



U.S. Department of Housing and Urban Development
District Office of the Inspector General
Office of Audit
Richard B. Russell Federal Building
75 Spring Street, SW, Room 330
Atlanta, GA 30303-3388
(404) 331-3369

January 11, 2002

2002-AT-1805

MEMORANDUM FOR: Hildamar Ortiz, Director, Public Housing Division, 4NPH

FROM: Nancy H. Cooper 
District Inspector General for Audit-Southeast/Caribbean, 4AGA

SUBJECT: Puerto Rico Public Housing Administration (PRPHA)
Citizen Complaint on Martinal Property, Inc (Management Agent)
San Juan, Puerto Rico

We completed a review of the subject Management Agent's procedures in awarding a contract under Bid 99-12. The procurement was for roof repairs at Luis Llorens Torres, Parque San Agustin, and Puerta de Tierra public housing projects. Martinal Property, Inc. is the manager of these projects under a contract with the PRPHA. Our review was prompted by a citizen's complaint alleging irregularities in the procurement process. Our objective was to determine the validity of the complaint and if the procurement procedures used by the Management Agent for Bid 99-12 complied with HUD requirements.

BACKGROUND

On June 26, 2000, we received a complaint about the bidding of a contract for roof repairs at three public housing projects - Luis Llorens Torres, Parque San Agustin, and Puerta de Tierra. Bid 99-12 was advertised in October 1999. The complainant raised concerns about the small number of bidders, improper bidding by the winning joint venture, excessive rate paid for the work, the quality of the materials used, and safety concerns. Although three projects were included in the advertisement for bid, Martinal did not execute a contract for the work at Puerta de Tierra. Martinal executed contracts for the remaining two projects totaling \$2,846,314 and funded with 1999 Comprehensive Grant Program (CGP) funds.

Title 24, Code of Federal Regulations (CFR), Subpart 85.36 governs the PRPHA's procurement and associated management controls. These are the basic principles that must be followed in obtaining and paying for goods and services. The regulations allow the PRPHA to use its own procurement procedures provided they conform to the Federal standards. The PRPHA's procurement regulations dated August 13, 1993, incorporate the Federal standards but also impose additional requirements.

HUD Handbook 7460.8, Rev-1, Procurement Handbook for Public Housing Agencies and Indian Housing Authorities, dated January 1993 supplements the Federal regulations.

These criteria apply to the PRPHA and to its management agents.

SCOPE AND METHODOLOGY

We interviewed Management Agent officials, HUD and PHA personnel, potential contractors, and others entities referenced in the complaint. We also reviewed the Management Agent's procurement file for Bid 99-12 and HUD's files pertaining to the 1999 CGP funds assignment. In addition, we made a site visit to Luis Llorens Torres Public Housing Project. Our review was limited in scope and not intended to meet all requirements of Government Auditing Standards.

SUMMARY

While we found the complainant's specific allegations were not valid, we did confirm irregularities in the procurement process. The Management Agent did not properly advertise the bid, did not perform a cost and price analysis, and awarded contracts for a different scope of work and twice the price of the winning bid. Consequently, the bid process failed to give assurances of either adequate competition or of value received. We are making no recommendations regarding procurement procedures since HUD is now working closely with the PRPHA to correct a myriad of management deficiencies, especially in the area of procurement. However, we are recommending that HUD direct the PRPHA to assure that all work under the subject contract was satisfactorily completed.

* * * * *

Please furnish this office a reply within 60 days for each recommendation describing: (1) the corrective action taken, (2) the proposed corrective action and a planned implementation date, or (3) why action is not considered necessary. Also, please furnish us copies of any correspondence or directives issued because of the review. Note that Handbook 2000.06 REV-3 requires management decisions to be reached on all recommendations within 6 months of report issuance. It also provides guidance regarding interim actions and the format and content of your reply.

We are providing a copy of this report to the PRPHA. If you have any questions, please contact me or Aurora Rodriguez, Senior Auditor, at 787-766-5540.

Appendices:

- A – Finding and Recommendation
- B – Auditee Comments
- D – Distribution

FINDING AND RECOMMENDATION

Finding – Management Agent Did Not Follow Procurement Requirements

We determined that the specific allegations of the complaint were not valid. However, the Management Agent did not comply with HUD's procurement requirements. It did not properly advertise the bid, did not perform a cost and price analysis, and awarded contracts for a different scope of work and twice the price of the winning bid. Consequently, the bid process failed to give assurances of either adequate competition or of value received.

The Management Agent did not publish the invitation to bid as required by the written procurement regulations. The Agent published the announcement once in the El Vocero newspaper on October 23, 1999. The bid opening was held 12 days later on November 4, 1999. PRPHA Regulation for Procurement, Article 7.B.1.c.1 requires invitations to bid and bid notices to be published on 2 different days in two general circulation newspapers. HUD Handbook 7460.8, Rev.1 App1, requires a minimum of 15 days from the advertisement to the bid opening.

The files contained no evidence that the Management Agent performed a cost and price analysis. Such an analysis is used to determine the reasonableness of the proposed contract price. Title 24 CFR part 85.36(f) requires grantees and sub-grantees to perform a cost and price analysis in connection with every procurement action including contract modifications. The winning contractor offered to seal 35 percent of the roof area for \$2.40 per square foot and the rest for \$2.90 per square foot. The procurement documents did not indicate the basis for the difference in price. A cost and price analysis should have included an evaluation of the propriety of the difference in price.

After the bid opening, the Management Agent changed the scope of work and significantly increased the roof area to be repaired without going through additional competition. The roof area to be waterproofed as specified in the bid was 515,708 square feet for Luis Llorens Torres project, with repairs to correct levels specified as 156,640 square feet. The winning contractor quoted \$1,483,243 in its bid. However, the contract executed on March 17, 2000, between Martinal Property and the winning contractor included waterproofing a roof area of 987,767 square feet plus repairs to level an estimated 313,280 square feet for a total contract amount of \$2,837,208. The contract was double the amount of the bid. Such a significant increase (91 percent) could have affected the prices quoted.

Upon inquiry, a Management Agent official stated that after receiving the bid proposals, the President of Martinal decided to perform the roof sealing on all the buildings, communal centers, and kiosks of the Luis Llorens Torres project. This official then requested a new price from the lowest bidder, Jorge Hernandez, and awarded the contract. This was contrary to 24 CFR 85.36(d)(2)(ii)(A) which requires full and open competition and procurement by sealed bids (formal advertising). Negotiation is not allowed when procurement is by sealed bids. The Management Agent awarded a contract without following the proper procurement process.

It is uncertain whether the PRPHA paid a fair price for the roofing work done at these projects. It is imperative that the Management Agents of the PRPHA understand and follow the procurement requirements. Those that fail to do so, as Martinal did in this bid, should not be selected to do business with the authority or HUD in the future.

Auditee's Comments

The Management Agent provided a reply to the PRPHA. The PRPHA did not agree with the answer given by the Management Agent, and initiated an audit of their reply. Also, the PRPHA instructed its Director of Operations to assign an engineer to inspect the work that was performed.

Recommendation

- 1A. Obtain assurance from the PRPHA that all work under the subject contract was satisfactorily completed.

AUDITEE COMMENTS

**"Nydia L. Carrillo
Castillo"**
<NCarrillo@avp.gobi
erno.pr>

To: "arodriguez@hudoig.gov" <arodriguez@hudoig.gov>
cc:
Subject:

11/16/01 02:52 PM

I am sending you by fax the response that was prepared by the Manager Agent regarding your audit.

We did not agree with this answer to the findings and we initiated an audit of their allegations. Also, we have instructed our Director of Operations to assign an Engineer to inspect the works that were performed.

Once we complete the audit and inspections, we will provide you with the PRPHA final determinations and about your audit.

If you have any questions, feel free to contact me at (787) 754-0321.

Sincerely,

Carlo G. Laboy Díaz



October 27, 2001

Mr. Carlos G. Laboy Díaz
Administrator
Puerto Rico Public Housing Administration
606 Barbosa Avenue, 8th Floor
Río Piedras, PR

(HAND DELIVERED)

**RE: BID 99-12 ROOFS WATERPROOFING
LUIS LLORENS TORRES (RQ-00-2009)**

Dear Mr. Laboy Díaz:

We hereby direct your concerns regarding the Inspector General report about reference bid procurement process. Accordingly, the following is our response to said report:

- Number of bidders: Six entities were interested in this bid and they purchased the bid package. These six interested entities also attended the pre-bid meeting held on October 29, 1999. Of these, two submitted bid proposals. Both entities were duly qualified and the bid was awarded to the lowest bidder. Applicable regulations do not require that a bid process be canceled when bid proposals are received from two bidders. On the contrary, not awarding this bid could have resulted in legal action taken by the lowest bidder, moreover when his bid offer was reasonable.
- It is true that three projects were included in the advertisement for bid. They were Luis Lloréns Torres, Parque San Agustín and Puerta de Tierra. At that time it was our intention to contract the roofs waterproofing of the three projects. However, PRPHA representative, Ing. José Vázquez, informed us that the waterproofing of Puerta de Tierra will not be done because said project was included for modernization in 2002, according to the PRPHA Agency Plan.
- It is important to emphasize that the I.G. Report specifies that the allegations of the complaint were not valid.
- It is also important to emphasize that the Memorandum from Nancy H. Cooper, District Inspector General for Audit-Southeast/Caribbean Director, specifies that they are making no recommendations regarding procurement procedures since HUD is now working closely with PRPHA to correct a myriad



REAL ESTATE MANAGEMENT CONSULTANTS
701 Ponce de León Ave. • Suite 100 (Lobby) • Centro de Seguros Building • Miramar • San Juan • Puerto Rico 00907
Telephone: (787) 725-7500 • Fax: (787) 723-7311

of management deficiencies, specifically in the area of procurement. They do recommend that HUD direct the PRPHA to assure that all work under the subject contract was satisfactorily completed. Likewise, the recent October 23, 2001 letter directed to you from Ms. Olga Saez, Acting Director of the HUD Office of Public Housing, states that "In lieu of improvements made by the personnel managing the modernization program, this serves as the official notification that this office will no longer require the PRPHA to submit to HUD contract settlement documents for review and concurrence. In this regard, we are returning the following contract closeout documents previously submitted to this office for review and concurrence: RQ3082, Ramón Marín Solá, RQ 2009, Luis Lloréns Torres and RQ5114, Covadonga. You should proceed with the final closeout of these contracts at your discretion."

Concerning this matter, as Management Agent we are responsible to PRPHA in assuring that all roofs waterproofing works were properly and satisfactorily completed. We hereby do certify that all roofs waterproofing works performed in Luis Lloréns Torres were satisfactorily completed. We certainly have available the inspections and related documents to support this, which we would be eager to show you in any meeting you may allow.

- It is correct that the invitation for bid announcement was published once in the El Vocero newspaper on October 23, 1999. It is also correct that the bid opening was held on November 4, 1999. We must point out that HUD Handbook 7460.8 Rev-1, page 6A-189, section 3-13, clearly states that it is recommended that the bid ad run once each week for two consecutive weeks. **This is only a recommendation, not a requirement.** Furthermore, in PRPHA's "REGLAMENTO DE COMPRAS DE BIENES Y SERVICIOS NO PERSONALES DEL DEPARTAMENTO DE LA VIVIENDA Y SUS AGENCIAS ADSCRITAS", page 21, article X, C, A, a, specifies that "La convocatoria se realizará publicando un aviso en un periódico de circulación general, por lo menos 1 vez." This document does not even specify the number of days between the date of the advertisement for bid and the date of the bid opening. **Obviously, there is no finding or irregularity concerning this matter.**
- Regarding the cost and price analysis, the winning contractor included in his bid, offers of \$2.00 per square foot, \$2.40 per square foot and \$2.90 per square foot, due to the different size, height, and existing conditions of the many different types of buildings that comprise Luis Lloréns Torres public housing project. Certainly, waterproofing a small one story "Kiosko" is less expensive than waterproofing a large four stories building. It was also informed in the pre-bid meeting that the bid would be awarded to the responsible bidder whose offer best comply with the specifications, terms, conditions, general instructions, etc., while taking into consideration the price and other factors. It was also stated that we would reserve the right of awarding this bid for the total amount, by parts or by adding other buildings where the cost per square feet would be the same as the cost included in the bid offer. Because of these reasons during the pre-bid meeting held on October 29, 1999 we required from all prospective bidders an on site inspection. Said inspection was held on November 1st, 1999. Thus, the winning bidder submitted his bid offer in compliance with these requirements. This is the reason that his offer includes three different costs per square foot. But at no time was any negotiation held contrary to the bid offer costs already submitted by the winning contractor in his sealed bid, which was opened the day of the bid, November 4, 1999. We did, as allowed in our bid documents, increase the amount of buildings and thus the amount of roofs square footage to be waterproofed. All these

matters were previously presented to PRPHA, analyzed and approved. Certainly the best evidence is that the necessary additional funds for the waterproofing of all buildings were duly approved. The same cost included in the awarded contractor bid offer were used at all times.

We again emphasize the reasonableness of the awarded bid offer by taking into consideration that the HUD document known as COMPREHENSIVE GRANT PROGRAM ESTIMATED COSTS WORKSHEET establishes the price of roof waterproofing at \$3.70 per square foot. Again, the offer of the awarded bidder is way below HUD's own suggested reasonable price. Thus, it is certain that PRPHA paid a fair price for the roofs waterproofing works performed, moreover if we take into consideration that the product used is first quality DANOSA SYSTEM, with a ten year bonded warranty, and also was previously duly approved by a PRPHA engineer.

- Accordingly, we disagree with the results of the I.G. report. We understand that we complied with HUD's procurement requirements, the process was duly discussed with and approved by PRPHA, the bid was properly advertised, an adequate price analysis performed, and awarded the bid contract for the same scope of work utilizing the same bid offer costs, being the only exception the increase of the buildings to be waterproofed, a right duly stated in the bid documents.

We sincerely hope to have explained this matter to your full satisfaction.

Very cordially yours,



Miguel Quiñones Coll
President

DISTRIBUTION

President, Martinal Property Corp.
 Administrator, Puerto Rico Public Housing Administration, San Juan, Puerto Rico
 Secretary, S
 Deputy Secretary, SD (Room 10100)
 Chief of Staff, S (Room 10000)
 Assistant Secretary for Administration, S (Room 10110)
 Acting Assistant Secretary for Congressional and Intergovernmental Relations, J (Room 10120)
 Deputy Assistant Secretary, Office of Public Affairs, S, (Room 10132)
 Deputy Assistant Secretary for Administrative Services, Office of the Executive Secretariat, AX
 (Room 10139)
 Deputy Assistant Secretary for Intergovernmental Relations,
 Acting Deputy Chief of Staff, S (Room 10226)
 Deputy Chief of Staff for Policy, S (Room 10226)
 Deputy Chief of Staff for Programs, S (Room 10226)
 Special Counsel to the Secretary, S (Room 10234)
 Senior Advisor to the Secretary, S
 Special Assistant for Inter-Faith Community Outreach, S (Room 10222)
 Executive Officer for Administrative Operations and Management, S (Room 10220)
 General Counsel, C (Room 10214)
 Assistant Secretary for Housing/Federal Housing Commissioner, H (Room 9100)
 Assistant Secretary for Policy Development and Research, R (Room 8100)
 Assistant Secretary for Community Planning and Development, D (Room 7100)
 Assistant Deputy Secretary for Field Policy and Management, SDF (Room 7108)
 Office of Government National Mortgage Association, T (Room 6100)
 Assistant Secretary for Fair Housing and Equal Opportunity, E (Room 5100)
 Director, Office of Departmental Equal Employment Opportunity, U
 Chief Procurement Officer, N (Room 5184)
 Assistant Secretary for Public and Indian Housing, P (Room 4100)
 Director, Office of Departmental Operations and Coordination, I (Room 2124)
 Office of the Chief Financial Officer, F (Room 2202)
 Chief Information Officer, Q (Room 3152)
 Acting Director, HUD Enforcement Center, V, 1250 Maryland Avenue, SW, Suite 200
 Acting Director, Real Estate Assessment Center, X, 1280 Maryland Avenue, SW, Suite 800
 Director, Office of Multifamily Assistance Restructuring, Y, 1280 Maryland Avenue, SW,
 Suite 4000
 Inspector General, G (Room 8256)

Secretary's Representative, 4AS
Area Coordinator, San Juan Area Office, 4NS
Director, Public Housing Division, 4NPH
Audit Liaison Officer, 3AFI
Audit Liaison Officer, Office of Public and Indian Housing, PF (Room P8202)
Departmental Audit Liaison Officer, FM (Room 2206)
Acquisitions Librarian, Library, AS (Room 8141)
Counsel to the IG, GC (Room 8260)
HUD OIG Webmanager-Electronic Format Via Notes Mail (Cliff Jones@hud.gov)
Public Affairs Officer, G (Room 8256)
Stanley Czerwinski, Associate Director, Resources, Community, and Economic Development
Division, U.S. GAO, 441 G Street N.W., Room 2T23, Washington DC 20548
The Honorable Fred Thompson, Chairman, Committee on Governmental Affairs,
United States Senate, Washington DC 20510-6250
The Honorable Joseph Lieberman, Ranking Member, Committee on Governmental Affairs,
United States Senate, Washington DC 20510-6250
The Honorable Dan Burton, Chairman, Committee on Government Reform,
United States House of Representatives, Washington DC 20515-6143
The Honorable Henry A. Waxman, Ranking Member, Committee on Government Reform,
United States House of Representatives, Washington, DC 20515-4305
Ms. Cindy Fogleman, Subcommittee on Oversight and Investigations, Room 212,
O'Neil House Office Building, Washington, DC 20515-6143
Steve Redburn, Chief, Housing Branch, Office of Management and Budget, 725 17th Street, NW,
Room 9226, New Executive Office Bldg., Washington, DC 20503
Sharon Pinkerton, Deputy Staff Director, Counsel, Subcommittee on Criminal Justice, Drug
Policy and Human Resources, B373 Rayburn House Office Bldg., Washington, DC 20515
Armando Falcon, Director, Office of Federal Housing Enterprise Oversight, O, 1700 G Street, NW,
Room 4011, Washington, DC 20552