



Issue Date February 14, 2007

Audit Report Number 2007-LA-1005

TO: Dominique Blom, Deputy Assistant Secretary, Office of Public Housing Investments, PI

Joan S. Hobbs

FROM: Joan S. Hobbs, Regional Inspector General for Audit, Region IX, 9DGA

SUBJECT: Oakland Housing Authority, Oakland, California, Did Not Comply with Procurement and Contracting Requirements

HIGHLIGHTS

What We Audited and Why

We audited Oakland Housing Authority's (Authority) procurement and contracting activities. We initiated the audit based on a citizen's complaint. Our objective was to determine whether the Authority's procurement and contracting practices were in compliance with federal requirements.

What We Found

The Authority did not follow HUD's procurement requirements and its own procurement policy when it awarded, and renewed a general counsel services contract to the firm Goldfarb & Lipman. The firm's duties under this contract, as requested by the Authority, can include oversight of the Authority's procurement of legal services. While the firm served as the Authority's general counsel, the scope of a prior contract with Goldfarb & Lipman for Hope VI development legal services contract was improperly expanded and the contract amount increased by 115 percent.

The Authority also did not properly account for payments made to Goldfarb & Lipman because the Authority failed to establish an adequate system to monitor contract payments. The Authority paid Goldfarb & Lipman a total of \$1,125,951 for services provided under the two contracts, however, we were unable to accurately determine which portion of the total was for services provided under each contract.

In addition, the Authority did not follow federal requirements or its own policies and procedures to obtain competitive prices when it procured eviction legal services from 2002 to 2006. As a result, the Authority made unsupported and excessive payments for these services.

What We Recommend

We recommend that HUD's Deputy Assistant Secretary of Public Housing Investments require the Authority to provide adequate support that rates and payments under the general counsel and Hope VI development legal services contracts were reasonable, or reimburse its federally funded program accounts with funds not obtained from other federal programs. We also recommend that HUD require the Authority to ensure all future procurement actions are processed through its procurement department and are performed in accordance with applicable requirements.

We further recommend that HUD's Deputy Assistant Secretary of Public Housing Investments require the Authority to provide adequate support that amounts paid for eviction legal services were reasonable, or reimburse the Low Rent program from nonfederal funds.

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-3. Please furnish us copies of any correspondence or directives issued because of the audit.

Auditee's Response

We provided our discussion draft audit report to the Authority on December 28, 2006, and held an exit conference on January 10, 2007. The Authority provided written comments on January 26, 2007. The Authority generally disagreed with our report findings.

The complete text of the auditee's written response, along with our evaluation of that response, can be found in appendix B of this report.

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BACKGROUND AND OBJECTIVES

The Oakland Housing Authority (Authority) was established on April 28, 1938, under the laws of the State of California. The Authority is responsible for administering various low-income housing programs provided through the United States Housing Act of 1937. The Authority is governed by a seven-member Board of Commissioners (Board) appointed by the mayor of the City of Oakland. The Board establishes policies and appoints the Executive Director to implement these policies. The Executive Director serves as the Contracting Officer, and is authorized to enter into contracts on behalf of the Authority. Under the direction of the Executive Director, the Authority's department of Contract Compliance and General Services handles all procurement activities.

On March 31, 2004, the Authority entered into HUD's Moving-to-Work demonstration program. Through its Moving-to-Work Agreement with HUD, the Authority proposed to use an alternative procurement system that would implement certain specific changes to the existing federal procurement requirements.

The OIG last performed a limited review on the Authority's procurement for a rehabilitation project in 2002 (Audit Memorandum Report Number 2002-SF-1002). The review found the Authority had expanded the scope of a \$467,500 roof replacement contract into a comprehensive modernization project costing nearly \$3 million without following Federal requirements. The report identified \$105,201 of questionable costs and problems with the quality of the work. HUD closed the recommendations in 2003, based on corrective actions taken by the Authority.

We received a referral of a hotline complaint concerning inappropriate procurement and contracting practices at the Authority. Our objective was to determine whether the Authority's procurement and contracting practices were in compliance with federal requirements.

RESULTS OF AUDIT

Finding 1: The Authority Did Not Follow Applicable Requirements to Procure Legal Services

The Authority did not follow federal requirements or its own policies and procedures when it contracted with the firm Goldfarb & Lipman for general counsel services. Specifically, the Authority did not (1) complete an independent cost estimate or maintain a cost analysis, (2) ensure a fair and impartial competitive procurement, and (3) retain records pertinent to the procurement. Further, the Authority improperly renewed and increased the amounts paid for the general counsel services and Hope VI development legal services contracts with Goldfarb & Lipman. This occurred because management assigned non-procurement personnel to manage the contracting process. As a result, the Authority could not show that competition was fair and impartial.

The Authority Awarded a General Counsel Contract to Goldfarb & Lipman

On December 4, 2003, the Authority issued a request for proposals to obtain general counsel services. In response, four law firms submitted proposals to the Authority. The proposals were evaluated and given scores by a panel consisting of the Authority's Executive Director, Deputy Executive Director, Director of Human Resources, and Director of Development, and the General Counsel of another housing agency. The Authority's Board of Directors interviewed the two highest scoring firms, and, in April 2004, the Authority entered into a one-year general counsel services contract with the law firm of Goldfarb & Lipman. The Authority extended this contract for another one-year period in April 2005, and for an additional 39 months in April 2006. The total contract amount was \$660,000 for the first three years; the amount for the final 24 months has not been determined.

The Authority Failed to Complete an Independent Cost Estimate and Did Not Maintain a Cost Analysis

Regulations at 24 CFR [Code of Federal Regulations] 85.36 require an independent cost estimate for every procurement action, as well as a cost analysis for every professional offer. However, the Authority did not prepare an independent cost estimate and did not have a cost analysis for the general counsel

contract available for review. The Authority should have had in its procurement file a cost estimate before soliciting proposals, and a cost analysis after reviewing cost information from prospective contractors. Both are necessary to ensure that the final contract price is reasonable.

The Authority Failed to Retain Records Pertinent to the Procurement

According to regulations in 24 CFR 85.36 and HUD Handbook 7460.8, records must be maintained in sufficient detail to document the history of each procurement. The Authority's files contained copies of the scoring sheets used by the proposal evaluation panel, but did not contain copies of the actual proposals submitted by the four firms that responded to the request for proposals. Without adequate documentation of the procurement process, the Authority could not show the procurement was performed in a fair and impartial manner.

The Authority Failed to Ensure Competitive Procurement Was Fair and Impartial

HUD Handbook 7460.8 requires impartial, consistent, and fair proposal evaluation. The Authority's files for the general counsel service procurement contained signed conflict of interest disclosure affidavits for each of the five evaluation panel members. The affidavit signed by one member of the panel stated that she was a personal friend of a partner of Goldfarb & Lipman, the winning bidder. Although it knew that this personal relationship existed, the Authority did not remove this person from the evaluation panel. Allowing this person to remain on the evaluation panel gives the appearance of bias in the evaluation process.

The Authority Inappropriately Renewed and Amended its Contracts with Goldfarb & Lipman

The original general counsel services contract contained an option to extend for an unspecified period at an unspecified price. Although HUD defines an unpriced option as a new procurement, the Authority ignored HUD requirements and chose not to conduct a new procurement. Instead, at the end of the original contract term, the Authority exercised the unpriced option and renewed the general counsel

contract with Goldfarb & Lipman for one year at \$180,000. At the end of the first renewal contract term, the Authority extended the general counsel contract with Goldfarb & Lipman for three years and three months, even though the first renewal contract did not contain an option for an extension. The contract amount for the first 15 months was \$300,000, while the contract amount for the subsequent two years remained to be determined.

In January 2002, the Authority entered into a \$386,000 contract with Goldfarb & Lipman for development legal services for the Coliseum Gardens Hope VI project. In April 2005, while Goldfarb & Lipman continued to serve under contract as the Authority's general counsel, the firm's Hope VI development legal services contract was amended and increased by \$445,354 (115 percent). The Authority advised that the amendment was needed due to various project complications. However, the Authority did not obtain Board approval for the amendment as required by its own procurement policy.

In November 2005, the Hope VI development legal services contract with Goldfarb & Lipman for Coliseum Gardens was amended again and increased by \$25,000. This amendment, which occurred nearly four years into the contract, expanded the scope of services to include predevelopment work for the Tassafaronga Village project. Tassafaronga Village is not part of Coliseum Gardens. When the original contract for Coliseum Gardens was signed in January 2002, the Authority did not know the scope of work and estimated cost of legal services for Tassafaronga Village. In accordance with HUD Handbook 7460.8, the Authority cannot continue to amend Goldfarb & Lipman's existing contract indefinitely to include additional work on Tassafaronga Village. Instead, legal services for Tassafaronga Village should be acquired through a new procurement to ensure fair and open competition.

The Authority's Procurement Department Did Not Monitor the Legal Service Procurements

The Authority failed to ensure that the contracting for legal services met the applicable requirements because management assigned non-procurement staff to oversee both the initial contracting process and subsequent contract renewals. The Executive office explained that it felt that the Procurement Department did not have sufficient expertise in contracting for legal services.

Recommendations

We recommend that HUD's Deputy Assistant Secretary of Public Housing Investments

1A. Require the Authority to provide documentation to support that Goldfarb & Lipman's rates under the original general counsel contract and subsequent renewals were reasonable, or repay unsupported amounts to its low-rent program from nonfederal funds.

1B. Require the Authority to provide support showing the \$470,354 increase to the Hope VI development legal services contract was reasonable.

1C. Require the Authority to ensure all future procurement actions are performed in accordance with applicable requirements.

1D. Revise the Authority's Moving to Work Agreement so that it requires the Authority to obtain HUD review and approval of all professional service contracts and amendments totaling more than \$50,000 in part or aggregate (consulting, accounting, legal services, and architect and engineering services) before execution for a minimum of one year or until HUD is satisfied the procurements and contracts meet federal requirements.

Finding 2: The Authority Did Not Properly Account for Expenditures Related to its General Counsel and Hope VI Legal Service Contracts

The Authority did not properly account for payments made to Goldfarb & Lipman for general counsel and Hope VI legal services. This occurred because the Authority failed to establish an adequate system to monitor contract payments. Control over contract payments relied upon the Authority's purchase order system and was easily circumvented. As a result, payments to Goldfarb & Lipman for Hope VI legal services exceeded contracted amounts.

The Authority Uses Purchase Orders to Track Contract Payments

The Authority accounted for contracts in a purchase order system that also included non-contracted small purchases. Under normal circumstances, the Authority's procurement department generated the purchase orders for the contract limits and the accounting department tracked contractor and vendor payments by the purchase orders. The accounting department did not know whether payments were made in accordance with the contract terms, as it was never provided with copies of contracts. The lack of an effective contract monitoring system prevented the Authority from accurately tracking the cumulative payments on the Goldfarb & Lipman contracts.

Controls Over Contract Payments Were Circumvented

Controls over contract payments were circumvented when Authority's management excluded its procurement department from the contract development and renewal process for the Goldfarb & Lipman contracts. Since Authority management did not inform the procurement department of the first renewal of the general counsel contract, a purchase order for this renewal was not created. When the original purchase order for the first year of the Goldfarb & Lipman general counsel contract was exhausted, the accounting department paid for general counsel invoices by charging the payments to Goldfarb & Lipman's other available purchase order, the Hope VI development legal services contract for Coliseum Gardens.

Controls over the contracting for legal services were further circumvented whenever the Goldfarb & Lipman purchase orders did not contain sufficient funds to cover an invoice. If the accounting department received an approved Goldfarb & Lipman invoice but did not have a Goldfarb & Lipman purchase order with sufficient funds to charge it to, accounting returned the invoice to the approving office. The approving office then issued a requisition request to the Executive Office to increase the existing purchase order or issue a new purchase order to cover the invoice.

Consequently, the Authority lost track of its expenditures and the Authority overpaid Goldfarb & Lipman for the Hope VI development legal services contract for Coliseum Gardens. The original contract amount was \$386,000. Through various amendments, the contract amount was increased by \$470,354 to \$856,354 (see finding 1). However, the Authority's records show that it paid Goldfarb & Lipman invoices, totaling \$930,789, that were charged to the Hope VI purchase orders, \$74,435 more than the amended contract amount.

Accounting Records for Payments to Goldfarb & Lipman are Inaccurate

The Authority spent a total of \$1,125,951 for Goldfarb & Lipman's legal services, including general counsel and Hope VI development legal services. Since the Authority's accounting system did not accurately account for payments on Goldfarb & Lipman purchase orders, we were unable to determine which portion of the total amount paid to Goldfarb & Lipman was for services provided under the Hope VI development legal services contract for Coliseum Gardens.

Recommendations

We recommend that HUD's Deputy Assistant Secretary of Public Housing Investments

2A. Require the Authority to provide documentation showing that all amounts paid to Goldfarb & Lipman (\$1,125,951) were adequately supported and were made in accordance with the terms of the applicable contract.

2B. Require the Authority to revise its contract monitoring system to ensure the Authority only pays for goods and services in accordance with contract terms.

Finding 3: The Authority Did Not Follow Procurement Requirements to Obtain Competitive Prices for Eviction Legal Services

The Authority did not follow federal requirements or its own policies and procedures to obtain competitive prices when it procured for eviction legal services from 2002 to 2006. The Authority (1) did not use a competitive procurement process for eviction legal services costing more than \$100,000 annually, (2) did not properly justify contracting for payment of different hourly rates to different law firms for eviction legal services, (3) paid invalid invoices, and (4) improperly increased an eviction legal services contract by 150 percent over the original amount. This occurred because Authority management (1) ignored procurement requirements, and (2) did not establish a system to administer and control payments for these contracts. As a result, the Authority made unsupported and excessive payments for eviction legal services.

The Authority's History of Obtaining Eviction Legal Services

The Authority obtained eviction legal services from Oakland's City Attorney's Office until that office discontinued providing legal services to the Authority in May 2002. To compensate, the Authority began paying private law firms to provide eviction legal services. From June 2002 to July 2005, the Authority purchased these services from two law firms without a contract. In August 2005, the Authority contracted for the services with four law firms after conducting a competitive procurement. As of July 31, 2006, contracts with the four law firms had expired with no option to extend.

The Authority Used an Inappropriate Procurement Method

Contrary to the Code of Federal Regulations and HUD handbook requirements, the Authority did not use a competitive procurement process for eviction legal services costing more than \$100,000 annually. Instead, Authority management instructed staff to use small purchase procedures to obtain these services. From June 2002 to July 2005, the Authority spent a total of \$954,631 for eviction legal services from two firms by issuing and amending purchase orders, instead of using formal written contracts. During this three year period, the Authority paid \$447,967 to the firm of Edrington, Schirmer & Murphy (Edrington) and \$506,664 to the Law Office of Charles Ramsey (Ramsey) for these services.

Since the Authority did not use competitive procurement, there was no assurance the Authority acquired the services at a fair and reasonable price. When small

purchase procedures were used, the Authority paid Ramsey at a rate of \$200 per hour. Additionally, the Authority did not limit (cap) the fee it would pay both firms for each different category of eviction case, even though non-contested evictions require significantly less legal assistance than evictions requiring additional court proceedings.

The Authority later used a competitive procurement process for the services. This led to lowering Ramsey's hourly rate to \$175. Further, in its December 2004 response to the Authority's request for proposals, Ramsey proposed and contracted for capped fees that were significantly lower than the fees paid to the firm up to that time. The lower capped fees could have been enforced for work performed by Ramsey to immediately reduce the excessive spending. However, the Authority continued to pay the uncapped fees for eviction legal services until the contracts became effective in August 2005.

The Authority Did Not Document Justification for Different Hourly Rates

The Authority set up a panel that reviewed and evaluated the four proposals received in response to its December 2004 request for proposals for eviction legal services. The request for proposals required each firm to propose an hourly billing rate and capped fees for specific types of eviction cases. Having determined the proposals were responsive and responsible, the Authority's legal counsel, Goldfarb & Lipman, wrote the contracts for all four firms.

The capped fees were the same among the firms, but the contract hourly rates were not. Ramsey and the Law Office of Arnold Evje were contracted at the highest hourly rate, at \$175 per hour, Edrington contracted at \$160 per hour, while the Office of Judondi Bolden had the lowest contract hourly rate, \$135 per hour. The Deputy Executive Director contended that the Authority contracted at different hourly rates because of the law firms' different experience levels. However, there was no documentation to show the Authority used the firms' experience levels to conduct any negotiation for the hourly rates. As such, it was unclear whether the different hourly rates were reasonable for the various levels of experience.

The Authority Approved and Paid Invalid Invoices

During the contract year, the Authority received invoices that were missing information necessary for the Authority to monitor and control cost. Instead of requiring the law firms to address the problem, the Director of Housing Management approved the invalid invoices for payment. As a result, the

Authority paid \$289,949 to four law firms without adequate supporting documentation.

To better monitor and control cost of eviction legal services, the contracts prohibited the law firms from charging more than the capped fees. For each eviction case, the law firms could bill hourly up to the capped fees in the corresponding eviction case category as specified in the contracts. All four law firms were contracted at the same capped fees.

Capped Fee for Uncontested Actions	Capped Fee for Ex Parte Actions	Capped Fee for Contested Actions, Including Bench Trials	Capped Fee for Contested Actions, Jury Trials
\$500	\$350	\$650	\$1,300 per day

The Authority received and approved progress billings that did not classify any of the eviction cases into one of the above categories. Without this information, the Authority was uncertain as to which capped fee category was applicable for a particular case. The problem of not knowing when billings would exceed the capped fee was exacerbated by a lack of a cost monitoring system to track the cumulative cost for each eviction case.

As a result, the Authority overpaid for eviction legal services. In one case, the eviction proceedings never reached the jury trial stage, and the Authority should have paid no more than the \$650 capped fee. However, during the contract period, the Authority paid \$1,675 to Edrington for services provided related to this case.

The Authority Improperly Amended a Contract by Nearly 150 Percent

The Authority did not properly justify and obtain the required approval for the price increase on Edrington’s contract. Edrington’s contract, as well as the other three law firms’ contracts, had a not-to-exceed price of \$67,500 and required the Authority’s Board of Commissioners’ approval for any increase to this contract amount. By the end of December 2005 total payments to Edrington under its eviction legal services contract were up to the \$67,500 limit. This situation occurred because the Authority did not allocate eviction cases to the law firms evenly and did not monitor the accumulated contract costs. The Authority assigned most of the eviction cases to Edrington and allowed Edrington’s invoices and payments to accumulate beyond the contract limit.

In order to continue paying invoices for eviction legal services to Edrington, the Authority’s Executive Director approved a purchase requisition in March 2006

that effectively raised the contract limit by an additional \$100,000. By this time, the payments made under the contract for eviction legal services with each of the other three firms were less than 50 percent of the \$67,500 contract limit. The addition to the payment limit for Edrington occurred without a written contract amendment, without the Board of Commissioners approval, and without proper justification.

The Authority management could not justify the uneven workload assigned to the law firms. Originally, the Authority contended that by contracting with more than one firm, it would be able to allocate the workload and better control costs. The Authority's Deputy Executive Director attributed the problem to its former Housing Management Director for not rotating the work between firms. However, her explanation was unfounded because the former Housing Management Director resigned approximately one month after the contracts became effective. The former Housing Management Director could not have been able to assign all the eviction cases and exhaust Edrington's contract amount in one month's time.

Recommendations

We recommend that HUD's Deputy Assistant Secretary of Public Housing Investments

3A. Require the Authority to provide documentation to support that the \$954,631 paid for eviction legal services between June 1, 2002 and July 31, 2005 was reasonable, or repay its low-rent program from nonfederal funds

3B. Require the Authority to provide support to show the \$289,949 paid for eviction legal service between August 1, 2005 and June 2006 was reasonable and was paid in accordance with contract terms, or repay unsupported amounts to its low-rent program from nonfederal funds.

3C. Require the Authority to issue a new Request for Proposal for eviction legal services to ensure it obtains competitive prices for the services.

SCOPE AND METHODOLOGY

We conducted our audit at the Authority's offices in Oakland, California from April to October 2006. To accomplish our objective, we interviewed the Authority's management and relevant staff, the Authority's former Housing Management Director, Goldfarb & Lipman attorneys, and officials from HUD's San Francisco, California, and Washington, D.C. offices.

To determine whether the Authority's procurement and contracting activities were performed in compliance with HUD requirements, we reviewed

- The Authority's Moving to Work Agreement;
- Code of Federal Regulations and HUD handbook requirements for procurement;
- The Authority's procurement policies and procedures;
- The Authority's board minutes;
- The Authority's procurement contracts; and
- The Authority's accounting records for disbursements.

We also obtained a legal opinion from HUD's Office of General Counsel to determine whether the Authority's participation in the Moving to Work program affected the applicability of existing federal procurement requirements. HUD's Office of General Counsel reassured us that, under the Moving to Work Agreement, procurement requirements established in 24 CFR 85.36, HUD Handbook 7480.8 REV-1, and the Authority's procurement policies and procedures remain applicable. The only exception is that the Authority has the benefit of self-certification for eight specific items, in which the handbook normally requires prior HUD approval (see Appendix C).

Our review generally covered the period from July 1, 2003, through June 30, 2006. This period was adjusted as necessary. We performed our review in accordance with generally accepted government auditing standards.

INTERNAL CONTROLS

Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved:

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

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

- Policies and procedures that management has in place to reasonably ensure procurement contracts were obtained and administered in accordance with applicable requirements.

We assessed the relevant controls identified above.

A significant weakness exists if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet the organization's objectives.

Significant Weaknesses

Based on our review, we believe the following items are significant weaknesses:

- The Authority management did not establish controls that would reasonably ensure procurement contracts were obtained with fair and open competition (see findings 1, 2, and 3).
- The Authority lacked adequate controls to ensure program funds were used in compliance contract terms (see findings 1, 2, and 3).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS AND FUNDS TO BE PUT TO BETTER USE

Recommendation number	Unsupported <u>1/</u>
2A	\$1,125,951
3A	\$954,631
3B	\$289,949

1/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of audit. Unsupported costs require a 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.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments



**Housing Authority
of the City of
Oakland, California**

EXECUTIVE OFFICE: 1619 HARRISON STREET
OAKLAND, CA 94612, (510) 874-1500

January 26, 2007

Ms. Joan S. Hobbs
Regional Inspector General for Audit
U.S. Department of Housing and Urban Development
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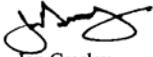
Subject: Response to Discussion Draft Audit Report
Oakland Housing Authority's Procurement and Contracting Activities

Dear Ms. Hobbs:

Enclosed is our detailed response to the Discussion Draft Audit Report issued by your office. In summary, after reviewing your findings, the Authority agrees that it needs to further centralize its procurement processes and that procurement records must be kept for longer periods. We have already made some changes in these areas and will further revise our procedures in response to your audit. However, we strongly disagree with the findings herein and find that portions of the findings are demonstrably not factual. Further, we found it impossible to fully respond to some portions of the findings as the basis for calculations that were different from the Authority's staff were not available for review.

If you have any questions, please contact me at (510) 874-1510 or Joseph Villarreal, Deputy Executive Director for Program Administration at (510) 587-2110.

Sincerely,



Jon Gresley
Executive Director

Comment 1

Comment 2

RESPONSE TO FINDING 1: THE AUTHORITY DID NOT FOLLOW APPLICABLE REQUIREMENTS TO PROCURE LEGAL SERVICES

The Inspector General believes that the Authority did not follow federal requirements or its own policies and procedures when it contracted with the firm Goldfarb & Lipman for general counsel services. The Inspector General believes this occurred because management assigned non-procurement personnel to manage the contracting process and that, as a result, the Authority could not show that competition was fair and impartial.

(1) The Authority failed to complete an independent cost estimate or cost analysis:

Comment 3

The Authority did conduct an estimate of costs based on its previous experience with the City Attorney's Office and also on information relative to legal fees and costs obtained from the San Francisco HA. HUD Handbook 7460.8, REV-1 Chapter 3-15(A) (1) and (3) allows the use of pricing history from previous contracts in conducting a cost estimate. Based on both the Authority's and San Francisco HA's information and on the Authority's previous usage, the Authority estimated its annual cost for attorney services at \$150,000. The Authority did not maintain this documentation in the contract file. The Authority is amending its procurement and contract management procedures to ensure that such documentation will be maintained in the future.

Comment 4

Likewise, the Authority conducted a cost analysis as part of its evaluation of the response to the RFP for legal services. In accord with HUD Handbook 7460.8, REV-1 Chapter 4-35(B) (4) this analysis was conducted as part of a comparison between the proposed rates received from respondents to the legal services RFP and also with the cost estimate performed previously. As stated in the Handbook:

In professional services procurements, if adequate price competition is received, the HA need not perform an extensive analysis of the proposed labor rates. It may be sufficient to compare the rates of the various offerors to determine if any proposal is significantly higher or lower, along with a comparison to the independent cost estimate or other independent source of pricing information to ensure that the rates are reasonable.

Comment 5

Additionally, in response to a Board request, a cost analysis was again conducted in March 2005. However, as with the cost estimate, the Authority did not maintain this documentation in the contract file. The Authority is revising its procurement and contract management procedures so that such documentation will be maintained in the future.

(2) The Authority failed to retain records pertinent to the procurement:

Comment 6

The Authority has begun the process of centralizing all procurement files and contracts, while also utilizing document imaging to store backup copies. This will effectively address this finding.

(3) The Authority failed to ensure competitive procurement was fair and impartial:

As stated in the Inspector General's report, one of the Authority's panelists disclosed that they had a personal relationship with one of Goldfarb's partners. However, OHA disagrees that this comprises a conflict of interest. HUD regulations at 24 CFR 85.36(b)(3) state that:

...No employee, officer or agent of the grantee or sub-grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

Similarly, Handbook 7460.8, REV-1 Chapter 10-2 states that any HA employee may not participate directly or indirectly in a procurement where that employee or a relative either has:

- a financial interest in the procurement;
- a financial interest in the business or organization involved in the procurement; or
- an arrangement concerning prospective employment.

The panelist has no financial interest in the award of this contract and had no arrangement concerning prospective employment. Therefore, under HUD regulations and guidance, there was no conflict of interest.

Further, after disclosing the relationship, the panelist was asked if she could render an impartial decision. She stated that she could. The panelist was chosen because she had experience serving as legal counsel to a large housing authority, a unique and relevant experience base. Because of her experience, the fact that the relationship did not meet HUD's definition of a conflict of interest and her statement, the panel proceeded with the procurement.

Finally, the job of the panelists was primarily to screen in the most qualified firms. The Authority's Board of Commissioners was responsible for selecting the firm that would provide general counsel legal services to the Authority. Of the four firms who responded to the RFP, the top three were forwarded to the Board to be interviewed. One of these firms dropped out of the selection process prior to the meeting and the Board selected Goldfarb from the remaining two firms.

Comment 8

(4) The Authority inappropriately renewed and amended its contracts with Goldfarb & Lipman:

The Inspector General's report states that the Authority's general services contract with Goldfarb contained an un-priced option. The Authority does not believe the original contract for general counsel legal services contained an un-priced option. HUD Handbook 7460.8, REV-1 Chapter 6-2(C) (1) states:

An option may only be exercised if the basic contract stated a price for the supplies, services, or construction.

The contract for general counsel legal services did state a price for services. The rate schedule for attorneys was attached to the contract as Exhibit B and those rates did not change when the option was exercised at the end of the first contract term. The Handbook goes on to state in Chapter 6-2(C) (2) that:

A further limitation is that options may not continue indefinitely; there must be a finite period for the contract, including all options, and a specific limit on the total quantity to be purchased by option.

The contract was executed for a finite period of one-year and there was a specific limit of \$115,000 placed on the contract (which was later amended to \$180,000 in accord with the contract). Therefore, the Authority feels that its first contract was executed in accord with HUD regulations and that the two subsequent options, which were both based on the original procurement and contract, were in accord with HUD regulations.

As stated in the Inspector General's report, the Authority increased its HOPE VI development legal services contract with Goldfarb and Lipman on April 4, 2005 by \$445,254. The Authority's procurement policy requires staff to take contracts over \$50,000 to the Board for approval. Staff did so on January 28, 2002. At that time, the Board authorized "the Executive Director to take all actions necessary to execute a contract for HOPE VI legal consultant services for the complete Coliseum Gardens project, including both on and off site development, with the firm of Goldfarb & Lipman serving as lead counsel..." This approval was given because it was recognized that the HOPE VI project plan was evolving and would of necessity be complex and lengthy.

As was true in the selection of general counsel legal services, the cost of legal services was a factor in selection. Firms were required to compete on the cost of their hourly rates as well as on their qualifications. The amended cost reflected the expanding and complex nature of the project (it is currently in its fourth phase of construction), not a material change in contract terms, which specified the hourly rates that could be charged. The amendment was consistent with the original Board approval for this contract.

Comment 9

Comment 10

Concerning the Tassafaronga Village project; the Authority believes it procured HOPE VI legal services appropriately for this project and that it should not be required to conduct a new procurement. The Authority's RFP stated that:

In addition to the foregoing scope of work, OHA may, at its sole discretion, contract with the consultant to assist with the preparation of a subsequent HOPE VI application for another property.

This language was reviewed and approved by HUD's Abt Associates consultant. The Authority and its consultant from Abt were not aware of any HUD restrictions on using one RFP for the procurement of more than one project. As before, firms were required to compete on the cost of their hourly rates as well as on their qualifications. The hourly rate being charged for the Tassafaronga Village project is in accord with the contract entered into as a result of the procurement in 2002.

(5) The Authority's Procurement Department did not monitor the legal service procurements:

Comment 11

This statement is not factual. The Authority's procurement section (CCGS) was intimately involved with both legal services procurements. The staff person who coordinated the general counsel legal services contract worked closely with CCGS at each step of the process and CCGS provided the final proofing, forms and approval for the RFP. Additionally, CCGS was listed on the RFP as the location to obtain copies of the RFP packet, as the location to direct any questions on the RFP and also as the location to submit all completed RFPs.

Similarly, CCGS was directly involved in almost every aspect of the HOPE VI legal services procurement. CCGS staff assisted Development Department staff with the writing of the RFP. The RFP was submitted to CCGS for final editing and approval. CCGS attended the pre-proposal conference and the CCGS Manager sat on the rating panel. As in the general counsel RFP, CCGS released the RFP and all completed RFPs were submitted to CCGS (in this case, questions were directed to HOPE VI staff with the requisite technical knowledge). Finally, CCGS was notified of all amendments to this contract.

Therefore, CCGS was well aware of the details of both procurements and any mistakes that were made were not because CCGS had been bypassed. That said, one thing that became clear in the audit is that, as we have stated previously, recordkeeping and ongoing contract monitoring needs to be centralized to a greater degree within CCGS and the Authority is currently undertaking the steps necessary to achieve this goal.

RESPONSE TO FINDING 2: THE AUTHORITY DID NOT PROPERLY ACCOUNT FOR EXPENDITURES RELATED TO ITS GENERAL COUNSEL AND HOPE VI LEGAL SERVICE CONTRACTS

The Inspector General believes that the Authority did not properly account for payments made to Goldfarb & Lipman for general because the Authority failed to establish an adequate system to monitor contract payments.

(1) The Authority uses purchase orders to track contract payments:

The Authority currently has an adequate system for monitoring contracts. Under the Authority's existing system, the contracting Department certifies compliance with contract payment terms. Personnel with signature authority will certify that payments are made in accord with contract terms and then forward invoices to the Finance Department for payment. External auditors routinely review contract payments. To date the Authority has not had a finding in this area. That said, the Authority agrees that its current system can be improved upon.

As part of the effort mentioned previously to consolidate all contract files within CCGS, Finance will now also receive copies of all contract files and will review and approve all contract payments based upon a review of the contract file. Copies of the relevant purchase order will be sent to all vendors, and vendors will be required to reference the purchase order number when invoicing the Authority (this is currently done with some, but not all contracts). Within the Authority, the contracting department will be required to ensure that the referenced purchase order is valid and still has money available. Finance will then verify that the purchase order is still valid prior to approving payment. Finally, Finance has begun a procurement process for cost-tracking software. This software will further enhance the Authority's control over this process.

(2) Controls over contract payments were circumvented

The Authority has not overpaid Goldfarb and Lipman. As discussed with the Inspector General's auditors, the reason it appears that funds were inappropriately charged is attributable to the Authority's software, not its method of contract control. An Accounting Clerk did make a mistake in charging Goldfarb and Lipman General Counsel Invoices against the Goldfarb and Lipman HOPE VI purchase orders, and vice versa. The mistake was not made in an effort to circumvent the existing purchase order, otherwise HOPE VI costs would not have mistakenly been charged to the general legal services contract. The Authority's accounts payable software permits corrections to be made within the system to checks and invoices, but not to purchase order charges. When errors are made in purchase order charges, journal entries are required in order to charge the appropriate General Ledger Account.

The Authority was aware of these mistakes prior to the audit and had already corrected most of them via journal entries. The remaining journal entries will be entered and

Comment 12

Comment 13

Comment 14

finalized as part of the Authority's annual external audit which is nearing completion. It appears that the Inspector General auditors did not review the journal entries until after writing this item. These journal entries remain available for review.

Finally, in this instance and in several others during this audit, the amounts quoted in the Inspector General's report do not match the totals the Authority believes are correct. The Authority's Finance staff requested to review supporting data used by the Inspector General so that it could be determined if both were looking at exactly the same payments, invoices, purchase orders, etc. However, this request was rebuffed, despite being a common practice utilized in audits and also an extremely useful tool that both sides can use to ascertain facts. Without a review of the Inspector General's data and calculations, the Authority is unable to fully respond to this portion of the finding.

(3) Accounting records for payments to Goldfarb and Lipman are inaccurate:

As stated above, the Authority's software does not permit corrections to be made in the system when purchase order charges are entered incorrectly. Instead, staff must make manual changes. Most of these corrections have been completed and accounted for properly. The remaining journal entries will be entered and finalized as part of the Authority's current annual external audit. Once complete, all payments will be accounted for properly. This system is audited annually along with the rest of the Authority's finances and programs by external auditors and has not previously produced findings.

Comment 15

RESPONSE TO FINDING 3: THE AUTHORITY DID NOT FOLLOW PROCUREMENT REQUIREMENTS TO OBTAIN COMPETITIVE PRICES FOR EVICTION LEGAL SERVICES

The Inspector General believes that the Authority did not follow federal requirements or its own policies and procedures to obtain competitive prices when it procured for eviction legal services from 2002 to 2006 and that, as a result the Authority made unsupported and excessive payments for eviction legal services.

(1) The Authority's history of obtaining eviction legal services:

The claim in the Inspector General's report that the Authority had no contract for eviction legal services from June, 2002 through July, 2005 is incorrect. The Authority first issued an RFP for eviction legal services on December 12, 2001 and awarded work based on that RFP in March, 2002. The Authority issued a second RFP for eviction legal services on June 19, 2003 and awarded work based on that RFP in August, 2003. The current eviction legal services contracts were awarded in May, 2005 based on an RFP that was released in December, 2004.

Comment 16

Comment 17

(2) The Authority used an inappropriate procurement method:

The statement in the Inspector General's report that "the Authority did not use a competitive procurement process for eviction legal services costing more than \$100,000 annually" is incorrect. As stated above, the Authority has issued three separate RFPs for eviction legal services since December, 2001.

Comment 18

(3) The Authority did not document justification for different hourly rates:

As with other legal services procurements, respondents to the eviction legal services RFP in December, 2004 were rated on a variety of criteria. These included experience, quality of service and Section 3 responsiveness as well as the firm's fee structure. Cost was not the sole deciding factor. While the Authority did cap certain, basic services, more complex cases would be paid on an hourly rate bid by the firms. These hourly rates naturally vary among firms based on experience, size of firm, etc. (as does pay among staff in the same job title, and most goods and services). For example, the lowest hourly rates were charged by a one-person, newly started law firm. Not surprisingly, a larger law firm with over 50 years of litigation experience on staff and with several pages of large corporations, cities and municipalities as clients charged more for their hourly rates.

As noted above in the Inspector General's report, rates were negotiated down when deemed too high. This was based on a consideration of the rating factors and also based on a cost analysis utilizing rate ranges provided by the California Bar Association. However, once rates were judged reasonable based on the cost analysis and the firm was selected in the competitive process, there was no effort or obligation to negotiate hourly rates down (or up) since price was not the sole deciding factor.

Comment 19

(4) The Authority approved and paid invalid invoices:

The Inspector General's report states that the Authority approved invoices that were missing information necessary to ensure proper billing and that as a result, the Authority overpaid for eviction legal services. The report cited an example where the Authority should have paid no more than \$650 but instead paid more than \$1,675. However, beyond this, no specific details have been given. As was the case in the second finding, since the Inspector General has not provided Authority staff with the details behind their assertions, the Authority is unable to fully respond to this portion of the finding.

Comment 20

(5) The Authority improperly amended a contract by nearly 150 percent:

Responsibility for rotating cases among the various law firms previously lay with the Department Director and was then delegated to the District Managers. The imbalance in the expenditures with Edrington partially stems from this decentralized approach to eviction approvals. The Authority has since corrected this and all eviction cases are assigned by the Deputy Executive Director who ensures that eviction cases are rotated in

strict accord with the contracts. That said, much of the cost overrun is not derived from improper rotation. A significant portion is from cases begun prior to the current contract.

OIG Evaluation of Auditee Comments

- Comment 1 We did not intend for the Authority to centralize its procurement functions. Accordingly, we have revised our recommendation for HUD's Deputy Assistant Secretary of Public Housing Investments to require the Authority to ensure all future procurement actions are performed in accordance with applicable requirements.
- Comment 2 We disagree. We explained the basis of our calculations and provided the sources of information in response to the Authority staff's inquiries. See Comment 14.
- Comment 3 The Authority could not show us the analysis it performed to estimate its annual cost for general counsel services. The only supporting documentation the Authority could provide was a quote from the request for proposals for general counsel services that read "*The Authority* anticipates that it annually spends approximately \$150,000 in legal fees for general counsel services and related legal advice." This quote could not be considered a cost estimate calculation.
- Comment 4 Extensive analysis of proposed labor rates may be waived if the Authority received adequate price competition. However, the Authority could not show it received adequate price competition. The Authority did not retain any proposals submitted by firms that responded to the request for proposals for general counsel services. Without the proposals, we do not know whether the proposed rates were competitive.
- Comment 5 Based on additional review of the board minutes, we revised the report to state that the cost analysis was not available.
- Comment 6 The Authority needs to retain records that are pertinent to each procurement. Centralized filing of all procurement files and contracts would not resolve all elements of this finding. The Authority needs to ensure procurements are performed in a fair, consistent, and impartial manner, and contracts are amended and renewed in compliance with applicable requirements.
- Comment 7 The proposal evaluation should be impartial, consistent, and fair. HUD requires this objectivity to be readily apparent upon review. Allowing a personal friend of a partner of Goldfarb & Lipman, the winning bidder, to serve on the evaluation panel gave the appearance of favoritism toward the firm.
- Comment 8 The original general counsel contract did not specify a price or a finite period for the option. Specifically, the section in which the contract addressed the option stated, "the contract may continue for a term that is mutually agreed to by *the Authority* and Attorney." HUD defined this to be an unpriced option, which required the Authority to perform a new procurement.

Comment 9 In January 2002, the Board approved a \$386,000 contract with Goldfarb & Lipman for Hope VI development legal services for Coliseum Gardens. An amendment increasing the contract amount by \$445,354 (115 percent) was a material change. However, the Authority did not obtain Board approval for this amendment.

Comment 10 The quote cited was insufficient to relieve the Authority of its responsibility to conduct a new procurement to obtain legal services for Tassafaronga Village. The request for proposals, from which the quote was taken, solicited Hope VI development legal services for Coliseum Gardens. There was no indication that HUD approved the language in the Authority's request for proposals. The Authority's quote from its request for proposals suggested the contract may contain an unpriced option at best. In fact, when the Authority awarded the legal services contract for Coliseum Gardens, it did not know the scope of work or the cost of legal services associated with developing Tassafaronga Village.

The Authority did not mention at any time during the review or at the exit conference that it consulted with Abt Associates for advice on the language in the referenced request for proposals. In addition, Abt Associate, according to its website, is a for-profit company and should not to be confused as a component of HUD.

Comment 11 We acknowledge that the procurement department participated in the process for issuing requests for proposals for legal services. However, management did not include the procurement department during the initial contracting and subsequent contract renewal processes. Specifically, non-procurement staff oversaw the proposal evaluation for general counsel services and developed the general counsel contract. Moreover, management notified the procurement department after the general counsel contract was renewed.

Comment 12 We disagree that the Authority had an adequate system for monitoring contracts. As stated in our report, the Authority made payments in excess of contract amounts. Furthermore, the Authority acknowledged it needed to make additional adjusting journal entries to correct improper charges (see Comment 9).

The Authority can present its newly proposed contract monitoring system to HUD for review and approval during the audit resolution process.

Comment 13 We acknowledge that the accounting staff made some mistakes in charging Goldfarb & Lipman general counsel invoices against Goldfarb & Lipman's Hope VI development legal services contract for Coliseum Gardens, and vice versa. After the exit conference, we reviewed the adjusting journal entries the Authority made to correct the mistakes. Although the adjustments made generally appeared appropriate, the accounting department reported that it still needed to make additional adjusting journal entries to correct charges that dated as far back as April 2004 to reverse improper charges. As such, the Authority's records

continued to show the Authority overpaid for Goldfarb & Lipman's Hope VI development legal services contract. The Authority must identify all improper charges and finish making all the appropriate adjustments to correct the overpayments on Goldfarb & Lipman's Hope VI development legal services contract.

While some improper charges could be mistakes, other improper payments were made because the Authority circumvented the controls over contract payments. For instance, the Authority could not explain how it managed to pay for an entire year's worth of general counsel expense during the first renewal contract period when it did not create a purchase order to allow for any contract payments. As stated in the report, if the accounting department could not find an existing Goldfarb & Lipman purchase order with a sufficient balance to cover an invoice, the Executive Office approved requests to increase the existing purchase order or to issue a new purchase order to allow for the payment.

Comment 14 We disagree. During the audit, we responded to all of the Authority's requests regarding the differences between OIG's amounts and what the Authority believed was correct. Specifically, the Finance Director asked how OIG arrived at the \$470,354 in amendments to the Hope VI legal services contract. He stated that he could not arrive at the same dollar amount by adding up the purchase orders in the accounting system. We told him we calculated the \$470,354 in amendments based on the contract amendments provided by the Authority's development department. We also informed the Finance Director that the reason for the discrepancy between the contract amendments and the purchase orders created for those amendments could be attributed to the Authority's practice of not forwarding copies of contracts and amendments to the finance department.

The Finance Director also inquired as to what documentation the OIG reviewed to arrive at the \$954,631 spent for eviction legal services from June 1, 2002 to July 31, 2005. We told him this information was obtained from the Authority's check register, files from the procurement department, and information obtained during meetings with the Deputy Executive Director. Specifically, we arrived at the dollar amount by totaling all disbursements made to Edrington and Ramsey during the period when the Authority used small purchase procedures to obtain eviction legal services.

Comment 15 Although the Authority's independent auditor issued reports on the Authority's internal controls, those reports would not necessarily disclose all matters in the internal controls that might be reportable conditions and material weaknesses.

Comment 16 A request for proposals is not the same document as a written contract. During our review, the Deputy Executive Director told us the Authority had been using small purchase procedures to obtain eviction legal services until it signed contracts in August 2005. Therefore, the Authority did not have written contracts for eviction legal services covering the period from June 2002 through July 2005.

- Comment 17 The competitive procurement process requires more than the issuance of a request for proposals. The Authority did not award eviction legal services contracts during the period from June 2002 through July 2005. The Deputy Executive Director said instead, the Authority purchased eviction legal services using small purchase procedures.
- Comment 18 Because firms were contracted to provide the same types of eviction legal service, our concern was whether the different hourly rates were fair and reasonable. Based on the Authority's records, we were unable to make this determination. The Authority did not have documentation to show it performed a cost analysis using the California Bar Association's rate ranges. Contrary to the Authority's examples explaining the reasons for different hourly rates, Ramsey, who was also a one-attorney firm, charged the highest hourly rate.
- Comment 19 The problem we found was not limited to one case. None of the invoices classified cases into a capped fee category. The Authority was unable to determine which capped fee category was appropriate for the cases billed. The Authority was also not tracking the cumulative cost for any eviction cases. As a result, the Authority overpaid for eviction legal services. During the audit resolution process, the Authority can provide HUD with documentation it may have to support its claim that payments made were reasonable and in accordance with contract terms, and repay any amounts that cannot be supported.
- Comment 20 We acknowledge the Authority is changing its approach for assigning eviction cases to the law firms. However, we still contend that the Authority needs to implement effective controls to ensure that total payments made do not exceed contract limits and that contract amendments are executed in writing and with proper approvals.

APPENDIXES

Appendix C

FEDERAL REQUIREMENTS

Procurement and Contracting Generally

Regulations at 24 CFR [*Code of Federal Regulations*] 85.36(b) require a housing authority to use its own procurement procedures, which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law.

The Authority's Procurement Policy manual requires that all procurement activities are performed in accordance with the federal procurement requirements of 24 CFR 85.36, and applicable state and local laws.

Requirements for Selecting a Procurement Method

Regulations at 24 CFR 85.36 (d)(1) specifies that small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C 403(11) (currently set at \$100,000). While the sealed bid method is the preferred method for procuring construction, the competitive proposal method is generally used when conditions are not appropriate for the use of sealed bids.

HUD Handbook 7460.8, REV-1, "Procurement Handbook for Public Housing Agencies and Indian Housing Authorities," chapter 4-3, also requires the use of sealed bidding or competitive proposal procedures rather than small purchase procedures if the supplies or services needed is estimated to go over the simplified acquisition threshold.

The Authority's procurement policy, section IV, explains that for purchases and contracts within the range of \$2,500 to \$100,000, the agreements and orders shall not exceed a period of two years. The dollar value of any single agreement or order shall not exceed \$100,000 on an annual basis. If a review of an individual supply or service, at any time, indicates annual expenditures in excess of \$100,000, a formal bid will be invited to procure the supply or service.

Requirements for an Independent Cost Estimate and a Cost Analysis

Regulations at 24 CFR 85.36 (f)(1) require grantees to make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts.

HUD Handbook 7460.8, REV-1, chapter 3-15, also states that an independent cost estimate of every procurement must be made before soliciting bids or proposals. Such an estimate is needed

in preparing for the procurement, since the dollar amount may dictate the method of procurement that can be used (such as small purchases versus sealed bidding, etc.). Further, the independent cost estimate is considered confidential information which shall not be disclosed outside the housing authority. The reason for this protection is that contractors often bid the same as or less than the independent cost estimate, if known, as a means of securing a contract award without consideration of the true cost of a job. The preferred approach to procurement is to have each prospective contractor conduct an analysis and develop the offer independently, considering only what the housing authority's stated needs are, without simply relying on an estimate of what the housing authority is able to afford.

The Authority's procurement policy, section V, requires a cost or price analysis be performed for all procurement actions including contract modifications. It further states that a cost analysis shall be performed for:

- a. Procurement based on noncompetitive proposals including contract modification (change orders).
- b. Procurement when only one offer is received.
- c. Procurement of professional, consulting, or architect/engineer services.

Requirements for Record Retention

Regulations in 24 CFR 85.36 (b)(9) and HUD Handbook 7460.8, REV-1, chapters 2-1 and 3-12, stipulate that the housing authority will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

The Authority's procurement policy, section III, requires the following:

- C. All contracts and modifications shall be in writing, clearly specifying the desired supplies, services, or construction. All awards and proposed awards shall be supported by sufficient documentation regarding the history of the procurement, including as a minimum the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offers, and the basis for the contract price.
- D. The Authority shall comply with applicable HUD review requirements and thresholds.

Requirements for Proposal Evaluation

HUD Handbook 7460.8, REV-1, chapter 4-23, states that the proposal evaluation should be impartial, consistent, and fair. This objectivity must be readily apparent upon review.

The same chapter further states, for the purpose of conducting negotiations, proposals should be initially classified as acceptable, potentially acceptable, or unacceptable. The competitive range decision should take into account the evaluation of both technical and cost/price proposals, the evaluation report, and the cost or price analysis, so that each proposal is examined in its entirety and the relative rankings of each offeror are compared. Offerors whose proposals are unacceptable should be so notified promptly by letter with the appropriate rationale for such action; such offers are excluded from the remainder of the procurement. A proposal may be

determined unacceptable on technical grounds, if the price is clearly excessive compared to other acceptable offers, or if the offer or is non-responsible.

Requirements for Contract Award

The Authority's procurement policy, section IV, requires contract awards in excess of \$50,000 be approved by the Commission.

Requirements for Contract Options

HUD Handbook 7460.8, REV-1, chapter 6-2, acknowledges that awarding a contract with options gives the housing authority a continued source of supply under contract, at known prices. An option is defined as a unilateral right of the housing authority to order additional supplies, services, or construction at the prices specified in the contract. A clause which allows an option to be exercised only at the contractor's discretion is not an option; instead, this is tantamount to a new procurement, and such clauses shall not be used.

The same chapter stipulates that an option may only be exercised if the basic contract stated a price for the supplies, services, or construction. An unpriced option, like a bilateral option, is considered a new procurement. A further limitation is that options may not continue indefinitely; there must be a finite period for the contract, including all options, and a specific limit on the total quantity to be purchased by option.

The handbook further specifies that before exercising an option, the housing authority should document the contract file with a written determination, which should include the following:

1. Funds availability;
2. Statement as to continuing need for the item;
3. Indication as to whether the option was included and evaluated as part of the basic contract;
4. Review of market prices to indicate whether the option is still economical for the housing authority; and
5. Any other factors (such as time or disruption to the housing authority's operations) supporting the housing authority's decision to exercise the option.

The Authority's procurement policy, section VII, states options for additional quantities or performance periods may be included in the contract provided that procurement requirements are satisfied.

Requirements for Contract Provisions

Regulations in 24 CFR 85.36 (i) stipulates that a grantee's contracts must contain the following provisions:

- (1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

The Authority's procurement policy, section VII, states that all contracts shall include any clauses required by Federal statutes, executive orders, and their implementing regulations.

Requirements for Contract Amendments or Modifications

Regulations at 24 CFR 85.36(f)(1) require grantees to perform a cost or price analysis in connection with every procurement action including contract modifications. It further states that a cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

HUD Handbook 7460.8, REV-1, chapter 4-33, states if the housing authority is negotiating a modification (including change orders) to any contract (even if the basic contract was awarded competitively) which changes the scope of work previously authorized and impacts the price or estimated cost, it must use cost analysis and the principles in HUD Handbook 2210.18 to arrive at a reasonable cost.

HUD Handbook 7460.8, REV-1, chapter 4-35, states that the cost analysis is vital to the housing authority not only in preparing for negotiations for the award of contracts but also for analyzing proposed contract modifications (especially change orders), because the lack of competition in the latter case poses a serious difficulty for the housing authority in ensuring that contractors only receive reasonable compensation.

The same chapter further specifies that a cost analysis is required when the housing authority is negotiating a modification (including change orders) to any contract which changes the scope of work previously authorized and substantially impacts the price or estimated cost, upwards or downwards. The housing authority must request a cost breakdown of the contract's proposed cost. Note: Modifications which change the work beyond the scope of the contract must be justified as a noncompetitive action per 24 CFR 85.36 (d)(4). If none of those conditions applies, the work must be procured competitively.

Requirements for Contract Administration

Regulations in 24 CFR 85.36 (b)(2) and the Authority's procurement policy, section VII, require the Authority to maintain a contract administration system which ensures that contractors

perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Moving-to-Work Agreement

HUD and the Authority entered into a Moving-to-Work Agreement on March 31, 2004, with the following proposed changes to the Authority's procurement requirements:

- The Authority may utilize qualification-based procurement as described in 24 CFR 85.36(d)(3)(v) for construction contracts and other procurement of services where the Authority deems said system the most suitable.
- The Authority may utilize an alternative system of procurement, subject to the following certifications by the Authority in relation to each transaction:
 - a) The contract price is reasonable for the goods, services, or property, which is the subject of the contract.
 - b) The selected contractor is qualified to perform the terms of the contract.
 - c) No individual member, officer, or employee of the Authority by through or under whose supervision (in whole or in part) the contract was offered and awarded, shall derive personal financial benefit from nor hold any beneficial interest, direct or indirect, in the contract.
 - d) Reasonable efforts to procure competitive prices and services were made.
- The Authority is authorized to self-certify those procurements listed in Chapter 11, 1.A.1. Items (a) through (h), of the Procurement Handbook for Public Housing Agencies, 7460.8 REV-1, that would otherwise require HUD's formal prior approval.

Good Cause Justification for self-certification for procurements that normally require HUD's formal prior approval states that

As the Authority will self-certify that it has complied with existing HUD or moving to work authorized procurement, any action taken by the Authority related to these eight instances would be fully justified and documented. As a result of this waiver, the Authority will demonstrate that through the use of this streamlined contracting process, work will be completed quicker, at a reasonable cost and within governing procurement policies.

Handbook Requirements Waived by Moving-to-Work Agreement

The Authority's Moving-to-Work Agreement waived the section in HUD Handbook 7460.8, Chapter 11, Paragraph 1.A.1, which requires HUD's formal prior approval for the following eight items:

- a) Solicitations and contracts by the housing authority whose procurement procedures or operation fails to comply with the procurement standards in 24 CFR 85.36(b), 24 CFR 85.36(g)(2)(i)

- b) Noncompetitive procurements expected to exceed \$100,000, including any procurements in which only one bid or proposal is received in response to solicitation, 24 CFR 85.36(g)(2)(ii)
- c) Brand name only procurements expected to exceed \$100,000, 24 CFR 85.36(g)(2)(iii)
- d) Awards over \$100,000 to other than the apparent low bidder under a sealed bid procurement, 24 CFR 85.36(g)(2)(iv)
- e) Proposed contract modifications changing the scope of a contract or increasing the contract amount by more than \$100,000, 24 CFR 85.36(g)(2)(v)
- f) Contracts for services whose initial period exceeds two years, and any option, extension, or renewal of a contract for services which makes the total length of the contract, as modified, exceed two years
- g) Procurements for legal or other services in connection with litigation
- h) Procurements which exceed the amount included in the HUD-approved Development Cost Budget or Operating Budget, or exceed the HUD-established threshold for revisions to the CIAP Budget or to the CGP Annual Statement, where HUD has issued a notice of deficiency or corrective action order in this functional area.

Office of General Counsel Legal Opinion

We obtained a legal opinion from HUD's Office of General Counsel to determine whether the Authority's participation in the Moving to Work program affected the applicability of existing procurement requirements. HUD's Office of General Counsel reassured us that, under the Moving to Work Agreement, procurement requirements established in 24 CFR 85.36, HUD Handbook 7480.8 REV-1, and the Authority's procurement policies and procedures remain applicable. The only exception is that the Authority has the benefit of self-certification for eight specific items (listed above), in which the handbook normally requires prior HUD approval.