, Procurement of Resident Initiatives, July 5, 1996.

Moten & Associates contract;[5] (2) Moten & Associates charged only eligible and supportable costs; and (3) the contract provided measurable benefits to HANO.

To achieve the audit objectives we:

- Reviewed Federal Acquisitions Regulations; HUD procurement guidelines; HUD procurement, grant agreement, and Cooperative Endeavor Agreement files; and other related documentation;
- Interviewed the Executive Monitor; HANO, HUD, and Andersen officials; and community representatives;
- Reviewed the procurement of Moten & Associates under Andersen and the Executive Monitor agreements and contracts; and
- Reviewed the supporting documentation for payments to Moten & Associates under the Executive Monitor agreement.

We performed field work at HUD Headquarters and HANO offices from November 1998 through July 1999. The audit generally covered the period of July 1997 through December 1998, although the period was extended as appropriate. We performed the audit in accordance with generally accepted government auditing standards.

[5] We reviewed Andersen's procurement of Moten & Associates to determine the validity of the Executive Monitor's assertion that Andersen had properly procured Moten & Associates.

Andersen and the Executive Monitor Improperly Procured Moten & Associates

Neither Andersen nor the Executive Monitor followed procurement requirements in awarding contracts to Moten & Associates. At the urging of the Executive Monitor, Andersen subcontracted with Moten & Associates in May 1996. When Andersen's contract expired, the Executive Monitor retained Moten & Associates under his agreement. HUD required both Andersen and the Executive Monitor to follow federal procurement guidelines. However, HUD contributed to the problem by relinquishing its approval responsibilities and allowing the Acting Assistant Secretary, who had a conflict of interest, to approve the procurement under the Executive Monitor's agreement. In fact, the Acting Assistant Secretary suggested the improper award of this contract. The improper procurements prevented competition. Thus, HUD and HANO do not know if it paid a reasonable price for the services received.

Federal regulations regarding procurement.

Federal Acquisition Regulation[6], Part 52.244-5 states, "The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract." HUD regulation 24 CFR 85.36[7] also requires Public Housing Authorities to use competitive procurement practices.

Executive Monitor strongly urged Andersen to use Moten & Associates.

At a May 1996 status meeting, Andersen officials, the Executive Monitor and HANO's Executive Director discussed the need for Andersen to have a consultant to interact with the community.[8] Andersen claimed to not have the expertise. The Executive Monitor, HANO, and Andersen officials agreed that this community development consultant needed certain qualifications including experience in the New Orleans area; a proven track record of urban development; and the ability to work with banks and community leaders.

The Executive Monitor believed Moten & Associates of Detroit, Michigan, met these qualifications. The Executive Monitor met Mr. Moten during the early days of the

6 The Andersen contract states that Andersen must follow Federal Acquisition Regulation 52.244-5, *Competition in Subcontracting*.
7 The Executive Monitor agreement requires Tulane to follow the same procurement requirements that HANO must follow.
8 Andersen officials did not recall whether a HUD official attended this meeting.

Cooperative Agreement. The Executive Monitor wrote that Mr. Moten "presented his significant accomplishments and expertise in the area of urban redevelopment, economic development, and organizational and community relations." He decided that Andersen should put Moten & Associates under its contract. The Executive Monitor explained that by having Moten & Associates under the Andersen contract, HUD would directly pay the costs. Further, by placing Moten & Associates under Andersen, the Executive Monitor believed that he would limit his exposure to criticism of favoritism because HUD, not he, would approve the procurement and rates paid to Moten & Associates.

HUD had concerns regarding the Moten & Associates Contract.

HUD's Office of Troubled Agency and Recovery (OTAR) had concerns regarding the Moten & Associates contract. However, whatever objections OTAR raised Secretary Cisneros overruled them. After one such objection, HUD's General Deputy Assistant Secretary for OTAR told staff that the Moten & Associates' subcontract "was going to happen." The HUD official believed that the extraordinary measures required by the Cooperative Endeavor Agreement drove HUD's agreement. Both HUD and Andersen officials stated that the Executive Monitor spoke with the Secretary quite often. The Executive Monitor explained that Secretary Cisneros promised him that he could hire the staff or consultants needed to correct HANO's problems.

Andersen's procurement of Moten & Associates violated federal procurement requirements.

Andersen's contract required it to competitively procure subcontracts to the "maximum practical extent."[9] As the facts above indicate, Andersen did not consider any other outside providers before subcontracting with Moten & Associates.

HUD and Andersen both stated that Andersen met the procurement requirements. Andersen asserted that Mr. Moten was uniquely qualified to interact with the community as discussed in the May 1996 status meeting. Andersen argued that its current subcontractor did not meet the necessary qualifications, and Andersen knew that no other provider existed. Andersen did not provide any documentation to support its argument that Mr. Moten was the only person qualified to interact with the community. HUD relied upon Andersen's determination that Mr. Moten was uniquely qualified. According to a HUD official, HUD did not care whether Andersen sole-sourced the contract as

9 Federal Acquisition Regulations 52.244-5 "Competition in Subcontracting."

long as the subcontractor was qualified and charged a reasonable price. Andersen never performed a cost analysis of the rates for such services.

According to Anderson, Moten & Associates unique qualification was the capability for "community interaction" in New Orleans. Under Andersen's final list of major deliverables to HUD and HANO, it made Moten & Associates responsible for nine of them. These included: preparing a plan for implementing Neighborhood Redevelopment Strategies; preparing a plan for Comprehensive Homeownership; and providing assessment recommendations on the feasibility of transferring Modernization Section 8 Certificates from the City to HANO. Community interaction does not seem a *unique qualification* for these tasks and it is not credible that Mr. Moten is the only person capable of performing them. Andersen should have followed requirements and competitively procured these services.

Value of Moten's contract not based on reasonableness.

Neither Andersen nor HUD determined a reasonable charge for Mr. Moten's services or compared the agreed on price to rates paid for similar work. HUD allowed Mr. Moten to charge $160 per hour based on his previous salary and benefits as Vice President of Development of Little Caesars' Enterprises, Inc. They further agreed to pay his weekly travel expenses from his home in Detroit. HUD and Andersen should have based compensation on the skills and abilities needed to perform the tasks rather than on previous employment. As a result of not competitively awarding this subcontract, HUD does not know whether it paid a reasonable compensation rate to Mr. Moten.

Executive Monitor improperly included Moten & Associates under his agreement.

Before the Andersen contract had expired, the Executive Monitor wanted to extend the Andersen contract, specifically for the Moten & Associates subcontract. According to the Executive Monitor, HUD's delay in approving the Moten & Associates subcontract prevented the subcontractor from completing his deliverables. According to Andersen, Moten & Associates completed all of its deliverables. However, Andersen stated that HANO would need additional modernization technical assistance after its contract expired. The Acting Assistant Secretary refused to extend Andersen's contract. Instead, he suggested that the Executive Monitor directly subcontract with Moten & Associates. Because the Acting Assistant Secretary also served as HANO's Board, he should have recused himself and allowed another HUD official who did not have a conflict of interest to review the matter.

In the agreement with Moten & Associates, the Executive Monitor refers to a January 7, 1997 letter as HUD's approval of Moten & Associates. However, the letter referred to is actually HANO's concurrence of Moten & Associates' scope of work and the associated budget.

The Executive Monitor agreement required Tulane to follow HANO's procurement requirements. The requirements allow a non-competitive award **only** after determining that awarding the contract under normal procurement methods is **infeasible** ***and*** one of four circumstances applies:

- Available only from one source;
- Public exigency or emergency;
- HUD authorization; and
- Competition is deemed inadequate.

Tulane did not show that this contract could not be awarded using competitive proposals. Also, no documentation exists that any of the other four conditions existed. Therefore, Tulane should have competitively procured this contract. Tulane paid Mr. Moten the same amount that he had earned under the Andersen contract.

As stated above, HANO concurred regarding Moten & Associates' inclusion in the Executive Monitor Agreement. Further, HUD provided HANO the funds to reimburse Tulane through a technical assistance grant. As a result, HANO had a responsibility to ensure that all procurement requirements were followed. However, HUD's involvement may have led HANO to believe it did not have that responsibility.

Our agency has been reporting for years that HANO needs to follow HUD requirements especially as it relates to procurement.[10] For HANO to ever fully recover

[10] See audit reports: 94-FW-201-1005, dated June 29, 1994; 98-FW-201-1002, dated October 24, 1997; and 98-FW-201-1004, dated June 15, 1998.

operationally it needs to follow its own procurement policy and HUD requirements. HUD should not encourage HANO to circumvent requirements by casually approving waivers or "rubber stamping" HANO or the Executive Monitor's intentions on sole-source contracts.

Auditee Comments

Tulane disagreed with the finding. Tulane believed the finding lacked merit and did not present a fair and accurate depiction of the contractual relationship between Tulane and Moten & Associates. Further, Tulane believed it was irrelevant to include the procurement of Moten & Associates under the Andersen contract in this finding.

Tulane maintained that it was not bound by the Federal Acquisition Regulation cited in the draft report. Tulane cited three reasons why it was not subject to procurement requirements: (1) Tulane contended that it only needed to follow procurement requirements if a specific clause was inserted into Tulane's contract, which it was not. Tulane also disputed that the Executive Monitor Services Agreement required it to follow the same procurement requirements that HANO must follow; (2) Tulane argued that HUD's knowledge and inclusion of Moten & Associates in the budgets attached to the Executive Monitor Services Agreement evidenced that HUD approved of Tulane's hiring of Moten & Associates; (3) Tulane maintained that neither itself nor the Executive Monitor were government contractors. Consequently, they were not subject to competitive bidding requirements. Instead, the Executive Monitor was a HUD "designee," functioning as HANO's Board of Commissioner. This was a unique and special relationship that cannot be reduced to an arms-length contractual relationship between a government agency and an outside vendor.

Tulane through its attorney argued that Mr. Moten had extensive experience in the fields of real estate development and consulting. Further, it disagreed that the Executive Monitor's recollection of Mr. Moten's procurement differed from Andersen's version. Tulane cited the ultimate hiring of Mr. Moten by Andersen as evidence that there was a consensus reached to retain Mr. Moten.

HANO maintained that it "is or was not a party to the Moten & Associates contract. As such, HANO had no role in the procurement or the administration of the contract."

OIG Evaluation of Auditee Comments

Although Mr. Moten may have had experience with real estate development, he had no consulting experience before Andersen hired the newly formed company, Moten & Associates. Moten & Associates had no other customers before its work with Andersen.

The OIG was not offered any evidence that anyone performed due diligence or reference checks of Mr. Moten's expertise. More importantly, neither HUD, Andersen nor the Executive Monitor determined whether any other consultants met the qualifications deemed necessary to assist HANO. We still have no assurances that Andersen or Tulane paid Moten & Associates a reasonable fee based upon the work and skills needed.

We agree that Tulane is not bound by Federal Acquisition Regulation 52.244-5. As stated in the finding, *Andersen* – not Tulane – was bound by this regulation. We disagree that Tulane was exempted from following 24 CFR 85.36. We have added additional language to the final report that further explains Tulane's requirement to follow 24 CFR 85.36. In simplest terms, the Executive Monitor Services Agreement required the Executive Monitor to follow all regulations that HANO must follow; and HANO must follow competitive procurement requirements, specifically 24 CFR 85.36.

HANO was part of the contract because the funds flowed through it.

Recommendations

We recommend your Office:

1A. Require HANO and the Executive Monitor to terminate existing contracts with Moten & Associates, and properly procure any of the needed services.

1B. Require HANO and the Executive Monitor, especially on consultant contracts, to follow procurement requirements without exception.

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HANO Paid $427,074 in Ineligible and Unsupported Costs

Through the Executive Monitor agreement, HANO paid Moten & Associates $421,760 in unsupported labor and $5,314 in ineligible travel expenses. The $421,760 in unsupported costs included budget overruns and undocumented labor costs. Neither HANO nor the Executive Monitor could produce sufficient evidence that it received benefit for the labor hours billed by Moten & Associates. Moreover, HANO personnel and other HANO contractors performed similar duties or had similar tasks. Additionally, HANO paid Moten & Associates $5,314 for profit on reimbursed travel expenses.

Executive Monitor could not adequately support $421,760 charged for labor by Moten & Associates.

In July 1997, the Executive Monitor let a technical assistance contract to Moten & Associates for services in the areas of Modernization, Financial Development, Management Operations and Overall Economic Development.[11] Between July 1997 and December 1998, Mr. Moten invoiced $493,283 for services and travel under this contract. The work plan did not require specific deliverables other than monthly reports to the Executive Monitor. Mr. Moten did not report his time consistent with work items performed. Furthermore, Mr. Moten's work plan duplicated or overlapped work performed by other contractors and/or HANO employees. The lack of documentation and the duplication of efforts between Moten & Associates, other contractors, and HANO personnel made it impossible to determine the amount of benefit HANO received from the Moten & Associates' contract.

Moten & Associates did not relate time to work performed.

The Executive Monitor Services Agreement (Services Agreement) outlined tasks for Moten & Associates to perform. Similarly, the Grant Agreement between HUD and HANO included a work plan that gave a detailed description of Moten & Associates' tasks and the number of hours it allowed to complete them. Furthermore, the Grant Agreement required HANO to incur costs in "conformance with the budget and tasks/work items outlined" in the Grant Agreement. For instance, to complete the task of "Monitor and assist in the implementation of the Comprehensive Grant Construction Program" the budget allowed for 96 hours. This allowed HUD and HANO to ensure that it only

[11] The improper procurement of Moten & Associates is discussed in Finding 1.

reimbursed Mr. Moten for tasks performed within budgeted hours. Any modification of either the tasks or budgeted hours required an amendment to the Grant Agreement. Both Agreements allowed reimbursement to Mr. Moten at a rate of $160 per hour.

Mr. Moten submitted monthly time sheets to support his hours. The time sheets only included total hours worked per day. The time sheets did not include a description of tasks or work performed by Mr. Moten. As a result of Mr. Moten being the only employee of Moten & Associates, there was no supervisory or independent review of the time sheets. Furthermore, without this information, it is impossible to determine the hours Moten & Associates spent on any specific task. Tulane should have required Mr. Moten to provide a detail of work performed on the time sheets before payment. However, the Executive Monitor's knowledge is not adequate supporting documentation for Moten & Associates' invoices.

Poorly written agreements.

The Agreements did not require Moten & Associates to perform specific tasks or produce concrete deliverables. Tasks included such vague phrases as: "Assist in the development of HANO Acquisition and Disposition policy;" "Continue to focus on the Section 8 units to assist in the marketing and counseling of residents . . .;" and "Continue to coordinate with operations in the implementation of the Vacancy Reduction Program." As such, the Agreements did not require Moten & Associates to produce the Acquisition and Disposition policy, only "assist" in the development of it. Likewise, Mr. Moten was not responsible for implementing the Vacancy Reduction Program, only for coordinating it. Without specific measurable tasks, the Executive Monitor, HANO, HUD, or others have no objective measure of Moten & Associates performance or accomplishments.

Moten & Associates could not provide adequate evidence of work performed.

Moten & Associates could not provide evidence that it completed the tasks that Tulane had paid it to accomplish. Mr. Moten could not provide such documentation as correspondence between HANO staff and himself, personal notes, or journals. Ideally, Mr. Moten should have submitted time sheets that indicated the tasks that he performed. According to Mr. Moten, he did not keep written documentation of his work other than the monthly reports. He communicated most things verbally to HANO or the

Executive Monitor. Regarding the lack of documentation, Mr. Moten stated, "I was doing what [the Executive Monitor] told me to do." In its response, Tulane stated that Mr. Moten meant he was not specifically directed to keep any documentation.

Mr. Moten offered completed work products and monthly reports as evidence of its work. For instance, Moten & Associates provided HANO's Relocation Policy as evidence that it monitored and assisted in the development of a Comprehensive Relocation Policy. The policy itself lacked any evidence that Mr. Moten performed the work. Also, a HANO staff member claimed to have solely written the policy without input from Mr. Moten. In another instance, HANO provided a training syllabus to support that Moten & Associates had worked to train the Modernization and Development staff. However, the syllabus appeared to have been created by another contractor. The syllabus does not indicate what involvement, if any, Mr. Moten had in planning or providing the training. Therefore, final work products do not provide any evidence that Mr. Moten contributed to their completion.

Several individuals interviewed were complimentary of Mr. Moten's work. For example, a HANO official did state that Mr. Moten was a tough negotiator.

The monthly reports also did not provide enough supporting documentation. The reports described activities that Mr. Moten claimed to have performed, but did not detail the hours worked on the activities. Also, the reports did not relate the activities performed to specific tasks required under Moten & Associates' work plan. In many instances, judgment had to be used to match the reported work to the tasks listed on the work plan. However, from the reports, we could determine the work plan tasks Mr. Moten did not perform. Moten & Associates did not complete 13 of 33 (40%) tasks listed on its 1997 work plan. The work plan did not state the hours necessary to accomplish these tasks. Therefore, the monetary total of tasks not completed could not be determined. In its 1998 work plan, Moten & Associates did not complete 8 of 21 (38%) tasks. The work plan allocated 546 budgeted hours to complete these tasks for a total of $87,360. Therefore, Moten & Associates' invoiced labor should not exceed $229,440 for 1998 ($316,800 budgeted - $87,360 tasks not completed). Moten

& Associates invoiced $272,320 for labor for 1998. See Appendix B for a table of those tasks that Mr. Moten did not report as having completed.

Duplication of services.

In addition to the tasks not completed, some of the tasks listed duplicated the work of HANO personnel and at least two other contractors. The Executive Monitor Agreement required the Executive Monitor to ensure that the duties and responsibilities of his staff will not duplicate the duties and responsibilities of HANO employees or other contractors. HANO's position descriptions, Moten & Associates' work plan, and the work plans of two other contracts included instances of duplicative and triplicative efforts.

For example, the work plan required Mr. Moten to assist in the implementation of the HOPE VI developments, such as St. Thomas. Similarly, HANO's Director of Development also had responsibility for the redevelopment of St. Thomas. Also, HUD hired another contractor to ensure that HANO effectively implemented its HOPE VI grants. The work plan required Mr. Moten to develop additional relocation resources to enable HANO to meet its demolition and development schedule. This appears to duplicate another contractor responsibility to prepare an estimate of the overall current and long-term needs and resources related to the revitalization of a development.

The vague time sheets, lack of documentation, and duplication of efforts create uncertainty of exactly what Moten & Associates accomplished for the $421,760 invoiced for labor and paid by Tulane reimbursed with HUD funds. HANO should not reimburse Tulane for unsupported costs. Tulane should either provide adequate documentation to support these costs or reimburse HANO for amounts it cannot support. At a minimum, Tulane should reimburse HANO for the $42,880 ($272,320 - $229,440) paid for work that exceeded the budgeted hours.

Executive Monitor believed Moten & Associates provided a quality work product.

The Executive Monitor wrote that Mr. Moten may not have reams of documentation to support its efforts, but the Executive Monitor looks at bottom line results. However, the Executive Monitor acknowledged that Moten & Associates did not complete some tasks because the Executive Monitor redirected Moten & Associates' efforts. Regardless of this, there should be some evidentiary matter to support the amounts charged and any modifications to the grant. Tulane, HANO, and HUD should require documentation to support a consultant's work, especially when more than one person could claim performance. Maintaining an audit trail is a prudent business practice that HANO and the Executive Monitor should follow.

Moten & Associates claimed $5,314 for profit on its travel cost.

Moten & Associates was allowed reimbursement for Mr. Moten's travel expenses to and from his Detroit residence and the New Orleans area, and for living expenses within the New Orleans area. Mr. Moten invoiced for $66,431 in travel cost for the audit period. On his travel voucher, Moten & Associates charged an additional 8% of the total travel cost as "profit." Neither the Executive Monitor Services Agreement, Grant Agreement, Agreement for Consulting Services, nor federal requirements allow for profit on travel costs.

The Moten & Associates Contract for Consulting Services states:

> "Tulane shall reimburse Moten & Associates for **reasonable** travel, lodging, telephone, and directly related business expenses. Moten & Associates shall substantiate amounts invoiced with satisfactory evidence." [Emphasis added]

The Grant Agreement required that Tulane follow OMB Circular A-21 when incurring costs. OMB Circular A-21 allows travel costs to be reimbursed "on an actual basis, on a per diem or mileage basis...or a combination of the two...." The Circular clearly does not allow profit on travel expenses.

Auditee Comments

Tulane strongly disagreed with the finding. Tulane, through its attorney, maintained that its payments to Moten & Associates were properly "documented under the terms of the relevant contract, and moreover officials at HANO and Tulane - particularly Ronald Mason, Executive Director of the Tulane/Xavier National Center for the Urban Community and the Executive Monitor who functions as HANO's Board of Commissioners - were intimately familiar with the nature and value of the Moten firm's work."

Based upon the investigation performed by Tulane's attorney, "the Moten firm made important contributions in numerous areas described in its work plans. . . ." Tulane also stated that the finding "repeatedly jumps to unsupported conclusions and raises false issues with respect to the firm's contract performance. . . ."

Tulane took exception to the depiction in the draft of the Executive Monitor telling Mr. Moten not to keep an audit trail. Tulane supplied a letter from Mr. Moten stating that OIG misunderstood or misconstrued his statements.

HANO disagreed with the finding. It maintained that all payments to Tulane were properly supported.

OIG Evaluation of Auditee Comments

Tulane did not provide any tangible documentation of Moten & Associates' involvement in any of the accomplishments claimed. Further, it appears that Tulane's attorney based its opinion of Mr. Moten's accomplishments on hearsay from two or three people, and principally on the Executive Monitor. Tulane states that Mr. Moten "played a key role in persuading the Louisiana State Housing Finance Authority to increase - from $300,000 to $500,000 - the per project limit on state tax credits for HANO's HOPE VI projects." However, an official from the Louisiana Housing Finance Agency credited the National Council of State Housing Agencies and not Mr. Moten for pushing this change. Regarding Mr. Moten's statements on keeping documentation, we provided further explanation.

Tulane agreed that Moten & Associates should return the $5,314 charged as profit on travel.

We revised the finding for the $23,011 previously cited as ineligible travel in the draft finding.

Recommendations

We recommend your Office:

2A. Recover the $5,314 paid for ineligible travel from HANO or Tulane.

2B. Determine and recover any amounts paid for work not performed or duplicative work from HANO or Tulane.

2C. Require the justification of any additional work to be performed and require concrete deliverables and a performance delivery schedule.

2D. Monitor and review work performed by Moten & Associates subsequent to the audit period.

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Management Controls

In planning and performing our audit, we obtained an understanding of the management controls that were relevant to our audit. Management is responsible for establishing effective management controls. Management controls, in its broadest sense, include the plan of organization, methods, and procedures adopted by management to ensure that its goals are met. Management controls include the processes for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

Significant Controls

We determined the following management controls were relevant to our audit objectives:

Administrative Controls

- Competitive selection and award of contracts
- Contract administration
- Eligibility of contract costs
- Written documentation of contract performance

Significant Weaknesses

A significant weakness exists if management controls do not give reasonable assurance that resource use is consistent with laws, regulations, and policies; that resources are safeguarded against waste, loss, and misuse; and that reliable data are obtained, maintained, and fairly disclosed in reports. Based on our review, we believe the following items are significant weaknesses, in that HANO and the Executive Monitor lack internal administrative controls to ensure:

- The contract is adequately performed and benefited HANO shown by use of regular work documentation including: (1) hours worked; (2) tasks specifically worked on during the hours charged; and (3) tasks completed.
- The contract is procured properly in accordance with federal regulations.
- The contract provides a continual benefit to HANO.
- The contract expends funds that are eligible and supported.

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Follow Up on Prior Audits

This is the first Office of Inspector General audit of Moten & Associates.

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Schedule of Questioned Costs

Issue	Type of Questioned Costs Ineligible [1/]	Unsupported [2/]
2A Travel costs	$5,314	
2B Work not performed		$421,760

1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law, contract or Federal, State or local policies or regulations.

2/ Unsupported costs are costs charged to a HUD-financed or HUD-insured program or activity and eligibility cannot be determined at the time of audit. The costs are not supported by adequate documentation or there is a need for a legal or administrative determination on the eligibility of the costs. Unsupported costs require a future decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of Departmental policies and procedures.

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Schedule of Tasks Not Reported as Completed

July 1997 through June 1998 Work Plan[1]	Amount Budgeted[2]
Assist in preparation of HOPE VI applications for CJ Peete and Fischer. Oversee implementation of grant if HUD funds the application.	N/A
Work with the Campus Affiliates program at CJ Peete to ensure work programs integration into overall CJ Peete master plan.	N/A
Develop a HANO Acquisition and Disposition policy.	N/A
If necessary, cause legislative package to be drafted for the March 1997 Louisiana session that will empower HANO to use Eminent Domain for acquisition of property.	N/A
Develop a fund for continued resident initiatives after HOPE VI funds have ended.	N/A
Develop a Financial instrument that HANO may use to carry out overall housing objectives.	N/A
Continue each development long-term manageability and maintenance to ensure competitiveness in New Orleans Housing market.	N/A
Oversee development and implementation of a unified system of building unit identification to be integrated into the CCS Software Program	N/A
Assist in selection process and the implementation for an asset manager by ensuring that a contract for said will meet the overall intent of the HANO asset manager's goals and objectives.	N/A
Assist in developing a business advisory council composed of private business and public sector leaders that will assist HANO in job development	N/A
Develop a business plan that will assist HANO and the City in business retention and attraction.	N/A
Work with the City to create a systematic job replacement system that HANO residents can input into.	N/A
Cause to be called an economic summit to assist in HANO business creation.	N/A
Total Amount Budgeted for Tasks Not Reported as Completed by Moten	N/A

1 The Appendix B schedules include tasks that Moten & Associates did not report as having been accomplished in its monthly activity reports. Moten & Associates should have performed these tasks which were part of its work plans.

2 The work plan did not state the hours necessary to accomplish these tasks. Therefore, the monetary total of tasks not completed could not be determined.

January 1998 through December 1998 Work Plan	Amount Budgeted
Focus on Section 8 units to assist in the marketing and counseling of residents who have been relocated as a result of HANO revitalization efforts.	$15,520
Develop HANO's CDC that will act alone or joint venture with non-profit or for profit organizations in carrying out HANO's overall revitalization program.	15,360
Facilitate the development of a financial instrument that HANO may use on its own and in its ability to carry out its overall housing objectives.	16,000
Monitor and assist in the implementation of the modernization and development organization and staff development.	6,560
Coordinate Gilbane capacity building contract with HANO's human resources department to ensure proper hiring and training of staff so that after Gilbane's contract is complete HANO staff can deliver services to its customers without interruptions.	6,400
Assist in selection process and implementation of an asset manager consultant by ensuring that a contract for said will meet the overall intent of the HANO asset manager's goals and objectives.	6,400
Assist in developing a business advisory council composed of private business and public sector leaders that will assist HANO in job development.	10,720
Assist in the development of a business plan that will assist HANO as well as the City of New Orleans in business retention and attraction. Such a plan will be incorporated in a HANO development strategy.	10,400
Total Amount Budgeted for Tasks Not Reported as Completed by Moten	**$87,360**

Auditee Comments

Tulane

DEC 06 1999

Office of the Senior Vice President for Operations
and Chief Financial Officer

December 3, 1999

Mr. D. Michael Beard
District Inspector General for Audit
U.S. Department of Housing and Urban Development
Southwest District Office of Inspector General
819 Taylor Street, Suite 13A09
Fort Worth, Texas 76102

By Facsimile (817) 978-9316

Dear Mr. Beard:

We have received the draft report, dated November 2, 1999, of your office's audit of the contractual relationship between Tulane University and Moten & Associates (the "Moten firm").

Your draft report concludes that (1) Tulane obtained the services of the Moten firm in violation of "federal regulations;" (2) Tulane has paid the Moten firm $493,283 in "ineligible and unsupported costs;" and (3), in the absence of "satisfactory evidence" that the Moten firm "completed the tasks it was paid to perform," your office "could not determine whether [the Housing Authority of New Orleans ("HANO")] derived a measurable benefit from the Moten & Associates contract." (draft report at 1)

Tulane has retained an outside lawfirm, Shereff, Friedman, Hoffman & Goodman, LLP, to conduct a careful investigation of the allegations and conclusions in the draft report. Based upon this investigation and the reasons stated in their investigation report, a copy of which is enclosed, we do not believe that the findings of the draft report have merit or that the draft Inspector General report presents a fair and accurate picture of the contractual relationship between Tulane and the Moten firm. We therefore urge that the draft report be withdrawn in its entirety. At a minimum, the draft report should be rewritten in conformity with the facts set forth in the enclosed investigation report.

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Tulane University
New Orleans, Louisiana 70118-5698
(504) 862-8698 FAX: 862-8927

December 3, 1999
Mr. D. Michael Beard
District Inspector General for Audit

Furthermore, we are deeply disturbed by the fact that your draft report is riddled with factual errors and misstatements of the record. A large number of these errors have the effect of casting false aspersions on certain individuals as well as on Tulane itself. We hope that your office will agree that these inaccuracies should be corrected.

Very truly yours,

Anthony P. Lorino,
Senior Vice President for Operations and
Chief Financial Officer

cc: Scott Cowen, President Tulane University
Victoria Johnson, General Counsel

246016.1 • 21243.0000 • 11/30/99 • 11:34 AM

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MEMORANDUM

TO: Victoria Johnson
General Counsel, Tulane University

FROM: Andrew J. Levander
Kevin J. O'Brien

DATE: December 3, 1999

RE: Moten & Associates Investigation

You have forwarded to us the draft report, dated November 2, 1999, of the audit by the HUD Southwest District Office of Inspector General (the "IG") of the contractual relationship between Tulane University and Moten & Associates (the "Moten firm").

The draft report concludes that (1) Tulane obtained the services of the Moten firm in violation of "federal regulations;" (2) Tulane has paid the Moten firm $493,283 in "ineligible and unsupported costs;" and (3), in the absence of "satisfactory evidence" that the Moten firm "completed the tasks it was paid to perform," the IG "could not determine whether [the Housing Authority of New Orleans ("HANO")] derived a measurable benefit from the Moten & Associates contract." (draft report at 1)

At your request we have conducted a careful investigation of the allegations and conclusions in the draft report. We believe – for the reasons summarized in the Executive Summary below and explained in the body of this memorandum – that each of the IG's conclusions is without merit. Furthermore, the draft report is riddled with factual errors and misstatements of the record, many of which have the effect of castings false aspersions on certain individuals and on Tulane.

-1-

I. Executive Summary

1. The first conclusion of the draft report – that Tulane violated federal competitive-bidding requirements in retaining the Moten firm – is incorrect for several reasons. First, the federal regulation cited in the draft report expressly applies only when language requiring the competitive selection of subcontractors is included in the contractor's contract with the federal agency. No such language is contained in any of Tulane's contracts. Indeed, these agreements clearly state that HUD knew and approved of Tulane's retention of the Moten firm, as well as the firm's budget and work plans. In any case, the draft report's attempt to categorize Tulane as a government "contractor" is fundamentally misconceived.

2. The second conclusion of the draft report – that Tulane paid the Moten firm nearly $500,000 in "ineligible and unsupported" fees and expense reimbursements – also lacks merit, with one minor exception. The Moten firm's fee submissions were properly documented under the terms of the relevant contract, and moreover officials at HANO and Tulane – particularly Ronald Mason, Executive Director of the Tulane/Xavier National Center for the Urban Community and the Executive Monitor who functions as HANO's Board of Commissioners – were intimately familiar with the nature and value of the Moten firm's work. As for the Moten firm's expense reimbursements, the vast bulk of the submissions were proper; a small amount – $ 5,314 – was mistakenly and inadvertently submitted and paid, and the Moten firm is prepared to remit this amount to HANO.

3. The third conclusion – that the Moten firm provided no "measurable benefit" to HANO through its work for Tulane and the Executive Monitor – is clearly incorrect, based on our investigation and review. The Moten firm made important contributions in numerous areas described in its work plans, including monitoring contract compliance at HANO construction sites, performing due diligence reviews in HANO real estate transactions, taking a leading role in resident relocation projects, negotiating development agreements for five HANO projects (St. Thomas, C. J. Peete, Desire, Imperial Drive and Florida) and devising strategies for these negotiations, formulating and implementing ways to "leverage" HANO's scarce public funds by acquiring other sources of funding (including successfully persuading the Louisiana State Housing Finance Authority to increase the state tax credit limit for HANO's HOPE VI projects), and training and organizing HANO personnel in many of these areas. The draft report scants or ignores these accomplishments by focusing narrowly on "supporting documentation," thus misconstruing the nature of the Moten firm's work. Moreover, the draft report repeatedly jumps to unsupported conclusions and raises false issues with respect to the firm's contract performance, as demonstrated below.

II. Factual Background

A. The Basic Agreements

On February 8, 1996, HUD and the City of New Orleans entered into a Cooperative Endeavor Agreement ("CEA")[1] whereby, in recognition of the ongoing crisis at HANO, (1) the City agreed to secure the resignations of the HANO Board of Commissioners, (2) HUD appointed Acting Assistant Secretary Kevin E. Marchman to serve as HANO's Board, and (3) both parties agreed that Mr. Mason "shall act as Mr. Marchman's designee in the capacity as an Executive Monitor of the Agreement, subject to Mr. Marchman's oversight." (Exhibit A at paras. 5-6) These unusual measures were justified by the fact that, in the words of the CEA, "extraordinary levels of expertise and resources are now required to improve the quality of life of the residents of HANO facilities." (Id. at 1)

Mr. Mason's role as Executive Monitor was further articulated in a Memorandum of Understanding, dated March 1996, between HUD, HANO and Tulane ("MOU"),[2] which states that Mr. Mason will be "Mr. Marchman's designee to fulfill HUD's responsibility as the Board of HANO." (Exhibit B at para. 9) In that capacity Mr. Mason was authorized to "oversee, coordinate and monitor the activities of HANO in a 24-month action plan for public housing renewal in the City of New Orleans," to review "[p]lans and implementation strategy set forth by HUD/HANO/New Orleans officials" and to "recommend to HUD specific steps and strategies for carrying out the goals and objectives of significantly improving the quality of life for public housing residents." (Id.)

A third agreement, the Executive Monitor Services Agreement ("EMSA"), entered into by HANO and Tulane in April 1997,[3] reiterated that as Executive Monitor Mr. Mason "will have day-to-day chief executive authority over the operation of HANO." (Exhibit C at 2) The EMSA also states that "HUD has approved certain budget allocations for the Executive Monitor," including a budget for the Moten firm (included in Exhibit C to the EMSA).[4] (Id. at 2-3) The EMSA expressly adds that "HUD has approved additional budget authority for year two, beginning July 1, 1997, for costs incurred by Tulane, through the Executive Monitor, for the services of Moten and Associates" (id. at 4); comparable language is contained in each extension

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[1] A copy of the CEA is attached hereto as Exhibit A. It has been extended by letter agreement through February 1, 2000. The draft report mistakenly includes HANO as a party to the CEA. (draft report at 1 n.1)

[2] A copy of the MOU is attached hereto as Exhibit B.

[3] A copy of the EMSA is attached hereto as Exhibit C. It has been extended through December 31, 1999.

[4] Each extension of the EMSA includes a HUD-approved budget for the Moten firm.

of the EMSA. HUD also explicitly approved the first work plan submitted by the Moten firm to the Executive Monitor (contained in Exhibit F to the EMSA).[5] HUD subsequently awarded grants to HANO for the purpose of defraying these and other costs associated with the services of the Executive Monitor.

B. The Moten Firm and its Relationship to Tulane

Mr. Moten, who founded the Moten firm in 1996, has extensive experience in the fields of real estate development and consulting, particularly in an urban context. Raised and educated in the New Orleans area, Mr. Moten held various executive positions with the City of New Orleans during the 1970's. In 1978 he moved to Detroit where he served as, among other positions, Director of the Community & Economic Development Department of the City of Detroit, Vice President of Little Caesar Enterprises, Inc. & Olympia Entertainment, Inc. and Vice President of Detroit Tigers, Inc.

Mr. Moten first met Mr. Mason in early 1996, around the time the latter was designated Executive Monitor. Attracted by Mr. Mason's vision for public housing in New Orleans, Mr. Moten offered his services. Mr. Mason, after becoming familiar with Mr. Moten's track record, strongly recommended retaining his services in discussions both with HUD and with Andersen Consulting, a HUD contractor already providing HANO-related technical support services to HUD. Andersen Consulting agreed to subcontract with the Moten firm, subject to HUD's approval of the Moten firm's rates ($160 per hour) as fair and reasonable. This approval was obtained by October 1996.[6]

On July 1, 1997, following the expiration of Andersen Consulting's contract with HUD, Tulane (acting through Mr. Mason) contracted with the Moten firm so that the latter's work for HANO could continue. This contract has been extended in writing through December 31, 1999.

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[5] See letter dated February 6, 1997 from Sherone Ivey, Acting Director of the HUD Office of Troubled Agency Recovery, to Michael Kelly, Executive Director of HANO, a copy of which is attached hereto as Exhibit D.

[6] The draft report raises several false issues regarding this process. First, the draft report alleges a discrepancy between Andersen Consulting's claim that "a consensus" was reached to retain the Moten firm, and the reality (which Mr. Mason has confirmed) that the firm was hired "at the urging of the Executive Monitor." (draft report at 2, 5) In fact, since Andersen Consulting agreed to subcontract with the Moten firm, there is no conflict between the two statements. Second, the draft report alludes to internal HUD opposition to the Moten subcontract. (Id. at 5) We cannot speak to the issue of the internal dynamics at HUD, which is in any case irrelevant to the conclusions reached in the draft report. Finally, the draft report alleges that Andersen Consulting's subcontract with the Moten firm violated federal procurement requirements. (Id. at 5-6) This allegation, too, is irrelevant to the draft report's conclusions regarding the Tulane-Moten firm relationship; consequently, it is not addressed in this memorandum.

III. The Erroneous Conclusions in the Draft Report

A. Tulane and the Executive Monitor Properly Procured the Contract with the Moten Firm

The draft report claims that Tulane and the Executive Monitor failed to follow federal competitive-bidding requirements in contracting with the Moten firm. This claim is erroneous, for reasons that derive from the clear terms of the basic agreements summarized above. The draft report ignores or misstates both these agreements and applicable regulations in reaching its mistaken conclusion.

The draft report's conclusion rests on the assumption that the language of 48 CFR 52.244-5 – "The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract" – applies to Tulane and the Executive monitor. (draft report at 4) This analysis, however, omits a critical feature of the language in question: In order to be effective it must be included in the contractor's contract with the government agency. The quoted language is described in the regulation merely as a clause that should be inserted in contracts "[a]s prescribed in 44. 204(c)," which in turn states that "[t]he contracting officer shall, when contracting by negotiation, insert the clause at 52.244-5" under certain circumstances. 48 CFR 44.204(c). In short, the language imposes no obligations unless it is inserted in the contract binding the government contractor.

In this case none of the relevant agreements – the CEA, the MOU, the EMSA and their various extensions – contains any language requiring or even suggesting competitive selection of subcontractors. The draft report misstates the record on this point. It asserts that "[t]he Executive Monitor contract requires Tulane to follow the same procurement requirements that HANO must follow." (draft report at 4 n.4, 6) In fact, the EMSA says no such thing.

Not only is the EMSA silent about subcontractor competition, but its terms clearly show that HUD knew and approved of the Executive Monitor's budgets for the Moten firm (which included Mr. Moten's hourly rate) and even sanctioned the Moten firm's work plans. The significance of this fact is that HUD itself did not subscribe to the argument that subcontractor competition was required – or, if HUD did so subscribe, it was prepared to override competition in the interests of expeditiously meeting the urgent needs of HANO's public housing residents.[7] It seems unfair and arbitrary to take Tulane and the Executive Monitor to task for actions that were justifiably believed to be right, proper and necessary by all concerned parties, including HUD itself.

Finally, the draft report's attempt to categorize Tulane and the Executive Monitor as government "contractors" (and hence subject to competitive bidding requirements) is fundamentally misconceived. Under the CEA and the MOU, the Executive Monitor serves essentially as HUD's "designee" (to use the language of the CEA) in functioning as HANO's Board. This unique relationship – forged in a period of crisis – has demanded close cooperation

[7] Significantly, the draft report cites "HUD authorization" as one circumstance that may justify a non-competitive award. (draft report at 6-7)

and trust between HUD, HANO, the Executive Monitor and Tulane. As the MOU states, "[t]he parties hereto agree to implement this memorandum of Understanding in good faith and to work together and do all such things that are consistent with and in the spirit of the objectives, purposes, and intent of this memorandum of Understanding." (Exhibit B at para. 15) This special relationship simply cannot be reduced to an arms-length contractual relationship between a government agency and an outside vendor.

B. <u>The Moten Firm, with One Minor and Inadvertent Exception, Billed Tulane for Eligible and Supportable Costs</u>

The draft report claims that, for the period covered by the audit (July 1, 1997-December 31, 1998), the Moten firm billed Tulane (for payment by HANO) for $464,958 in unsupported fees and $28,325 in ineligible travel expenses. (draft report at 8) With one small exception to be discussed, these allegations lack merit.

The draft report finds the Moten firm's fees to be unsupported because the monthly statements it submitted to Tulane included only total hours worked per day, without any description or breakdown of the specific tasks performed. (draft report at 8-9) However, nothing in any of the contracts requires invoices to be submitted in the form preferred by the IG, and we are aware of no law or regulation – nor does the draft report cite any – that requires such a form. Especially in view of the Executive Monitor's extensive familiarity with the Moten firm's work and its widely recognized value (both of which are discussed below), Mr. Moten's failure to itemize his time cannot be said to make his fees "unsupported."

In fact, the Moten firm's invoices complied with the relevant provisions of the EMSA. That contract provides that "[t]he fees, reimbursement, or compensation charged by or reimbursed to the Executive Monitor or Tulane, to the extent such fees, reimbursement or compensation are to be paid by HANO from funds subject to the provisions of a federal contract [or] grant..., shall be paid by HANO based on invoices submitted by Tulane, such invoices to be supported by adequate documentation regarding time and hourly rates, expenses, and supplies...." (Exhibit C at 5) The invoices submitted by the Moten firm constitute "adequate documentation" within the meaning of this contract provision.

As for the Moten firm's expenses, the bulk of the expenses cited in the draft report as "ineligible" (<u>i.e.</u>, $23,011 out of the cited amount of $28,325) are in fact eligible. The draft report's claim is that the Executive Monitor's 1997 budget did not provide for reimbursement of expenses, and thus HANO's payment of $23,011 to the Moten firm for that purpose should be disallowed. (draft report at 10-11) However, as HANO has explained in a letter to the IG,[8] the draft report is in error: The 1997 budget did include an amount ($52,800) for expenses.

The remaining $5,314 in expenses reimbursement represents an 8% "profit" that the Moten firm charged Tulane on its travel expenses in 1998. This charge was inadvertent. The expenses forms supplied by Andersen Consulting to the Moten firm had included a line for 8% "profit" on travel (as well as other expenses), and the Moten firm simply continued adding

[8] A copy of this letter is attached hereto as Exhibit E.

this percentage in submitting expense statements to Tulane. The Moten firm is prepared to remit the amount of $5,314 to HANO in order to rectify this mistake.

C. The Moten Firm's Consulting Work Has Been Highly Beneficial to HANO

The draft report professes to lack "evidence that [the Moten firm] had completed the tasks that Tulane had paid it to accomplish." (draft report at 9) We have conducted an intensive investigation of this matter and found ample evidence of the Moten firm's accomplishments, particularly as a result of interviews with some of the very HANO officials with whom Mr. Moten has worked.

Evidently this was not the type of evidence the IG's auditors were seeking. The exclusive focus of the draft report is on "supporting documentation;" when the IG's auditors did not find it, they automatically concluded the work was not done. This overly narrow approach misconstrues the nature of the Moten firm's work and produces a false picture of its performance, as demonstrated below.

Before turning to the accomplishments of the Moten firm, however, we must point out the statement in the draft report that "[a]ccording to Mr. Moten, the Executive Monitor directed him not to keep or provide any of the above types of evidence [i.e., documentation such as correspondence, personal notes or journals] of work [Mr. Moten] performed." (draft report at 9) Mr. Moten and Mr. Mason both have stated that this statement is totally false.[9] What Mr. Moten in fact told the IG's auditors is that Mr. Mason never told him to create or keep such documentation; he did not tell the auditors that Mr. Mason told him not to create or keep it. The draft report's distortion of Mr. Moten's innocuous comment – a distortion that falsely suggests deception on Mr. Mason's part – is evidence of bias. We suggest that Tulane demand that, at the very least, this distortion be removed from any audit report issued by the IG.

The work plans of the Moten firm that were approved by HUD describe tasks in five areas: Modernization and Development (primarily assistance in the renovation of HANO's physical plant and development of new or existing real estate for HANO); Development (primarily helping to implement HOPE VI and other development projects at various HANO sites); Financial Development (developing and implementing various strategies for "leveraging" public funds by means of tax credits and other incentives for private investment); Management and Operations at HANO; and Overall Economic Development (including job development for HANO residents). The 1998 work plan also included estimates of approximately how many hours the Moten firm might devote to projects within each of these areas.

These estimates proved to be imprecise; in the course of its work the Moten firm spent considerably more time on some tasks than was estimated, and considerably less on others. By all accounts, the bulk of its time has been spent on projects in the areas of Development and Financial Development, while its involvement has been limited in the areas of

[9] Mr. Moten has sent the IG a letter, dated November 22, 1999, protesting the quoted distortion of his statement and correcting it. A copy of this letter is attached hereto as Exhibit F.

Management and Operations (in part because HANO hired an on-site manager and an asset-management consultant) and Overall Economic Development.[10] These task-sensitive shifts reflect the fluid nature of Mr. Moten's role as conceived by the Executive Monitor, who described Mr. Moten as "my eyes and ears," a wide-ranging "monitor" who "plugs holes" and "gets things done."

The following is a summary of the Moten firm's accomplishments to date, organized around the five work plan areas, based upon our investigation and review:

1. Modernization and Development. Mr. Moten was heavily involved in this area early on in his tenure, and somewhat less so as problems were resolved. According to Marcus Dasher, HANO's Deputy Executive Director for Modernization and Development,[11] Mr. Moten was "instrumental" in accomplishing the following important goals, among others: monitoring contract compliance, often by visiting construction sites and detecting construction or staffing deficiencies, which he reported directly to Mr. Mason; assisting the Modernization and Development Department in performing due diligence reviews of private developers, by, for example, visiting their other projects and meeting with banks; and taking a leading role in resident relocation projects (necessary when facilities are being modernized or torn down), in particular by locating, often under emergency conditions, developers who will make units available for relocated residents.

Mr. Moten's important role in relocation projects – confirmed by both Mr. Mason and Theresa Richard, HANO's Director for Relocation and Self-Sufficiency – is especially noteworthy, since the draft report falsely suggests that Mr. Moten performed no services in this area because he did not actually write HANO's Comprehensive Relocation Policy. (draft report at 9) The authorship of this document is a false issue: Mr. Moten never claimed to have written it; what he did do, by all accounts, was to provide technical assistance in the formulation and implementation of the policy for the benefit of HANO residents. This example illustrates the arbitrariness of a narrow focus on "supporting documentation," to the exclusion of work actually performed and benefits achieved.[12]

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[10] The draft report summarily opines that the Moten firm did not complete "40%" of the tasks listed on its 1997 work plan and "43%" of the tasks listed on its 1998 work plan. (draft report at 9-10) The draft report does not explain how it arrives at these numbers and provides no basis or justification for them, nor does it define what it means to "complete" a task. Our investigation determined that the Moten firm made substantial contributions in each of the five task areas listed in the work plans and that the extent of the contribution tends to vary with the differing amounts of time spent by the firm in each area.

[11] Mr. Dasher informed us that no one from the IG's office spoke to him regarding the work of the Moten firm, which is noteworthy given the considerable familiarity Mr. Dasher has with that work and also given Mr. Mason's request that the auditors speak to Mr. Dasher.

[12] Similarly, Mr. Moten's important role (as described by Mr. Dasher and others) in training Modernization and Development Department staff answers the draft report's criticism

2. Development. The Moten firm spent a large amount of time on this area, primarily in implementing the development or redevelopment of five HANO sites: St. Thomas, C. J. Peete, Desire, Imperial Drive and Florida (only the first four of which are mentioned in the firm's work plans). Frank Nicotera, HANO's General Counsel, confirmed that Mr. Moten – "one of the best negotiators I've ever seen," in Mr. Nicotera's words – played an invaluable role in negotiating all of the basic development agreements for these sites and in conceiving strategies for these negotiations. The case of St. Thomas is instructive. Negotiations for the development of this site had to be conducted twice – a fortuity unforeseen in the Moten firm's work plan – because of HUD's directive to reprocure a developer. When the negotiations began a second time, Mr. Moten again became actively involved. He also spearheaded the effort to preserve the St. Thomas project's tax credits, which were jeopardized by the aborted transaction, by working with the accountants, tax lawyers, real estate developers and bankers involved in the project. Mr. Moten also played a major role in relocating residents of St. Thomas in anticipation of the site being developed.

Despite these extensive accomplishments, the draft report criticizes the Moten firm for allegedly "duplicating" the efforts of both Mr. Dasher and another contractor who worked on the project. (draft report at 10) Mr. Dasher emphatically denied there was any duplication of his efforts, and in fact the draft report offers no evidence of duplication but merely infers it from the fact that Mr. Dasher – whom the IG's auditors never contacted – "had responsibility for the redevelopment of St. Thomas." (Id.)[13] The failure of the IG's office to examine the facts before leveling this accusation against Mr. Moten is inexcusable.

3. Financial Development. According to Mr. Mason and Mr. Dasher, one of Mr. Moten's most important contributions to HANO has been formulating strategies for "leveraging" HANO's scarce public funds to acquire other sources of funding. Moreover, Mr. Moten has often succeeded in helping implement these strategies. For example, he played a key role in persuading the Louisiana State Housing Finance Authority to increase – from $300,000 to $500,000 – the per project limit on state tax credits for HANO's HOPE VI projects (St. Thomas and Desire). HANO is the only public housing agency in the state positioned to take advantage of this benefit.

The Moten firm has had other successes in expanding the funds available to HANO. As Andersen Consulting wrote in its 1998 status report: "During the past year, under the direction of Emmett Moten, HANO has been extremely successful at forming alliances with banking institutions, CDCs and the private sector to redevelop the neighborhoods around HANO properties without the use of HANO funds." A Change Journey: Status Report on the Housing Authority of the City Of New Orleans (1998) at 39. According to several HANO officials whom

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that he did not author the training syllabus used to teach the staff. (draft report at 9) Again, Mr. Moten did not write the training syllabus and never claimed to; what he did was provide training.

13 Similarly, the other contractor – James Brooks, who was hired by HUD – did not duplicate Mr. Moten's efforts. According to several persons involved in the St. Thomas project, Mr. Brooks served as an "expediter" for the HOPE VI review and approval process.

we interviewed, the Moten firm has continued these successes during the period of its relationship with Tulane.

4. Management and Operations and Overall Economic Development. Although, as noted above, the Moten firm's role in these areas has been limited, it nevertheless has made substantial contributions to HANO. For example, Mr. Moten was instrumental in putting together a consortium of seven or eight banks which, under a memorandum of understanding, have agreed to provide mortgages to HANO residents. The Moten firm also has been active in the training and organization of HANO personnel in such areas as real estate development, relocation policy and negotiation skills.

HANO Comments

HANO
Housing Authority of New Orleans

November 19, 1999

Mr. D. Michael Beard
District Inspector for Audit
819 Taylor Street, Suite 13A09
Fort Worth, Texas 76012

Dear Mr. Beard:

I have reviewed your draft report regarding your audit of the Moten & Associates contract, and my comments follow:

FINDING 1: **ANDERSEN AND THE EXECUTIVE MONITOR IMPROPERLY PROCURED MOTEN & ASSOCIATES**

The Housing Authority of New Orleans (HANO) is or was not a party to the Moten & Associates contract. As such, HANO had no role in the procurement or the administration of the contract. HANO's reimbursement to Tulane, through the Executive Monitor, was supported by approved invoices by the Executive Monitor and Tulane University. These invoices were supported by documentation from Moten & Associates that included receipts for expenses, monthly activity reports, and a log that summarized the daily hours charged. Based upon the contract between the Executive Monitor (Tulane) and Moten & Associates, the only deliverable required with respect to contract performance were monthly activity reports.

Since HANO's role with this contract was perfunctory at best, I believe any recommendation resulting from this finding with respect to HANO is baseless, inappropriate, and irresponsible.

FINDING 2: **HANO PAID $493,283 IN INELIGIBLE AND UNSUPPORTED COSTS**

As stated above, HANO paid invoices that were approved by the Executive Monitor. Your finding that $23,011 of expenses was not budgeted is in error. Although the YEAR TWO budget was not descriptive with regards to the approved $316,800, your auditor assumed that it did not include expenses. Previous correspondence to the reviewing and approving

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officials disclosed that the $316,800 included $264,000 in fees and $52,800 in expenses(Attachments).

Sincerely,

Michael P. Kelly
Executive Director

Enclosures

Distribution

Secretary's Representative, 6AS
Comptroller, 6AF
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Director, Office of Public Housing, 6APH
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