



Issue Date	April 25, 2006
Audit Report Number	2006-AT-1008

TO: Dominique Blom, Acting Deputy Assistant Secretary for Public Housing
Investments, PIU
Boyce J. Norris, Director, Office of Public housing, 4APH

FROM: *James D. McKay*
James D. McKay
Regional Inspector General for Audit, 4AGA

SUBJECT: The Housing Authority of the City of Macon, Georgia's Controls for Expending Low-Income Housing and HOPE VI Program Funds and Safeguarding Low-Income Housing Assets Were Inadequate

HIGHLIGHTS

What We Audited and Why

We reviewed the Housing Authority of the City of Macon's (Authority) administration of its housing development activities as part of our audit of the U.S. Department of Housing and Urban Development's (HUD) oversight of public housing agency development activities with related nonprofit entities.

Our audit objectives were to determine whether the Authority inappropriately used low-income housing and HOPE VI Program funds for unauthorized purposes to benefit other entities without specific HUD approval and whether the Authority complied with applicable laws and regulations and properly safeguarded low-income resources when it conducted business with affiliated nonprofit entities and consultants.

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What We Found

The Authority violated its annual contributions contract (contract) with HUD by using funds from its low-income housing general fund account to pay expenses of its programs and affiliated entities. As of December 31, 2004, 11 programs or entities, including nonprofit firms and other programs, owed the general fund account \$395,211. As a result, the Authority made ineligible disbursements with low-income housing funds totaling \$395,211.

Further, the Authority violated its contract with HUD by using low-income public housing assets as collateral to guarantee loans for two affiliated nonprofit entities totaling \$2.2 million, thereby placing contract assets at risk. The original \$2.2 million in loan balances guaranteed has been reduced to \$125,000, which is the amount currently at risk.

Additionally, the Authority violated federal contracting requirements by entering into an open-ended contract with a consultant without a ceiling price. The Authority spent \$227,684 on the contract, which has been in effect since November 2001.

What We Recommend

We recommend that the director of the Office of Public Housing require the Authority to collect the \$395,211 or current balance owed to the general fund account and repay the low-income public housing reserve the amounts collected.

In addition, the director of the Office of Public Housing should require the Authority to pursue terminating the loan guarantees, so the contract collateral used to guarantee the unpaid loan balances of \$125,000 will not be at risk.

Finally, the acting deputy assistant secretary for Public Housing Investments should require the Authority to justify the necessity and reasonableness of the payments made for the consultant's contract. Any amounts that cannot be supported should be reimbursed from nonfederal funds. The acting deputy assistant secretary should require the Authority to terminate or amend the consultant's contract in accordance with applicable federal requirements.

Auditee's Response

We discussed our review results with the Authority and HUD officials during the audit. We provided a copy of the draft report to Authority officials on March 9, 2006, for their comments and discussed the report with the officials at the exit conference on March 20, 2006. The Authority provided written comments on March 24, 2006. The Authority disagreed that it placed their assets at risk with the loan guarantees. The Authority acknowledged that it used the general fund for all operations, and did not include a ceiling price in the consultant contract.

The complete text of the Authority's response, along with our evaluation of that response, can be found in appendix B of this report. The Authority also provided attachments with its response that are available for review upon request.

HUD Management Decisions

The Office of Public Housing's memorandum dated April 12, 2006, indicated agreement with the findings and recommended corrective actions, and provided proposed management decisions for recommendations 1A, 1B, 2A, 2B, and 3C. In addition, the Office of Public Housing Investment's memorandum dated April 19, 2006, indicated agreement with the findings and recommended corrective actions, and provided proposed management decisions for recommendations 3A and 3B. We have accepted the management decisions, and they will be recorded in the Departmental audit resolution tracking system upon report issuance. Please furnish us copies of any correspondence or directives issued because of the audit.

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BACKGROUND AND OBJECTIVES

The Housing Authority of the City of Macon (Authority) was organized pursuant to the Housing Act of 1937 and the laws of the State of Georgia. Its primary objective is to provide low-income housing to the citizens of Macon, Georgia, in compliance with its contract with the U.S. Department of Housing and Urban Development (HUD).

A six-member board of commissioners (board) governs the Authority with members appointed in accordance with Georgia law. Each member is appointed to a five-year term. Joann Fowler is the board chairperson, and John Hiscox is the executive director.

The Authority's major programs include administering 2,159 conventional low-income housing units and 2,713 Section 8 vouchers. The Authority also administers business-type activities (proprietary funds), which include the activities of affiliated nonprofit entities.

The Authority administers federally funded activities for the low-rent public housing program, Housing Choice Voucher program, Public Housing Capital Fund grant programs, HOPE VI grant program, Section 8 Moderate Rehabilitation program, and Section 8 substantial rehabilitation and new construction program.

In addition, the Authority administers activities which are not federally funded for Tattnell Place, L.P.; 2009 Vineville, L.P.; Grove Park Village, Inc.; Family Investment Center and Other Nonfederal Grants; Administration Fund; Special Programs Fund; Homeownership Fund; Mark to Market Corporation; HAP [housing assistance payment] Administration Fund; Revenue Bond Fund; Autumn Manor Management Fund; Blended Component Unit – Infill Housing, Inc.; Blended Component Unit – Infill Housing II, Inc.; and, Blended Component Unit – Vineville Management, Inc.

HUD's Office of Public Housing in Atlanta, Georgia, is responsible for overseeing the Authority. HUD's Office of Public Housing Investments is responsible for overseeing the Authority's HOPE VI program.

Our overall objective was to determine whether the Authority used low-income housing funds for unauthorized purposes, including nonprofit entity activities, and whether the Authority complied with laws and regulations and properly safeguarded low-income resources when it conducted business with nonprofit entities and consultants.

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RESULTS OF AUDIT

Finding 1: The Authority Used Low-Income Public Housing Funds for Other Programs

The Authority violated its annual contributions contract (contract) with HUD by using funds from its low-income public housing general fund (general fund) account to pay expenses of its programs and affiliated nonprofit firms. As a result, as of December 31, 2004, 11 programs or entities, including nonprofit firms and other programs, owed the general fund account \$395,211. These actions occurred because the Authority did not have adequate controls in place to ensure its general fund transactions followed contract requirements. Also, Authority officials incorrectly believed that it was an acceptable practice for housing authorities to use low-income public housing funds to pay operating expenses for the Section 8 Housing Choice Voucher program and not repay the funds for several months.

The Authority Used Its General Fund to Pay Expenses

The Authority used funds from its general fund account to pay expenses for programs and entities that were not under its contract with HUD. As of December 31, 2004, 11 programs and entities owed the general fund account \$395,211 for the ineligible disbursements. Of that amount, the Authority's Section 8 Housing Choice Voucher program owed \$235,519.

Section 9(C) of the contract states that the Authority may withdraw funds from the general fund account only for (1) the payment of costs of development and operation of projects under contract with HUD, (2) the purchase of investment securities as approved by HUD, and (3) such other purpose as may be specifically approved by HUD.

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The Authority Had Inadequate Controls for Its General Fund

The Authority did not have adequate internal controls for operating its general fund. Instead of limiting payments from the general fund account to paying expenses for contract projects, it also paid expenses for other programs and entities. These programs and entities would repay the general fund account, but it was never completely repaid.

At the end of 2004, the following 11 programs and entities owed the general fund account \$395,211:

<u>Program/activity</u>	<u>Amount due to general fund</u>
Section 8 vouchers	\$235,519
HOPE VI	85,238
Special programs	30,503
Macon HAP [housing assistance payment]	
Administration	14,404
InFill Housing, Inc.	10,396
Moderate Rehabilitation 03	6,018
Riverside Gardens	5,369
Moderate Rehabilitation 01	4,596
Dempsey Apartments	2,891
Autumn Manor/Grove Park Management	192
Administration	<u>85</u>
 Total owed the general fund	 <u>\$395,211</u>

The above balances were not settled monthly and remained outstanding from month to month. Although some payments and reclassifications were made to reduce the balances owed, at no time were the balances reduced to zero. Therefore, the public housing program was deprived of \$395,211 in HUD-approved funds that should have been used for public housing activities.

Recommendations

We recommend that the director of Office of Public Housing

- 1A. Require the Authority to collect the \$395,211 or current balance owed to the general fund account and repay the low-rent public housing reserve the amounts collected.
- 1B. Require the Authority to establish and implement controls to ensure contract funds are only spent for operating projects and activities under its contract with HUD.

Finding 2: The Authority Used Low-Income Public Housing Assets To Guarantee Loans

In violation of its contract, the Authority used low-income public housing assets as collateral to guarantee loans for two affiliated nonprofit entities totaling \$2.2 million. The loan guarantees placed the Authority's assets at risk. As of October 2005, the remaining loan balance was \$125,000. These actions occurred because the Authority did not establish sufficient controls to monitor its interactions with affiliated nonprofit entities and ensure related transactions followed contract requirements. Authority officials incorrectly believed that low-income public housing assets were not placed at risk because it could have used nonfederal assets from other banks, instead of the pledged low-income public housing assets, to cover the loan repayments if default occurred.

The Authority Inappropriately Used Assets for Collateral

On December 20, 2002, and November 17, 2003, respectively, the Authority's executive director signed guaranty of payment agreements, pledging accounts the Authority had on deposit at the lending bank as collateral for a \$900,000 loan by 2009 Vineville, L.P., and a \$1.3 million loan by Tattnall Place, L.P. The bank accounts that were used as collateral allowed the bank to withdraw loan payments from the HUD accounts if the loan payments were not made. The nonprofit entity 2009 Vineville, L.P., obtained the \$900,000 loan to finance construction costs, and Tattnall Place, L.P., obtained the \$1.3 million to finance development costs.

Part A, section 7, of the contract provides that the Authority shall not pledge, as collateral for a loan, the assets of any project covered under the contract. Additionally, part A, section 17, of the contract provides that upon occurrence of a substantial default by the Authority, as determined by HUD, HUD shall be entitled to any or all of the remedies set forth in paragraphs (E), (F), and (H) of section 17 of the contract. Paragraph (F) states that nothing contained in the contract shall prohibit or limit HUD from the exercise of any other right or remedy existing under applicable law or available at equity.

The Authority placed its assets at risk and substantially violated its contract requirements by using its assets as collateral to guarantee affiliated nonprofit entities' loans totaling \$2.2 million. As of October 2005, \$125,000 of the Authority's HUD funds remain at risk.

Recommendations

We recommend that the director of the Office of Public Housing

- 2A. Require the Authority to pursue terminating the loan guarantees risking the \$125,000 pledged for unpaid loan balance.
- 2B. Require the Authority to establish adequate controls to monitor interactions with its nonprofit and related entities and ensure transactions comply with the contract, particularly as it relates to using contract assets as collateral for loans.

Finding 3: The Consultant’s Open-Ended Contract Violated HUD Contracting Requirements

The Authority entered into an open-ended time and materials type contract without a ceiling price, which violated federal procurement and contracting requirements. The Authority spent \$227,684 of HOPE VI Program funds on the contract, which has been in effect since November 16, 2001. The contract terms did not provide adequate safeguards to ensure amounts paid to the consultant were for necessary goods and services at reasonable prices. Also, the consultant did not bear any of the risks associated with contract performance since the contract does not have a ceiling price. These contracting violations occurred because Authority management disregarded certain contracting requirements due to its desire to hire a consultant for its HOPE VI program, before the program was established and specific needs were determined, and its failure to amend the consultant’s contract after the specifics were determined. As a result, HUD lacked assurance that the Authority obtained goods and services for this contract at the most advantageous terms. Further, contract terms do not provide adequate safeguards to ensure future amounts paid for this contract will be necessary and reasonable.

Contracting Requirements

Contracting requirements are included in 24 CFR [Code of Federal Regulations] 85.36. Section (b)(10) provides that the grantee may use a time and material type contract only if the following two conditions are met: (1) a determination was made that no other contract was suitable, and (2) the contract includes a ceiling price that the contractor exceeds at its own risk.

Section (b)(9) requires the grantee to maintain records that document the rationale for the method of procurement, selection of contract type, and contractor selection or rejection. Section (f)(1) states that grantees must perform a cost or price analysis in connection with every procurement.

Contracting Requirements Violated

On November 16, 2001, the Authority entered into an open-ended contract with a consultant, which violated federal contracting requirements. The contract did not have a ceiling price, and Authority files did not document the rationale for the contract type or include a cost or price analysis in connection with the procurement.

The contract stated that the consultant would provide certain consulting and advisory services to the Authority in connection with development, planning, financing, and/or operation of the Authority's HOPE VI project. The Authority agreed to compensate the consultant according to a schedule that set forth rates for seven members of the consulting firm, ranging from \$840 to \$1,470 per day, with the rates adjusted annually. For all additional expenses, the Authority agreed to reimburse the consultant the actual cost of such expenses. The contract did not include limits on contract price, compensation to the consultant, or contract length. Also, the contract did not specify what specific goods and services the consultant would provide. Authority officials said they would limit payments to the consultant to the amount included in the Authority's budget for such services, originally \$420,000 but later reduced to \$235,343 by budget revision.

Authority files did not document the reason for the contract type or whether any type of cost or pricing analysis was performed. Because of the Authority awarding the open-ended contract without documenting a cost or price analysis and justification, improper payments may have been made to the consultant. There was no assurance that goods and services were procured at the most favorable prices.

Recommendations

We recommend that the acting deputy assistant secretary for Public Housing Investments require the Authority to

- 3A. Justify the necessity and reasonableness of the payments made for the contract. Any amounts that cannot be supported should be reimbursed from nonfederal funds.
- 3B. Terminate or amend the contract in accordance with applicable federal requirements.

We also recommend that the director of Office of Public Housing require the Authority to

- 3C. Establish and implement adequate management controls to monitor contract activities and ensure contracts follow federal requirements and payments do not exceed contract limitations.

SCOPE AND METHODOLOGY

To accomplish our audit objective, we reviewed the following:

- Applicable laws, regulations, and other HUD program requirements;
- The Authority's contracts; and
- HUD's and the Authority's program files.

We reviewed various documents, including financial statements, general ledgers, bank statements, minutes from board meetings, check vouchers, invoices, loan documents, related guarantee agreements, partnership agreements, and reports from the independent public accountant. Additionally, we obtained an understanding of the Authority's accounting system as it related to our review objective.

We reviewed the contracts for each of the five consultants used by the Authority from January 1, 1999, through September 30, 2005. Further, after determining that one of the contracts did not meet federal contracting requirements, we reviewed documentation relating to the Authority's procurement of the contract and payments made for the contract.

We also interviewed officials of HUD's Atlanta, Georgia, Office of Public Housing and Authority management and staff.

We performed our audit work at the Authority's offices in Macon, Georgia, from August through October 2005. Our audit covered the period from January 1, 1999, through September 30, 2005.

We performed our audit in accordance with generally accepted government auditing standards.

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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:

- Compliance with laws and regulations – Policies and procedures that management has implemented to reasonably ensure resource use is consistent with laws and regulations.
- Safeguarding of resources – Policies and procedures that management has implemented to reasonably ensure resources are safeguarded against waste, loss, and misuse.

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 did not have a system to ensure that federal funds were properly used and the funds were not put at risk (see findings 1 and 2).
- The Authority did not have a system to ensure that its contracts met federal procurement and contracting requirements (see finding 3).

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APPENDIXES

Appendix A

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

<u>Recommendation</u>	<u>Ineligible 1/</u>	<u>Funds to be put to better use 2/</u>
1A	\$ 395,211	
2A		\$ <u>125,000</u>
Total	\$ <u>395,211</u>	\$ <u>125,000</u>

- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or federal, state, or local policies or regulations.
- 2/ “Funds to be put to better use” are quantifiable savings that are anticipated to occur if an Office of Inspector General (OIG) recommendation is implemented. This includes costs not incurred, deobligation of funds, withdrawal of interest, reductions in outlays, avoidance of unnecessary expenditures, loans and guarantees not made, and other savings.

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Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

COMMISSIONERS:

DR. CHARLES H. ANDREWS
MR. E. EARL BENSON
MRS. JOANN T. FOWLER
MRS. MARGARET S. HOBES
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March 24, 2006

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Attention: Ms. Sonya D. Lucas, Assistant Regional Inspector General for Audit

Dear Mr. McKay:

We received a copy of the draft OIG Audit of the Macon Housing Authority and reviewed it with your staff in an exit conference on Monday, March 20th. Please accept this letter, along with the accompanying supportive materials, as our response to the report. This includes documentation that the Macon Housing Authority has in fact taken all of the actions which we have been informed were necessary in order to clear the findings. As you can see, this information follows in a format which mirrors the audit report.

Finding 1: The Authority Used Low-Income Public Housing Funds for Other Programs.

Recommendations:

- 1A. Require the Authority to collect the \$395,211 or current balance owed to the general fund account and repay the low-rent public housing reserve the amounts collected.
- 1B. Require the Authority to establish and implement controls to ensure contract funds are only spent for operating projects and activities under its contract with HUD.

Comment: Of the \$395,211 owed to the Public Housing general fund at the time of the audit, \$235,519 was for Section 8 Vouchers, \$6,018 for Moderate Rehabilitation 03, \$5,369 for Riverside Gardens, \$4,596 for Moderate Rehabilitation 01, and \$2,891 for Dempsey Apartments. These programs are not Public Housing but are various types of Section 8 under contract with HUD. An additional \$85,238 of the funds was due from HOPE VI for Public Housing replacement under ACC contract. Only \$55,580 (or about 14% of the total) was for allocated expenses due from non-federal programs, which represented only about 14% of the receivable cited and less than ¼ of 1% of combined MHA operations.

A High Performer Housing Authority
EQUAL OPPORTUNITY IN HOUSING, EMPLOYMENT, PROCUREMENT AND SERVICES

Comment 1

MHA has two points in citing these figures. The first is that MHA acknowledges that it has, like the vast majority of PHAs, historically used the Public Housing General Fund as the General Fund for all operations. However, no prior auditors, Federal or otherwise, have objected to this practice. A quick survey of similarly sized PHAs revealed that virtually all handle these accounts in the same manner and none we know of have been cited to date. This seems logical to us, especially since most of these receivables (85%+ of the total) were from other HUD funded programs. We also note that HOPE VI is a Public Housing/ ACC program, and furthermore operates on a reimbursable basis, so we can't imagine why the OIG would ever question a receivable to Public Housing from HOPE VI.

This leads directly to the second point, namely that one of the principal purposes for the audit stated by the OIG was to determine whether or not the MHA was failing to allocate the proper costs for non-Federal programs, thereby subsidizing them with Federal funds, as has been the case in several PHAs reviewed by OIG. But the receivables from non-Federal programs (though only 14% of the total) demonstrate that MHA does, in fact, properly allocate costs. Because it is not the normal practice of auditors to elaborate on what you did NOT find, MHA has included this statement to make it clear in the record that our cost allocation practices are correct.

The draft report receivable figure of \$395,211, while accurate, overstates the effect of a balance of that size. This is because the account receivable balance for non-public housing programs reflected on December 31, 2004 included all accrued expenses that were incurred in December 2004 but were not actually paid until January 2005.

Action: The Authority has collected the balances owed to the general fund account, that is the non-Public Housing programs have paid their outstanding balances to Public Housing. Please refer to Attachment #1 for the relevant documentation, consisting of: bank statements; copies of checks and deposit slips; and the general ledger trial balance as of 1/31/06. For the time being, MHA will continue to use the Public Housing General Fund as its general fund for operations, but we have deposited \$70,000 in non-Federal funds in this account to establish an estimated two months expense credit with the general fund; the check requests and deposit slips that served as the basis for this estimate are also included in Attachment #1. This will ensure that, if anything, the costs of maintaining the cash flow needs of the various programs would be subsidized by the non-Federal programs, rather than the other way around.

The Authority certifies that it will reconcile and pay expenses paid from the General Fund on a monthly basis, thus maintaining the funds on deposit for other programs. The Management of the Authority also certifies that it will review the monthly balances of accounts receivable on the general fund ledger to verify no Public Housing ACC funds have been spent on programs not under Public Housing ACC contract.

Finding #2: The Authority used low-income public housing assets to guarantee loans.

Recommendations:

We recommend that the director of the Office of Public Housing:

Comment 2

2A. Require the Authority to pursue terminating the loan guarantees risking the \$125,000 pledged unpaid loan balance.

2B. Require the Authority to establish adequate controls to monitor interactions with its nonprofit and related entities and ensure transactions comply with the contract, particularly as it relates to using contract assets as collateral for loans.

Comment: As your office is aware from a lengthy discussion of this issue at the exit conference, the Macon Housing Authority disagrees with this finding on two principal grounds: (1) there exist clear legal distinctions between the loan guarantees cited in the draft audit report and the actions prohibited by MHA's existing Annual Contributions Contract (ACC) and (2) more importantly, it was our belief at the time we entered into these guarantees, and still is our belief, that nothing in these guarantees placed Federal assets at risk, improperly or otherwise. As a practical matter, we do not desire to engage in a protracted argument for an issue that is fast becoming moot, since 2009 Vineville is complete and Tattnall Place almost so. Further, as the following section will document, we have already taken corrective actions which exceed requirements. Therefore, the reason for including the remainder of this statement is not to alter either the finding or corrective actions, but to state our position clearly for the record and for the benefit of any third parties who read this report.

In connection with the construction of (a) 106 units of elderly housing by 2009 Vineville, L.P., a Georgia limited partnership ("2009 Vineville") and (b) 97 units of family housing by Tattnall Place, L.P., a Georgia limited partnership ("Tattnall Place") the Authority entered into guaranty agreements with Branch Bank & Trust ("BB&T") wherein the Authority guaranteed payment of two (2) loans totaling \$2.2 million. The guaranty agreements did not specifically pledge any assets of the Authority as collateral for the loans, including but not limited to, any public housing assets. Instead, the guaranty agreements were a promise of the Authority to satisfy the loans in the event of an uncured default. The proceeds of such loans were utilized to fund pre-development costs at 2009 Vineville and Tattnall Place as part of the revitalization plan identified in the HOPE VI grant received by the Authority in 2002.

Both communities contain a substantial percentage of public housing units compared to the total units constructed (for example, at 2009 Vineville, 104 of the 106 units are public housing units). As part of the development and construction process for each of these communities, the Annual Contributions Contract (the "ACC") of the Authority was amended by a Mixed-Financed ACC Amendment, wherein both communities (2009 Vineville and Tattnall Place) were incorporated into the ACC. If you will pardon the double negative, these are not non-HUD developments. Nevertheless, the Authority at all times during the duration of the guaranty agreements, maintained sufficient non-federal funds that were available to satisfy the outstanding obligations had an uncured default arisen.

Further, the Authority at all times maintained sufficient internal controls and procedures to insure that the guaranties were permissible pursuant to applicable law and were not in violation of the ACC, as amended. The Authority sought and obtained an opinion from legal counsel that the guaranties were permissible. The opinion of legal counsel for the Authority was and remains that

the guaranty agreements were and are not a pledge of collateral as prohibited by the ACC, as amended. A copy of the opinion of legal counsel is included in Attachment #2.

Action: In deference to the opinion of the Office of Inspector General, upon learning of the finding, the Authority immediately remedied the issue by requesting that BB&T alter the terms of the remaining guaranty agreement still outstanding (as of the date the Authority learned of the finding, the loan to 2009 Vineville had already been satisfied by the partnership, thereby rendering the guaranty agreement moot). Instead of seeking a pledge of collateral from the Authority, BB&T released the guaranty obligation of the Authority by letter, a copy of which is included in Attachment #2. To avoid the reoccurrence of this issue, the Authority certifies that it will not issue guaranties of loans and obligations substantially in the form objected to by the OIG in the draft report or in any other form that, in the opinion of Authority Counsel, places any federal assets in jeopardy without first obtaining the consent of HUD.

Finding #3: The consultant's open-ended contract violated HUD contracting requirements.

Recommendations:

We recommend that the Acting Deputy Assistant Secretary for Public Housing Investments require the Authority to:

3A. Justify the necessity and reasonableness of the payments made for the contract. Any amounts that cannot be supported should be reimbursed from nonfederal funds.

3B. Terminate or amend the contract in accordance with applicable federal requirements.

We also recommend that the Director of Office of Public Housing require the Authority to:

3C. Establish and implement adequate management controls to monitor contract activities and ensure contracts follow federal requirements and payments do not exceed contract limitations.

Comment: The Macon Housing Authority concedes that the consultant's contract does not contain an "upset figure" normal to this type of contract, and which the auditor found in all of the other MHA contracts he reviewed. As explained during the exit conference, this oversight occurred due to the two-stage nature of the contract. The first phase consisted of HOPE VI application preparation and the second phase was composed of management and technical services as described in the scope of services, the latter to be rendered only in the event the HOPE VI grant were to be awarded. The cap figure could not, of course, be known or negotiated until after the first phase was completed, the grant application planned, budgeted and funded. It was indeed our error that we failed to do so after the grant was received.

For the record, both the Housing Authority and the consultant regarded the amount prescribed in the HUD approved HOPE VI budget (\$420,000) as the de facto upset figure. We ask the OIG to note that this amount was significantly below the norm for general management consultant contracts in HOPE VI, being a half or even a third of many similar contracts for similar sized HOPE VI grants. The Authority received good value for the money expended; the documentation

Comment 3

within each periodic pay request clearly establishes that the services rendered were those described in the contract and were, in fact, useful and necessary for the accomplishment of the program. For your review, these are included in Attachment #3.

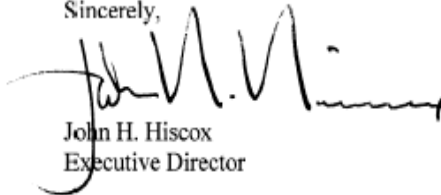
Finally, we wish to point out a rather unusual fact about this contract which proves both the integrity of the consultant and the management diligence of the Authority. With the HOPE VI now winding to an end, MHA has spent only \$232,462 (or 55%) of the original budget amount for this contract. With HUD's permission, we have already revised the budget downward for savings of over \$180,000, which funds are being reprogrammed to generate additional single family housing units. In summary then, we budgeted this contract dramatically lower than similar contracts in other HOPE VI's and still managed to accomplish the planned purposes for not much over half of the budgeted amount.

Comment 4

Action: Prior to presentation of the draft audit report, the Macon Housing Authority negotiated an addendum to the consultant contract containing the required upset figure. Both the contract and the addendum are included in Attachment #3, along with the previously mentioned payment records. The Macon Housing Authority certifies that it will take care in the future to ensure that all contracts subject to Federal contract requirements contain all of the required elements in the correct form.

Thank you for the opportunity to present the above information. I trust the documentation we have supplied will be sufficient to clear each of the three findings, but please do not hesitate to let me know immediately if any additional information is required. Please also accept my compliments for the professional demeanor displayed by your staff during the audit field work and exit conference.

Sincerely,



John H. Hiscox
Executive Director

Cc: Mr. Boyce Norris, Jr., Director Office of Public Housing
Ms. Dominique Blom, Acting Deputy Assistant Secretary for Public Housing Investments

OIG Evaluation of Auditee Comments

- | | |
|------------------|---|
| Comment 1 | The Authority's response that HOPE VI is a public housing program and operates on a reimbursable basis is incorrect. The HOPE VI Grant Agreement in Article X states that the Grantee agrees that it will not commingle HOPE VI grant funds with funds from any other sources including but not limited to other HUD program funds or funds from other Federal, state, or local government agencies. In addition, Article XXI states that commingled funds constitute a default and one remedy is to reduce the grant or petition for the appointment of a receiver to manage the grant. Therefore, the Authority did not comply with the Grant Agreement, and has committed a significant violation causing a default of the Grant Agreement and should immediately change its method of operations. |
| Comment 2 | The Authority disagreed that it placed its Federal assets at risk with the loan guarantees. We do not agree with the Authority's comments because the Authority's guarantee agreements with a lending bank that allowed the bank to use HUD-controlled funds on deposit to make loan payments for affiliated non-profit firms, if the non-profit firms defaulted on their loans. The agreement placed the HUD-controlled funds in those bank accounts at risk. Those agreements also violated the terms of the Authority's annual contributions contract with HUD and should be corrected. |
| Comment 3 | The Authority's response did not indicate that a cost or pricing analysis was performed to support this determination. Further, the Authority's response indicates that there was no negotiation of contract price. Because the Authority awarded the open-ended contract without documenting a cost or price analysis and without any negotiation of the contract price, improper payments may have been made to the consultant. |
| Comment 4 | The addendum adding an upset price to the contract that was included with the Authority's response did not include dates for the signatures. Also, the upset price for the contract added by the addendum was \$420,000, although the Authority indicated that only about \$240,000 would be spent for the contract. Further, the contract remains open-ended with no contract termination date specified. |