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TO: Stephen Schneller, Director, Office of Public Housing, 9APH
Margarita Maisonet, Director, Departmental Enforcement Center, CV

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

SUBJECT: The Housing Authority of the City of Las Vegas, Nevada, Did Not Comply with Contracting and Grant Use Requirements

HIGHLIGHTS

What We Audited and Why

Based on a complaint from a member of the Housing Authority of the City of Las Vegas' (Authority) Board of Commissioners (board), we reviewed three contracts with Abt Associates, Incorporated (Abt). The complainant alleged the Authority awarded contracts to Abt without a competitive procurement or the prior approval of the board. Our objective was to determine whether the Authority followed federal procurement and contracting requirements when it hired Abt. During the review of one Abt contract involving the use of replacement housing factor grants, we expanded our objective to include the Authority's retention of interest earned from improperly invested grant funds.

What We Found

The Authority awarded three contracts totaling $473,499 to Abt in 2004 and 2005 in violation of federal requirements and its own policies and procedures for procurement, contracting, and contract administration. The noncompliance

included failure to complete independent cost estimates and cost analyses, failure to ensure fair and impartial competitive procurement, use of inappropriate contract type and improper contract amendments, and inappropriate use of sole-source procurement.

The Authority also improperly retained investment earnings totaling $84,569 from improperly drawn down replacement housing factor grant funds for fiscal years 2000 and 2001.

What We Recommend

We recommend that HUD's Region IX Director of Public and Indian Housing require the Authority to provide adequate support of cost reasonableness or reimburse its federally funded program accounts from funds not obtained from any federal programs the amount of $473,499 and reimburse the federal government for the $84,569 in interest earned on improperly drawn and invested grants. In addition, we recommend that HUD provide simultaneous training for both the board and any officials directly responsible for conducting procurement activities or approving contracts and contract amendments.

We recommend that the director of HUD's Departmental Enforcement Center take appropriate administrative sanctions against the executive director, deputy executive director, and purchasing manager for continuous disregard of federal regulations.

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

Auditee's Response

We provided the Authority a draft report on February 28, 2006, and held an exit conference on March 21, 2006. The Authority provided written comments on March 27, 2006. The Authority generally disagreed with the report. The auditee's response, along with our evaluation of that response, can be found in appendix B of this report. Due to the volume of the exhibits to the auditee's response, the exhibits will be made available upon request.

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BACKGROUND AND OBJECTIVES

The Housing Authority of the City of Las Vegas (Authority) 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 Authority is governed by a five-member board of commissioners appointed by the mayor of the city of Las Vegas. The board establishes policies and appoints an executive director to implement the policies.

The current executive director was appointed on July 15, 2002. Before that, he was the deputy executive director. The executive director is required to administer the Authority's affairs in accordance with the policies adopted by the board and applicable federal, state, and local laws and regulations. He executes contracts and appoints department heads and other staff. The deputy executive director joined the Authority in June 2004 with more than 30 years' housing experience, including serving as deputy executive director and executive director for other housing authorities. The deputy executive director performs duties assigned by the executive director and acts in the executive director's absence or incapacity. The executive director designated the purchasing manager to administer all procurement transactions. The current purchasing manager has held that position for approximately 29 years.

The OIG last performed an audit of the Authority's procurement practices in 2002 (Audit Memorandum Report Number 2003-LA-1801, draft issued to the current executive director). The audit resulted in findings that procurement and contracting policies were not followed, particularly for service and consulting contracts, including

- Contracts were awarded without fair and open competition,
- The former executive director awarded consulting contracts without board approval or the involvement of the purchasing manager,
- No cost analysis was performed to ensure prices were reasonable, and
- Contracts did not contain federally required clauses.

The recommendations were closed by HUD, based on corrective actions taken by the Authority, under the management of the current executive director.

Additionally, between September 15 and October 3, 2003, HUD conducted a comprehensive management review of the Authority's operations. HUD's report, dated February 6, 2004, included findings related to procurement and contract administration. Most significantly, HUD found no documentation to show the Authority followed procurement requirements when it engaged a legal firm or a consultant. Both were hired without a competitive process, including failure to perform an independent cost estimate and a cost or price analysis, and without a written contract. HUD reported violations in both cases after OIG issued its report and when the current executive director and the current purchasing manager were in place. Improper contract increases found by HUD occurred while the current executive director was in place. As a result of OIG's previous report and HUD's management review, the Authority, under the direction of the current executive director, revised its written policies and procedures to ensure compliance with federal requirements and repaid ineligible costs from nonfederal funds. The comprehensive

management review finding of improper procurement of a local legal firm remains open pending repayment of related costs from nonfederal funds. The same legal firm that was noncompetitively hired is currently providing services to the Authority as a subcontractor to an out of state legal firm.

We received a complaint from a member of the Authority's board concerning the Abt contracts. The complainant alleged improper actions by the executive director, deputy executive director, and chairman of the board, related to improper sole-source contracts and contract amendments with Abt. Our objective was to determine whether the Authority followed federal requirements for procurement and contract administration when it hired Abt. For fiscal years 2004 and 2005 we reviewed three consulting contracts and did not determine whether other procurements complied with federal requirements

During our review of the contract for assistance with planning for the use of replacement housing factor funds, information came to our attention, indicating that the Authority did not properly administer funds previously obtained through the program. As a result, we expanded our review to determine whether the Authority followed HUD requirements. Regulations at 24 CFR [*Code of Federal Regulations*] 905.10 govern the replacement housing factor program, which was established to assist in the replacement of public housing units lost through demolition or disposition.

RESULTS OF AUDIT

Finding 1: The Authority Did Not Follow Federal Requirements for Procurement or Contracting

The Authority did not follow federal requirements or its own policies and procedures for procurement, contracts, or contract administration when it hired Abt for three consulting contracts between 2004 and 2005. The Authority's noncompliance included its failure to complete independent cost estimates and cost analyses, failure to ensure fair and impartial competitive procurement, use of inappropriate contract types and forms, inappropriate contract amendments, and improper use of sole-source procurement. The noncompliance occurred because the executive director and deputy executive director ignored requirements and because the purchasing manager did not follow established procedures. As a result, the Authority could not show that competition was fair and impartial or that the prices it paid for services were reasonable.

The Authority Issued Three Contracts to Abt

The Authority issued three contracts to Abt Associates, Incorporated (Abt), at a cost of $473,499 after the most recent contract amendments. The first contract was for assistance in developing and administering a voluntary compliance agreement that HUD required to correct fair housing violations. Under the second contract, Abt wrote a plan and a development proposal for the Authority's future use of replacement housing factor grant funds. Under the third contract, Abt wrote the Authority's application for state low-income housing tax credits, which the Authority planned to use, along with the replacement housing factor funds, to build new housing for its low-rent program. Both the voluntary compliance agreement and low-income tax credit contracts went through a competitive procurement process, while the replacement housing factor contract was a sole-source selection.

The Authority Failed to Complete an Independent Cost Estimate and a Cost Analysis

Although regulations at 24 CFR [*Code of Federal Regulations*] 85.36 and the Authority's written procurement policy requires an independent cost estimate for every procurement action, as well as a cost analysis for every professional

consulting service offer, the purchasing department did not prepare adequate independent cost estimates for the two competitively procured Abt contracts and did not prepare any independent cost estimates for the sole source consulting contract with Abt. Further, because the Authority did not request adequate cost information from the prospective contractors, as HUD Handbook 7460.8 and the Authority's own policy require, it could not complete a meaningful cost analysis. The estimate should be done before soliciting bids or proposals and the analysis after reviewing cost information received from the prospective contractors. Both must take into account all elements of cost (including overhead and profit) and the total cost of the contract, and both are necessary to ensure the final cost of the contract is reasonable.

For the two competitive procurements, the purchasing manager estimated an hourly rate, which he said was based on past solicitations for consultant services. However, he did not attempt to estimate the number of hours required to complete either job or break down the elements of cost; therefore, he did not complete the process of estimating the full cost of the contract. In the case of the sole-source procurement, no attempt was made to prepare an independent cost estimate or a cost analysis.

In the requests for proposals, the Authority did not ask respondents to provide a total price for the jobs or break down elements of cost. It only asked respondents to state the hourly rates they would charge and the rates at which they would require reimbursement for travel. The purchasing manager limited his cost analysis to a comparison of these rates with his estimate. For the comparison, the purchasing manager extended the hourly rates by multiplying each proposed rate by 100. The multiplication factor was arbitrary and did not reflect actual estimates. Therefore, the cost analysis was meaningless because one firm might have completed the work in a fraction of the time used by another firm and, therefore, cost less even while charging higher hourly rates.

The Authority Failed to Ensure Competitive Procurement Was Fair and Impartial

The Authority's contention that the amount of work required could not be estimated is not credible. The Authority and most of the contractors responding to the requests for proposals had relevant past experiences on which to base an estimate. The first contract was for assistance in negotiating and carrying out a voluntary compliance agreement required by HUD to correct fair housing violations. Two of the respondents had extensive experience and knowledge of the fair housing requirements, and Abt had assisted several large and medium-size housing authorities with similar voluntary compliance agreements. Further, the Authority included the HUD letter with the findings from the compliance review in the request for proposals to ensure prospective contractors knew what was

needed. The last contract was for assistance in applying for state low-income housing tax credits. The Authority hired consultants to apply for tax credits in the past, and the responding firms had substantial relevant experience. Therefore, the Authority and the contractors had adequate knowledge and experience to develop cost estimates and establish a total fixed contract amount.

Contrary to the requirements of 24 CFR [*Code of Federal Regulations*] 85.36 and HUD Handbook 7460.8, the two competitive procurements that resulted in hiring Abt were not conducted in a fair, impartial, and consistent manner. Before hiring Abt, the Authority solicited proposals. Each proposal received numeric scores for six evaluation criteria, and Abt was chosen based on those scores. However, some of the scores for individual criteria were not reasonable, and others were not supported. As a result, there is no assurance the Authority hired the best contractor based on price and other factors.

The evaluation of information provided in the proposals was broken into two parts. The purchasing manager scored the first three criteria (considered to be objective criteria), which included cost. A three-person evaluation panel scored the last three criteria (considered to be subjective criteria), including experience, technical competence, and past performance; specialized knowledge, capability, and ability; and overall quality of the proposal submitted. Some of the scores given by the purchasing manager were not reasonable, and the lack of support in the evaluation panelists' narrative justification statements indicates that either they did not review the proposals in a careful manner or they ignored the content of the proposals.

Tax Credit Solicitation Scored Unfairly

For the solicitation for a consultant to assist the Authority with an application for tax credits, the purchasing manager gave Abt a score of 60 for the cost criteria and gave another firm a score of 45, although he had calculated a difference in cost of only 2.65 percent. The large disparity in scores was not justified by the small difference in calculated cost.

In addition, the panelists' narrative justifications for their scores were often inconsistent with the information submitted in the proposals. All three firms had relevant experience with low income housing tax credits. However, one panelist wrote that one of the firms had no relevant tax credit experience, although the firm's proposal included detailed descriptions of tax credit projects it had obtained funding for at a number of housing authorities.

Voluntary Compliance Agreement Solicitation Scored Unfairly

For assistance with the voluntary compliance agreement, the evaluation panel included the deputy executive director and two department managers. Both Abt and another firm submitted proposals that showed extensive and comparable relevant knowledge and experience. However, Abt received an average score 53 percent higher than the comparable firm for all evaluation categories other than

cost, including the maximum available points for the experience category and the knowledge and capability category. Moreover, since Abt's proposed rates were 45 percent higher than the other firm's, the selection was not fair and impartial.

The Authority Used an Inappropriate Contract Type and Form

Contrary to requirements of 24 CFR [*Code of Federal Regulations*] 85.36(i) and its own Contracts and Purchasing Procedures Manual, the Authority used an improper contract type for the two competitive Abt contracts and a contract form that omitted required clauses for the sole source contract.

Improper Contract Type Used

The Authority inappropriately used a type of contract called a requirements contract, instead of a fixed-price or cost reimbursement contract (see 24 CFR [*Code of Federal Regulations*] 85.36(d)(3). As a result, the Authority had little control over costs, which escalated from an initial $110,000, the original total for the two competitive Abt contracts, to $394,845.

HUD Handbook 7460.8 states a firm fixed price should be used whenever possible because it encourages contractor efficiency and controls costs. Under a fixed-price contract, the risk of cost overruns is born by the contractor, rather than the housing authority. The handbook also describes other types of contracts and the circumstances for their appropriate use. It states a requirements contract is only appropriate for the purchase of specific commercially available items or services at a fixed price over a specified period, when the precise quantity of the items needed is not known but there is a realistic estimated total quantity. The key to a requirements contract is the ability to easily determine a reasonable cost because the item or service is readily available from commercial sources.

The Authority's choice of requirements contracts rather than fixed-price contracts resulted in contracts that provided for easy price amendments. Both requests for proposals specified the contracts would be "requirements contract(s), with work ordered on a task order basis; meaning the [Authority] does not at this time know the exact total of all work it will award to the contractor pursuant to this contract, but the [Authority] will order additional work on an as-needed basis." The solicitations and resulting contracts also stated, "[t]he [Authority] reserves the right to order any quantity of work pursuant to this contract, which means the [Authority] is not agreeing to a definitive minimum and/or maximum amount of work that may be ordered, either on an individual order basis or in total." In

addition, although contradictory to the previous language, the contracts included not-to-exceed values of $50,000 for the voluntary compliance agreement contract and $60,000 for the tax credit contract, which could only be amended with the board's approval.

The use of requirements contracts was inappropriate because the services solicited by the Authority were not for specific commercially available services of unknown quantities, since the unknown in question was not the services to be provided but the number of hours to be provided. As discussed above, in the section about independent cost estimates and cost analysis, both the Authority and Abt were capable of determining reasonable fixed-price or not to exceed amounts for the contracts, but the Authority chose not to do so.

The inappropriate use of requirements contracts and lack of cost analyses eliminated the Authority's control over costs and allowed for contract amendments, resulting in a 322 percent increase in the price of the contract for assistance with the voluntary compliance agreement and the 227 percent increase in the price of the contract for assistance with tax credits.

Inappropriate Contract Form Used

The Authority noncompetitively selected Abt to prepare the replacement housing factor plan and development proposal. The Authority signed a contract written by Abt, omitting clauses required by 24 CFR [*Code of Federal Regulations*] 85.36. These clauses were designed to protect the interests of the grantee (in this case, the Authority) and the federal agency (in this case, HUD) and ensure compliance with federal regulations. Omitted clauses included the following:

- Administrative, contractual, or legal remedies for violation or breach of contract terms and applicable sanctions and penalties;
- Notice of reporting requirements and regulations;
- Notice of patent requirements and regulations;
- Copyrights and rights in data requirements and regulations;
- Access to documentation and records requirements; and
- Retention of all records requirements.

The Authority's internal controls were designed to ensure all necessary clauses were included in each contract by requiring the use of approved contract templates and final contract approval by both the legal counsel and the purchasing

manager. The executive director and deputy executive director ignored the controls and signed Abt's contract without notifying either office.

The Authority Improperly Amended Contracts by More Than 200 and 300 Percent

Contrary to requirements of 24 CFR [*Code of Federal Regulations*] 85.36(d)(4), the Authority did not properly justify noncompetitive contract modifications and price increases for its three contracts with Abt. The Authority's improper contracting method and inclusion of unpriced options in the Abt contracts resulted in lack of control over contract costs and lack of open and fair competition. HUD Handbook 7460.8 explains that a contract option's quantity and price must be specified in competitive solicitations and an unpriced option is considered a new contract requiring a new procurement.

Contract for Assistance with the Voluntary Compliance Agreement

In April 2004, HUD notified the Authority of the result of its fair housing review and the need for a voluntary compliance agreement. In July, the Authority issued a request for proposals for a knowledgeable consultant to "(1) advise the HA [housing authority] as to a pertinent course of action; (2) assist in developing the documentation required by HUD; and (3) participate in the dialog with HUD and negotiation of the voluntary compliance agreement." In addition, the contractor would be asked to provide quarterly post settlement compliance reports and quarterly status reports on implementation of the voluntary compliance agreement.

Before executing the contract with Abt, the executive director and the deputy executive director asked for the board's approval as required. The contract start date was August 23, 2004, with the contract amount not to exceed $50,000. However, the deputy executive director authorized Abt to continue work beyond the $50,000 limit, issuing an interim notice to proceed in December 2004 without prior board approval. He excused the lack of approval by stating in the authorization letter that the December 2004 board meeting had been cancelled but board approval would be requested at the next meeting. At the next board meetings in January and February 2005, the Abt contract was excluded from the agenda and was not discussed. In March 2005, the deputy executive director issued another interim notice to proceed, authorizing additional work, and the letter again stated that there was no March 2005 board meeting but he would seek board approval at the next meeting. The two contract increases were not disclosed to the board until April 2005, almost five months after the initial notice to proceed. By the time the board was made aware of the situation, the increase had grown to $161,200 for a total contract cost of $211,200, a 322 percent

increase. The deputy executive director explained the increase to the board, stating the original contract amount was "pretty much just an estimate on the part of the staff because the true costs of the voluntary compliance agreement are not known until after it is negotiated and all of the conditions that have to be met are identified." He went on to explain that under the voluntary compliance agreement, HUD required training for Authority staff and set a January deadline for submission of a training curriculum for approval. Abt had already created the curriculum and still had to conduct the training. Contrary to the HUD Handbook 7460.8 requirement to specify a price for contract options, this contract did not specify a cost for developing a curriculum or for training. Since training was not included in the original contract, except as something Abt could provide, if asked, it should have been handled as a separate procurement with an independent cost estimate, a request for proposals, and a cost analysis. Even if Abt was the best firm to assist with the negotiation of the voluntary compliance agreement, it may not have been the best firm to handle training. Again, there is no assurance the cost was reasonable and there was a lack of open and impartial competition.

According to the Authority's procurement policy (and the contract itself), neither the executive director nor the deputy executive director had the authority to make an increase to the contract without prior board approval. Considering the cancelled meetings, the meetings when the contract was not on the agenda, the minutes of the meeting when the board approved the initial contract and those when the board considered the increase, the executive director and the deputy executive director did not make sufficient and timely disclosure to the board. The board was initially unreceptive to the need for an increase, resulting in a contentious discussion during the April 2005 board meeting. Because the tape recorder used to record board meetings malfunctioned during the discussion and the information was not transcribed, based on a recommendation from its counsel, the issue was carried over to the May 2005 meeting as an agenda item. Although the board approved the increase, one board member stated the board had been misled and the process was improper, but since the work had been done there was no choice but to approve payment.

Contract for Preparation of a Replacement Housing Factor Plan and Development Proposal

The original $59,200 contract to prepare the replacement housing factor plan was improperly amended. The contract was executed in October 2004 and amended in November 2004 for a total value of $78,654. The amendment added an additional work item deliverable for the preparation of a development proposal. In a September 23, 2004, letter, HUD required the Authority to submit the plan within 30 days and the development proposal within 90 days. The executive director and the deputy executive director were fully aware of both requirements when they awarded the contract, and they were also aware that the replacement housing plan and development proposal were so interconnected that use of separate contractors would be inefficient. However, they did not include the deliverable for preparation of the development proposal in the original contract

and, contrary to requirements of the Authority's procurement policy, they did not provide written justification for the contract modification as a noncompetitive procurement (See chapter 4-37, Handbook 7460.8 in appendix C). Further, although they notified the board about the emergency procurement for $59,200 in October 2004, they did not ask the board to approve either the original contract or the amendment until the February 2005 board meeting, after work was completed.

Contract for Assistance with a Low-Income Tax Credit Application

The Authority contracted for assistance in applying for and administering state low-income tax credits to leverage financing for new construction of public housing. After issuing a request for proposals and evaluating the three responses received, the Authority executed a $60,000 contract with Abt on March 30, 2005.

In its response to the request for proposals, Abt provided a two-phase work plan, which was incorporated in the contract. The contract included Abt's price breakdown for phase one of the work plan, but it did not provide pricing for phase two. The total for phase one was $47,370 and the introduction to the plan stated that Abt recommended a fixed-price contract. The Authority did not document why it set the contract's "not to exceed" value at $60,000 or why it did not use a fixed-price contract. In June 2005, the contract was amended for phase two with a 206 percent increase of $123,645 for a total contract value of $183,645. Phase two was treated as an option, but as an unpriced option, it violated requirements prescribed in HUD Handbook 7460.8.

All Contract Amendments Were Improper

All three contracts were improperly amended and in each case, the amendment was an option for additional services that were not priced or negotiated until the time of the amendment. Other contractors were denied the opportunity to compete for the work and costs were not controlled. In all cases, this occurred because the executive director and the deputy executive director ignored federal requirements and the Authority's written procedures and management controls.

The following table shows the amendments and relative increases for each of the three Abt contracts.

Abt contracts	Effective date	Original amount	Amendment date	Additional amount	Total	Percent increase
VCA-CO4070	August 23, 2004	$50,000	July 2005	$161,200	$211,200	322%
RHF-CO5018	October 1, 2004	$59,200	November 2004	$19,454	$78,654	33%
Tax Credit-CO5014	March 30, 2005	$60,000	June 2005	$123,645	$183,645	206%
Totals		$169,200		$304,299	$473,499	

Average increase = 187%

The Authority Improperly Used Sole-Source Procurement

The Authority improperly interpreted emergency sole-source procurement provisions of 24 CFR [*Code of Federal Regulations*] 85.36 (d)(4)(i)(B) and state regulations when it hired Abt to prepare a replacement housing factor plan and development proposal. Section 332.112 of the Nevada Revised Statutes (and the HUD handbook) defines an "emergency" as a disaster like fire, flood, hurricane, riot, power outage, or disease, which may impair the health, safety, or welfare of the public if not immediately attended to.

The Authority's director for development and modernization believed he could prepare an approvable plan in house. Instead, the executive director and the deputy executive director hired Abt to prepare the plan at a cost of $59,200. They justified the noncompetitive procurement as an emergency because HUD imposed a 30-day deadline, which if missed, would result in the loss of the current and future replacement housing factor grants totaling approximately $10 million. However, the executive director's and the deputy executive director's justification was inappropriate because this was not an emergency created by outside forces, as described in of the Nevada Revised Statutes and the handbook. It was directly caused by the Authority's failure to use the grants for replacement housing within regulatory time limits. Instead, the Authority inappropriately deposited the grant funds in an investment account (see finding 2). As a result, there is no assurance the cost of the services was reasonable or necessary.

Conclusion

The Authority violated federal requirements during the procurement process and throughout the administration of all three Abt contracts. All of these violations occurred because the executive director, deputy executive director, and purchasing manager ignored federal procurement requirements. Because the Authority failed to complete the steps necessary to ensure contract costs were reasonable, the $473,499 paid to Abt Associates for the three contracts remains questionable. For the two competitive contracts, the Authority must provide support to show the amounts paid to Abt were reasonable, or they must repay the low-rent program from nonfederal funds. In the case of the sole source contract for assistance with the replacement housing factor plan, the Authority failed to show the need to hire a consultant, making the sole source procurement unnecessary. Therefore, the Authority must reimburse the federally funded account used for payment from nonfederal funds. OIG's previous audit was conducted in 2002 and the report was issued in 2003. The OIG audit report

contained similar procurement violations by the Authority. A year later, HUD performed a comprehensive management review, and reported that the Authority continued to violate procurement requirements. As a result of the OIG and HUD reviews, the authority established new procedures, policies, and controls to ensure compliance with federal requirements.

Both the current executive director and the purchasing manager were in place when the prior OIG and HUD reports were issued and were responsible for the corrective actions. Some of HUD's findings were on procurement actions that occurred under the management of the current executive director.

Although the current deputy executive director was new to this Authority in June 2004, he had 30 years housing experience, including positions as deputy executive director and executive director of other housing authorities and as a consultant providing expert advice to other housing authorities. Therefore, the three officials should have known that federal procurement requirements must be followed. However, the Authority's executive managers ignored the required procedures when in conflict with their apparent desire to hire Abt, repeating the previous violations and demonstating a continuous disregard for federal requirements.

The following table summarizes the deficiencies of the three contracts.

VIOLATIONS	**CONTRACTS AND AMOUNTS**		
	Voluntary Compliance Agreement $211,200	Replacement Housing Factor $78,654	Tax Credit $183,645
Lack of proper independent cost estimate and cost analysis	X	X	X
Unfair competitive procurement	X		X
Improper contract type	X		X
Improper contract form		X	
Improper contract amendment	X	X	X
Improper sole source procurement	X*	X	X*
Lack of board approval	X	X	
Lack of review by purchasing manager and legal counsel		X	

* Improper amendments amounted to improper sole source procurement.

Recommendations

We recommend that the Region IX Director of Public Housing

1A. Direct the Authority to repay $78,654, the cost of the noncompetitive contract for assistance with the replacement housing factor plan, to the account holding the proceeds from the sale of public housing from funds not derived from federal sources, including federal grants, program income from federal programs, the proceeds from the sale of public housing property, or other funds the use of which HUD has the authority to regulate.

1B. Require the Authority to provide support showing the $211,200 paid for the voluntary compliance agreement services was reasonable or repay its low-rent program from funds not derived from federal sources, including federal grants, program income from federal programs, the proceeds from the sale of public housing property, or other funds the use of which HUD has the authority to regulate.

1C. Require the Authority to provide support showing the $183,645 it paid for assistance with its tax credit application was reasonable or repay its low-rent program from funds not derived from federal sources, including federal grants, program income from federal programs, the proceeds from the sale of public housing property, or other funds the use of which HUD has the authority to regulate.

1D. Provide training to the board, executive staff, and purchasing manager to ensure they understand federal procurement and contracting requirements and have the same understanding of their respective responsibilities.

1E. Require the Authority to obtain HUD review and approval of all professional service contracts and amendments totaling more than $50,000 in part or aggregate (consulting, accounting, legal services, and architect and engineering services) before execution for a minimum of one year or until HUD is satisfied the procurements and contracts meet federal requirements.

We also recommend that the Director of HUD's Departmental Enforcement Center, based upon the findings of this report, along with the prior OIG audit and HUD management review of the Authority

1F. Take appropriate administrative actions against the executive director, deputy executive director, and purchasing manager for their continuous disregard of federal requirements, up to and including debarment.

Finding 2: The Authority Improperly Retained the Earnings From Invested Replacement Housing Factor Grant Funds

Instead of obligating and expending over $2.9 million of replacement housing factor grant funds for low rent housing, the Authority inappropriately placed the funds in an investment account and earned $84,569 in interest. Although the Authority complied with HUD's demand to return the grant funds, the Authority improperly retained the interest. The noncompliance occurred because the Authority was not aware that the comptroller general requires the return of any interest earned from such advances to the federal government. As a result, the Authority was unjustly enriched by its misuse of federal funds.

The Authority Was Unjustly Enriched by Improper Investment of Replacement Housing Factor Grants

The replacement housing factor program was established to assist in the replacement of public housing units lost through demolition or disposition. The Authority initially told HUD it would use the funds to purchase scattered site housing for its low-rent program. However, it later abandoned this plan, and without a clear alternate plan for how it would obtain replacement housing, it deposited the replacement housing factor funds in an investment account in March 2002, in violation of 24 CFR [*Code of Federal Regulations*] 905.10.

HUD discovered the inappropriate use of the replacement housing factor grants during a comprehensive management review. HUD's February 6, 2004, report stated the 2000 and 2001 funds were not spent on replacement housing as required and the Authority did not have an approved replacement housing factor plan. HUD instructed the Authority to return the grant funds and develop a replacement housing factor plan, setting firm goals and directions for the use of the remaining replacement housing factor funds, including the funds for 2000 and 2001. In October 2004, the Authority returned the principal amount of the grant funds to HUD, but to date, the earnings of $84,569 remain with the Authority.

Interest Must Be Returned to the Government

In its 1992 decision B-246502, the comptroller general of the United States held that grant recipients may not keep the earnings from the unauthorized investment of grants. The comptroller general further held that agencies do not have

discretion to allow grant recipients to keep the interest earned from such grant advances and are responsible for ensuring reimbursement is made to the United States Department of the Treasury. Therefore, HUD must ensure the Authority returns the earnings to the federal government.

Recommendations

We recommend the Region IX Director of Public Housing

2A. Direct the Authority to repay the $84,569 in interest earned on replacement housing factor grants and ensure the funds are returned to the United States Department of the Treasury.

SCOPE AND METHODOLOGY

We conducted our audit at the Authority's offices in Las Vegas, Nevada, between June 28 and July 28, 2005. The audit covered three procurement actions with Abt and the resulting contracts and administration thereof between July 2004 and February 2005. We met with the complainant and discussed operations with the Authority's management and relevant staff, as well as key officials from HUD's San Francisco, California, and Las Vegas, Nevada, offices. We also reviewed federal, state, and local procurement and contracting requirements.

The primary methodologies included reviews of the Authority's

- Procurement policies, procedures, and processes;
- Minutes of board meetings for 2004 and 2005;
- Three contracts totaling $473,499 awarded to Abt;
- Accounting records for all payments to Abt; and
- Bank statements and accounting records for replacement housing factor grant investments.

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

INTERNAL CONTROLS

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

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

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

Relevant Internal Controls

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

- Written policies and procedures for procurement and contract administration.
- Adequate knowledge of and compliance with regulatory requirements.

We assessed the relevant controls identified above.

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

Significant Weaknesses

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

- Although the Authority's written policies and procedures require compliance with federal, state, and local regulations for procurement and contracting, the executive director, deputy executive director, and contracting manager, ignored those requirements. The Authority's management did not establish a control environment that set a positive and supportive attitude toward internal control or conscientious management. (See finding 1).
- The Authority's officials lacked adequate knowledge of requirements for earnings on federal grant funds. (See finding 2).

APPENDIXES

Appendix A

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

Recommendation number	Ineligible 1/	Unsupported 2/
1A	$78,654	
1B		$211,200
1C		$183,645
2A	$84,569	

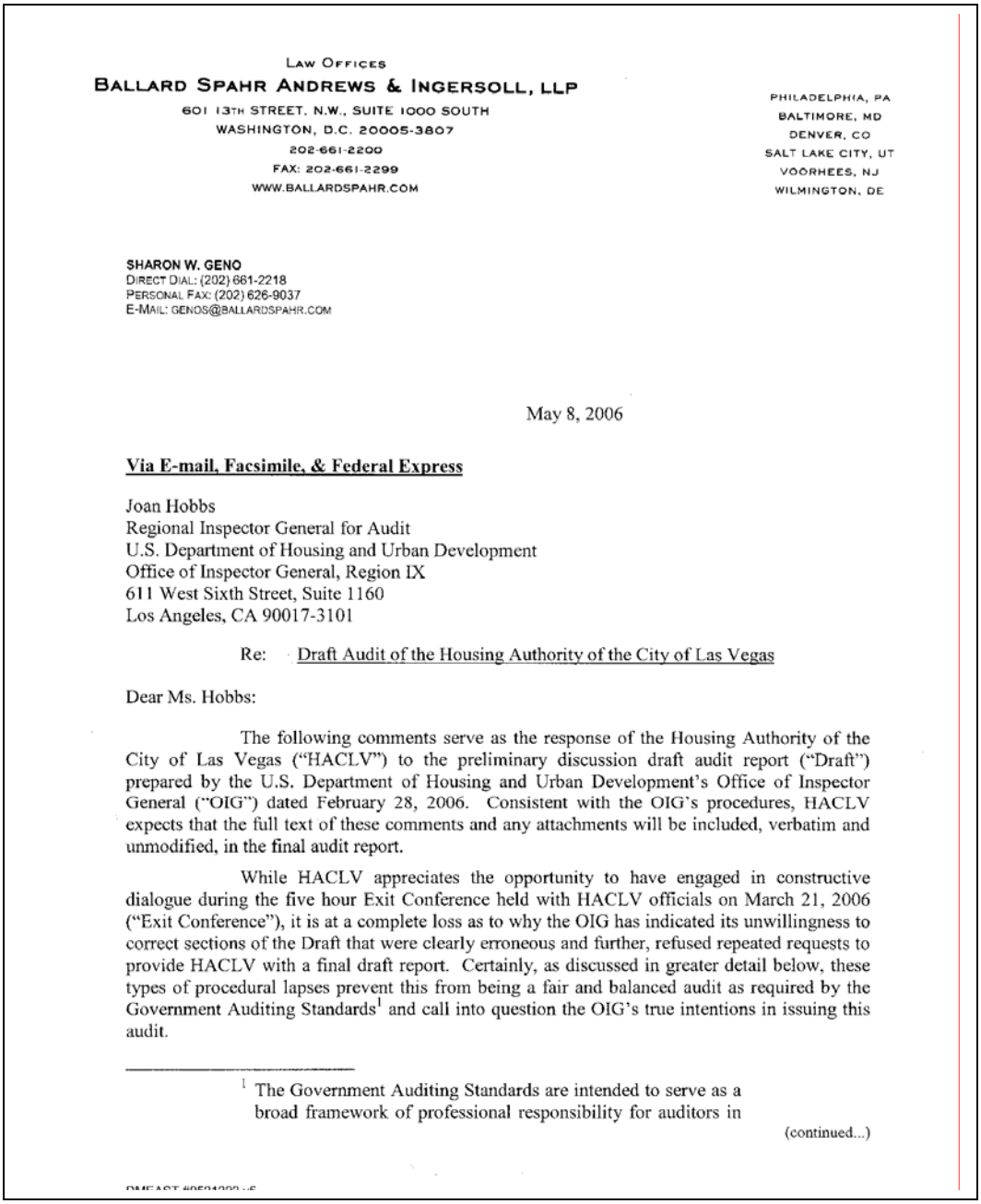
1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or federal, state, or local policies or regulations.

2/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation **Auditee Comments**



LAW OFFICES
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
601 13TH STREET, N.W., SUITE 1000 SOUTH
WASHINGTON, D.C. 20005-3807
202-661-2200
FAX: 202-661-2299
WWW.BALLARDSPAHR.COM

PHILADELPHIA, PA
BALTIMORE, MD
DENVER, CO
SALT LAKE CITY, UT
VOORHEES, NJ
WILMINGTON, DE

SHARON W. GENO
DIRECT DIAL: (202) 661-2218
PERSONAL FAX: (202) 626-9037
E-MAIL: GENOS@BALLARDSPAHR.COM

May 8, 2006

Via E-mail, Facsimile, & Federal Express

Joan Hobbs
Regional Inspector General for Audit
U.S. Department of Housing and Urban Development
Office of Inspector General, Region IX
611 West Sixth Street, Suite 1160
Los Angeles, CA 90017-3101

Re: Draft Audit of the Housing Authority of the City of Las Vegas

Dear Ms. Hobbs:

Comment 1

The following comments serve as the response of the Housing Authority of the City of Las Vegas ("HACLV") to the preliminary discussion draft audit report ("Draft") prepared by the U.S. Department of Housing and Urban Development's Office of Inspector General ("OIG") dated February 28, 2006. Consistent with the OIG's procedures, HACLV expects that the full text of these comments and any attachments will be included, verbatim and unmodified, in the final audit report.

Comment 2

While HACLV appreciates the opportunity to have engaged in constructive dialogue during the five hour Exit Conference held with HACLV officials on March 21, 2006 ("Exit Conference"), it is at a complete loss as to why the OIG has indicated its unwillingness to correct sections of the Draft that were clearly erroneous and further, refused repeated requests to provide HACLV with a final draft report. Certainly, as discussed in greater detail below, these types of procedural lapses prevent this from being a fair and balanced audit as required by the Government Auditing Standards[1] and call into question the OIG's true intentions in issuing this audit.

[1] The Government Auditing Standards are intended to serve as a broad framework of professional responsibility for auditors in

(continued...)

Comment 3

From the outset of the OIG's review, OIG staff has failed to acknowledge the totality of facts, circumstances and reasoning behind the HACLV decisions that the OIG asserts are violations of contracting and grant use requirements. Thorough discussion at the Exit Conference clarified that the vast majority of "findings" in the Draft are not based on violations of Federal requirements, but rather are based on: (1) the OIG's misunderstanding of the facts; (2) the OIG's failure to apply the correct standards; and/or (3) the OIG substituting its business judgment on matters that are within HACLV's discretion. This is even more troubling given the multiple procedural problems with the process detailed below, as well as the unjustified, excessive recommendations which are based on incorrect facts and unwarranted second guessing. Furthermore, the Draft and the audit process were shaped by a complaint submitted by a former HACLV Commissioner who was not happy with the decisions made by a majority of the Board. No attempt was made to interview other Board members who, after extensive discussions at public meetings, made decisions by majority vote that were contrary to positions taken by the Board members who complained about HACLV's actions.

Comment 4

HACLV has continually sought to work as a cooperative partner in this effort and has provided OIG staff with hundreds of pages of documentation upon which a fair and balanced audit could be prepared. Unfortunately, that information has apparently been disregarded and OIG staff has failed to conduct these proceedings in accordance with its written procedures. Additionally, as mentioned, the OIG did not respond to repeated attempts by HACLV to confirm the process for providing these very comments. Initially, the OIG did not to communicate its findings with HACLV. Once the Draft was issued, the OIG was reluctant to provide HACLV with adequate time to prepare a response, giving HACLV one week to prepare for the Exit Conference and two weeks to prepare written comments to a draft audit that took over eight months to prepare. The OIG also refused to provide a copy of a revised draft despite repeated requests and no logical or legal basis for this refusal.

Comment 2

As detailed more fully below, the Draft is inaccurate, fails to integrate key facts and does a disservice to HACLV as well as to the OIG's credibility. HACLV continues to be willing to work in a cooperative manner to address any legitimate OIG findings.

(...continued)

> the public sector. The stated purpose of the standards is, "To maintain and broaden public confidence, auditors need to perform all professional responsibilities with the highest degree of integrity. Auditors need to be professional, objective, fact-based, nonpartisan, and non-ideological in their relationships with audited entities and users of the auditors' reports…Audit organizations also have responsibility for ensuring that (1) independence and objectivity are maintained in all phases of the assignment." *§ 1.22 & 1.27 of Government Auditing Standards, United States General Accounting Office (2003).*

Comment 2

1. FINDINGS

Below please find a more detailed discussion of HACLV's issues regarding the Draft's findings/

A. The OIG has failed to Adhere to Agreements Made at the Exit Conference to Review and Incorporate Additional Information by Refusing to Make Substantive Changes to the Draft Report.

On March 21, 2006, OIG staff held a five hour Exit Conference with HACLV staff and counsel to discuss the Draft findings. HACLV was led to believe that a number of issues that were discussed in depth, and for which HACLV has since provided additional documentation to address, would be reviewed and considered by OIG staff and incorporated in a final draft audit report. HACLV also provided a follow-up letter, dated March 27, 2006, summarizing the agreements reached during the Exit Conference as well as attachments of the additional documentation that OIG staff agreed to review. **[see March 27, 2006 letter to Joan Hobbs, Exhibit A-1].** The attachments included hundreds of pages of additional documentation that address and correct inaccurate OIG conclusions regarding: HACLV's obligation to conduct price analysis versus cost analysis in competitive procurement, HACLV's procedures in scoring the Abt contracts in question, the type of contracts employed by HACLV and the basis for HACLV's discretion in doing so, HACLV procedures in making necessary amendments to the Abt contracts, HACLV's procedures for keeping the Board of Commissioners informed regarding contract modifications, and the HUD created emergency that necessitated the use of certain procurement procedures by HACLV. HACLV asked OIG to notify them immediately if there was a misunderstanding regarding the agreements reached as described in the letter. OIG never responded. The OIG refused to provide HACLV with a draft final report, despite repeated requests. No explanation was offered other than a suggestion that it was unnecessary. This is contrary to the spirit, if not the letter, of the Government Auditing Standards and the HUD OIG's own protocols which state that the final draft audit should contain "no surprises".

It is apparent that the OIG has refused to adhere to the agreements reached during the Exit Conference to review the documentation addressing these issues. To date, OIG staff has refused to provide HACLV with a draft final report. For this reason, HACLV may be responding to points not included in the final draft published herewith, or of even greater concern, may not have an opportunity to respond at all to allegations or recommendations that may have been rewritten or rephrased since the Draft was written. Again, this is contrary to the Government Auditing Standards requirement to provide a fair and balanced audit.

For several weeks following the audit, HACLV asked the OIG via several telephone calls and emails for the status of the audit. HACLV received no response by OIG to these requests. When the OIG did finally respond, the OIG stated that few if any changes will be made in the final draft audit reported when it is issued. The OIG could not reasonably maintain that it has reviewed the additional documentation provided while simultaneously hold that few if any changes would be made in the final draft audit report. The U.S. Government Accounting Office Government Auditing Standards provide, "Accuracy requires that the evidence presented be true and that findings be correctly portrayed. The need for accuracy is based on the need to assure report users that what is reported is credible and reliable." (GAO Government Auditing Standards, § 8.43, 2003). Unfortunately, because of the OIG staff's apparent refusal to

Comment 5

recognize documentary evidence contrary to their conclusions, and seek out HACLV staff and Commissioners who may have presented information contrary to the OIG's views, the auditors have failed to fulfill these obligations. The result is an audit report that does not present an accurate and balanced set of allegations regarding HACLV's conduct.

B. The OIG's Conduct and Methodology Did Not Comply With Government Auditing Standards Regarding A Fair and Balanced Audit Report.

Failure to Conduct Thorough and Complete Interviews of Key Personnel

The GAO Government Auditing Standards handbook maintains that "Auditors should communicate information about the specific nature of the performance audit, as well as general information concerning the planning and conduct of the audit and reporting." (GAO Government Auditing Standards, § 7.39, 2003). The GAO handbook notes that such communications should be made to "A. the head of the audited entity; B. the audit committee or, in the absence of an audit committee, the board of directors or other equivalent oversight body; C. the individual who possesses a sufficient level of authority and responsibility for the program or activity being audited." (GAO Government Auditing Standards § 7.39, 2003). OIG staff failed to follow these protocols. Instead, the OIG selectively interviewed a few individuals and failed to provide the very people involved in the procurements at issue with a fair opportunity to respond. The OIG never held a substantive meeting to obtain views and responses of the three employees, [redacted], Executive Director, [redacted], Deputy Executive Director, and [redacted], Purchasing Manager, whom it claims are responsible for the various problems identified and against whom it recommends administrative sanctions. In fact, the OIG never made these men aware of the full scope of its complaints against them. **[See Affidavits executed by [redacted] March 21, 2006, below].**

Names have been redacted for privacy

AFFIDAVITS

THE UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Inspector General

In the Matter of:	
Audit of Housing Authority of Las Vegas, Nevada, 2006	

DECLARATION OF [redacted]

I, [redacted] declare as follows:

1. I am the Executive Director of the Housing Authority of the City of Las Vegas, Nevada ("HACLV"). I have been the Executive Director of HACLV since January 17, 2003.

2. Prior to becoming Executive Director, I was the acting Executive Director from July 15, 2002 until January 17, 2003.

3. Prior to becoming acting Executive Director, I was Deputy Executive Director of HACLV from May 15, 2000.

4. Prior to becoming Deputy Executive Director, I was employed at HACLV in various positions starting on September 5, 1989.

5. On June 28, 2005, I attended an entrance conference held in my office with auditors from the HUD Office of Inspector General ("OIG"). At the conference we discussed only the following matters: 1) that the OIG staff had received a resident complaint regarding the Abt Associates contracts; 2) that the OIG staff would be on-site to generally review the Abt Associates contracts. No substantive issues were discussed at this time. I also notified the auditors that Deputy Executive Director [redacted] should be their point of contact for audit-related matters. The OIG staff agreed to work through [redacted] and to contact myself should there be any problem.

6. Starting on June 28, 2005, the OIG conducted an audit of HACLV. Auditors were on-site at HACLV from June 28, 2005, until July 28, 2005.

7. On July 19, 2005, another HACLV staff member and I met with OIG Auditor [redacted] in the office which HACLV provided her to conduct her auditing duties. At this meeting, we discussed only HACLV's FY 2000 and FY 2001 Capital Fund Replacement Housing Factor Plan. We provided her with these plans and with Notice PIH 2004-15.

8. On July 27, 2005 I met with [redacted] and [redacted]. During this meeting, which lasted no longer than one-half hour, the only matters that were discussed were the following: 1) the OIG staff expressed concerns regarding the emergency nature of the Replacement Housing Factor ("RHF") consulting contract; 2) OIG staff expressed concern as to whether the proceeds from the sale of Gerson Park were federal funds. The OIG staff present also indicated they would return for further on-site review.

9. At no point during the July 27, 2005 did OIG staff ask me about any of the following issues raised in the draft OIG audit, including but not limited to: 1) why HACLV chose to conduct price analyses of the Tax Credit Services and Voluntary Compliance Agreement ("VCA") consulting contracts with Abt and how the Independent Cost Estimates ("ICE") were completed; 2) the evaluation/scoring system under which the Tax Credit Services and VCA consulting tracts were scored; 3) why HACLV chose to enter into requirements contracts as opposed to fixed-price contracts for all three contracts in question with Abt Associates; 4) the extent to which the Board of Commissioners was informed of contract amendments made to the Abt contracts.

10. Aside from the aforementioned meetings, I have had no further meetings, telephone calls, discussions or was asked for my responses or additional information regarding these issues by any OIG staff members other than several requests for documents to which we have promptly responded.

11. At no point did any OIG staff member discuss administrative sanctions against me, including proposed debarments, as a recommendation contained within the draft audit.

12. Despite the OIG's contentions in the draft audit, there has been no intention on my part to mislead the HACLV Board of Commissioners regarding any of the contracts or contractual matters cited in the OIG draft audit.

13. On March 1, 2006, I received the discussion draft of the audit report.

14. During the course of the above-described audit, neither [redacted] nor [redacted] nor any other OIG auditors met with me to discuss interim audit findings.

15. During the course of the audit, the OIG auditors did not ask me substantive questions or seek explanations or other responses regarding the allegations contained in the discussion audit draft.

I hereby certify that the foregoing statement is true and correct.

Executed this 21st day of March 2006.

[redacted]

DMEAST #9489987 v1 2

DMEAST #9521292 v5 6

THE UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Inspector General

In the Matter of:	:
Audit of Housing Authority of Las Vegas, Nevada, 2006	:

DECLARATION OF [redacted]

I, [redacted] declare as follows:

1. I am the Deputy Executive Director of the Housing Authority of the City of Las Vegas, Nevada ("HACLV"). I have been the Deputy Executive Director of HACLV since June 14, 2004.

2. I have worked in the field of affordable housing for nearly thirty years including positions as Executive Director, Chief Operating Officer, Director of Housing Management, Director of Human Resources, Housing Manager, Resident Relations Coordinator and Housing Management Trainer at several different public housing authorities and organizations affecting affordable housing development.

3. On June 28, 2005, I was in attendance at an entrance conference held by auditors from the HUD Office of Inspector General ("OIG"), in the office of [redacted], Executive Director of HACLV. At the conference we discussed only the following matters: 1) that the OIG staff had received a resident complaint regarding the Abt Associates contracts; 2) that the OIG staff would be on-site to generally review the Abt Associates contracts. No substantive issues were discussed at this time. [redacted] also notified the auditors that I should be their point of contact for audit related matters. The OIG staff agreed to work through myself for all matters regarding the audit.

4. Starting on June 28, 2005, the OIG conducted an audit of HACLV. Auditors were on-site at HACLV from June 28, 2005, until July 28, 2005.

5. On July 27, 2005 I met with [redacted] and [redacted]. During this meeting, which lasted no longer than one-half hour, the only matters that were discussed were the following: 1) the OIG staff expressed concerns regarding the emergency nature of the Replacement Housing Factor ("RHF") consulting contract; 2) OIG staff expressed concern as to whether the proceeds from the sale of Gerson Park were federal funds. The OIG staff present also indicated they would return for further on-site review.

6. At no point during the July 27, 2005 meeting did OIG staff ask me about any of the following issues raised in the draft OIG audit, including but not limited to: 1) why HACLV chose to conduct price analyses of the Tax Credit Services and Voluntary Compliance Agreement ("VCA") consulting contracts with Abt and how the Independent Cost Estimates ("ICE") were completed; 2) the evaluation/scoring system under which the Tax Credit Services and VCA consulting tracts were scored; 3) why HACLV chose to enter into requirements contracts as opposed to fixed-price contracts for all three contracts in question with Abt Associates; 4) the extent to which the Board of Commissioners was informed of contract amendments made to the Abt contracts.

7. Aside from the aforementioned meetings, I have had no meetings, telephone calls, discussions or was asked for my responses or additional information regarding these issues by any OIG staff members other than several requests for documents to which we have promptly responded.

8. Despite the arrangements agreed to at the June 28, 2005 entrance conference, OIG staff members often did not communicate directly with me regarding requests for information or other matters related to the scope of the audit.

9. At no point did any OIG staff member discuss administrative sanctions against me, including proposed debarments, as a recommendation contained within the draft audit.

10. Despite the OIG's contentions in the draft audit, there has been no intention on my part to mislead the HACLV Board of Commissioners regarding any of the contracts or contractual matters cited in the OIG draft audit.

11. On March 1, 2006, I received the discussion draft of the audit report.

12. During the course of the above-described audit, neither [redacted] nor any other OIG auditor met with me to discuss interim audit findings.

13. During the course of the audit, the OIG auditors did not ask me substantive questions or seek explanations or other responses regarding the allegations contained in the discussion audit draft.

I hereby certify that the foregoing statement is true and correct.

Executed this 21 day of March, 2006.

[redacted]

DMEAST #9521292 v5 8

Comment 5

THE UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Inspector General

In the Matter of:

Audit of Housing Authority of
Las Vegas, Nevada, 2006

DECLARATION OF [redacted]

I, [redacted] declare as follows:

1. I am the Purchasing Manager of the Housing Authority of the City of Las Vegas, Nevada ("HACLV"). I have been the Purchasing Manager of HACLV for approximately twenty-nine years.

2. I have reported to different members of the HACLV's executive team throughout my term as Purchasing Manager.

3. I have attended numerous industry trainings on HUD procurement procedures and have used the knowledge gained at those trainings in handling procurement matters throughout the course of my career.

4. I was in attendance at the June 28, 2005 entrance conference meeting with auditors from the HUD Office of Inspector General ("OIG") that was held in the office of [redacted], Executive Director of HACLV.

5. Through the course of the OIG on-site review that ended July 28, 2005, I had only one other extended in-person meeting with the OIG staff. This meeting took place on July 27, 2005 with [redacted] and [redacted] and lasted approximately ten minutes. During this meeting [redacted] and [redacted] asked me questions about my involvement with the execution of the Replacement Housing Factor ("RHF") consulting contract. [redacted] and [redacted] also made comments of the following effect: 1) that the emergency RHF contract with Abt Associates was most likely justified but that the cause of the emergency was yet to be determined; 2) that the determination of whether the $78,000 amendment to the RHF contract should be paid for from federal funds or non-federal funds was still outstanding; 3) that HACLV staff should do a better job of estimating and informing the Board of Commissioners of the potential total cost of jobs; 4) and that HACLV is able to enter into requirements contracts that allow the award of work on an as-needed basis but that we should tell the Board initially how much we think the contract may eventually cost.

DMEAST #9490388 v2

DMEAST #9521292 v5 9

6. During the course of the audit, each time after I met with, spoke with or received any request from [redacted] and/or [redacted] I documented in writing the discussion or inquiry, as applicable, and delivered such documentation to [redacted] Accordingly, I documented the matters discussed at the July 27, 2005 meeting with [redacted] and [redacted] in an email dated July 27, 2005 to the attention of [redacted]

7. In my written documentation of the July 27, 2005 meeting with [redacted] and [redacted] I have no record of the following matters being discussed: 1) why I chose to conduct price analyses of the Tax Credit Services and Voluntary Compliance Agreement ("VCA") consulting contracts with Abt and how my Independent Cost Estimates ("ICE") were completed; 2) the evaluation/scoring system under which the Tax Credit Services and VCA consulting tracts were scored; 3) why HACLV chose to enter into requirements contracts as opposed to fixed-price contracts for all three contracts in question with Abt Associates; 4) why HACLV pursued an emergency procurement for the RHF contract and why the particular form of contract was used for that procurement; 5) the extent to which the Board of Directors was informed of contract amendments made to all three Abt contracts.

8. The findings provided in the OIG draft audit are contrary to what I was led to believe would be the subject matter and conclusions contained therein by [redacted] and [redacted]

9. At no other time did [redacted] or any other OIG staff member seek to conduct a personal interview with me regarding any additional matters ultimately addressed in the OIG draft audit. I have had no other extended meetings with OIG staff other than the June 28, 2005 and July 27, 2005 meetings described above. I was not present at the July 27, 2005 meeting with [redacted] and the OIG audit staff. All other contact with OIG audit staff was for document requests to which I promptly responded.

10. At no point did any OIG staff member discuss administrative sanctions against me, including proposed debarments, as a recommendation contained within the draft audit.

11. Despite the OIG's contentions in the draft audit, there has been no intention on my part to mislead the HACLV Board of Commissioners regarding any of the contracts or contractual matters cited in the OIG draft audit.

I hereby certify that the foregoing statement is true and correct.

Executed this 21st day of March 2006.

[redacted]

Comment 5

The OIG appears to have based a number of its allegations on interviews of two former HACLV Commissioners who had been outvoted by a majority of the Board on several key decisions. OIG staff did not interview any of the remaining Board members who had voted with the majority of the Board in these cases. One of the Commissioners interviewed had already manifested her general opposition to HACLV's leadership via a July 12, 2005 resignation letter sent to [redacted]. **[see Exhibit B-1]**. Furthermore, the OIG claimed during the Exit Conference that the same Commissioner was interviewed only because she was so vocal in the Board minutes and that staff did not have enough time to interview others. OIG staff never bothered to interview the Board Chairman, who is also an active participant at Board meetings.

Even a cursory review of Board minutes would reveal that this was an active Board of Commissioners that engaged in thoughtful, substantive discussions on the issues presented before them. OIG staff declined however to interview any of the remaining Board members who play an important role in HACLV's operations. The Board Chairman and other Board members therefore never had an opportunity to clarify any of the Board actions identified by the OIG as problematic. Further, even when directly told at the Exit Conference by a Commissioner that not all of the HACLV Commissioners agreed with the statements of the two former Commissioners interviewed by the OIG, the OIG still failed to follow up with any conversations with any sitting Commissioners. While HACLV does not intend to be dismissive of comments or critique offered by any one person, it fully expects that independent auditors would take even-handed measures to obtain a full understanding of the matters under review. In this case, OIG staff only sought individuals who were intent on presenting a one-sided view towards HACLV. Certainly, during an eight month audit process, OIG staff could have found time to obtain valuable information from other Board members.

Unauthorized Communications with Former HACLV Counsel

Comment 6

The OIG also interviewed HACLV's former legal counsel, [redacted], whose contract the HACLV Board of Commissioners had chosen not to renew. Once again, OIG staff personally met with an individual who had already indicated a strained relationship with HACLV. Moreover, the OIG never notified HACLV that it was interviewing its former legal counsel, resulting in a violation of HACLV's attorney-client privilege. This is an egregious breach of professional protocol which should not have taken place without HACLV's permission. It is also additional evidence that OIG staff only conducted personal interviews with individuals who intended to present HACLV from one perspective. A thorough and proper audit procedure would have included interviews with other knowledgeable individuals such as the HACLV Board Chairman and other Board members, the Executive Director, Deputy Executive Director and Purchasing Manager.

Failure to Adhere to Internal OIG Auditing Procedures

In addition to the OIG's failure to conduct a fair and balanced interview process, the OIG violated its own procedures in the conduct of the audit. The OIG Audit Operations Manual indicates that auditors have an obligation to "provide auditees with draft finding details during the audit." The Manual also notes that "since the audit findings should have been fully discussed and comments on finding outlines obtained during the audit, there should be no

Comment 5

Comment 7

Comment 8

surprises when the draft report is issued." **[see OIG Audit Operations Manual, Exhibit B-2].** The OIG never provided full interim comments or recommendations to the Executive Director or Deputy Executive Director or any other member of the HACLV staff. OIG staff additionally never held any formal meetings with HACLV staff to discuss interim audit findings or procedures. The release of the Draft was the first time that HACLV staff had been made aware of the auditor's recommendations in response to the allegations contained therein. A formal meeting where any of the HACLV employees had an opportunity to provide additional or rebutting information was never held. In addition, OIG staff had explicitly agreed at the audit entrance conference held on June 28, 2005 that all contact with HACLV regarding the audit would go through [redacted]. OIG staff did not uphold their side of this agreement as they pursued contact with [redacted] and [redacted] without notifying [redacted]. Finally, contrary to the OIG Audit Operations Manual clear instruction that unauthorized disclosure of draft reports and exposure of draft findings are prohibited, damaging portions of the Draft audit were leaked to local government officials before HACLV had received a copy.

Extending Audit Scope Beyond the Stated Objective in the Discussion Draft Audit

Comment 9

Page 1 of the Draft notes that the OIG's objective "was to determine whether the Authority followed federal procurement and contracting requirements when it hired Abt." Nevertheless, as will be described in subsequent comments, OIG used the occasion to review and critique HACLV's business decisions and procedures. This is well beyond the scope of the OIG's authority.

These obvious procedural oversights and missteps have led to an audit report that is incorrect, unbalanced and unsupported by the law and facts. The Draft simply does not contain evidence that is "sufficient, competent, and relevant to support a sound basis for audit findings, conclusions, and recommendations." (GAO Government Auditing Standards § 7.52, 2003).

C. The Final Draft Audit is Rife with Incorrect or Misstated Facts.

> "Accuracy requires that the evidence presented be true and that findings be correctly portrayed. The need for accuracy is based on the need to assure report users that what is reported is credible and reliable. One inaccuracy in a report can cast doubt on the reliability of the entire report and can divert attention from the substance of the report. Also, the use of inaccurate evidence can damage the credibility of the issuing audit organization and reduce the effectiveness of its reports." (GAO Government Auditing Standards, § 8.43, 2003)

Comment 2

Several statements asserted as fact in the Draft are without support or are not correctly portrayed. Additionally, the OIG repeatedly fails to explain fully or misstates the circumstances surrounding an action or issue in order to support its conclusions. Reasonable review of the additional documentation provided by HACLV would have clarified most if not all of the misstated facts. In failing to correct the Draft, in light of the additional documentation, the

OIG has deliberately left inaccuracies in the report. Despite its agreement to do so, the OIG has apparently not reviewed or adequately considered the documentation and the Draft is accordingly rife with incorrect facts. The following is a summary of the most egregious misstated facts.

Scope and Methodology - Draft, Page 19

Comment 5

The OIG misstates in the Draft that it "discussed operations with the Authority's management and relevant staff." As noted, OIG staff never had a substantive meeting with the Executive Director and Deputy Executive Director to discuss in any detail the substantive claims in the audit, or to ask them about the procurements in question. Similarly, the OIG only met with the Procurement Manager for approximately 10 minutes, during which time the Procurement Manager was never asked to explain or respond to the findings that pertain to his actions. The Draft fails to specify in detail persons within the "Authority's management and relevant staff" with whom the OIG actually met with. HACLV is aware that OIG staff had meetings with [redacted] and two HACLV Commissioners - all three of whom had a similar one-sided point of view to present and none of whom is HACLV staff.

Finding 1 - Draft, Page 12

Comment 10

The Draft falsely states that the Executive Director and Deputy Executive Director "intentionally misled" the Board regarding contract expenditure increases related to the HACLV/Abt HUD Voluntary Compliance Agreement ("VCA") assistance contract and "that the contract increases were not disclosed to the board until April 2005." (see Draft, p. 12). There is no support for this characterization. The documented interim notices to proceed indicate that the Board Chairman was notified of the contract status. Both the Board Chairman and HACLV legal counsel were consulted before HACLV even issued the interim notices to proceed. The interim notices clearly demonstrate the employees' attempt to inform, *not mislead*, the Board. The notices stated that they were subject to Board approval and that the staff was merely *recommending* that the Board approve a contract increase. Despite the OIG's contention, the interim notices were not contract amendments themselves. **[see Interim Notices, Exhibit C-1].** Furthermore, the Board Chairman canceled two Board meetings (in December 2004 and March 2005) during which the contract increase might have been discussed as evidenced by the May 13, 2005 Board of Commissioner minutes. **[see May 13, 2005 Board meeting minutes, Exhibit C-2].**

While Board of Commissioner meetings were held in January and February 2005, the VCA contract amendment was not raised for Board consideration due to issues that arose with the architect on the contract. At the time, the Executive Director and Deputy Executive Director did not have sufficient information upon which the Board could make an informed decision on the contract amendment. For example, the VCA amendment could not be brought forward for Board consideration until actual costs of and both architectural and non-architectural services required under the VCA were known. Ultimately, the Abt VCA contract was not amended and the purchase order for the amendment was not issued until after the Board had approved the contract increase at the April meeting based on full and complete information. In the interim, the HACLV executive office properly issued interim notices to proceed with work, all of which clearly stated they were subject to the board's approval of a contract increase.

Comment 11

Comment 10

Comment 2

Comment 12

The Draft also falsely notes on page 12 that discussion regarding the VCA contract amendment carried over from the April, 2005 Board meeting to the May, 2005 Board meeting because "the board was unreceptive to the need for an increase…". This is a glaring inaccuracy. The Board meeting minutes for May, 2005 make clear that the only reason further discussion regarding the VCA contract amendment took place was because of a tape malfunction during the April, 2005 meeting. As stated, the Board actually approved the increase in April but due to the transcription problem, legal counsel advised that the issue again be raised at the May, 2005 Board meeting. **[see May 13, 2005 Board meeting minutes, Exhibit C-2].**

Both of these inaccuracies were raised and discussed at length with OIG staff during the Exit Conference. HACLV provided several documents as part of the March 27th letter, including the Executive Director's monthly reports to the Board, minutes from Board meetings, interim notices to proceed which were developed in consultation with legal counsel and the Board Chairman, and other information which clearly shows that the Board was fully informed of the status of this contract and the reasons for discussing the contract amendment at the May, 2005 Board meeting. **[see Exhibit C-2].** OIG staff agreed to consider removing the assertion that information from the staff was "intentionally misleading", in the absence of any evidence other than the opinion of one former Board member which supports that position. OIG staff also agreed to revisit the statements regarding the reasons for carrying over the contract amendment discussion into the May, 2005 meeting. The OIG however appears to have reneged on these agreements and has instead disregarded the substantial amount of evidence indicating that the HACLV Directors properly informed the Board regarding the VCA contract amendments. The consequence is a significant factual inaccuracy that undermines the credibility of the Draft.

Finding 1 - Draft, Page 8

The Draft inaccurately states "two panelists identified only Abt as having tax credit experience, when all three firms had such experience." It appears that OIG staff did not actually read the panelist reviews of proposals submitted to a Request for Proposals ("RFP") for tax credit compliance assistance. This is a plain example of the use of inaccurate evidence. In fact, two panelists identified another firm as having tax credit experience. One reviewer made the comment for one of the three respondents (Reznick, Fedder & Silverman) that they "have extensive experience in developing tax credit applications with a variety of HA's", and another reviewer noted for the same firm that they "show experience in the tax credit area". **[see panelist scoring sheets, Exhibit C-3].** While one of the reviewers noted that the same firm did not have experience with tax credit applications in the State of Nevada, the reviewer still recognized the firm as having overall tax credit application experience.

This inaccuracy was raised at the Exit Conference and HACLV and OIG staff together reviewed the panelist scoring sheets disproving the OIG's statement in great detail. The scoring sheets were resubmitted as part of the additional information sent to the OIG on March 27th. The unwillingness of the OIG to make appropriate changes to the final Draft furthers the notion that the audit procedure includes unsupported allegations.

Comment 13

Finding 1 - Draft, Page 13

The Draft incorrectly states that HACLV did not ask for Board approval of the original or amended contract for a replacement housing plan and development proposal until April, 2005. In fact, the Board was notified in January that its approval would be requested in February, 2005. At the February, 2005 Board meeting, staff requested the Board's approval. The *Board*, however, decided at that meeting to delay action until it obtained further legal information. **[see February, 2005 Board meeting minutes, Exhibit C-4].** This Board-initiated delay was clearly indicated in the agenda and minutes for those meetings. In addition, the Executive Director consistently apprised the HACLV Board of the status of the contract via monthly Executive Director reports that are addressed and submitted to the Board. The Board ultimately voted on the matter at the April, 2005 meeting.

Once again, OIG staff agreed to review the February Board meeting minutes and agenda and to revise this assertion appropriately. The OIG's apparent failure to revise the Draft according to the facts undermines its allegation based on factually incorrect information.

Comment 14

Finding 1 - Draft, Page 14

The Draft Audit inaccurately states that Nevada Revised Statute § 332, which includes a description of emergency procurement situations, applies to the Authority. The Draft indicates that this applies in the context of the sole source procurement for the Abt replacement housing plan contract and that the definition of "emergency" only applies to "a disaster like fire, flood, hurricane, riot, power outage, or disease…". (see Draft, p. 14). In this instance, OIG staff has not only misapplied the facts but also has misapplied the law.

The Nevada statute on which the OIG relies to define "emergency" is inapplicable to the Authority. That statute only applies to certain bodies of local government which do not include the Authority. **[See N.R.S. § 332.015, Exhibit C-5].** During the Exit Conference, HACLV and OIG staff discussed that a valid emergency was actually created when HUD gave HACLV no more than thirty days to produce replacement housing plan or lose significant funds available to provide housing. This "emergency" in fact met the more applicable definition of emergency contained within the HUD-approved HACLV procurement policy. The HACLV procurement policy provides, in relevant part, that "[a]n emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the HACLV…In such cases, there must be an immediate and serious need for supplies, services or construction such that the need cannot be met through any other procurement methods…". **[see excerpts from HACLV procurement policy, Exhibit C-6]**. As was discussed during the Exit Conference, HUD has provided no standards for items to be included in replacement housing plans and accordingly HACLV had no way of knowing that a modification would suddenly be required. This emergency threatened the welfare of the Authority and its tenants as it created a credible threat that HACLV would lose $10 million in federal funding. The Board relied upon advice of legal counsel that the procurement was consistent with applicable requirements prior to proceeding with approving the sole source procurement. **[see counsel advice in excerpts from April 22 Board minutes, Exhibit C-7].**

The HACLV procurement policy definition of "emergency" is supported by the Federal Acquisition Regulation (FAR) as well. **[see FAR § 6.302-2(b)(2), Exhibit C-8].** The

Comment 14

FAR notes that "an unusual and compelling emergency" can occur when "delay in award of a contract would result in serious injury, financial or other, to the Government." The OIG's view that an "emergency" requires some sort of physical event is not only excessively restrictive but fails to comport with more appropriate definitions contained in the FAR and HACLV procurement policy.

Once again, the OIG appears to have disregarded critical information conveyed during the Exit Conference. HACLV hopes that the OIG is adhering to its original commitment to remove this assertion from the final draft audit report. To date, HACLV has no way of knowing whether this change was made per this agreement because it has been denied access to the final draft audit.

Finding 1 - Draft, Page 10

Comment 15

The Draft incorrectly notes that the HACLV/Abt Replacement Housing Plan ("RHP") assistance contract did not contain "administrative, contractual or legal remedies for violation or breach of contract terms and applicable sanctions and penalties." The OIG auditors apparently did not read the contract in its entirety. As was discussed during the Exit Conference, the contract addressed all of these situations. **[see Replacement Housing Plan contract, Exhibit C-9].**

Section VII of the RHP contract includes administrative remedies for disputes, indicating that in the event of disputes, both parties will first seek mediation followed by binding arbitration. Section VIII of the RHP contract contains a contractual remedy in the event of a dispute, noting that the contract will terminate 30 days after a party's notice of cause for termination, unless that party corrects or begins to correct the cause for termination. Finally, Section XIII of the contract states that the remedies available to the Authority in the contract are HACLV's exclusive remedies. Accordingly no other legal remedies are available. This further means there are no additional sanctions or penalties.

Comment 16

Once again, these provisions were brought to the OIG's attention during the Exit Conference and via the March 27th follow-up letter. The OIG apparently has refused to revise the Draft accordingly. Moreover, while HACLV acknowledges that other identified clauses were missing from the RHP contract, HACLV in fact attempted to amend the contract accordingly once it was clear the provisions were missing. A technical contract drafting mistake does not warrant remedies including the repayment of funds or debarment of HACLV directors as the OIG has recommended.

Finding 1 - Draft, Page 13

Comment 17

The Draft incorrectly alleges that the HACLV Directors "did not ask the board to approve either the original [replacement housing plan] contract or the amendment until the April 2005 board meeting." (see Draft, p. 13). As was discussed with OIG staff during the Exit Conference, this is an inaccurate statement. HACLV Directors actually brought forth the issue to the Board's consideration in February, 2005. **[see February, 2005 Board meeting minutes, Exhibit C-4].**

At the February meeting, the Board actually decided to postpone approval until further legal information could be obtained on the issue. The Board finally approved payment in

the amount of $59,000 at the April, 2005 meeting and approved the remaining $19,454 at the June 13, 2005 Board meeting. **[see April, 2005 Board meeting minutes at Exhibit C-7 and June, 2005 Board meeting minutes at Exhibit C-10]**. Furthermore, the chronology of HACLV Director actions and Board notification demonstrates that the Board received almost monthly reports about the status of the contract and amendments. **[see Chronology of RHP contract actions, Exhibit C-11]**. In addition, the Board was notified of the emergency procurement of Abt for this matter immediately following the procurement in the Executive Director's reports to the Board.

During the Exit Conference, OIG staff had agreed to review the Board meeting minutes, review the chronology of events and consider modifying the Draft to remove this allegation. HACLV continues to be bewildered by the OIG's apparent refusal to include accurate information in the audit report.

Finding 1 - Draft, Page 9

Comment 18

The Draft incorrectly states that the Replacement Housing Plan contract was a requirements contract. The Draft incorrectly suggests that all three Abt contracts under review were requirements contracts by noting that HACLV "had little control over costs, which escalated from an initial $169,000, the original total for all three Abt contracts, to $473,499." [Emphasis Added]. However, the replacement housing plan contract was a fixed price contract. **[see Replacement Housing Plan contract, Exhibit C-9].** This matter was discussed during the Exit Conference and the OIG staff agreed that the RHP contract was not a requirements contract.

Finding 1 - Draft, Page 4

Comment 19

The Draft asserts that HACLV "repaid unsupported costs from federal funds." (see Draft, pg. 4). These "unsupported costs" referred to expenses identified in the 2002 procurement audit conducted by the OIG and a 2003 management review conducted by HUD. This statement is incorrect as HACLV and HUD are still in the process of closing one finding. In addition, HACLV was able to successfully close a number of findings without making any repayments as originally recommended by the OIG.

D. The OIG Failed to Correctly Apply Federal Procurement Requirements in Conducting the Audit.

Comment 20

The Draft indicates that the OIG does not appear to understand certain of the applicable procurement requirements. The Draft incorrectly asserts that HACLV has violated procurement requirements because HACLV made business decisions which were permitted under HUD requirements. In practice, the OIG is substituting opinions about how HACLV's procurement should operate. If the OIG's real concern is that HUD's procurement policies are too permissive, the OIG should conduct a review of HUD and make recommendations accordingly. Blaming a housing authority for compliance with HUD policies is not the proper means of achieving such ends. In some cases, HACLV elected to take an optional course of action as permitted in the HUD Procurement Handbook because it was a fiscally prudent course of action. Many of the audit findings amount to a critique of business decisions by HACLV staff and its Board - business decisions that did not violate any HUD requirements. The Draft findings demonstrating the OIG's severe lack of understanding regarding the relevant procurements standards include the following:

Comment 20

Finding 1 - Draft, Pages 6-7

This finding incorrectly alleges that HACLV did not use the proper procedure by completing adequate independent cost estimates as well as completing a cost analysis (versus a price analysis) in procuring Abt's services for the VCA compliance and tax credit application assistance contracts. In making its assessment however, OIG staff has failed to properly understand and apply the relevant portions of the HUD Procurement Handbook, 24 CFR § 85.36 (the "Regulation"), and the HUD-approved HACLV procurement policy to the facts of the situation.

Despite the OIG's allegation, there are no regulatory or administrative requirements for HACLV to use cost analysis in a competitive procurement for professional services. The HACLV procurement policy, which has been approved by HUD, tracks this notion. **[see relevant portions of HACLV procurement policy, Exhibit D-1].** Furthermore, the HUD Procurement Handbook gives HACLV a choice as to which type of analysis to apply to a professional services contract. **[see relevant portions of HUD Procurement Handbook, Exhibit D-2]**. Among other relevant portions of the HUD Procurement Handbook that clearly provide HACLV with the flexibility to use a cost analysis versus a price analysis are the following:

- "In most cases, it will be sufficient for the HA to use price analysis, which may be as simple as comparing the independent cost estimate with the competitive prices received, to ensure that the contract price will be reasonable. When competition is not obtained, a change order has been issued, or the procurement is for a complex item such as professional services, the HA *should* perform a cost analysis, using the procedures described in HUD Handbook 2210.8." [HUD Procurement Handbook § 2-7; Emphasis Added];

- "Should" is not defined as an obligatory requirement in the HUD Procurement Handbook. The term is defined as "the action is suggested but not required to obtain or retain benefits." [HUD Procurement Handbook § 1-1.C.4];

- The HUD Procurement Handbook also states that price analysis is "the most common technique for evaluating the price of HA procurements." [HUD Procurement Handbook § 4-21.B].

Similarly, the HUD-approved HACLV procurement policy specifically provides:

- "A cost or price analysis shall be performed for all procurement actions, including contract modifications…The degree of analysis shall depend on the facts surrounding each procurement." [HACLV Procurement Policy Sec. III. F].

The Regulation also provides HACLV with flexibility to determine whether to use a price or cost analysis.[2] It is also important to note that the previous 2002 OIG procurement

[2] "Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is

(continued...)

Comment 19

audit of HACLV cleared a number of procurement findings that were based upon contracting procedures involving price analyses. The OIG determined price analyses to be sufficient in the 2002 review and it is inexplicable that the OIG would now make contrary findings. This matter was discussed during the Exit Conference and OIG staff agreed to review the provided materials and the prior OIG audit.

Comment 21

The Draft also notes that "adequate cost estimates" were not prepared for any of the three contracts with Abt. This allegation is incorrect. Independent Cost Estimates ("ICE") were completed nearly two months prior to the response evaluations were completed. **[see completed ICEs, Exhibit D-3].** The OIG's allegation suggests that either the ICE's were not completed at all (which is incorrect) or that what was completed was not "adequate". If the former is the case, the OIG has cited no standard that HACLV should have followed for what would constitute an "adequate" cost estimate. The cost estimates used by HACLV followed the same form used by the agency for many years and accepted by HUD.

The Draft states that "adequate cost information" was not sought from prospective contractors and as a result, a "meaningful cost analysis" could not be completed. (see Draft, pg. 7). This argument is circular and highlights the OIG's lack of understanding of the HUD Procurement Handbook, the Regulation and the HACLV procurement policy. Again, HACLV chose to do a price analysis, based upon its reasonable interpretation of the Regulation and HUD Procurement Handbook, and as a result, obtained the information that was only necessary for a price analysis - there was no need to require a breakdown of the elements of cost, as the OIG alleges because that information is only required for a cost analysis.

Ultimately, these are business decisions within HACLV's jurisdiction for which the OIG is trying to substitute its judgment. 24 CFR § 85.36(a)(11) specifically prohibits such practice noting that "federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a federal concern." Unfortunately, the OIG has taken the opportunity of the audit to step well beyond its bounds to insert its business judgment. Accordingly, there is no evidence that supports this finding.

(...continued)

dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees 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 will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. *A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.*" [Emphasis Added]. 24 CFR § 85.36(f).

Finding 1 - Draft, Page 8

The OIG makes the unwarranted allegation in the Draft that "the two competitive procurements [for the tax credit assistance and VCA compliance assistance contracts] that resulted in hiring Abt were not conducted in a fair, impartial and consistent manner." (see Draft, p. 8). The Draft also states that "some of the scores for individual criteria were not reasonable and others were not supported" and that "some of the scores given by the purchasing manager were not reasonable, and the lack of support in the evaluation panelists' narrative justification statements indicates that either they did not review the proposals in a careful manner or they ignored the content of the proposals." (see Draft, p. 8). Unfortunately, it appears that the OIG has failed to review carefully both the applicable procurement policies as well as the HACLV documentation produced in reviewing the proposals.

Comment 22

The OIG claims that the Abt tax credit consulting contract proposal was scored too highly based upon a proposed cost differential of 2.65 percent in comparison with another bidder. The OIG also faults HACLV for providing Abt with a higher score for "specialized knowledge, capability and ability" due to Abt's submission of an unsolicited work timeline. These allegations demonstrate the OIG's lack of understanding of the relevant procurement policies.

Comment 23

As permitted by HUD's Procurement Handbook, HACLV's scoring criteria does not evaluate costs simply on the dollar value proposed by offerors. Cost is not just evaluated on the basis of the dollar figure presented but as a function of value. Value is a subjective consideration as provided by each evaluator. The HUD approved HACLV procurement policy (that also tracks the requirements of the HUD Procurement Handbook) states, "the RFP shall clearly identify the relative importance of price and other evaluation factors and sub-factors, including the weight given to each technical factor and sub-factor. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitations are issued." [**see HACLV procurement policy § 3.D.2, Exhibit D-4**]. Therefore, the OIG's contention that the scoring differential vis-à-vis the cost differential is too large is incorrect as it does not take into account that reviewers afforded to "value". The Purchasing Manager's award of 60 awarded to Abt versus the 45 awarded to another firm for the tax credit consulting contract is not simply a function of cost. It is an evaluation of cost and value which the Draft's conclusions do not seem to capture.

HACLV's scoring process outlined in the RFP for tax credit consulting also made clear that cost is not the only factor in determining a responder's score. **[see pg. 14 of tax credit consulting services RFP, Exhibit D-5].** The RFP indicates that a maximum of 30 points would be applied for each evaluator pertaining to the "COSTS the proposer proposes to charge the HACLV and their VALUE (Value, based upon the opinion of the evaluators)". Each proposal was first evaluated for responsiveness (whether the response met the minimum of the requirements). A minimum three-person panel then evaluated each proposal based upon a series of categories for which a maximum set of points could be awarded.

Comment 12

The OIG also faults the HACLV reviewers for providing Abt with additional points for the submission of a project timeline in its proposal for the tax credit assistance contract. It is important to note that while the RFP did not require the submission of timelines, there is nothing that would prohibit the responder from providing additional information that

may assist a reviewer in evaluating the proposal. In fact, the RFP noted that "development of a schedule for completion of all components of the application, with interim deadlines and assignments of all components" was one of the tasks for which the chosen responder would eventually be responsible. **[see pg. 5 of tax credit consulting services RFP, Exhibit D-6]**. Most importantly, the tax credit assistance RFP specifically noted that *"The proposer may include hereunder any other general information that the proposer believes is appropriate to assist the LVHA in its evaluation."* **[see Sec. 3.1.10 of tax credit consulting services RFP, Exhibit D-7; Emphasis Added].**

Comment 24

With regards to the VCA compliance assistance contract scoring process, the OIG alleges that because Abt received an average score 53 percent higher than a comparable bidder for all evaluation categories other than cost, that the selection was not fair and impartial. The OIG has failed to substantiate this allegation and again has misunderstood HACLV's HUD-compliant procurement procedures. To say simply that the review was not impartial because one score is far higher than the competitors fails to account for a scenario in which one responder truly outshines the responses submitted by others. All of the VCA compliance assistance response reviewers indicated that the comparable bidder had fared well in both the experience and knowledge/capability categories - however, they all make clear distinctions that the other proposal was not as detailed as that submitted by Abt. **[see VCA solicitation evaluation and tabulation forms, Exhibit D-8].** It is reasonable for a reviewer to award a higher score to a responder that submits a more detailed, well prepared proposal particularly when the RFP indicates that a number of factors would be weighed in assessing the responders' bids. **[see VCA RFP scoring criteria, Exhibit D-9].**

It is important to note that with regard to both the tax credit compliance and VCA compliance assistance contracts, HACLV has fully complied with all proposal evaluation requirements as set forth in the HUD Procurement Handbook, the HUD-approved HACLV Procurement Policy and the evaluation criteria set forth in the RFPs. The OIG has not provided any evidence to the contrary. These matters were discussed at length during the Exit Conference and on both counts OIG staff agreed to review the additional documentation and make the appropriate revisions to the Draft as warranted. A reasonable review of the submitted documentation would demonstrate that in no uncertain way did HACLV ever indicate that cost would be the singular factor upon which the evaluation would be conducted. The documentation demonstrates that HACLV properly considered a variety of factors in making its evaluations. Furthermore, HACLV was perfectly within its right to consider additional documentation not specifically requested nor prohibited by the RFP. The OIG should remove these unsupported findings accordingly.

Finding 1 - Draft, Page 9

Comment 25

The OIG incorrectly alleges in the Draft that HACLV "used an improper contract type for the two Abt contracts." (see Draft, p. 9). The OIG claims that requirements contracts are only appropriate for the purchase of specific commercially available items or services at a fixed price over a specified period. The OIG also claims that HACLV in effect set cost limits by including Not-to-Exceed ("NTE") amounts in both the VCA compliance contract RFP and the tax credit application assistance contract RFP which were then exceeded. Both conclusions demonstrate the OIG's misunderstanding of the relevant procurement policies as well as the facts regarding each contract procurement.

Comment 25

The OIG has not substantiated its claim that HACLV cannot use requirements contracts for these types of procurements. In fact, there is nothing that prohibits HACLV from using requirements contracts in these instances. The HUD Procurement Handbook notes that "When contracting by competitive or noncompetitive proposals, any other contract type [in addition to a firm fixed price or fixed price] is permissible." **[see Handbook 7460.8, § 6-1(E) at D-10].** Furthermore, requirements contracts are considered appropriate when the government anticipates recurring requirements but cannot predetermine the precise quantities of services that designated government activities will need during a definite period. 48 C.F.R. 16.503(b) (2005). The unknown quantity of services needed, and the fact that the quantity of services contracted is defined by the government's need are justifications for using a requirements contract. See [redacted] ASBCA 25542, 81-2 SCA para. 15,204. It is appropriate to use a labor-hour contract for services that are not well-defined, as this permits the government flexibility as to the amount of work that needs to be done to meet the government requirement. See 48 C.F.R. 16.501-2(c) (2005); [redacted] DOTCAB 1231, 82-2 BCA para. 15,967. The only types of contracts that are explicitly prohibited are: 1) cost plus a percentage of cost contracts; 2) percentage of construction cost contracts. (see 24 CFR § 85.36(f)(4)).

The use of requirements contracts in these instances was appropriate as HACLV did not have a sense as to how much work would be performed. HACLV had not entered into a contract for VCA compliance assistance and therefore had no experience upon which to base a fixed-price contract. It was not clear to HACLV at the time what exactly the scope of assistance would be and how much time it would take. Furthermore, the RFP for the tax credit consulting indicated that while the Housing Authority had a greater awareness of the potential tasks to be completed by the contractor, there were still a great number of uncertainties that made it difficult to pursue a firm fixed-price contract - the RFP in fact states that the tasks to be performed were "including but not limited to." **[see tax credit consulting services RFP, p. 3, Exhibit D-11].** In a professional services contract context, there is no other measurement tool of production units than hours worked. In this case, that was the unknown quantity because HACLV did not know the total amount of time required to complete the tasks under the VCA and tax credit contracts. The OIG has not sufficiently demonstrated that HACLV had sufficient experience and information in order to procure fixed-price contracts in these contexts.

Once again, it appears that the OIG has substituted its own business judgment for HACLV's. OIG staff have also taken the liberty of commenting on HACLV's adherence to its own procurement policy which is clearly beyond the stated objectives of the audit. These matters were raised at the Exit Conference and it was mutually agreed that the OIG would review the relevant portions of the HUD Procurement Handbook and consider revisions to accurately reflect what is required and what is recommended regarding contract types. That review has apparently not taken place. Furthermore, as previously discussed under the section addressing the Draft's factual inaccuracies, the OIG has mischaracterized the RHP contract as a requirements contract when it is in fact a fixed-price contract.

It is interesting that the OIG chooses to characterize the aforementioned contracts as requirements contracts but at the same time criticizes HACLV for establishing and exceeding Not-to-Exceed ("NTE") amounts that it simultaneously maintains are fixed-price amounts. Not only is the OIG's logic circular but it is simply incorrect. The NTE amounts were never intended to be fixed-price amounts. These amounts were to be drawn down by issuance of task orders to Abt for specific required work and it was always HACLV's intention to increase the contract

amounts if the scope of the work expanded. Therefore, the OIG's argument that costs escalated 322 percent over the original NTE is a meaningless and disingenuous comparison. The original NTE amounts were not even intended to approximate the amount of work to be performed - if there were such a sense of work to be performed, HACLV would have procured fixed-price contracts. Both contracts explicitly provide that the NTE amounts may be amended by HACLV where it is in HACLV's "best interest to do so." **[see tax credit compliance contract § 2.3.2 & VCA contract § 1.3.2, Exhibit D-12].** The increases over the original NTEs only reflect the additional work ordered - not an increase in price.

Comment 26

Furthermore, to characterize the contract amendments as a function of percentage only is misleading. The OIG agreed to provide specific citation to applicable policy and/or regulations demonstrating that an evaluation of cost increases on a percentage basis is proper procedure. However, in the absence of such information, HACLV is not aware of any HUD requirements that prohibit contract amendments based upon percentages and it is irrelevant for purposes of HUD requirements if a contract is amended by one percent or 500 percent. Amendment of a requirements contract by a high percentage does not mean that the amendment constitutes an unpriced option as the Draft asserts.

Finding 1 - pg. 12

Comment 27

The OIG makes the unfounded allegation that the amendment to the VCA contract to provide training was a noncompetitive amendment because it was an unpriced option as the need for training was not particularly described in the original RFP. This is an incorrect allegation. The RFP called for submittal of a work plan of which training could be one component.

As was discussed during the Exit Conference and submitted as part of the March 27th follow-up letter, the RFP plainly indicated the need for the responder to submit a "work plan, including key policies and procedures, that the successful proposer will implement to provide the services and the specific results that the proposer expects to affect." **[see VCA RFP sec. 3.1.4.1, Exhibit D-13].** In response, Abt submitted a work plan that included training as a component of their overall assistance strategy. **[see Abt work plan, Exhibit D-14]**. The work plan was eventually made part of the Abt VCA assistance contract.

This matter was discussed during the Exit Conference and OIG staff agreed to review the relevant RFP language as well as the Abt work plan submission. In fact, OIG staff had explicitly agreed to consider adding a statement that the training was in the original scope of the contract and to state what was wrong with the process at issue. Once again, by refusing to revise the Draft in any meaningful way, the OIG has reneged on another agreement and left another glaring inaccuracy and misunderstanding of HACLV procurement actions in the final draft audit report.

Finding 1 - pg. 12

Comment 28

The OIG has incorrectly alleged in the Draft that the original RHP assistance contract was improperly amended to add a development proposal, increasing the original $59,200 contract to $78,654. As was discussed during the Exit Conference, the original scope of work for the RHP contract stated that the contractor's responsibility was to "work with HACLV to develop a scope of work and price (additional services) toward future milestones (development proposal) necessary to proceed with implementation of the RHF plans." **[see RHP**

Comment 28

contract, Attachment A, Exhibit C-9]. The need for the development services was clearly anticipated from the beginning and was made part of the original RFP. The contract was amended on November 18, 2004 in order to clarify the elements of the scope of work to include the development proposal and the price for such work. **[see RHP contract modification No. 1, Exhibit D-15].**

This information was discussed at the Exit Conference and the relevant materials were submitted as part of the March 27th letter. A reasonable review of the materials would lead the OIG to revise this finding in the final draft audit report.

Finding 1 - pg. 13

Comment 25

The Draft incorrectly notes that the amendment to the tax credit Application assistance contract was improper because it was treated as an "unpriced option". Once again, OIG staff failed to comprehend the procurement process and instead made conclusions that are unfounded. As previously noted, the HUD Procurement Handbook does not limit the amount of contract increases. Particularly, the HUD Procurement Handbook places no limitation on percentage cost increases. To merely review a large percentage increase and summarily conclude that it was an unpriced option is a faulty analysis.

As previously explained, the NTE amount on the tax credit contract was never intended to be a set limit. HACLV always expected, with Board approval, to seek contract increases as the work evolved and progressed. This contract increase, requested by [redacted] was considered at the June, 2005 Board meeting. **[see Increase of Contract request, Exhibit D-16].** This increase was for the second phase of work as contemplated in Abt's two-part work plan submitted in response to the tax credit RFP. The Board approved the cost for the second phase of work during the June, 2005 Board meeting in the amount of $136,275. **[see p. 2 of June, 2005 Board meeting, Exhibit C-10]**. There was nothing improper about this contract increase and the finding should accordingly be removed from the OIG's final draft audit report.

E. The OIG Fails to Delineate between Past Problems and Current Practices

Comment 29

As HACLV conveyed to OIG representatives during the Exit Conference, the audit report does not clearly distinguish between practices which occurred under a prior HACLV administration and those which occurred under the current one. For example, on page 4, the Draft states that the current Executive Director, [redacted] was appointed in 2002, and that prior to that he was HACLV's Deputy Executive Director. This is true. The Draft further notes that the current Deputy Executive Director, [redacted] was hired in 2004. This is also true. The Draft, however, then commences a discussion of issues identified during a 2002 OIG audit of HACLV which reviewed procurements during a time period in which neither individual was in his present position or responsible for supervising the actions reported in the audit. The OIG, however, never clarifies the distinction between the two administrations. In fact, it even states that the 2002 OIG audit found that "[t]he executive director awarded consulting contracts without board approval" yet never clarifies that this finding relates to the *previous* Executive Director of HACLV. Additionally, the OIG never mentions anywhere in the draft that [redacted] was not involved in procurement when he was Deputy Director of HACLV. Similarly, on page 15 of the Draft, the OIG discusses "similar procurement violations by the Authority" and again fails to clarify that the violations occurred under a different administration. The Draft

attempts to explain its reliance on HACLV's past problems by stating on page 15 that [redacted] and purchasing manager [redacted] were "in place" when the OIG report was issued; however, this statement does not justify the failure of the OIG to clearly distinguish between past practices and the present administration.

Comment 29

At best, this lack of specificity is confusing. At worst, the misleading information could improperly be used as support for the OIG's serious recommendations against HACLV and its present administration. In fact, if one compares the scope of OIG's review and findings to its recommendations, it is difficult to imagine that the OIG is *not* relying on these past problems to support its present recommendations. The OIG reviewed three out of eighty-three contracts that HACLV entered into in during fiscal years 2004 and 2005. The costs of the three contracts totaled $473,499, whereas the cost of all eighty-three contracts executed during that time period was $18 million. This equals 3.6% of the total contracts executed and less than 2.6% of the total dollar value of these contracts. The three contracts were not randomly sampled, nor could they be considered statistically significant. While HACLV takes any criticisms of its practices seriously and will seek to rectify any problems, the OIG's findings cannot be used to reach general conclusions about HACLV's procurement practices. Yet the OIG recommends, based on its findings related to these three contracts, that HUD be required to review all HACLV professional services contracts in excess of $50,000 and further recommends that [redacted] and Purchasing Manager [redacted] receive administrative sanctions including debarment. These recommendations are so extreme compared to the scope of the OIG's review that it appears that the OIG is using HACLV's past problems as support for its recommendations.

Comment 2

HACLV and its present administration have worked diligently and very closely with HUD to remedy problems identified by the OIG in 2002 and HUD in 2003. As the Draft notes, HACLV revised its policies and procedures in response to those earlier findings, which are now closed with the exception of one open finding referred to earlier. In fact, [redacted] led the charge to remedy those findings. It is therefore extremely disingenuous to suggest in any way to use those earlier findings as support for the Draft's recommendations. It is further troubling that HACLV brought these issues to the OIG's attention during the Exit Conference, and the OIG agreed during the Exit Conference to review and add information clarifying the distinctions between the past and the current findings. To date, HACLV does not know whether the modifications have been made.

2. RECOMMENDATIONS

Below please find HACLV's responses to the OIG's recommendations. Because the OIG refused to provide HACLV with a revised draft audit report for review, HACLV is forced to respond to the recommendations contained in the Draft. Accordingly, the response below is based on an assumption that the recommendations are the same.

Finding 1

Comment 30

1A. As HACLV discussed at length with the OIG during the Exit Conference, HACLV strongly disagrees with this recommendation and had requested its removal for two reasons. First, as discussed above, the sole source procurement at issue was proper and was consistent with both Federal law and the HUD-approved HACLV procurement policy. Second,

the contract costs at issue *were* paid with non-Federal funds, so the OIG's recommendation is erroneous.

Comment 30

The non-Federal funds at issue were proceeds from the disposition of land at HACLV's Gerson Park development. The OIG has asserted that proceeds from land disposition are "Federal funds" because HUD regulates the use of such proceeds by requiring housing authorities to use them for affordable housing purposes delineated in 24 C.F.R. part 970. Just because HUD regulates certain funds, however, does not make them Federal funds. In fact, the OIG's position is not supported by legal experts or by HUD's own actions. First, at the time that HACLV paid the contract costs at issue, it relied on an opinion from a nationally-recognized housing law firm that concluded that the funds used were not Federal funds. The OIG was given a copy of this opinion. Second, HUD's actions further suggest that the OIG's conclusion is mistaken: HUD permitted HACLV to use the Gerson Park land disposition proceeds to leverage replacement housing factor funds, and such leveraging can, by statute, only occur with non-Federal funds. Were the Gerson Park proceeds Federal funds, HUD would not have permitted this use. In sum, HACLV disagrees with the recommendation because the procurement at issue was proper and further maintains that the recommendation is irrelevant because the contract costs were paid with non-Federal funds.

Comment 31

1B. The costs associated with the VCA contract were proper and reasonable, so no repayment of such costs should be required. As discussed at length in the preceding section of this response and at the Exit Conference, the OIG's allegations regarding the VCA contract are factually inaccurate and misleading and are not supported by law. The OIG was unable to identify any actual violations of Federal, state or local law in connection with this contract, nor could it identify any HUD *requirements* which were violated; instead the OIG supported its questioning of HACLV's business decisions with HUD *guidance* and *recommendations* that HACLV is not required to follow. In short, the OIG provided no evidence that the costs incurred were improper or unreasonable. In contrast, HACLV provided information and evidence to the OIG which showed that the procurement and contract amendments were proper and that HACLV followed its internal procurement procedures. Accordingly, HACLV objects to this recommendation.

Comment 31

1C. Again, the OIG provided no evidence that the costs of the tax credit consulting services contract were unreasonable. Accordingly, no corrective action should be taken. As discussed in detail in the preceding section of this response, the OIG repeatedly misconstrued the facts associated with this procurement and failed to correctly understand and apply the Federal requirements applicable to this procurement. The OIG's allegations were unsupported in fact and law and no repayment of costs should be required.

1D. In recent years, HACLV has worked closely with HUD to correct previous problems in its procurement practices. As a result, HACLV has overhauled its procurement system and instituted policies and procedures, which have been approved by HUD and which are consistent with Federal law. While HACLV believes its staff and Board are already very knowledgeable about Federal requirements and their respective responsibilities, HACLV welcomes the opportunity to increase the knowledge and skill sets of its employees and Board. Accordingly, as communicated to OIG staff during the Exit Conference, HACLV embraces this

recommendation and looks forward to participating in the educational opportunities that result from this recommendation.

1E. The OIG's allegations simply do not justify this extreme recommendation. Moreover, it would be neither prudent nor effective to have HUD staff review and approve all professional services contracts and amendments over $50,000. The OIG's findings must be placed in relevant perspective. As the OIG noted in the Draft, during fiscal years 2004 and 2005, the Authority entered into 83 contracts totaling more than $18 million. In the Draft Audit, the OIG reviewed 3 of these contracts, totaling $473,499. This equals 3.6% of the total contracts executed and less than 2.6% of the total dollar value of these contracts. The allegations simply do not constitute a representative sample of the Authority's contracts that could give rise to such an extreme remedy. Further, as discussed, the procurement training should eliminate the need for this recommendation.

Comment 32

1F. The issues identified in the Draft simply do not justify the extreme recommendation of administrative sanctions, including debarment. Debarment is a serious remedy that is only warranted if HUD can prove, by a preponderance of the evidence, that an individual has acted in a manner so serious and compelling in nature that it affects his present responsibility. The Draft recommends that the Region IV director of public housing should, "Take appropriate administrative action against the executive director, deputy executive director, and purchasing manager, up to and including debarment, for blatant disregard of federal requirements." (see Draft, p. 16). As our response has indicated and the documentary evidence shows, there was no such "blatant disregard of federal requirements." No evidence exists that any of these individuals acted improperly, in their self-interest, or intentionally misled the Board. While HACLV takes seriously any allegations of wrongdoing and will vigorously seek to rectify problems, any reaction must be proportionate to the situation. As noted above, the OIG's unsupported allegations cover 3.6% of the total contracts executed by HACLV during the period in question and less than 2.6% of the costs of these contracts.

Comment 29

Additionally, it appears that the OIG is using past problems at HACLV to justify these serious recommendations against these employees. As noted above, however, the past problems at HACLV occurred under a different administration. The 2002 OIG audit covered a period of time in during which [redacted] was not employed at the Authority. [redacted] was Deputy Executive Director during that time period; however, he was not involved in the actions or decisions that led to unfavorable OIG findings. Moreover, [redacted] was charged with implementing remedies to the problems identified. The remedies he implemented resulted in a closing of the OIG findings against the housing authority. [redacted] also was not employed at HACLV during the period of time covered by the 2002 review but since joining HACLV has worked with [redacted] to rectify the prior identified issues. While [redacted] was employed by HACLV during the 2002 OIG review as well as during the 2003 HUD management review, many of the findings contained in those reports involved procurements that were conducted outside the Procurement Department by other HACLV employees. [redacted] worked cooperatively with HUD in resolving those findings.

As described above, the OIG's conduct in this audit raises serious questions as to the validity of these extreme recommendations. The OIG did not seek a fair and balanced perspective from HACLV's Board members; rather, it only spoke with two board members who

Comment 5

Comment 5

were unhappy because they held a minority view of the Board on some matters. This omission is highly disturbing, given the number of allegations by the OIG against [redacted] and [redacted] related to their interactions with the Board. Additionally, the OIG did not have thorough discussions with the relevant staff regarding all of its findings. The OIG did not even meet in a substantive manner with the three individuals against whom it recommends administrative sanctions; these men were never even aware that they were a target of the audit until they received the Draft. As a result, the Exit Conference was the first and only opportunity that they were given to provide a defense, but the OIG apparently has refused to consider the information provided during the Exit Conference, including direct comments by a HACLV Commissioner, by revising the Draft. It is impossible for the OIG to produce a fair and accurate audit if the auditors ignore key sources of information.

Finding 2

Comment 33

2A. No wrongdoing or improper actions occurred in connection with this finding, therefore HACLV requested at the Exit Conference that this finding be removed. First, no law, regulation or statute indicates that it would be improper to retain the interest. Second, as explained to the OIG, HACLV only retained the interest referenced in this finding because HUD specifically asked HACLV to do so until HUD made a decision regarding the monies. HACLV has contacted HUD several times in writing in an attempt to return the interest, and is presently awaiting directives from HUD regarding the proper Treasury routing number to which the payment should be made. The HUD official in attendance at the Exit Conference confirmed that no information as to where to send the interest had been provided notwithstanding HACLV's repeated requests therefor. HACLV provided the OIG with documentary evidence of its correspondence with HUD in connection with this matter, again, as confirmed by HUD at the Exit Conference, and is extremely disappointed that the OIG may have failed to remove this finding. There was no impropriety and HACLV acted and continues to act in accordance with HUD's directives in connection with this interest.

3. CONCLUSION

HACLV strongly objects to the issuance of this audit which is unsupported by the facts and federal requirements. Equally troubling is the OIG's disregard for the Government Auditing Standards, HUD OIG Handbook, and its own protocols in processing this audit. There is absolutely no justification for the recommendations proposed by the OIG, with the possible suggestion of procurement training, but even additional training would not necessarily change any of the allegations cited in the Draft, as many of them are based on HACLV's failure to follow federal requirements, but rather OIG's own views on how the procurement process should occur. Taken in the best light, HACLV can only surmise that OIG seeks to push HUD to change or otherwise make more rigid its procurement guidelines for housing authorities. If that is the case, OIG should be conducting an internal audit of HUD and not use HACLV as the vehicle for criticizing the Department. A more cynical view would be that OIG has some hidden agenda regarding this agency and its employees.

Comment 29

The debarment recommendations against [redacted], and [redacted] are unconscionable, as they attempt to ruin the reputations and livelihoods of three well-respected professionals who each have well over twenty years of dedicated service to affordable

Comment 29

housing without due process. OIG does not even allege that they were self-dealing or otherwise acted improperly, however, including these severe recommendations of debarment suggests that these men somehow acted criminally or unethically. If the OIG has evidence of such acts, OIG should present it to HACLV and the three employees so that they can respond appropriately. To date, no support for such claims has been provided, thus there is no basis for debarment or other enforcement action.

Perhaps the most troubling aspect of this entire exercise is that, if implemented, the majority of the recommendations seek to punish residents of HACLV public housing and families on the waiting list who would lose the benefit of tens of thousands of dollars in already scarce housing assistance. Even if these allegations were true, which they are not, many of the findings are of a technical nature that do not warrant the recapture of funds, as there is not even an allegation that federal funds were used for an improper purpose. The OIG's attempt to damage HACLV's reputation in the community can hurt residents for many years to come by making it more difficult for the agency to do business and leverage the private investment desperately needed to increase and maintain the inadequate supply of affordable housing in Las Vegas.

Please feel free to contact me if you have any questions.

Sincerely,

Sharon W. Geno

CC: [redacted], Board Chairperson
[redacted], Board Member
[redacted] Board Member
[redacted], Board Member
[redacted], Board Member
[redacted], Executive Director (via email)
[redacted] Deputy Executive Director (via email)
[redacted], Purchasing Manager (via email)
[redacted], U.S. Department of Housing and Urban Development (via email, facsimile, and Federal Express

OIG Evaluation of Auditee Comments

Comment 1: We have included the entire 29 pages of comments, unmodified, in the final report. It is not OIG's policy to include all exhibits provided with the auditee response, or additional information provided, as this constitutes a large volume of documents. As a result, the exhibits have not been included, but are available upon request.

Comment 2: During the exit conference on March 21, 2006, the attending attorneys from Ballard & Spahr repeatedly stated that they expected to receive a revised draft report to which they would provide final comments. The Regional Inspector General repeatedly explained to the attorneys that the Office of the Inspector General would review the written comments received in response to the discussion draft (which was provided to the auditee prior to the exit conference) as well as any additional documentation provided, and we would only provide a revised discussion draft to the auditee if substantial changes were required. Minor changes were made to the final report based on information obtained during the exit conference, review of the written comments, and documents provided by the Authority's attorneys. However, these changes were not substantial to affect the conclusions presented in the February 28, 2006, discussion draft report. Therefore, a revised discussion draft was not warranted.

Comment 3: The audit findings and conclusions (as explained during the exit conference) are primarily based on the analysis of documents obtained from the Authority (including minutes of the Board of Commissioners' meetings). During the audit, we also discussed finding issues with the executive director and other housing authority staff. As a matter of fact, as we were responding to the Authority's first set of comments to the draft report and decisions were being made on whether a revised draft was necessary, the HACLV attorneys received approval from OIG Headquarters for yet another extension of time to provide another set of comments to the draft report.

Comment 4: The Office of the Inspector General repeatedly communicated to the Authority the deadlines delineated by internal policies and procedures. Despite the established procedures, the Authority was allowed substantial leeway and several time extensions to participate in an exit conference and provide its official comments.

Comment 5: The Authority claims auditors did not obtain a fair and balanced view of the matters under audit because the auditors only interviewed commissioners who disagreed with the executive actions, failing to meet Section 7.39 of the Government Auditing Standards. The entire Section 7.39 actually states: "Auditors should communicate information about the specific nature of the performance audit, as well as general information concerning the planning and conduct of the audit and reporting—such as the form of the report and any potential restrictions on the report - to the various parties involved in the audit to help them understand the objectives, time frames, and any data needs. Parties

involved may include **a.** the head of the audited entity; **b.** the audit committee or, in the absence of an audit committee, the board of directors or other equivalent oversight body; **c.** the individual who possesses a sufficient level of authority and responsibility for the program or activity being audited; and **d.** the individuals contracting for or requesting audit services, such as contracting officials or legislative members or staff, if applicable."

The auditors fully complied with the requirements of Section 7.39 by communicating information concerning the planning and conduct of the audit to the executive director by telephone on June 20, 2005, by a letter on June 21, 2005, and during the entrance conference held on June 28, 2005. Only one commissioner (the same one the auditors subsequently interviewed) was present at the entrance conference, although all could have attended. The auditors kept the executive director informed about the audit progress the entire time the audit team was present at the Authority's premises (through July 2005), including plans to return to the audit site after the end of the survey stage to review additional contracts.

It is not OIG's policy to recommend administrative sanctions lightly or without considering the total audit, as well as discussing the issues and recommendations with both HUD Public Housing officials and OIG headquarters officials. Therefore, a decision to recommend sanctions is not normally discussed while the audit fieldwork is still in progress.

Although we were not required to discuss issues with the Board of Commissioners, the matters of use of federal funds in the emergency procurement with Abt and RHF and VCA contracts and contract amendments were discussed with two commissioners. One of the two commissioners interviewed was the complainant, and the other was the sole commissioner present at the entrance conference, at which time she offered to meet with the auditors. We also discussed a procurement matter, not related to the findings identified in the report, with the chairman of the board that directly related to him. In addition, we discussed the matters of emergency procurement for the RHF contract and the VCA contract with the authority's then current counsel, and discussed audit related matters with the director of modernization and finance director. We discussed our preliminary results with the director of modernization, deputy executive director, and executive director on July 26th, 2005. These communications show the auditors maintained an objective balance of communication with those who agreed and disagreed with the procurement actions under review. Although written finding outlines were not provided to the auditee, the issues were discussed with its officials, including an extensive discussion during the March 21, 2006 exit conference in which the authority responded to each finding issue in great detail. We have audit work papers that document the discussions held
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Our discussions with the authority's executive director and other officials throughout the audit fulfilled the Government Audit Standards requirement fo holding discussions with the head of the audited entity, and provided a reasonable and fair opportunity for those subject to the audit findings to respond. The lack of finding outlines did not affect the final outcome of the proceedings as the auditee was granted a reasonable period to document its rebuttal to the audit findings documented in the February 28, 2006, discussion draft. Our office gave the auditee substantial leeway for their response, including an extension before the exit conference, which was held three weeks later on March 21, 2006; an opportunity to provide "unofficial" written comments on March 27, 2006; and to provide final comments on May 8, 2006 (see appendix B), 69 days after the discussion draft was issued.

In addition, we did not solely rely on the claims of two board members as the auditee claims. As mentioned above, discussions were held with other authority officials. We reviewed and considered all pertinent documentation, including documents provided by the auditee in response to the discussion draft, to draw our final conclusions.

Examples of specific non-compliance about the tax credit procurement and contract processes (reviewed after on-site work was completed) were communicated to the executive director and the deputy executive director in the discussion draft report of February 28, 2006, along with the rest of the audit findings and conclusions. In the declaration submitted by the purchasing manager, he stated that the auditors expressed opinions and audit conclusions including, the conclusion that the RHF contract was an emergency and the use of a requirements contract was acceptable. Neither of the auditors ever expressed conclusions or opinions claiming to approve or agree with the justification of the emergency RHF contract. Neither of the auditors ever made any comments about the propriety of requirements contracts for professional consulting services.

Comment 6: The auditors interviewed the then current legal counsel to the Authority, who was actively involved in the matters under audit. The legal counsel was to participate in the June 28, 2005, entrance conference; however, he missed the meeting because he was given the wrong time by the authority officials. There is no criteria prohibiting auditors from asking the legal counsel questions, and the Authority never requested the auditors not to do so. Many of the questions asked of the attorney were public knowledge as it related to approval for sole source contracts because the information was in the board minutes. The attorney comfortably refused to comment on issues he felt were inappropriate for our discussion. This indicates he was alert of his freedom to refuse answering our questions. Further, it was incumbent upon the attorney to protect any privileged communication with the housing authority and not the responsibility of the audit staff.

Comment 7: During the entrance conference, the executive director and the deputy executive director indicated that the deputy executive director would be available to assist us with our needs during the audit. We were never informed of any restriction against contacting the Authority's employees, nor is there anything restricting us from speaking with employees of any federally funded entity.

Comment 8: The OIG transmitted reports to only two people, the executive director of the housing authority (via Federal Express and email) and HUD's director, Office of Public Housing, in San Francisco (via email). Further, the accompanying transmittal letters contained the following warning to prevent improper release of the draft contents:

"Recipients of this draft must not show or release its contents for any purpose other than review and comment. They must safeguard it to prevent premature publication or otherwise improper disclosure of the statements or information it contains. Reproduction of this draft without consent of the Office of Inspector General is prohibited."

Additionally, each page of the draft report is clearly marked "**DRAFT – USE RESTRICTED**."

We did not consent to the reproduction of this draft to any other individuals, nor did we leak the draft to anyone else.

Comment 9: The OIG did not criticize business decisions, except when those decisions did not comply with government requirements or did not support economies or efficiencies of operations. The review and critique of an auditee's procedures is within the scope of OIG's authority, per the Inspector General Act of 1978 (see Appendix C – Criteria), and is an audit requirement.

Comment 10: We have adjusted the report to state that the executive director and the deputy executive director did not provide sufficient and timely disclosure to the board and that one board member stated that the board was misled. Our conclusion considered the documents provided with the auditee's comments, most of which had already been reviewed during the course of the audit.

The Authority states that "the interim notices [to proceed] clearly demonstrate the employees' attempt to inform, *not mislead,* the board." However, the interim notices to proceed were addressed to Abt Associates and the executive director and the deputy executive director have never provided any statement or evidence that the notices were sent to the board. There is no evidence to substantiate the Authority's statement that the executive director and the deputy executive director consulted with the chairman of the board and legal counsel prior to issuing interim notices to proceed. If such a consultation occurred, neither the chairman of the board nor counsel had the authority to approve additional charges under the

contract, and the rest of the board remained uninformed of the increase. By the Authority's own procurement policies and procedures and according to the contract itself, board approval was required before the contract could be increased. The minutes of the April and May 2005 board meetings, including statements made by the executive director and the deputy executive director (below), show that the board was not informed about the contract increases until April 2005.

Regarding the cancellation of two board meetings and the failure to disclose the contract increase during two board meetings, the executive director stated that Authority employees did not cancel board meetings during this time; the meetings were cancelled by the chairman of the board. The cancellation of the December 2004 and March 2005 board meetings came into question during the April and May 2005 board meetings, when the VCA contract increases were discussed. The minutes show several explanations were offered.

- During the April board meeting, the deputy executive director said that he realized, when he read the agenda for the December board meeting, that a mistake had been made on the VCA contract because it did not account for the A&E firm that was supposed to partner with Abt as proposed in response to the RFP. Because of that, he needed to reassess the contract and recommend a separate RFP be issued for an A&E contractor.

- A board member said she remembered being told the meeting was cancelled because there was nothing on which the board needed to vote. The chairman of the board said that he was the one who said the meeting was cancelled, and he did not say there was nothing to decide, he said there was nothing important to decide.

- The executive director said during the May 2005 board meeting that the housing authority never had board meetings in December, and the March meeting was cancelled because of the NAHRO (National Association of Housing and Redevelopment Officials) conference, but they could have had meetings in December and the week after the March conference.

Based on the available documentation, it is not clear why or by whom the meetings were cancelled. Nevertheless, if the executive director and the deputy executive director knew there was an immediate need to increase the VCA contract, and board approval was required before it could be increased; it was their duty to ensure the full board (not just the chairman) knew the seriousness of the situation and that board approval was needed. Further, if the chairman was fully informed about the situation, he had a duty to inform the board and was negligent if he told the board there was nothing important to decide.

During the May 2005 board meeting, one of the commissioners, after recapping the impropriety of the cancelled meetings said, "In the interim, staff has received approval from the chairman of the board to increase this contract. I obviously have two problems with that. One of them is, again we are placed in a situation where nobody brought this to the board to increase the contract and the other one is that there is a suggestion that I think it puts the Chairman in a bad position, because the suggestion is that the Chairman of the Board has the ability to approve things such as this without the participation of the board, and I think that was an inappropriate request of the Chairman to do so." The executive director responded, taking full responsibility for the contract increase and saying the chairman was not asked for and did not give his approval. The executive director's words, as recorded in the board minutes, were, "Let me put it publicly out, the chairman of the board or no member of this board tell us it is okay to proceed. I informed the chairman, and I told him this is what I have to do or my staff should have done. Again, credit, blame, anything on that is sitting right here with [name deleted], Executive Director, Las Vegas Housing Authority. I don't want to hear publicly that the chairman or the chairman said this contract could proceed. The chairman, absolutely not the chairman. The legal counsel was at that meeting. If that was correct, our legal counsel should have stopped our chairman of the board and said, "You cannot say that." Therefore, that was not a true statement. However, there is something in the record, in the paper, that said the chairman said go ahead and do it, the chairman's okayed me to go to do that and bring back the ratification. Publicly saying that last time, I will say it again for the record that I did that."

The Authority's response provided an explanation why the executive director and the deputy executive director did not disclose the contract increase to the board in January or February, which goes back to what the deputy executive director stated during the April meeting. The response stated, "...the VCA contract amendment was not raised for board consideration due to issues that arose with the architect on the contract. At the time, the executive director and the deputy executive director did not have sufficient information upon which the board could make an informed decision on the contract amendment." If the executive director and the deputy executive director did not have sufficient information upon which the board could make an informed decision, they did not have sufficient information to authorize work that exceeded the $50,000 contract limit.

The executive director's and the deputy executive director's failure to inform the board of the increase further comes into question because one board member specifically asked, during the February board meeting, if any money was owed to Abt (aside from the RHF contract). The deputy executive director answered "that the $78,000 that is in the Agenda is all that is owed for this particular work item. The deputy answered that there is also a VCA contract which was executed with them which is going to be on the March agenda, but that is not related to the Replacement Housing Factor Plan, they are two separate agreements." The executive director added that "the VCA agreement was approved by the board.

It was brought in front of the board, and it approved the VCA." During this board meeting nothing else was discussed about the VCA contract and the board was not informed that the VCA contract had exceeded its $50,000 limit or that the executive director and the deputy executive director had authorized additional work.

The Authority also claimed in its response that the executive director's monthly reports to the board, minutes of board meetings, and interim notices to proceed clearly show that the board was fully informed as to the status of the contract. However, there is no evidence that the executive director provided any reports to the board prior to April 2005 that disclosed the contract increase. The only information about the VCA that was disclosed to the board in January was the fact that HUD had signed it in December.

In addition, the interim notices to proceed, signed by the deputy executive director and copied to the executive director, contained inaccurate statements. The first notice to the contractor in December 2004 stated that "…staff has received approval to incur costs against this Contract until such time as the board acts on the staff recommendation." The second notice in March 2005 stated, "Staff has received approval from the chairman of the board to incur costs against this contract until such time as the board acts on the staff recommendation...." As discussed above, since the board was not informed and the chairman did not give such an approval, these representations were false, and misrepresented the facts to Abt..

Comment 11: The auditee incorrectly claims the OIG made a false statement that was a "glaring inaccuracy." The discussion draft stated, "The board was unreceptive to the need for an increase, resulting in a contentious discussion during the April 2005 board meeting that carried over to the May 2005 meeting." This is a true statement, as the discussion was begun during the April meeting and was not concluded until the May meeting. However, to address the auditee's concern and to avoid any possible misinterpretation, we have clarified in the report the reason the discussion of the Abt contract was continued to the May board meeting was because of a malfunction of the tape recorder, and therefore, the ability to record the minutes.

Comment 12: The Authority provided evaluation sheets during the exit conference, one of which, the Authority's attorney agreed, contained handwriting that was extremely hard to read. As a result, we agreed to take a second look at the Authority's records of evaluations of competitive proposals before finalizing the report. Subsequently, we asked the Authority's evaluator whose handwriting was unclear to review his own work and transcribe his comments for us in type. After reviewing all evaluation materials again, we removed the reference to timelines and adjusted the report to ensure it contained accurate examples of why the scoring was not fair and objective.

We noted that Abt received the maximum available points for each evaluation criteria that was scored, except for one instance where one of the three evaluators gave Abt 39 points out of a possible 40. Neither of the other two proposers received the maximum possible points in any category. While we found no misstatements of fact in the written evaluations of Abt's proposal, we found material misstatements of fact in the evaluations of the other two proposals, submitted by firms that did not receive contracts. The following examples clearly show that the evaluation panel did not adequately review and evaluate all proposals.

- In its proposal, one firm included a paragraph specifically identifying tax credit experience, followed by more detailed descriptions of each of the projects and its financing. However, one of the evaluators wrote on the evaluation sheet for this proposal, “This company has performed and developed many affordable apps for several HA’s but none specific to tax credits.” At the bottom of the sheet, the evaluator wrote, “Proposal was lacking in timelines and actual tax credit experience.”

- Another issue affecting scores was the ability of the proposers to provide training to Authority staff. The request for proposals stated the following: “Generally speaking, the successful proposer will provide assistance, training, mentoring, and related work products to the LVHA through the completion of the project." All three proposals addressed training.

Abt wrote the following in its proposal: "HACLV desires to manage the project in-house and may need assistance from Abt Team in preparation of the Resident Selection Plan and Management Plan.... Train HACLV staff in the construction requisition process, involving multiple funding sources." One of the evaluators wrote the following comment about Abt: "Also includes training;" another wrote: "Addressed all areas indicated in the bid document;" and the third evaluator wrote: "Abt will provide training in decision to manage in-house." All three evaluators acknowledged Abt’s proposal to provide training.

One of the other two proposers wrote that its "LIHTC Principal would 'provide assistance, training, mentoring, and related work products to the LVHA through the completion of the project.'" The same proposer wrote it would "[p]rovide LVHA's personnel with a general understanding of the tax credit process and other debt component programs…. Provide LVHA an understanding of how our financial model works and provide a detail analysis of the financial, tax and compliance strengths and how the deal currently stands and provide suggestions for improvement…. Advise LVHA on how to best rent up the underlying tenant units based on regulatory, investor, and lender requirements and current market conditions."

However, one evaluator wrote that this proposer indicated no training in the proposal. Another wrote that this proposer "[d]idn't provide any training. The third evaluator wrote that the "[f]irm states will provide general training/ understanding; no formal in depth training program. No trainer of tax credits on staff; very weak in this area." None of the evaluators' comments indicate a readily apparent fair and objective review of the proposal.

The third proposer wrote "the team will be available to provide targeted assistance and training in all other public housing related areas, including tax credit compliance, project based Section 8 subsidies, public housing operating subsidy rules, accounting and budgeting for mixed finance ACC/non-ACC properties, among others." However, one evaluator also wrote about this proposer "[d]idn't provide any training." This evaluator's comments do not indicate a readily apparent fair and objective review of this proposal.

Comment 13: We revised the report to clarify that the board was notified about the original contract in October 2004, but was not asked to approve the contract or amendment until the February 2005 meeting.

Comment 14: Although the Authority's own procurement policies refer to Nevada Revised Statutes § 332.112, which defines "emergency," and the Authority has operated under this statute since before our prior audit performed in 2002 (and we believe throughout its entire history), the Authority now claims, in response to the draft audit report, that the statute does not apply to housing authorities. We disagree. Although the Authority operates with a certain degree of autonomy, its governing board is appointed by and responsible to the mayor of the City of Las Vegas, and section 332 applies to the City.

The Authority's response quotes its own procurement policy, but omits the key words that do not fit the noncompetitive procurement of services for the development of the RHF plan (see Appendix C - Criteria). The pertinent words, which also are used in the Nevada Revised Statute, clearly describe an emergency as something that "may arise by reason of flood, earthquake, epidemic, riot, equipment failure, or similar event." However, the authority would not have been in this situation had it not failed to use grants for replacement housing within the regulatory time limits. The authority's failure does not justify an emergency situation.

Comment 15: 24 CFR 86.35(i) requires all contracts to include "administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms." The sample contract the Authority submitted to HUD and HUD approved included such clauses written to protect the Authority's interests and ensure the Authority's legal and other means of recourse were not restricted. The Abt contract, on the other hand, was written to protect Abt, and restricted the

Authority to two possible remedies, termination or binding arbitration. Moreover, the Abt contract included penalties against the Authority for delays, but none against Abt, and placed more liability on the Authority than the Authority's sample contract allowed. The absence of required clauses has been a continuous problem at the authority as reported in our prior audit report.

Comment 16: The Authority's written comments dismiss the omission of the other required clauses as "a technical contract drafting mistake." We disagree because the requirements for the following are particularly important and apply to every contract: "Notice of reporting requirements and regulations; retention of all records for three years after completion of work; and access to documentation and records relevant to the contract by the Authority and HUD. OIG's last audit and HUD's comprehensive management review both criticized the Authority for omitting required clauses. As a result, the Authority developed contract templates and its Purchasing Procedures Manual was revised to require use of the templates. By signing a nonconforming contract, the Authority's executive director and the deputy executive director again failed to follow regulatory requirements as well as their own, HUD approved procedures.

In addition, the Authority's revised Purchasing Procedures Manual included requirements for review and approval of all contracts by both legal counsel and the purchasing manager prior to execution. The review was required to further ensure the contracts met federal requirements and to protect the Authority's interests. As an additional control to ensure compliance, the Authority's procedures required the purchasing manager to sign all contracts after the contractor and before the department head and executive director. All contracts required all four signatures and were to be signed in the specified order. The Abt RHF contract was not reviewed or signed by the purchasing manager.

Comment 17: We have revised the report to show that the Authority asked the board to approve the original contract (executed in October 2004) and the November 2004 amendment in February 2005. In February, the board had questions about the propriety of the emergency justification and the amendment, and approval was delayed while seeking legal advice.

Comment 18: We modified the report to make it very clear that the Replacement Housing Factor contract was not a requirements contract.

Comment 19: We have revised the report to clarify the fact that the Authority repaid ineligible costs (rather than unsupported costs) for improperly procured consulting services as a result of the previous OIG audit. The OIG recommendation to provide support for the reasonableness of other service costs or repay was closed based on the actions the Authority's new acting executive director (now the executive director) took to revise procedures and develop controls to ensure future compliance with procurement requirements.

HUD found the Authority, under the leadership of the current executive director (who was acting executive director at the time) had increased the contract with the local law firm Marquis and Aurbach without competitive procurement. The firm was initially hired by the former executive director without procurement and without a contract. The resulting recommendation remains open because the Authority has yet to repay from nonfederal funds the $95,000 it paid to the attorneys. The Authority has now retained the services of an out of state law firm as general counsel, under which Marquis and Aurbach are acting as local subcontractors.

Comment 20: The Authority's attorneys quote certain regulations while ignoring others. The Authority believes federal regulations allow a choice for every procurement, of performing a price analysis or a cost analysis. Although the CFR, the handbook, and the Authority's own written procurement policy contain general language stating "A cost or price analysis must be done for every procurement," further clarification in each describes when a price analysis may be used, and when a cost analysis is required. All are clear about the requirement for a cost analysis, including the offeror's submission of cost elements, for most consulting contracts and in all cases where price reasonableness is not based on a "catalog or market price of a commercial product sold in large quantities to the general public or a price set by law or regulation." The HUD handbook and the Authority's own written procurement policy contain the same requirements, using the same language as the CFR.

Here is the CFR section (emphasis added):

24 CFR 85.36 Section f(1) states, "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 will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or marketprice of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

The Authority's reference to section 2-7 of the HUD Handbook using phrases like "In most cases…" is correct, but incomplete. The Authority omitted the sentence immediately preceding the one they site, which states: "The extent of the analysis depends on the dollar value and complexity of the procurement." Additionally, although section 2-7 of the Handbook uses the word "should" for performing a cost analysis for complex professional services contracts, regulations at 24 CFR 85.36(f)(1) clearly place a mandatory requirement for such analysis by using the

word “must.” Neither the handbook nor the regulations treat professional consulting services as "most cases," where a price analysis is sufficient. Regarding the prior audit, that review included a sampling of all procurement categories, and therefore, OIG reviewed procurements for which price analysis was appropriate. HUD closes audit recommendations, not OIG. HUD closed the audit recommendations based on the Authority's revision of its procurement policies and procedures, not, as the Authority implied in its May 8 letter, because OIG changed its determination of when price analysis is appropriate.

Comment 21: In the report, we state the Authority did not prepare adequate independent cost estimates for the two competitively procured Abt contracts (for the VCR and for tax credits) and the Authority did not prepare any independent cost estimate for the sole source contract for an RHF plan. The estimates for the two competitive contracts were inadequate because they did not estimate the amount of the eventual contract. For the sole source contract, the Authority has not provided any independent cost estimate (or cost analysis) for our review. In addition to the general requirements for independent cost estimates and price or cost analysis for all procurements, the regulations specifically require an independent cost estimate and a cost analysis (not a price analysis) for all sole source contracts (24 CFR 85.36 (d)(4)).

The degree of effort required for an independent cost estimate, like the requirement for a cost analysis, is dependent on the individual situation. Again, the handbook, which quotes the CFR, states that the requirements for simple procurements are less complex than the requirements for larger or more complicated procurements, but note that the purpose is to estimate the eventual dollar amount of the contract. The handbook states, such an estimate may, in some cases dictate the procurement method. The independent cost estimate should include anticipated labor costs, material expenses, subcontracted items, overhead, profit, and any other cost factor that might have an impact on the eventual contract. In the case of commercial items, however, the estimate should be based on published catalog or market prices, and the HA should maintain available price lists from local or national vendors to assist in developing independent cost estimates. In the case of the Abt contracts, the Authority could not rely on published catalogue or market prices, because the services required were not commercially available. Therefore, more work was required to determine a reasonable estimate of the eventual amount of the contract.

As the handbook explains, another purpose of an independent cost estimate is to “…go through the discipline of analyzing its needs fully and anticipating the type of work that contractors will likely have to perform to do the job.” See Appendix C – Criteria for the full text of the section on independent cost estimates.

Comment 22: The auditors carefully reviewed both procurement requirements and the Authority's documentation of the subject procurements. Regulations at 24 CFR [*Code of Federal Regulations*] 85.36(c)(1) require all procurement transactions to "…be conducted in a manner providing full and open competition consistent with the standards of §85.36. Some of the situations considered to be restrictive of competition include but are not limited to … (viii) [a]ny arbitrary action in the procurement process." HUD Handbook 7460.8, chapter 4-23 interprets the regulatory requirement for open competition and prohibition against arbitrary action in the procurement process by placing a special importance on the impartiality, consistency, and fairness of the proposal evaluation process. The handbook requires that the objectivity of the proposal evaluations be readily apparent upon review. Additionally, the handbook advises the evaluators to ensure their evaluations are thorough, objective, and well documented.

Comment 23: The Authority incorrectly claims the report states Abt's tax credit consulting contract proposal was scored too highly based upon a proposed cost differential of 2.65 percent in comparison with another bidder. The OIG does not dispute that competitive proposals do not solely focus on the proposed costs. The report states that one of the six criteria, which is proposed cost, was scored unfairly because the price difference was only 2.65 percent while the score difference for this one criterion was 25 percent, almost ten times the price difference.

The Authority also states the cost criterion is not scored on the dollar figure alone, but on value. However, the evaluation and scoring sheets show only the dollar amounts as the basis for these scores. Costs constitute a part of the evaluation process, and the Authority had accordingly allocated one of the six evaluation criteria to costs. The purchasing manager alone scored three criteria: cost, Section 3 preference, and proposer diversity. The three person evaluation panel gave individual scores for the other three criteria, as explained in the report. When the scores for all six criteria are combined for each proposal and compared to the scores for the other proposals, a determination of value can be made.

Comment 24: We took all evaluation criteria into account when we reviewed the Authority's evaluation and scoring of competitive proposals. The report does not imply that cost was the only basis for selection, which should never be the case for solicitation by requests for proposals. We noted that two of the three firms had comparable qualifications and experience.

1. According to its proposal, Abt's experience included technical assistance to the Newark Housing Authority on Section 504 and other issues after appointment by a federal judge; voluntary compliance agreement training to HUD staff; assistance on a voluntary compliance agreement plan for the San Antonio Housing Authority; and assistance on a voluntary compliance agreement for the City of Baltimore Housing Authority. One of Abt's principals was a former Assistant Secretary of Public and Assisted

Housing at HUD. In addition to work settling high profile lawsuits involving Section 504 compliance, she added language to the parts 5, 960, and 966 of the regulations that addressed PHA responsibilities to provide equal access to persons with disabilities.

2. The comparable firm, in its proposal said its principal was the author of HUD's Section 504 regulations, the HUD liaison to the U.S. Access Board developing the UFAS, and has trained most of HUD's FHEO staff on Section 504, and recently served as a presenter at the HUD National Conference on Fair Housing. The proposal said he was considered one of the nation's top witnesses for cases involving ADA, Section 504, and the Fair Housing and Architectural Barriers Act. Relevant experience as a HUD employee started in November 1980 as an Architectural Barriers Specialist, Office of Independent Living for the Disabled and ended in January 1989 after three years as the Section 504 Program Manager. Since then he has worked for numerous federal and local government agencies, private sector businesses and associations, and colleges and universities consulting on issues related to Section 504, ADA and similar issues. The firm also included the author of Public Housing Authority notices, which addressed compliance with Section 504.

Abt received the maximum possible points, 210 in all three subjective evaluation criteria from all three panelists while the comparable firm received only 112 points (53 percent) out of the maximum possible for the same three criteria. The scores given in the experience category by the deputy executive director did not readily show fairness or objectivity. For the evaluation category of experience and capability, he gave Abt a score of 40 (maximum points), the comparable firm a score of 5, and the third firm, (a marketing firm with no apparent relevant experience) a score of 15. The other two panelists gave Abt 100 percent of the possible points while giving the comparable firm 75 percent and 41 percent of the possible points.

We further noted that the purchasing manager's scoring of the objective criteria of cost was unfair. The purchasing manager calculated that Abt's rates were 45 percent higher than the comparable firm's rates yet he gave Abt a higher score of 72 for proposed cost, compared with 63 for the firm with considerably lower rates.

The disparity in the purchasing manager's and the deputy executive director's scores for the proposals showed they were not fair. The fairness of the scores given by the other panelists was also not readily apparent.

Comment 25: We disagree that the handbook allows housing authorities to choose to use a requirements contract in any circumstance. In its description of a requirements contract, the handbook describes the situations that are appropriate for a requirements contract. The consulting contracts did not meet the criteria described.

Additionally, the prior audit report criticized the inappropriate use of indefinite quantity contracts for certain consulting services for the same reasons we are now criticizing the use of requirements contracts.

Abt did not provide a commercial-type item to the Authority. The Authority's response refers to two administrative decisions, neither of which are binding on HUD OIG, to illustrate examples of requirements contracts executed by government agencies.

1. One case, involved a dispute over a contract for the supply of auto parts for an air force base. See *East Bay Auto Supply*, Armed Services Board of Contract Appeals 25542, 81-2 BCA para. 15,204. Each part to be supplied by East Bay Auto supply was a recurring commercially available item.

2. The other case involved a dispute over a contract for snow removal services to be measured in hourly increments. See *Stanley F. Horton*, Department Of Transportation Contract Appeals Board 1231, 82-2 BCA para. 15,967. Snow removal services depend on unpredictable weather patterns. In the Horton case, the variance was estimated at 25 to 30 feet – 20% variance from the lower estimate. *Id*. This is a significant unknown factor. Moreover, the contract for snow removal services involves a commercially available item with commercially (easily) obtainable prices.

The Authority's solicitations for services were for assistance with one voluntary compliance agreement and assistance with one tax credit application. None of these projects are recurring commercially available items described as appropriate for requirements contracts in Appendix 20 of the HUD Handbook 7460.8. Appendix 20 states that a requirements contract is appropriate for the purchase of a specific commercially available item or service at a fixed price over a specified period when the precise quantity of the item is not known. The housing authority did not need an unknown quantity of these items, nor did it negotiate a price for the items required. The RFP process itself, which described the services needed shows that the Authority was not soliciting a commercial-type item. Again, it is not the OIG's position that there is a general prohibition against the use of a requirements contract. It is OIG's position that the authority improperly applied requirements clauses to professional consulting services contracts, and there is nothing to show the initial and amended costs were reasonable. Although the regulations do not require a specific contract type, they require a reasonable and supported decision as to contract type.

The Authority's contention that the amount of work required could not be estimated is not credible. In the case of the RHF (sole source) contract, a fixed price was determined and a fixed price contract was used. In the case of the tax credit contract, where Abt included a two phase work plan in its proposal, Abt also recommended a fixed price of $47,370 for phase one, proving that it was possible to estimate the cost and enter into a fixed price contract. When we pointed this out during the exit conference, the auditee's only response was, "but we weren't required to use a fixed price contract." The auditee never attempted to explain why they instead entered into a requirements contract for phase one with a not to exceed value of $60,000.

The Authority and most of the contractors responding to the requests for proposals had relevant past experiences on which to base an estimate. Further, even if he had no prior experience contracting for a tax credit consultant or VCA assistance, it is the purchasing manager's job to ensure research was done to estimate the eventual contract amount. For example, he could have contacted other housing authorities to find out the cost of similar contracts and the time in which work was completed. Two of the respondents had extensive experience and knowledge of the fair housing requirements, and Abt had assisted several large and medium-size housing authorities with similar voluntary compliance agreements. Further, the Authority included the HUD letter with the findings from the compliance review in the request for proposals to ensure prospective contractors knew what was needed.

The last contract was for assistance in applying for state low-income tax credits. The Authority had hired consultants to apply for tax credits in the past, and the responding firms had substantial relevant experience. Therefore, the Authority and the contractors had adequate knowledge and experience to develop cost estimates and establish a total fixed contract amount. Additionally, the Authority itself need not have had experience with certain services to be able to contact other similarly situated authorities to easily obtain information about costs associated with such services.

Comment 26: The report did not state that HUD requirements prohibit contract amendments based on percentages, therefore, we never "agreed to provide specific criterion…" The report included the percentages to illustrate how poorly the Authority estimated the eventual costs prior to awarding and executing the contracts and how little control the Authority had over final costs. We agree that the percentage of an increase does not determine if a contract option has a previously determined price. The language of the solicitation and the contract itself must provide the required information for an allowable option. In the report, we refer to Handbook 7460.8, which explains that a contract option's quantity and price must be specified in competitive solicitations. The handbook defines a contract option as a "unilateral right of the housing authority to order additional supplies, services,

or construction at the price specified in the contract." The handbook also imposes specific limits on the exercise of options: "There must be a finite period for the contract, including all options, and a specific limit on the total quantity to be purchased by option. Any contract containing options must specify the time by which the HA must exercise the options. The HA should allow itself enough time to ensure that funds will be available and a management decision made as to the need for the option quantities."

"If the HA decides to include options in a solicitation, the options should be evaluated as part of the contract award, to ensure that the evaluation takes into account the total eventual cost of the entire contract."

Although the competitive contracts state that the not-to-exceed amounts may be amended by the Authority if the Authority determines it is in its best interest to do so, this language does not meet the requirements for contract options. Having a not-to-exceed amount is proper, but allowing unspecified amendments with no criteria except "the LVHA determines it is in its best interest to do so," does not comply with HUD requirements for controlling costs. Whether or not task orders were used is irrelevant.

Comment 27: In the draft report, we stated that training was not included in the original VCA solicitation. We have revised the report to remove this statement. However, the bottom line is that the cost of training was not estimated or analyzed, and the initial contract did not specify training as one of the tasks both parties agreed was included. One of the Authority's practices we have observed, is that the purchasing manager does not take the time to negotiate with contractors and write out a mutually agreed upon work plan, based on the Authority's needs. Instead, he merely takes the section of the contractor's proposal that describes proposed services, and incorporates it into the contract as the work plan. In this case, the result was a contract that included several clearly defined tasks that Abt would perform under the contract. Training, however, was mentioned as something Abt was capable of providing, if the Authority requested it. This fact, combined with the executive director's and the deputy executive director's explanations to the board of the reason the contract increase was needed, leads to the conclusion that training was optional. No price was included for the option.

Comment 28: The fact that the original contract specified the development proposal as "additional services," and the fact that a contract amendment was required, make it clear this was treated as a contract option. It was not contemplated as a service included in the original contract price of $59,200. It is also clear this was an unpriced option. This did not meet the requirements for contract options explained above.

We revised the report to show that the Authority asked for board approval of the original contract and the November 2004 amendment in February 2005. In February, the board had questions about the propriety of the emergency justification and the amendment, and approval was delayed.

Comment 29: We adjusted the report to clarify that the findings of the previous audit report referred to the previous executive director. However, it is irrelevant that the previous findings of violations occurred under a prior administration. It is important to note that the current Executive Director and Purchasing Manager were in executive and contracting positions, respectively, during the prior OIG audit and HUD Comprehensive Management Review. They both knew the reported findings and they both continued the previously criticized practices. Therefore, it is reasonable to conclude that they knowingly disregarded regulatory and handbook requirements in carrying out their procurement and contract administration responsibilities.

The current executive director was the deputy executive director during the prior audit period, but had taken over as acting executive director before OIG's prior draft report was issued and the exit conference was held, and he was responsible for the corrective action. Some of the pertinent procurement findings HUD reported as a result of the comprehensive management review were based on procurement actions that occurred after the current executive director became the responsible official.

On June 28, 2002, the former executive director passed away. A $5,000 purchase order for temporary legal services was executed on July 1, 2002. On July 15, 2002, the current executive director became the acting executive director. Over the next nine months, the contract increased from $5,000 to $95,000, under the watch of the current executive director. Because this procurement was not compliant with requirements, HUD's comprehensive management review report required the Authority to repay these funds to HUD from nonfederal funds. However, under the management of the current executive director, as of June 13, 2006, the Authority has failed to repay the funds.

Despite the OIG report and the comprehensive management review the current executive director still chose to ignore federal procurement requirements when Abt was hired. The purchasing manager has held the same position at the Authority, according to his own declaration, for approximately 29 years. Although the deputy executive director did not join the Authority until June 2004, he took an active role in the improprieties associated with the contracts and contract amendments we reviewed, including the withholding of information from the board and provision of misinformation.

Comment 30: On January 11, 2005, HUD issued a letter to The Authority stating that the proceeds from the sale of public housing units and the use of pre-fiscal year 2003 Section 8 reserves may be used in the calculation of "substantial additional leveraging funds" for the second five-year increment of the RHF plan. The letter does not state in any manner that either the use of the proceeds from the sale of public housing units or the Section 8 reserves are not subject to the procurement requirements of 24 CFR 85.36.

Regardless of opinions the Authority obtained from attorneys,

1) 24 CFR part 970 governs disposition and use of public housing proceeds.

2) 24 CFR part 85 governs use of Federal grants in procurement.

3) Proceeds from the sale of public housing do not constitute a grant even if the housing was initially purchased or built utilizing grants. Regardless of whether proceeds from public housing property are considered federal funds, program income, or public housing funds, regulations indicate that use of proceeds from public housing disposal or demolition are subject to procurement regulations of 24 CFR part 85.

Although 24 CFR 970.1 states that [the act of] demolition or disposition of public housing is not subject to requirements of 24 CFR part 85, criteria under 24 CFR 970.9 states that proceeds from disposition of public housing property must be used for low income housing. 24 CFR 941.102(a) states that mixed finance public housing development, is subject to 24 CFR subpart F. 941.602(d) of subpart F requires compliance with 24 CFR part 85 even if the public housing project is being developed using a public and private partnership for mixed financing.

The governing regulations of 24 CFR Chapter IX (parts 900 to 999) do not treat proceeds from disposition of public housing property any differently than Federal grants when it comes to use of the proceeds, and thus, contracting. Even if no regulation specifically defines proceeds from public housing funds as Federal funds, the regulations limit the type of use and use procedures (in procurement) for those proceeds.

Therefore, Reno & Cavanaugh's June 2, 2005, opinion that the Authority did not have to comply with 24 CFR part 85 requirements when procuring Abt for the RHF Plan, is not supported by the regulations or HUD guidance.

Comment 31: The audit report clearly details how the Authority violated federal procurement requirements and its own procurement policies and procedures. Therefore,unless the Authority is able to provide support showing that the amounts paid for the voluntary compliance agreement services and tax credit application were reasonable, we recommend HUD require the Authority repay its low-rent program from nonfederal funds (and funds not derived from the sale of public housing).

Comment 32: The comments' depiction of our recommendation for HUD review of all professional service contracts over $50,000 is not accurate. We only recommend specific professional service contracts for such review. This recommendation is not unwarranted given the procurement history of the Authority, despite the fact that we reviewed only the three Abt contracts, because similar problems have been reported in the prior OIG and HUD reviews, and those problems and questionable practices continue to persist at the Authority.

Comment 33: The Authority provided a letter to HUD dated February 5, 2005, which, among other things, provided an accounting of the interest earned from the RHF funds. The response from HUD dated March 3, 2005, states that HUD will respond to the interest information in another letter. Although this does not show an attempt to return the money, the Authority has not disputed that it should be returned. We see no reason to remove the finding or the recommendation, since the money must still be returned and HUD must provide instructions to the Authority.

Appendix C

CRITERIA

Inspector General Act 5 USCA Appx § 1 (2001):

The Inspector General Act of 1978 (the Act) Subsection 2 states:

§ 2. Purpose and establishment of Offices of Inspector General; departments and agencies involved in order to create independent and objective units−

(1) to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 11(2);

(2) to provide leadership and coordination and recommend policies for activities designed

(A) to promote economy, efficiency, and effectiveness in the administration of, and

(B) to prevent and detect fraud and abuse in, such programs and operations; and

(3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action; there is established─

One of the duties and responsibilities of the Office of Inspector General, listed in subsection 4 is:

(4) to recommend policies for, and to conduct, supervise, or coordinate relationships between such establishment and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by such establishment, or (B) the identification and prosecution of participants in such fraud or abuse; and

Contracting Generally:

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

The Authority's Contracts and Purchasing Procedures Manual incorporates the proposal solicitation procedures of HUD Handbook 7460.8 and 24 CFR [*Code of Federal Regulations*] 85.36.

- **Requirements for an Independent Cost Estimate and a Cost Analysis**

HUD Handbook 7460.8, chapter 3-15, requires the preparation of an independent cost estimate before solicitation of proposals or bids. The Handbook states that the cost estimate may dictate the method of procurement. A housing authority must analyze its needs fully, anticipating labor costs, material expenses, subcontracted items, overhead, profit, and any other cost factor likely to impact the eventual contract.

HUD Handbook 7460.8 3-15, Cost Estimates and Analysis of Offers:

" A. Independent Cost Estimate. 24 CFR 85.36(f)(1)

1. An independent cost estimate of every procurement must be made before soliciting bids or proposals. Such an estimate is needed in preparing for the procurement, since the dollar amount may dictate the method of procurement that can be used [such as small purchases versus sealed bidding, etc.]. Depending on the type and size of the procurement, the independent cost estimate could be as simple as examining the price paid in the most recent contract and factoring in inflation or changed market conditions. Alternatively, the cost estimate could be as detailed as described below. The exercise of developing an in-house estimate forces the HA to go through the discipline of analyzing its needs fully and anticipating the type of work that contractors will likely have to perform to do the job.

2. The independent cost estimate is considered confidential information which shall not be disclosed outside the HA. The reason for this protection is that contractors often bid the same as or less than the independent cost estimate, if known, as a means of securing a contract award without consideration of the true cost of a job. The preferred approach to procurement is to have each prospective contractor conduct an analysis and develop the offer independently, considering only what the HA's stated needs are, without simply relying on an estimate of what the HA is able to afford. To assist the bidders in understanding the scope of the project the HA is encouraged, however, to disclose a general range of dollars for construction contracts; for example, the estimated price could be described in terms of the following price ranges: less than $25,000; between $25,000 and $100,000; between $100,000 and 250,000; between $250,000 and $500,000; between $500,000 and $1 million; between $1 million and $5 million; between $5 million and $10 million; and more than $10 million.

3. In developing the independent cost estimate, the HA may use available published price lists, commercial construction cost estimating publications, known Davis-Bacon wage rates, and pricing history from prior contracts. The estimate should include anticipated labor costs, material expenses, subcontracted items, overhead, profit, and any other cost factor that might have an impact on the eventual contract. In the case of commercial items, however, the estimate should be based on published catalog or market prices, and the HA should maintain available price lists from local or national vendors to assist in enveloping independent cost estimates."

Regulations at 24 CFR [*Code of Federal Regulations*] 85.36(f) and HUD Handbook 7460.8 Chapter 3-15 also require a housing authority conduct a cost or price analysis for every procurement. Without such analysis, the housing authority would be unable to verify the fairness and reasonableness of the price paid to the contractor.

When using the competitive proposal method of procurement of professional and consulting services, the Regulations at 24 CFR [*Code of Federal Regulations*] 85.36(f) and chapter 4-3 (section 6) of the HUD Handbook 7460.8 require a housing authorities to ask offerors to submit the elements of the proposed costs and to perform a cost analysis using cost principles (according to chapter 4-31 of the HUD Handbook 7460.8 the cost principles must follow the principles found in HUD Handbook 2210.18 and the Federal Acquisition Regulations found in Title 48 of the Code of Federal Regulations). The objective is to negotiate total prices that are fair and reasonable, cost, and other factors considered.

Regulations at 24 CFR [*Code of Federal Regulations*] 85.36 (f) require that (1) Grantees and subgrantees 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, grantees 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 will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine them reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see Sec. 85.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

Chapter 4-35 also requires a full cost analysis when an authority is negotiating a contract with a sole source as justified under 24 CFR [*Code of Federal Regulations*] 85.36(d)(4).

- **Requirement to Ensure Competitive Procurement Was Fair and Impartial**

Regulations at [*Code of Federal Regulations*] 24 CFR 85.36(c)(1) requires all procurement transactions to "…be conducted in a manner providing full and open competition consistent with the standards of §85.36. Some of the situations considered to be restrictive of competition include but are not limited to … (viii) [a]ny arbitrary action in the procurement process." HUD Handbook 7460.8, chapter 4-24 interprets the regulatory requirement for open competition and prohibition against arbitrary action in the procurement process by placing a special importance on the impartiality, consistency, and fairness of the proposal evaluation process. The Handbook requires that the objectivity of the proposal evaluations be readily apparent upon review. Additionally, the handbook advises the evaluators to ensure their evaluations are thorough, objective, and well documented.

- **Requirements to Use Appropriate Contract Types, Forms, and Clauses**

Regulations at 24 CFR [*Code of Federal Regulations*] 85.36(b)(9) require grantees and subgrantees to maintain records sufficient to detail the significant history of a procurement, including but not limited to the rationale for the method of procurement, selection of contract type, contactor selection or rejection, and the basis for the contract price.
HUD Handbook 7460.8, chapter 6, explains the different types of contracts, their advantages and disadvantages, and when they should be used.

In most cases, a housing authority should rely on firm fixed-price contracts because this pricing arrangement poses the least risk to a housing authority. Regardless of the procurement method, each solicitation should clearly state the anticipated contract type.

Appendix 20 to the handbook further explains the different contract types and appropriate uses. A firm fixed-price contract should be used whenever possible if fair and reasonable prices can be established at the time of the contract award and any performance uncertainties can be identified and reasonable costs estimated in advance. Although it lacks flexibility, firm fixed-price contracts are advantageous to a housing authority because they encourage contractor efficiency and place total responsibility and risk on the contractor.

Appendix 20 also states that a requirements contract is appropriate for the purchase of a specific commercially available item or service at a fixed price over a specified period when the precise quantity of the item is not known. A requirements contract is appropriate when there is a realistic estimated total quantity but no guaranteed minimum and delivery orders are issued to obtain the needed items. An appropriately used requirements contract is advantageous because a housing authority may save money by not having to conduct several procurements for the same item. A requirements contract may be disadvantageous because the contractor may include a contingency factor in his bid prices if it is uncertain as to how much a housing authority will order under the contract. Funds for requirements contracts are obligated by delivery orders.

Chapter 6-3 of HUD Handbook 7460.8 requires that all contracts contain certain clauses in accordance with 24 CFR [*Code of Federal Regulations*] 85.36(i). Part V.C. of the Authority's procurement policy and chapter 6-4 and appendix 28 of HUD Handbook 7460.8 contain for other requirements to include required clauses in all housing authority contracts.

Section 6.5.1 of the Authority's Contracts and Purchasing Procedures Manual requires use of preapproved contract forms. This requirement was developed to ensure compliance with the requirements of HUD Handbook 7460.8 and 24 CFR [*Code of Federal Regulations*]

According to the Authority's manual, only the executive director may approve an alternate contract form and only after consulting with the Authority's legal counsel; otherwise, the Authority must use the applicable set of its own sample contract forms for all contracts and contract modifications.

The introductory section of the Authority's Contracts and Purchasing Procedures Manual states: "All contracts and purchasing activities, including competitive solicitations, shall be conducted exclusively by or under the purview of the Contracts and Purchasing Office." The Authority's purchasing manual requires the purchasing manager to review all contracts and amendments before execution.

Under the heading, "Staff Review," the Authority's purchasing manual requires the applicable department head to review the contract, followed by legal counsel, the executive director, and the purchasing manager.

Regulations at 24 CFR [*Code of Federal Regulations*] 85.36(i) require grantees to include nine specific clauses in their nonconstruction contracts (we have omitted the four clauses only applicable to construction):

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

(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. (All contracts in excess of $10,000)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention, which arises or is developed in the course of or under such contract
(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

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

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

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. [*United States Code*] 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR [*Code of Federal Regulations*] Part 15). Contracts, subcontracts, and subgrants of amounts in excess of $100,000.

(13) Mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

[53 FR [*Federal Register*] 8068, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]

- **Requirements for Contract Amendments**

Chapter 6-1 of HUD Handbook 7460.8 explains that if a housing authority does not describe its needs in accurate and precise terms, resulting in ambiguous specifications, contractors may factor in contingencies in their offers to cover such uncertainties. The latter is likely to result in unrealistic price proposals and may create the need for a continuous redefining of needs during contract performance.

Chapter 6-2 of the handbook defines a contract option as "a unilateral right of the housing authority to order additional supplies, services, or construction at the prices specified in the contract." In order for a housing authority to take into account the total eventual cost of the entire contract, contract options must be specified in competitive solicitations. Unpriced options are considered a new contract and require a new procurement.

Chapter 4-37 of the handbook requires cost analysis for contract modifications affecting the previously authorized work and price. Modifications which change the work beyond the scope of the contract must be justified as noncompetitive actions under 24 CFR [*Code of Federal Regulations*] 85.36(d)(4). If none of the conditions for noncompetitive procurement exist, the work must be procured competitively.

Part II.B.2 of the Authority's procurement policy requires the Authority's legal counsel to review all contracts and modifications (especially time extensions) before execution.Additionally, before execution, part II C of the policy requires the legal counsel, as well as the board, to review and approve all purchases, contracts, change orders, and contract amendments and modifications of more than $25,000.

- **Requirements for Noncompetitive Procurement**

Part III.E.1 of the Authority's procurement policy states:

"Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and… [a]n emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the LVHA [Authority], as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services or construction necessary to meet the emergency…."

Regulations at 24 CFR [*Code of Federal Regulations*] 85.36 (d)(4)(i)(B) allow noncompetitive procurement when the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. Part 332 of the Nevada revised statutes governs purchasing for local governments. Section 332.112 (1) of the Nevada revised statutes defines an "emergency" as one which "(a) results from the occurrence of a disaster including, but not limited to, fire, flood, hurricane, riot, power outage or disease; or (b) may lead to impairment of the health, safety or welfare of the public if not immediately attended to."

Section 332.112 (2) requires the authorized representative to report the decision to undertake emergency noncompetitive procurement to the governing body of the agency at its next regularly scheduled meeting.

Additionally, a Sample Statement on Procurement Policy found in HUD Handbook 7460.8, Appendix 1, Section E.1.b. defines an emergency (for the purpose of sole source procurement) as one "that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the PHA, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency."

Replacement Housing Factor Generally:

Regulations at 24 CFR [*Code of Federal Regulations*] 905.10, which govern the replacement housing factor program, require a housing authority to use grant funds only for replacement housing. HUD is required to reduce the amount of funds if a housing authority fails to provide replacement housing in a timely fashion. A housing authority must obligate replacement housing factor funds within 24 months from the date the funds are available or from the date the housing authority accumulates adequate funds to undertake replacement housing.

Eligible expenses do not include long-term investment of replacement housing factor funds in interest-earning accounts. Placement in interest-bearing accounts is allowed only for the limited purpose of credit enhancement for bond issuance or to serve as collateral.

Section 903.5(a)(4) allows a housing authority to update its five-year plans but requires the housing authority to explain any substantial deviation from the original in its annual plans. Section 903.7(2) requires the housing authority to (1) submit a brief statement of the housing authority's progress in meeting the mission goals and goals described in the five-year plan and (2) identify the basic criteria the housing authority will use for determining substantial deviation from its five-year plan and for determining significant amendment or modification to the five-year and annual plans.

Section 968.103(e)(3)(iii) allows HUD to recapture, reallocate, or place other restrictions or requirements on replacement housing factor funds if the housing authority fails to obligate the funds within two years of approval of the plan and expend the funds within three years of the approval.

Section 941.302 allows a housing authority only limited drawdowns of funds under the annual contributions contract without HUD's approval of the authority's full development proposal. Section 941.612 allows HUD to issue limited case-by-case approval of front-end drawdowns for specific requests of such drawdowns.

Notice PIH [Public and Indian Housing] 2003-10, issued in April 2003, requires replacement housing factor recipients to submit a separate replacement housing factor plan and a development proposal for any fund grants not yet expended.

- **Requirement to Return Interest Earned on Unauthorized Loans of Federal Grant Funds**

Decision B-246502, issued by the comptroller general of the United States on May 11, 1992, requires HUD to take appropriate collection action and deposit the interest earned by unauthorized investment of grants in the Treasury of the United States as miscellaneous receipts. Because grants are not to be used to profit (other than in the manner and to the extent provided by law), such grants improperly used to earn money are considered grant advances. The interest earned on such grant advances cannot be considered "program" or "grant-related" income. Therefore, the interest must be returned to the Untied States.

The decision further concludes that HUD does not have discretion not to require payment of the interest earned from the unauthorized use of grants unless otherwise expressly authorized by Congress. Therefore, HUD must require the grant recipient to return the interest to the United States Department of the Treasury.