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MEMORANDUM NO.: 2003-LA-1801

MEMORANDUM FOR: Joyce L. Lee, Director, Office of Public Housing, 9APH

Joan S. Hobbs

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

SUBJECT: The Housing Authority of the City of Las Vegas
Procurement and Contract Activities
Las Vegas, Nevada

INTRODUCTION

In response to your request, we included the Housing Authority of the City of Las Vegas (LVHA) in a larger survey of procurement by public housing authorities (HA's). The specific objectives were to determine if the LVHA (1) established adequate procurement policies and procedures, (2) followed its procurement policies and Federal requirements, (3) purchased only goods and services that were necessary and reasonable for proper and efficient performance and administration of the HA, (4) ensured proper receipt of purchased goods and services, and (5) elicited fair and open competition for contract awards.

METHODOLOGY AND SCOPE

In conducting the survey, we reviewed the LVHA's written procurement policies and procedures and interviewed responsible staff. We selected 16 procurement actions from contract logs and vendor payment records. We chose the procurements with the object of including all four HUD-approved procurement methods: sealed bids, competitive proposals, noncompetitive proposals, and small purchase procedures. Because we did not use a statistical sample, the items we reviewed are not representative for all of LVHA's procurements. We also reviewed the Federal requirements for procurement contained in 24 CFR 85.36, HUD Handbook 7460.8 REV-1, and OMB Circular A-87.

The survey generally covered the period from January 1, 1999, through June 30, 2002, and the fieldwork was performed at the HA from March through June 2002.

BACKGROUND

The LVHA was established pursuant to the laws of the State of Nevada to administer various low-income housing programs provided through the United States Housing Act of 1937, as amended, and local efforts. The LVHA is governed through a five member Board of Commissioners (the Board), appointed by the Mayor of the City of Las Vegas. The Board establishes policies and appoints an Executive Director who is responsible for implementing the policies. The former Executive Director passed away in June 2002.

The principal goal of the HA is to provide safe, decent, and sanitary housing to low-income families and senior citizens. As of Fiscal Year 2003, the HA had 6,448 units of housing consisting of 2,098 conventional public housing units, 320 non-Federal aided units, and 4,030 Section 8 units.

An Office of Inspector General (OIG) audit report dated January 1989, included findings of \$3,967,444 in ineligible costs and \$5,699,864 in unsupported costs. In February 1996, OIG issued another report identifying \$830,652 in ineligible costs. As of October 2002, all funds had been returned.

RESULTS OF REVIEW

Procurement and Contracting Policies Were Not Followed

LVHA's policies and procedures were not adequate to ensure compliance with Federal regulations and in some cases, HA officials circumvented established procedures. Some contracts were awarded without fair and open competition. Services in excess of the small purchase limit were obtained without a written contract. When contracts did exist, the terms were often not enforced or included an open-ended escape clause that favored the contractor. As a result, the LVHA expended funds for goods and services that were not proper and reasonable, increased monetary and legal risks by conducting business without the benefit of contracts, failed to ensure open and free competition, and allowed contracts to contain termination clauses allowing contractors to simply walk away from signed contracts. Our review of 16 procurement actions identified ineligible costs totaling \$57,000 and unsupported costs totaling \$101,705.

Although we found only minor deficiencies in the sealed bid procurement of two construction contracts and in four of the five small purchases reviewed, we found significant deficiencies in the LVHA's procurement of services and administration of service contracts. The LVHA did not follow Federal regulations, HUD requirements, or its internal policies for procurement or contract administration. Deficiencies included the award of contracts without competition and payment for ongoing services without the benefit of a contract. In some cases, the LVHA continued to receive and pay for services far beyond the expiration dates of the contracts. The LVHA also failed to include all required clauses in its written contracts, and could not show it followed procedures to ensure it did not do business with parties suspended or debarred by the Federal government. We attribute the deficiencies to poor controls and decisions by HA officials not to follow established procurement policies. In addition, the Board of Commissioners did not maintain adequate oversight when it allowed a policy change to enable the Executive Director to enter into contracts exceeding

\$25,000 without prior board approval. As a result, the LVHA expended funds for goods and services it did not determine to be proper and reasonable. It also increased monetary and legal risks by conducting business without the benefit of contracts, failing to ensure open and free competition for all contracts awarded, and allowing a contractor to terminate a contract by exercising a termination clause.

Procurement Policies

Under LVHA's procurement policies published in October 1996 and February 2001, the Executive Director was not required to obtain approval by the Board of Commissioners prior to making purchases or entering into contracts for amounts exceeding \$25,000, provided the goods or services were included in the Board-approved budget. As a result, the Executive Director made unilateral procurement decisions without any oversight. For instance, in the case of the professional and consulting services procured directly by the Executive Director, the contracting department was not involved.

Subsequent to our site work, the LVHA's Board approved another Procurement Policy dated October 15, 2002, with the primary policy change being: "...The Board of Commissioners must give prior approval to all purchases/contracts over \$25,000." We believed this change still fell short of needed changes, since it was silent on approval requirements for change orders and contract amendments/modifications. After our March 7, 2003, exit conference with executive staff, we were provided another revised policy that was prepared as a Draft Procurement Policy for its' Commissioners to approve. We reviewed it and it still does not meet HUD's requirements for small purchase procedures as we explain later in this report in our evaluation of the auditee's comments.

Contract Administration

HUD Handbook 7460.8 Rev-1, paragraph 3-8, requires all HAs to have a management information system for procurement. The system should provide accurate information as to procurement workload, statistics on key factors of competition, as well as deliveries and work progress. The Executive Director should periodically assess the performance of the HA's procurement operations to ensure contracts (including small purchases) are being awarded on a timely basis, and supplies are being delivered or services performed, as provided in the contract. Although the LVHA's procurement policy stated the HA would maintain a contract administration system that would ensure contractors performed in accordance with their contracts, no such system was in place for non-construction contracts. As a result, some vendors were paid significant amounts of money without having a contract, and other vendors were paid although their work was not consistent with contract terms.

The purchasing agent was responsible for the procurement process through contract execution for professional and service contracts. However, the LVHA did not assign clear responsibility for monitoring payments or assuring amounts were consistent with the procurement method or the contract.

The LVHA employees responsible for accounting and accounts payable functions said they pay all invoices that have the Executive Director's signature or the signature of any department head as evidence of approval. They did not monitor cumulative payments against contract amounts or review contracts to ensure invoices were in the required form and payments were consistent with contract terms. Staff responsible for paying invoices said they do not have copies of contracts, although the LVHA's Accounts Payable Training Handbook (which was the only source of written procedures available for the function) included contracts in the accounts payable filing system. The procedures did not, however, require a check for consistency between contracts and invoices. The LVHA needs to adopt procedures that ensure payments are not made without adequate documentation of the procurement method and consistency with contract terms, if applicable. The system must ensure that contract limits for time and payment amounts are not exceeded and the vendor provides the services specified in the contract.

PROFESSIONAL AND CONSULTING SERVICES

Because the Executive Director handled the hiring of certain professionals and consultants, he was able to circumvent procurement policies and procedures. There is no evidence the Executive Director performed an independent estimate of cost or price for any of three procurements we reviewed. Under 24 CFR 85.36(f), the LVHA is required to make independent estimates before receiving bids or proposals. The Executive Director did not procure professional services through an advertised Request for Proposal (RFP) in order to achieve free and open competition. Instead, it appears he awarded work to the firms he desired. Without cost analysis, price analysis, and RFPs, there is no assurance the fees paid for professional and consulting services were proper and reasonable, and the HA incurred costs of \$101,705 that are unsupported. An additional \$57,000 is ineligible. This occurred because the Executive Director was not subject to adequate oversight by the Board of Commissioners (he was not required to obtain their approval for any budgeted purchase) and there were poor controls over contract administration and accounts payable.

The procurement of consulting services comes under the requirements of 24 CFR 85.36(d)(3), procurement by competitive proposals. The regulations require the HA to prepare and publicize RFPs: "...identifying all evaluation factors and their relative importance. Proposals will be solicited from an adequate number of qualified sources. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered." The LVHA's procurement policies reflect these requirements.

In addition, 24 CFR 85.36(b)(9) requires the HA to maintain records sufficient to detail the significant history of a procurement. These records should 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 LVHA procurement policy, in effect from 1996 until February 2001, mirrored the CFR. In 2001, the new procurement policy reduced the minimum record requirements to contract type, method of procurement chosen, and basis of selection. It omitted mention of the rationale for the method of procurement and the basis for the contract price. Thus, the LVHA procurement policy is not in compliance with Federal requirements.

Under 24 CFR 85.36(f)(1), the HA must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the HA must 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. A cost analysis is always necessary when price reasonableness cannot be readily established on the basis of a catalog price or market price of a commercial product. The LVHA included these requirements in its procurement policies, but its procedures did not ensure compliance.

In addition to Federal Regulations, the LVHA is subject to the *Nevada Revised Statute Chapter 332 - Purchasing: Local governments*. Under both the statute and the LVHA's written policies, the ceiling for small purchases is \$25,000. Although the HA is not required to advertise a RFP for small purchase contracts, it is required to solicit proposals from an adequate number of sources. The LVHA's own policy requires it to obtain quotes from at least three sources for small purchases over \$10,000 but less than \$25,000, and award the contract to the offeror providing the lowest acceptable quote, unless justified in writing based on price and other specified factors. If non-price factors are used, they must be disclosed to all those solicited. The names, addresses/telephone numbers, date, and amount of each quotation shall be recorded and maintained as a public record.

Herrera Communications & Tribeca Media: Public Relations Services

LVHA did not award public relations contracts in accordance with Federal regulations and Nevada Revised Statutes. Starting in January 2001, the Executive Director hired Herrera Communications to provide public relations services, without benefit of a cost analysis, an RFP, or a contract, and authorized monthly payments of \$4,500. Although LVHA initiated an RFP in April 2001, and finally awarded a contract to Tribeca Media in November 2001, the HA continued to pay Herrera Communications (reducing the rate to \$3,500 for the last four months) through January 2002. Ten firms submitted responsive proposals for public relations services, but Herrera Communications did not respond to the RFP. Payments to Herrera Communications ceased in January 2002 without explanations and there was no evidence they provided any services for the \$50,000 in total payments they received. The twelve invoices Herrera submitted either stated they were for "retainer" payments or merely "professional services" or "consulting services" without any evidence that any services were provided. Since a retainer is an advance payment for services to be provided in the future, we looked to subsequent invoices to detail the work done and show credits towards advance payments made. Although Herrera Communication collected advanced fees and retainer fees, they never submitted evidence the fees were applied to completed work. In accordance with OMB Circular A-87, *Cost Principles for State and Local Governments*, and the LVHA's Consolidated Annual Contributions Contract (ACC), costs must be necessary and reasonable to be allowable. A-87 also requires costs to be net of any applicable credits and adequately documented. In assessing reasonableness, A-87 states consideration must be given to the restraints or requirements imposed by such factors as sound business practices. The payment of advance fees without subsequent evidence that services were provided does not meet the criteria for necessary or reasonable costs, therefore, we

believe the \$50,000 dollars the LVHA paid Herrera Communications is ineligible. However, only \$36,000 of this amount was paid with Federal funds and needs to be repaid.

The HA evaluated all ten of the responsive submissions to the April 2001 RFP, and after considering price and other factors, it selected Tribeca Media. Tribeca Media had not identified Herrera Communications as a subcontractor or in any other capacity in its proposal, nor is there any evidence of a relationship between the two firms. In all, the LVHA took eight months to complete the procurement process, during which, it continued to pay Herrera Communications for public relations services. Although the LVHA entered into a contract with Tribeca Media in November 2001, it stipulated the work would be divided between Tribeca Media and Herrera Communications and wrote this requirement into the contract.

Under the contract between the LVHA and Tribeca Media, it was clearly stated that each firm would provide services on an as needed basis. Under the terms of the indefinite quantity contract, each firm would be paid for work performed, based on hourly rates specified in a contract attachment. Monthly amounts were not to exceed \$3,500 for each firm. Although the contract specified public relations work would be split between Herrera Communications and Tribeca Media, Herrera Communications was not required to sign the contract. The contract did not identify Herrera Communications as a subcontractor under Tribeca Media, or indicate Herrera Communications would be supervised by or report to Tribeca Media. In effect, the LVHA continued to pay Herrera Communications without subjecting the firm to a competitive process or requiring the firm to sign a contract.

The contract specified LVHA would issue task orders for work required and the contractor would submit monthly invoices detailing the service provided and the date of service. However, the LVHA did not have any record of written task orders and some of the invoices did not include dates or details of the work provided. LVHA paid six invoices for \$3,500 each, totaling \$21,000, that Tribeca billed as a “monthly retainer fee.” No work was documented to apply to these fees, and we consider these retainer fee payments totaling \$21,000 to be ineligible expenditures, per the requirements in OMB Circular A-87 and the Authority’s ACC.

The November 19, 2001, contract with Tribeca Media allowed for payments of up to \$84,000 annually. Actual payments to the two public relations firms during the period from January 2001 through February 2002 came to \$76,393¹ and we consider the entire \$50,000 paid to Herrera Communications and the \$21,000 paid to Tribeca Media to be ineligible expenditures.

In its response to the draft report, the LVHA provided documentation showing that \$14,000 of the ineligible expenditures that went to Herrera Communications were originally paid from non-Federal funds, and the remaining \$57,000 was transferred on March 27, 2003, from the HA’s non-Federally funded development program to the Federally funded conventional low-rent program. We are now satisfied that the ineligible \$71,000 has been either paid or repaid from non-Federal funds.

¹ See Appendix C and Appendix D for schedules of payments to Herrera Communications and Tribeca Media.

NFC, Inc.: Policy Consultant

LVHA's contract terms with National Facility Consultants, Inc. (NFC) were changed, effectively awarding additional work to the vendor without a competitive procurement or cost/price analysis. In September 2000, the Executive Director contracted with NFC to review and evaluate existing LVHA management policies. The work was to be completed within 90 days for a price of \$18,500. There was no price or cost analysis, as is required by Federal regulations, to show that fees were reasonable. The Executive Director stated in a memorandum to the legal department that he had requested quotes from five firms but only received a reply from one. However, there was no documentation to support the statement, and he did not name the firms. Although the contract amount was under their small purchase limit, the HA paid NFC over \$38,000 and broadened the scope of the contract to include services unrelated to the evaluation of management policies.

Once signed on September 29, 2000, the 90-day contract underwent several modifications, some of which were not in writing. The most recent modification was dated April 3, 2002, 18 months after the original completion date. The modifications included preparing the FY 2002 and FY 2003 annual Agency Plans required by HUD, while postponing the management policy review. As of March 15, 2002, the LVHA had paid NFC \$38,850 under the contract, which was still open. The LVHA did not provide adequate support to show costs were reasonable and there was no documentation of the work done by NFC to review management policies. We questioned \$38,850 expended as being unsupported costs and recommended the contract be terminated. In its response to our draft report, LVHA provided certification, signed by the contractor, that, as of March 14, 2003, there were no existing contracts between the HA and NFC.

EDTEC: Contract to Write a Grant Application

The Executive Director hired the Education Training & Enterprise Center (EDTEC) in April 2000 to research and prepare a HOPE VI grant application pursuant to a HUD Notice of Funds Availability. There was no record of his solicitation of proposals, but the Executive Director explained this was handled as an informal process because the cost was under the \$25,000 small purchase limit. Although there is no documentation of the information the LVHA provided to the firms, three firms submitted proposals. One firm proposed to write a grant application for \$24,000. EDTEC proposed \$24,550. A third firm proposed prices for grant applications for three separate housing projects at \$50,000, \$60,000, and \$75,000.

Other than the proposals, the only procurement document available for review was a memorandum from the Executive Director to the HA's legal department instructing it to prepare two contracts for grant proposals for separate projects. The Executive Director's instructions specified one contract for a firm that proposed \$24,000 and a second contract for EDTEC in the amount of \$24,550. However, there was only one contract entered into, and it was with EDTEC. There was no documented explanation of the decision not to award two contracts. In addition, there was no explanation of why the one contract was not given to the lowest bidding firm.

The LVHA's procurement policy as of April 2000 required the award of any small purchase over \$5,000 go to the offeror providing the lowest acceptable quotation, unless justified in writing

based on price and other specified factors, such as for architect-engineer contracts. If non-price factors were used, they must be disclosed to all those solicited. The Executive Director did not follow the LVHA's procurement policy.

CCSN: Senior Social Services

The LVHA had contracted with Catholic Charities of Southern Nevada (CCSN) for senior companion services since 1995. The HA justified this as a sole source procurement. There is no assurance that the \$62,855 LVHA paid to CCSN for senior services during the audit period was reasonable and necessary. There was no competition for the contract, no independent estimate or cost or price analysis, the contract was not clear regarding the payment terms for the services to be provided, and a new type of service added in October 1999 (telephone reassurance services) may have been available for free. Payments continued for seven months after the 1999 contract expired. Although the new October 1999 contract with CCSN stated the LVHA would pay an amount *not to exceed* \$20,000 for senior companion services and an amount *not to exceed* \$10,000 for telephone reassurance services, the contract was silent on exactly what the basis for payment would be. The contract did not specify units of service (hourly or per contact would have been reasonable), how often services would be provided, or how many residents would be served. Since inadequate information was given, there was no way to measure whether the costs were reasonable, so we questioned the \$62,855 as unsupported costs.

In fact, there is evidence the payments were not necessary for the added telephone reassurance services. A LVHA manager, who was not involved in the 1999 contract, questioned these payments in 2002 because the telephone reassurance service was provided by volunteers and made available, free of charge, to any elderly resident of Las Vegas. The manager asked why the LVHA was paying for a service that was available for free. The LVHA stopped paying for telephone reassurance service with the new contract dated July 8, 2002.

Although the 1999 contract required monthly written reports from CCSN detailing "the status and names of residents served and the type of service provided to each resident; the status of the service provided to each resident (i.e. on-going, temporary, etc.), and whether the resident would benefit more from an assisted living environment," no such reports were submitted. The invoices showed resident's names and scheduled days for visits, without any other details. There was no evidence of effort by the LVHA to monitor performance under the contract. The current 2002 contract requires CCSN to submit detailed reports on each senior companion visit and the clients' signatures acknowledging each visit. The reports are due no later than the 5th of each month. However, the new contract still only named a "not to be exceeded" amount without specifying a cost per client visit; therefore, there was still no mechanism for the LVHA or us to assess the reasonableness of the contract amount.

Apex Maintenance, AC Janitorial, A&F Maintenance: Janitorial Services

LVHA did not follow HUD requirements when it procured janitorial services. The HA did not issue a formal contract for the services, and then it continued to use the same vendors from 1995 until 2002. HUD 7460.8 Rev-1 (Chapter 11 – HUD Review Requirements) requires prior HUD

approval when a HA wishes to extend a contract beyond two years. Unless approved by HUD, at the end of two years the HA must advertise again for proposals or bids.

The error of not issuing a contract does not negate the need to solicit new proposals after two years. LVHA's noncompliance in procuring janitorial services resulted in increased risk and lack of control over the vendors, a lack of assurance costs were reasonable, and the denial of open competition to other firms that may have been interested in bidding. During the period included in our review, payments to the janitorial firms increased more than 600%, from a total of \$45,222 in 1999 to a total of \$286,237 in 2001. Payments totaled \$102,875 for the first 4 ½ months of 2002.

Between January 1999 and April 2002, the LVHA paid a total of \$613,475 to AC Janitorial and A&F Maintenance without a formal contract and without following competitive procurement procedures. Officials explained that the HA used an RFP to select a vendor in 1995, and believed AC Janitorial and A&F Maintenance were being paid based on the prices proposed by the firm it had previously selected. That firm was called Apex Maintenance, Inc., but there was no contract. Instead, the LVHA issued several blanket purchase orders. Officials said this was due to a desire to have directors of different program areas monitor the work for their areas of responsibility. However, we see no conflict between an executed contract and the ability of different directors to report on the work done.

Apex, with the approval of the HA, "subcontracted" two thirds of the work to two resident-owned businesses, AC Janitorial and A&F Maintenance. According to HA officials, Apex went out of business after only 10 months, leaving AC Janitorial and A&F Maintenance to split the extra work. The two janitorial firms continued to work for the LVHA without a contract, and without selection through free and open competition, until April 2002, when the LVHA initiated a new RFP and a new vendor was selected. Since neither firm had been selected through competitive procurement, the HA should have advertised for proposals and selected the most responsible firm in accordance with the requirements in 24 CFR 85.36.

Although HA officials said AC and A&F initially continued to work at the rates proposed by Apex in its 1995 proposal, they increased the rates throughout the years without documenting the changes. Officials also said they added more offices to the scope of services, and at some point began reimbursing the janitorial firms for cleaning supplies, even though, in accordance with Apex's original proposal these supplies were to be provided by the vendor. Apart from this verbal explanation, the LVHA could not provide documentation showing why the cost of janitorial services increased by over 600% between 1999 and 2001.

Payments for Janitorial Services 1/1/99 – 5/13/02			
Year	A C	A & F	Subtotal by Year
1999	\$25,260	\$19,962	\$45,222
2000	93,397	85,744	179,141
2001	134,049	152,188	286,237
2002*	52,112	50,763	102,875
Totals	\$304,818	\$308,657	\$613,475

*Includes only 4 ½ months

Other Contract Issues

Contracts did not contain required Federal clauses

When the HA did execute contracts, it did not include all clauses required by 24 CFR 85.36(i) and by HUD Handbook 7460.8 REV-1. The LVHA’s procurement policies state: “...In addition to a clause identifying the contract type, all contracts shall include any clause required by Federal statutes, executive orders, and their implementing regulations, as provided in 24 CFR 85.36(i), such as...” the LVHA’s written policy listed fourteen required clauses, but it did not enumerate all of the clauses required by the CFR. The clauses that were missing from contracts we reviewed were not listed in the LVHA’s written policy. HUD made it mandatory for housing authorities to use HUD contract forms, including HUD-5370-A non-construction contracts (See Appendix 14 of HUD Handbook 7460.8 REV-1). Using the HUD contract forms would have ensured contracts included the clauses required by 24 CFR 85.36(i) and the Handbook, but LVHA chose to create its own contracts or use contracts created by the vendors. As a result, the HA and HUD funds were subjected to unnecessary risks.

Missing Clauses [24 CFR 85.36(i)]	Cole	NFC	CCSN	EDTEC	Tribeca
(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.		X	X	X	X
(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement.					X
(7) Notice of awarding agency requirements and regulations pertaining to reporting.	X	X	X	X	X
(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.	X	X	X	<u>X</u>	X

There was no assurance contracts would not go to debarred or suspended contractors

LVHA did not always check the General Services Administration's List of Parties Excluded from Federal Procurement and Non-procurement Programs before purchasing goods or services. Some employees said they had checked the list, but did not document it. Some responsible employees were unaware there was a list to check, but said they ask vendors if they have been debarred or suspended. Others said they do not receive current lists. There was no documentation for 11 of 14 purchases we reviewed.

Although the LVHA's procurement policies require checking the list, they do not specifically require documentation. However, a lack of consistency between employees' understanding of the policy indicates a need for a clearer procedure. The list is available on-line at GSA's website. In order to document that a vendor is not on the list, the web page should be printed and included in the procurement or purchase file. Otherwise, there is no assurance that government sanctions against vendors are upheld.

Vendor	GSA Documentation in the File?
1. Richardson Construction	Yes
2. C & W. Enterprises, Inc.	Yes
3. Ned Cole, Architect	Yes
4. Tribeca Media	No
5. B'More Security	No
6. Rector & Moffitt, PC	No
7. National Facility Consultants, Inc.	No
8. The Educational Training & Enterprise Center	No
9. Catholic Charities of Southern Nevada	No
10. Fencing Specialists	No
11. Bill Heard Chevrolet	No
12. Boise Cascade	No
13. Clark County-Nevada Glass	No
14. A&F Maintenance	No

Contracts contained escape clause language that allowed contractors to terminate contracts at their option

In response to our Draft Report, LVHA provided written responses that included an amended contract and a draft of a contract with provisions for Contractor termination procedures. In reviewing these procedures, we learned that in effect LVHA had provided termination clauses in its contracts that allow Contractors to simply walk away from a signed contract upon written notice and without any penalty. One such contract contained the following language:

The contractor at its option, upon written notice to the LVHA, may terminate this agreement if:

1. The contractor is unable to provide the services as outlined in this Agreement due to a lack of funding, administrative determinations, or the imposition of statute, regulation or judgment.

2. The contractor determines that the LVHA has materially breached the provision of this Agreement.

We are very concerned that the Purchasing Agent allowed this type language to be included in any contracts. We were also alarmed to learn, subsequent to our Exit Conference of March 7, 2003, that an extermination contractor had provided the lowest bid, signed a contract, and subsequently walked away after invoking the above type termination clause. This was a glaring example of how the use of inappropriate contract clauses can benefit the contractor at the expense of the HA.

AUDITEE COMMENTS AND OIG EVALUATIONS

We had an exit conference with auditee officials on March 7, 2003, and the LVHA provided a written response to the draft memorandum, which is included in Appendix B. The LVHA agreed with the facts presented in this report. Enclosed with its written response, the LVHA provided documentation of corrective actions taken on all recommendations. This documentation will be sufficient to close two of the ten recommendations. We also revised the report to reflect the changes. In other cases, some additional action is necessary.

The LVHA provided documentation showing that \$14,000 of the ineligible expenditures we identified were paid from non-Federal funds and \$57,000 was transferred on March 27, 2003, from the HA's non-Federally funded development program to the Federally funded conventional low-rent program. As a result, we are satisfied that the recommendation has been completed and will be closed.

The LVHA also provided a draft of a revised procurement policy. As discussed below, the proposed revision still needs modifications and subsequent approval by HUD and the HA's Board of Commissioners.

Procurement Policies

Comments Synopsis

In response, the LVHA provided a Draft of its new Revised Procurement Policy and stated it followed almost exactly the HUD issued sample procurement policy in HUD Handbook 7460.8, REV-1.

In addition, correspondence from LVHA on April 29, 2003, regarding our concerns about an escape clause in an extermination contract, stated " ... It is our internal procedure that the "Best & Final" process will be conducted with only firms that are rated within 10% of the top-rated firm."

OIG Evaluation

We reviewed the revised Draft and noted that the small purchase procedure for items of less than \$10,000 is not consistent with the intent and requirements in 24 CFR 85.36 (d)(1), or the guidelines

in the HUD Handbook. The CFR requirement reads "...If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources." The Handbook suggests that only one quotation may be required for small purchases of under \$1,000 or at most, 10 percent of the HA's small purchase limit. Although the LVHA's small purchase limit, set by State law, is \$25,000, the LVHA's policy is that only one quotation is required for small purchases below \$10,000. We believe the LVHA would be better served by soliciting more than one phone or written quotation.

We saw no reference in the Draft Revised Policy to an internal procedure or internal policy that allows LVHA to conduct Best & Final proposals only with firms rated within 10% of the top rated firm, when a contractor chooses to terminate its contract. The purchasing agent's claim of such a policy was not supported, appears to be overly restrictive, and appears to have been created to justify inappropriate actions. In our opinion, this is yet another example of the cavalier contracting practices LVHA has continued to propagate. Any such internal policy must be included in their written procurement policy or manual, and must ensure full and open competition.

Contract Administration

Comments Synopsis

In response, the Executive Director issued a memorandum to the department heads assigning specific contract administration responsibilities to the contracting agent, the department heads, and the finance director.

OIG Evaluation

Although the memorandum assigned responsibilities, it fell short of creating a contract administration system. We believe a system still needs to be developed, approved, and documented in a procedures manual. The manual must specify system documentation and controls, the procedures that will ensure compliance with the policy. A key component should be a description of the accounting system/accounts payable modification that will provide an alert if payments to or billings from a vendor exceed either the small purchase limit or the contract limit.

Herrera Communications & Tribeca Media: Public Relations Services

Comments Synopsis

In its response to the draft version of this report, and subsequent to the Exit Conference held on March 7, 2003, the LVHA provided documentation showing that \$14,000 of the ineligible expenditures we identified were paid initially from non-Federal funds, and \$57,000 was transferred on March 27, 2003, from the HA's non-Federally funded development program to the Federally funded conventional low-rent program.

OIG Evaluation

We have reduced this recommendation to repay \$57,000, and are satisfied that this recommendation has been completed.

CCSN: Senior Social Services

Comments Synopsis

In its response, LVHA provided a document titled, “LVHA Contract #C02022 Addendum #1.” The document was a memorandum from the Purchasing Agent for LVHA, to a staff person at Catholic Community Services. It specified the July 2002 contract was amended to include a provision that all invoices would specify the number of hours the Senior Companion spent with the client at the rate of \$2.65 per hour, with an extended amount for mileage reimbursement at .345 per mile.

OIG Evaluation

The unit amount specified meets the intent of our recommendation, however, we reviewed the document the LVHA provided and it falls short of a properly executed contract amendment, as noted by the following discrepancies:

- In order to properly amend the contract, the amendment must be signed by both parties to the contract. This is stated explicitly in Article IV of the contract. Only P. Leary, with no official title shown, signed this memo, and there was no signature from anyone at LVHA.
- The contract we were concerned with was between Catholic Charities of Southern Nevada and the LVHA. The document the LVHA provided as a contract amendment was addressed to Catholic Community Services. We believe this may be a division of Catholic Charities of Southern Nevada, but any contract, amendment should be between the same two entities that entered the original contract with clarifications on any corporate name changes. The original contract, in Article V, stated that it would not be assigned, transferred, or delegated by either party.

This recommendation will remain outstanding until the contract is properly amended.

There was no assurance contracts would not go to debarred or suspended contractors

Comments Synopsis

In its response, the LVHA provided a copy of a memorandum from the purchasing agent to the Executive Director, stating the new procedures require staff to document checking the GSA list of debarred and/or suspended persons by placing the applicable pages in the procurement file.

OIG Evaluation

We believe the new procedure provides better assurance the GSA list will be checked; however, the latest revised procurement policy, in the section precluding contracts with debarred or suspended contractors, does not require documentation. We believe the procurement policy should be revised accordingly.

Contracts did not contain Federally required clauses

Comments Synopsis

In its response LVHA provided a revised sample contract that it claimed contained all of the required clauses identified in 24 CFR 85.36(i). It stated that the clauses were on pages 5-8 of the draft of the revised sample contract provided. The sample contract provided also contained language regarding an Indefinite Quantity Contract and stated this means "... LVHA does not at this time know the total of all work it will award to the contractor...."

OIG Evaluation

We reviewed the draft revised sample contract and it still did not contain all of the required clauses. It did not address access to records, and it did not provide for or address sanctions or penalties for breach of contract or contract violations. It also contained inappropriate termination for cause and convenience language that in effect was an escape clause as is addressed below.

In addition, in our opinion, an indefinite quantity contract type should only be used in extremely limited situations such as for Architect/Engineer services. LVHA should be able to reasonably estimate the quantity of services or goods required, particularly since 24 CFR 85.36(f) requires it "... must perform a cost or price analysis in connection with every procurement action including contract modifications." If an indefinite quantity contract is used, we believe the reasons need to be fully documented, and the contract needs to state a minimum and maximum quantity, based on a reasonable and supported estimate.

Contracts contained escape clause language that allowed contractors to terminate contracts at their option

Comments Synopsis

In its response, LVHA provided written responses that included an amended contract and a draft revised sample contract that had provisions for Contractor termination procedures. The termination language allows a contractor, at its option, to terminate a contract for reasons that include administrative determinations.

OIG Evaluation

The sample contract gives both the LVHA and the contractor the option to terminate the contract due to lack of funding, administrative determinations, or the imposition of statute, regulation or judgment. In effect LVHA has provided an escape clause to contractors that allows them an opportunity to simply walk away from signed contracts at their option, and with no obligations or penalties.

In our opinion, this is an unacceptable contracting option that should not be a routine clause in LVHA contracts and contract amendments. If contractors exercise the termination option, the results could range from cost inefficiencies, due to having to renegotiate or again bid contracts, to chaos from contractors abandoning contracts. We do not believe contractors should be provided with escape clauses, and such language should be removed from future contracts and amendments.

RECOMMENDATIONS

We recommend your office take corrective action to ensure:

- 1A LVHA revises its procurement policy to comply with, at a minimum, the requirements in 24 CFR 85.36 and HUD Handbook 7460.8, REV-1. The revised policy should incorporate by reference any and all internal policies, be approved by the LVHA's board, and sent to HUD for review and approval.
- 1B LVHA adopts contract administration procedures to ensure payments for services are in accordance with contracts and contractor performances are properly monitored. The system should include an alert if billings from a vendor exceed their small purchase limit of \$25,000, but there is no contract for authorization.
- 1C LVHA's legal department ensures that the contract with National Facility Consultants, Inc. has been effectively terminated.
- 1D LVHA adopts procedures to ensure all applicable contracts contain the required clauses identified in 24 CFR 85.36(i), and amends current contracts to include the required clauses.
- 1E LVHA amends its contract with Catholic Charities of Southern Nevada to specify a cost per visit for the Senior Companion Service program.
- 1F LVHA adopts procedures to ensure prospective vendors are not on GSA's list of Debarred or Suspended Entities and Individuals, and revises its procurement policy to reflect this requirement.
- 1G LVHA repays the ineligible expenditures of \$57,000 from non-Federal funds.

- 1H HUD staff assesses unsupported costs of \$101,705, identified in Appendix A, to determine whether repayment is appropriate.
- 1I LVHA removes the escape clause that allows contractors to terminate contracts at their option from all future contracts and amendments.
- 1J LVHA removes the Indefinite Quantity Clauses from all future contracts and amendments and ensures that it amends all active service contracts to eliminate this clause.

As required by HUD Handbook 2000.6 REV-3, within 60 days, please provide us, for each recommendation without a management decision, a status report on: (1) the corrective action taken; (2) the proposed corrective action and the date to be completed; or (3) why action is considered unnecessary. Additional status reports are required at 90 days and 120 days after report issuance for any recommendation without a management decision. Also, please furnish us copies of any correspondence or directives issued because of the audit.

If you have any questions, please contact Clyde Granderson, Assistant Regional Inspector General for Audit, at (415) 436-8101.

SCHEDULE OF QUESTIONED COSTS

	<u>Type of Questioned Costs</u>	
	<u>Ineligible 1/</u>	<u>Unsupported 2/</u>
Herrera Communications	\$36,000	
Tribeca Media	\$21,000	
NFC, Inc.		\$38,850
Catholic Charities of Southern Nevada		\$62,855
Total	\$57,000	\$101,705

1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law, contract, or Federal, State, or local policies or regulations. We questioned \$50,000 associated with the Herrera Communications contract, but only \$36,000 was paid with Federal funds.

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

Auditee Comments



Housing Authority of the City of Las Vegas

POST OFFICE BOX 1897
LAS VEGAS, NEVADA 89125
(702) 386-2727
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March 28, 2003

Ms. Joan S. Hobbs
Regional Inspector General for Audit
Office of Inspector General
U.S. Department of HUD
Code 9DGA
AT&T Center
611 West Sixth Street, Suite 1160
Los Angeles, CA 90017

Dear Ms. Hobbs:

Enclosed please find our response to the eight Recommendations indicated in the draft Audit Report dated March 5, 2003, and as discussed at the Exit Conference held on March 7, 2003, as follows:

Recommendation 1A – Attached is draft of revised Procurement Policy (**Tab A**).

Recommendation 1B – Copy of Contract Procedures Memorandum dated March 27, 2003, issued to LVHA staff detailing their responsibilities (**Tab B**).

Recommendation 1C – Copy of confirmation from National Facility Consultants, Inc. (NFC) that there are no current open contracts between NFC and our Authority (**Tab C**).

Recommendation 1D – Copy of confirmation from Catholic Community Services that they are now contractually obligated to specify a cost per visit for the services they provide to our Authority (**Tab D**).

Recommendation 1E – Attached is draft of revised sample Contract Form (**Tab E**).

Recommendation 1F – Copy of confirmation that vendors used by our Authority are not on GSA's list of Debarred or Suspended entities and individuals (**Tab F**).

Recommendation 1G – The ineligible expenditures of \$71,000 as identified in the OIG Report, Appendixes C and D, are paid from non-federal funds (**Tab G**).

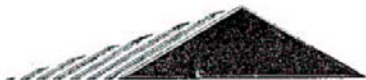
Recommendation 1H – We welcome HUD's staff to review and assess the unsupported costs of \$101,705 as identified in the OIG Report, Appendix A (**Tab H**).

MICHAEL J. McDONALD
CHAIRPERSON
BEATRICE TURNER
VICE CHAIRPERSON
DEWAIN STEADMAN
COMMISSIONER
CHRISTOPHER HOYE
COMMISSIONER
ROBERT FORBUSS
COMMISSIONER
PARVIZ GHADIRI
EXECUTIVE DIRECTOR

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Auditee Comments



Ms. Joan S. Hobbs
March 28, 2003
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Based on the above actions taken by the Housing Authority of the City of Las Vegas, we are respectfully requesting the eight recommendations be cleared.

We would like to extend our appreciation to your staff, [REDACTED] for their professionalism and courtesy they provided us during the Audit.

Should you have any questions or need further information, please do not hesitate to contact me at (702) 922-6850.

Sincerely,

Parviz Ghadiri
Executive Director

PG:ur

Attachments

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PAYMENTS TO HERRERA COMMUNICATIONS

Invoice Number	Invoice Date	Chk. No.	Check date	Check Amount
1	1/5/01	148525	1/19/01	\$ 4,500.00
3	1/29/01	149641	2/9/01	4,500.00
6	4/16/01	151972	4/20/01	4,500.00
8	5/17/01	153205	5/25/01	4,500.00
12	6/21/01	154372	6/28/01	4,500.00
15	7/24/01	155515	8/2/01	4,500.00
18	8/23/01	157240	9/13/01	4,500.00
21	9/21/01	157536	9/28/01	4,500.00
24	10/23/01	158645	11/1/01	*3,500.00
27	11/16/01	159618	11/29/01	*3,500.00
33	1/16/02	161860	1/25/02	*3,500.00
30	12/14/01	160586	12/20/01	*3,500.00
			TOTAL	\$ **50,000.00

*Ineligible expenses paid from Non-Federal funds

**\$36,000 was paid with HUD funds

PAYMENTS TO TRIBECA MEDIA

Date	Payment Amount	Reimbursement for Expenses	Billed at hourly rate	Retainer
9/21/01	\$ 693.63	\$ 18.63	\$ 675.00	
11/1/01	3,940.00		440.00	\$ 3,500.00
11/15/02	127.50		127.50	
11/29/01	886.25		886.25	
11/9/01	3,500.00			3,500.00
12/13/01	309.37	101.87	207.50	
12/7/01	3,500.00			3,500.00
1/4/02	1,885.75	335.75	1,550.00	
1/11/02	3,500.00			3,500.00
1/17/02	175.00		175.00	
2/1/02	3,509.60	9.60		3,500.00
2/22/02	627.32	142.32	485.00	
2/28/02	3,738.99	79.99	159.00	3,500.00
TOTALS	\$ 26,393.41	\$ 688.16	\$ 4,705.25	\$ 21,000.00