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TO: Chet J. Drozdowski
Director, Office of Public Housing, 6HPH

FROM: D. Michael Beard
District Inspector General for Audit, 6AGA

SUBJECT: Housing Authority of New Orleans
Contract with Tucker and Associates, Inc.

We audited the Housing Authority of New Orleans' (Authority) contract with Tucker and Associates, Inc. (TAI) to create a Comprehensive Strategic Plan for the Authority. Our audit objectives included determining whether: (1) the Authority properly procured the contract; (2) TAI could support its billings to the Authority; and (3) TAI complied with all contractual obligations. We have provided a copy of the report to the Housing Authority of New Orleans.

The audit found that the Authority's poor procurement practices resulted in questionable contract costs and not all work being performed. The questionable costs included \$43,282 in unsupported charges, \$43,619 in unreasonable general and administrative expenses, and \$4,466 in excessive charges related to a change order. In addition, neither TAI nor the Authority reduced the contract amount for work required by the contract that was not performed.

Within 60 days, please furnish this office, for each recommendation in this report, a status on: (1) corrective action taken; (2) proposed corrective action and the date to be completed; or (3) why action is not considered necessary. Also, please furnish us copies of any correspondence or directives issued related to the audit.

Please contact me or Frank Baca, Assistant District Inspector General for Audit, if you or your staff have any questions.

Executive Summary

We audited the Housing Authority of New Orleans' (Authority) contract with Tucker and Associates, Inc. (TAI) to create a Comprehensive Strategic Plan for the Authority. Our audit objectives included determining whether: (1) the Authority properly procured the contract; (2) TAI could support its billings to the Authority; and (3) TAI complied with all contractual obligations.

The audit found that the Authority's poor procurement practices¹, in a contract permeated by apparent conflicts of interest, resulted in questionable costs and not all work being performed. The questionable costs included \$43,282 in unsupported charges, \$43,619 in unreasonable general and administrative expenses, and \$4,466 in excessive charges related to a change order. In addition, neither TAI nor the Authority reduced the contract amount for work required by the contract that was not performed.

The Authority poorly procured the contract

The Authority could not support its selection of Tucker & Associates, Inc., effectively sole-sourced the contract to TAI, and did not perform an adequate cost analysis prior to contract award. Also, apparent conflicts of interest involving the Authority, City, and TAI officials and associated parties permeated the contract procurement and negotiations.

In awarding the contract, the Authority did not document the basis the selection committee used to award the contract to TAI. The Authority has no record of who served on the selection committee for the Strategic Plan or selection committee members' individual evaluations of proposals. In addition, the Authority essentially sole-sourced the contract to TAI. TAI prepared the scope of work incorporated into the contract; therefore, other respondents did not have the opportunity to respond to the actual scope of work. The Authority could not provide any evidence that it negotiated with any other respondents. Further, the Authority did not provide any supporting documentation to show it performed a cost analysis prior to the approval of the contract amount.

The Authority also exercised poor procurement practices in selecting, negotiating, and awarding a contract that showed strong indications of favoritism. At the time TAI bid on the contract, Mr. Robert Tucker, Executive Vice-President of

¹ We noted similar procurement problems in our June 29, 1994 report.

TAI, served on the Board of Directors of a bank owned by the Chairman of the Strategic Planning Committee. Further, Mr. Tucker identified this person as a reference in his proposal. Also, the Committee Chairman stated that Mr. Tucker, the Mayor, and himself had discussed the Authority's need for a strategic plan prior to the procurement of the contract. According to Mr. Tucker, the Committee Chairman directed TAI to use Urban Land Institute (ULI). The Committee Chairman has been a member of ULI since 1969 and is currently the president of the organization. TAI subcontracted with ULI for \$25,000. Further, a subcontractor for TAI appears to have worked for all parties involved in the contract.

At the time the contract was procured, the Authority was in a tumultuous and transitional state, and much has transpired since then. The audit results may not reflect the current procurement activities of the Authority. For this reason, we are not making any recommendations regarding the Authority's procurement practices. However, we report these matters for purposes of full disclosure and as background for the remainder of the report regarding questionable costs.

Poor procurement practices result in questionable costs and work not performed

The questionable costs resulting from the Authority's poor procurement practices included \$43,282 in unsupported charges, \$43,619 in unreasonable general and administrative expenses, and \$4,466 in excessive costs related to a change order. In addition, neither TAI nor the Authority reduced the contract amount for work required by the contract that was not performed.

Based upon information it supplied, TAI cannot support \$43,282 in charges made under its contract with the Authority. In computing the \$43,282, we used actual cost data regarding labor, materials, and subcontracts provided by TAI and the percentages for fringe benefits, labor overhead, general and administration, and profit that TAI used on its first two invoices to the Authority. Further, in its final negotiating document submitted to HUD, TAI did not apply the percentage for general and administrative expenses to \$50,000 in estimated subcontractor costs. However, in its billings to the Authority, TAI applied 18.70 percent for general and administrative expenses to \$214,982 in actual subcontractor costs. We question as unreasonable the \$43,619 general and

administrative expenses and related profit applied to subcontracts.

Also, in charges related to a change order, TAI paid one subcontractor \$3,500 less than it purported to HUD (\$4,466 including overhead and profit), but still retained the full amount of the change order. We consider these excessive charges to be ineligible. Finally, neither the Authority nor TAI reduced the contract amount for contract work not performed relating to training and town meetings at Authority developments. We are recommending the Authority recover questionable amounts and HUD take administrative action against TAI if it will not repay the Authority these amounts.

Authority and TAI
responses to draft report

Authority and TAI officials responded in writing to the draft report in letters dated August 21, 1997, and July 10, 1997, respectively (Appendices B and C). In addition, Authority officials provided verbal comments at an exit conference held September 9, 1997. Both the Authority and TAI generally disagreed with the finding and recommendations. The main point of disagreement was the Authority's and TAI's contention that the contract was fixed price rather than cost reimbursement. However, the Authority said it would look into the issue of defective cost data TAI submitted. The OIG maintains the Authority should recover the questionable amounts from TAI.

Introduction

Background

The Housing Authority of New Orleans (Authority) was established in 1937 as an autonomous public agency operating under the local, state, and federal laws that created it. HUD designated the Authority as a financially troubled agency in 1979, the first year HUD made such designations. The Authority has retained the designation of a troubled housing authority since that time. The Authority's problems have been manifold and serious, including deplorable housing units, inadequate maintenance, and poor procurement practices. Over the years the Authority has operated under a Memorandum of Agreement with HUD, and used the services of two management companies. In February 1996 the Mayor entered into a Cooperative Endeavor Agreement with HUD to avert a complete HUD takeover of Authority operations. Part of the Authority's efforts to avoid a HUD takeover included developing a Comprehensive Strategic Plan, which would provide a framework for improving Authority operations.

In seeking outside assistance for developing its Comprehensive Strategic Plan, the Authority prepared a Request for Proposal. Under the Request for Proposal, respondents had to reply by July 18, 1994. The Authority received proposals from six firms. On August 1, 1994, the Authority provided each firm 30 minutes to make a presentation. On August 3, 1994, the Authority's Board of Commissioners approved the award of the contract to Tucker and Associates, Inc. (TAI). After lengthy negotiations concerning the scope of work and contract amount, the Authority signed a contract with TAI on October 21, 1994. The contract required TAI to submit invoices for costs incurred, including profit of 8.5 percent, up to a ceiling amount of \$431,200. HUD and the Authority later approved a \$62,208 change order for additional work that TAI performed.

The Cooperative Endeavor Agreement replaced the Authority's Board of Commissioners with Mr. Kevin Marchman, HUD's Acting Assistant Secretary for Public and Indian Housing. The Secretary also appointed an Executive Monitor, Mr. Ron Mason from Tulane University, to oversee the Authority's recovery and act in Mr. Marchman's absence. Mr. Michael Kelly, the Authority's Executive Director, has responsibility for day-to-day Authority operations. The

Authority's main office is located at 918 Carondelet Street, New Orleans, Louisiana.

As previously mentioned, the Authority underwent dramatic changes prior, during, and subsequent to the performance of the contract including the firing of a management company, and the bringing in of a HUD transition team, new executive staffers, and eventually the present organization created under the Cooperative Endeavor in February 1996. Therefore, the results of this review may not reflect current procurement activities at the Authority.

Objectives and Scope

Our audit objectives included determining whether: (1) the Authority properly procured the contract; (2) TAI could support its billings to the Authority; and (3) TAI complied with all contractual obligations.

During our audit we interviewed personnel and examined all available contract related documents from the Authority, TAI, and HUD. We informed officials of the Authority and TAI of the review on January 30, 1997, and February 5, 1997, respectively. The audit generally covered the period July 1994 through September 1995; we extended the coverage as appropriate. Audit field work consisted of site visits to Authority and TAI offices to conduct interviews and review records. We performed field work during March and April 1997 in accordance with generally accepted government auditing standards.

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Abbreviations

TAI	Tucker and Associates, Inc.
DCAA	Defense Contract Audit Agency
HUD	U.S. Dept. of Housing and Urban Development
OIG	Office of Inspector General

Poor Procurement, Apparent Favoritism, and Questionable Costs Taint Strategic Plan Contract

Poor procurement practices by the Housing Authority of New Orleans, relating to a contract laced with apparent favoritism, resulted in questionable contract costs and not all work being performed. The Authority could not support its selection of Tucker & Associates, Inc., effectively sole-sourced the contract to TAI, and did not perform a cost analysis prior to contract award. Also, apparent conflicts of interest involving Authority, City, and TAI officials and associated parties permeated the contract procurement and negotiations. The questionable costs resulting from the Authority's poor procurement practices included \$43,282 in unsupported charges, \$43,619 in unreasonable general and administrative expenses, and \$4,466 in excessive charges related to a change order. In addition, neither TAI nor the Authority reduced the contract amount for work required by the contract that was not performed.

Authority poorly procured the TAI contract

The Authority could not support its selection of Tucker & Associates, Inc., effectively sole-sourced the contract to TAI, and did not perform a cost analysis prior to contract award. Also, apparent conflicts of interest involving Authority, City, and TAI officials and associated parties permeated the contract procurement and negotiations.

Authority cannot support its selection of TAI

The Authority has no record of who served on the selection committee for the Strategic Plan or selection committee members' individual evaluations of proposals. As a result, the Authority cannot document the basis the selection committee used to award the contract to TAI. A member of the Authority's Board of Commissioners served as Chairman of the Strategic Planning Committee (Committee Chairman). An assistant to the Committee Chairman evaluated and ranked the proposals based on five evaluation factors: past experience, price, understanding of scope, local affiliation, and minority participation. Contrary to federal regulations (24 CFR §85.36 (d)(3)(i)), the Authority did not set forth these or any other evaluation factors in the Request for Proposal. This assistant's evaluation ranked TAI as the best proposal. The Authority, at the request of the assistant, provided the evaluation to

members of the Board of Commissioners on the same day the Board of Commissioners voted to approve awarding the contract to TAI.

Authority essentially sole-sourced the contract to TAI

The Authority, TAI, and HUD did not establish the scope of work until after the Authority awarded the contract to TAI. The Request for Proposal contained only 11 sentences in bullet form as the scope of work. Under the Code of Federal Regulations, the Authority must have written selection procedures to ensure that all solicitations incorporate a clear and accurate description of the service to be procured (24 CFR §85.36 (c)(3)).

Because the Authority did not establish an adequate scope of work in the Request for Proposal and due to changing conditions at the Authority,² the Authority, TAI, and HUD engaged in negotiations over a 2-month period until they finally signed a contract for \$431,200 in October 1994. TAI prepared the scope of work incorporated into the contract.³ Therefore, other respondents did not have the opportunity to respond to the actual scope of work. The acting Executive Director at the time of the procurement stated that the selection committee told the respondents that the scope of work would change and allowed the respondents an opportunity at their presentation to adjust their scope of work and price to different alternatives. However, the Authority has no documentation to support that it provided the scope changes to the respondents.⁴ The evaluation and ranking of the proposals provided to the Board of Commissioners by the Committee Chairman's assistant did not include any comments regarding the contractors' responsiveness to scope changes or changes in proposed cost. The Authority could not provide any evidence that it negotiated with any other respondents.

The Authority did not perform a cost analysis to support the contract amount

The Authority did not provide any supporting documentation to show it performed a cost analysis prior to the approval of

² The Authority fired its management company, and HUD threatened to take over the Authority.

³ The contract scope of work was very similar to the methodology presented in TAI's response to the Request for Proposal, although the contract amount was approximately \$104,000 higher than TAI proposed in its response.

⁴ A subcontractor for TAI stated that they did not discuss any changes in scope of work at the presentation, but that the Authority, HUD, and TAI changed the scope of work after the Authority awarded the contract to TAI.

the contract amount. Federal procurement regulations require grantees to perform a cost analysis on every procurement action to support the reasonableness of the cost (24 CFR §85.36(f)). This requirement takes on greater significance when the Authority only negotiates with one respondent.

HUD Headquarters provided information indicating that it reviewed costs supplied by TAI for reasonableness.⁵ However, this information does not reflect who TAI actually used to perform the work. The information indicates that, with the exception of a \$50,000 consultant, TAI would perform the work in-house. However, TAI actually subcontracted over \$214,982 of the \$431,200 contract (49.86 percent).⁶

**Conflict of interest
permeates procurement and
contract negotiations**

At the time TAI bid on the contract, Mr. Robert Tucker, Executive Vice-President of TAI, served on the Board of Directors of a bank owned by the Committee Chairman. Further, Mr. Tucker identified this person as a reference in his proposal. Because of their relationship, the Committee Chairman should have recused himself from the selection process. However, it appears that the Committee Chairman took a leading role not only by serving as Committee Chairman, but also by having a personal assistant rank the proposals. Also, the Committee Chairman stated that he, Mr. Tucker, and the Mayor had discussed the Authority's need for a strategic plan prior to the procurement of the contract. Mr. Tucker did not recall such a conversation.

According to Mr. Tucker, the Committee Chairman directed TAI to use Urban Land Institute (ULI). The Committee Chairman has been a member of ULI since 1969 and is currently the president of the organization. TAI subcontracted with ULI for \$25,000.⁷ The duties under the subcontract consisted of assembling a panel for:

"one to one a (sic) one-half days, with representatives of the Strategic Planning Team and the Strategic Planning Committee to

⁵ HUD did have some documents it received from TAI regarding this contract but could not locate critical files to support the final contract amount.

⁶ Oddly, TAI did include the subcontractors in its response to the Authority's Request for Proposal.

⁷ TAI actually paid ULI \$28,072.

provide insights (sic) and advice on financing options for public housing reform."

Also, the duties required ULI to provide a "brief" summary of conclusions and recommendations within 5 days after the panel convened. TAI included ULI's comments and recommendations in the final report.

A senior employee for Smart Inc., a subcontractor for TAI, appears to have worked for all parties involved in the contract. Smart Inc. received \$60,000 as a subcontractor on this contract. According to Mr. Tucker, this employee negotiated the terms of TAI's contract with the Authority. The Authority's Executive Council minutes identified this employee as a consultant /city liaison and as a member of the transition team. When interviewed, this employee denied having any direct role in negotiating the contract, but did acknowledge that Smart Inc. has had contracts with the City. Also, the employee assisted in preparing the Mayor's campaign platform on housing.

Poor procurement practices result in questionable costs and work not performed

The questionable costs resulting from the Authority's poor procurement practices included \$43,282 in unsupported charges, \$43,619 in unreasonable general and administrative expenses, and \$4,466 in excessive costs related to a change order. In addition, neither TAI nor the Authority reduced the contract amount for work required by the contract that was not performed.

TAI cannot support \$43,282 in charges to the Authority

Based upon information it supplied, TAI cannot support \$43,282 in charges made under its contract with the Authority. In computing the \$43,282, we used actual cost data regarding labor, materials, and subcontracts provided by TAI and the percentages for fringe benefits, labor overhead, general and administration, and profit that TAI used on its first two invoices to the Authority.

Cost of Contract Based on Invoiced Percentages	
Direct labor - Full-time	
Direct labor - Part-time	\$51,103
Fringe benefits applied to full-time labor (41.31%)	
Fringe benefits applied to part-time (10.50%)	5,366

Labor overhead - Applied at 11.88% to direct labor	6,071
Direct cost	2,421
Total direct costs performed by TAI	\$64,961
Resident Contracts	21,260
Subcontracts	214,982
Subtotal	\$301,203
General and administrative expenses applied at 18.70%	56,325
Subtotal	\$357,528
Profit (8.5%)	30,390
Total supportable amount	\$387,918
Total paid to TAI	\$431,200
Unsupported amount paid to TAI	\$43,282

TAI asserts that the contract is fixed. TAI contends that it entered into a firm fixed contract with the Authority; therefore, TAI considers any cost savings as additional profit. The Vice President of Operations explained that they originally believed that the contract was a cost reimbursement contract, and submitted the first two invoices with itemized costs. Later, TAI became unsure as to what type of contract it was. After consulting with the Defense Contract Audit Agency (DCAA), TAI changed its opinion and decided the contract was firm fixed price and not cost reimbursement. However, TAI could not provide any documentation that DCAA concurred with its opinion.

Mr. Tucker acknowledged that the contract reads as a cost reimbursement contract if taken alone, but he does not feel it should be taken alone. On March 10, 1995, TAI claims to have sent a letter to the Authority along with their third invoice stating TAI's understanding that the contract was firm fixed price. Mr. Tucker argues that since the Authority never responded to the contrary, then the Authority agreed with TAI's interpretation. Subsequent to the letter, TAI billed on the percentage-of-completion method after it had billed \$233,096 under the cost reimbursement method.

TAI officials could not provide any reasonable explanation why they changed their opinion about the type of contract.

Further, TAI could not provide any support that the Authority agreed with TAI's new opinion of the contract. TAI wrote the letter containing TAI's new understanding of the type of contract to the Executive Director of the Authority. However, neither the Executive Director nor Contracting Officer recall receiving the letter, and the Authority's files do not contain a copy of the letter.

TAI's argument that the Authority should have rejected the invoices would have more validity if the Authority's operations at the time were not in complete disarray. TAI knew of the Authority's state of operations. Mr. Tucker even commented that, during January 1995 through June 1995, they provided staffing assistance to the Authority's Executive Director while waiting for the Authority's Board of Commissioners to approve seven new senior executives.

Additionally, an attorney representing TAI said when she first read the contract, she thought it was a cost reimbursement contract with a maximum limit. The attorney could not point out any portions of the contract that read as a fixed fee contract. The attorney believed the type of contract should be clearly stated. Also, the attorney argued that the Authority should have been monitoring the contract, and should have rejected the invoices if TAI did not bill properly.

Contract is clearly a cost reimbursement contract. The wording of the contract clearly indicates that the contract is a cost reimbursement contract with a maximum ceiling amount of \$431,200. While it would be preferable for the contract to specifically state it is a cost reimbursement contract, there is nothing in the wording of the contract to provide any confusion about the type of contract intended. Relevant portions of the contract include (emphasis added):

Article 4, Consideration and Payment

A. The total of the allowable cost of this contract shall not exceed FOUR HUNDRED THIRTY-ONE THOUSAND TWO HUNDRED DOLLARS AND NO CENTS (\$431,200).

C.(1) The contractor shall submit vouchers or invoices . . . on costs incurred for work performed. Each invoice

shall include . . . an itemization of the costs being billed.

Article 45, Price Reduction for Defective Cost or Pricing Data

- a. If any price, including profit or fee, negotiated in connection with contract, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data . . . the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.
- c.(1) If the Contracting Officer determines under paragraph a. above that a price or cost reduction should be made, the contractor agrees not to raise the following matters as a defense:
 - (iii) The contract was based on an agreement about the cost of each item procured under the contract.

Unreasonable general and administrative percentage applied to subcontracts

On TAI's final negotiating document submitted to HUD, TAI listed a special consultant cost of \$50,000. TAI did not apply the percentage for general and administrative expenses to this \$50,000. However, in its billings to the Authority, TAI applied 18.70 percent for general and administrative expenses to \$214,982 in actual subcontractor costs.

TAI claims it has general and administrative costs associated with monitoring the subcontracts. However, there is no direct correlation between some of the costs included in the general and administrative cost pool and the cost of subcontractors. Costs to TAI such as rent, utilities, telephone expense (all the subcontractors were local firms), and employment advertising would not increase proportionally with the dollar amount of subcontractors. Also, it appears any direct labor or materials used to monitor subcontractors would be included as a direct cost with the 18.70 percent for general and administrative expenses applied to the direct cost.

Since HUD and the Authority did not agree to the application of the general and administrative percentage to subcontractor costs and TAI has not shown that their application would be reasonable, we question all general and administrative expenses and related profit applied to subcontracts.

Computation of questionable general and administrative overhead applied to subcontractors	
Subcontractor costs	\$214,982
General and administrative expense (18.70%)	\$40,202
Profit (8.5%)	\$3,417
Total unreasonable G&A costs	\$43,619

TAI paid a subcontractor less than it represented to HUD

On September 28, 1995, HUD gave the Authority approval to pay TAI \$62,208 as additional compensation for presentations of the Strategic Plan made to the City council, business community, media, and HUD officials. HUD approved the \$62,208 based upon proposed costs submitted by TAI, which included line items for direct labor, subcontractors, general and administrative expense, and profit allocation. However, TAI paid one subcontractor \$3,500 less than it purported to HUD, but still retained the full amount of the change order. TAI considers the issue moot because it maintains the contract, including the change order, is fixed price. Nothing provided by TAI supports TAI's contention it entered into a fixed price contract or amendment. On the contrary, HUD's approval, based upon TAI's cost proposal, specifically states how the money is to be allocated between line items. TAI should repay the Authority \$4,466 for the underpayment, overhead, and profit in accordance with Article 45 of the original contract.

Computation of reimbursement amount on change order	
Amount of underpayment to subcontractor	\$3,500
Overhead applicable to underpayment (18.70%)	655
Subtotal	\$4,155
Profit applicable to underpayment (7.5%)	311

Total underpayment (excessive charges to contract)	\$4,466
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TAI and Authority did not reduce contract amount for work not performed

Training. The contract required TAI to provide in-depth training specifically designed to orient the stakeholders in the skills, resources, and competencies required to successfully implement the components of the strategic plan. The contract described stakeholders as Board members, executive staff, site-based management, and others. However, TAI never provided the training, and neither TAI nor the Authority ever reduced the contract amount.

Mr. Tucker stated they did not provide the training because the Authority did not have anyone to train. He noted a series of management gaps while the Authority went from a private management company to a transitional executive director, and finally to the current executive director. Mr. Tucker noted that the Board was reduced to an advisory status and that the Authority had no senior staff in place. Further, TAI believed that the site-based staff might leave once the Board or HUD appointed a new executive director. The Authority's current executive director agreed that the Authority had no one to train.

Although TAI provided legitimate reasons for not providing the training, it did not provide any legitimate reasons why it billed the Authority for training not performed. After we discussed this matter with TAI officials, TAI sent a letter to the Authority dated March 21, 1997, in which it offered to provide orientation, training, and a briefing to Authority staff on the strategic role without additional compensation.⁸ However, since the strategic plan is dated and has been superseded by later plans, such training would seem to be of little value at this time. Further, the contract required the training to be provided to all stakeholders, not just Authority staff.

Town meetings. The contract required TAI to hold 11 town meetings; 1 town meeting for each of the Authority's 10 developments, and 1 for the scattered site developments. According to TAI, due to the Mayor's request for an

⁸ With the letter, TAI included a \$459 check to correct a known overpayment of the contract amount.

expedited report,⁹ it reduced the number of town meetings to the two already held. TAI then held two other meetings not called for in the original contract¹⁰ to substitute for the remaining nine town meetings that the scope of work required. Neither the Authority nor TAI reduced the contract amount in relation to the reduced scope of work performed. The Authority should receive a price reduction for the number of town meetings that TAI did not hold.

Comments on draft report by the Authority and TAI

Both the Authority and TAI provided written responses to the draft report. In addition, Authority officials provided verbal comments at the September 9, 1997 exit conference. This section summarizes written and verbal comments, while Appendices B and C contain the written responses in their entirety.

Housing Authority of New Orleans Comments

Authority officials stated that:

- HUD and the former management team were to a significant degree responsible for the deficiencies noted in the draft report.
- The contract was not sole sourced. The selection process was fair, and all respondents had opportunity to address scope changes.
- The Authority and HUD reviewed costs, and the Authority awarded TAI a fixed fee contract. The Authority disagrees with our disallowance of general and administrative overhead, and considers the subcontractor issues to be irrelevant since the contract was fixed fee.
- TAI had indicated their willingness to provide the training required by the contract. Also, the town hall and joint

⁹ TAI issued the final plan on May 26, 1995, 1 month after the due date in the original contract. TAI did issue a preliminary draft on February 15, 1995, and a draft on April 14, 1995. TAI blames the delay on the Authority not getting their Comprehensive Grant Program application processed timely.

¹⁰ Resident Leadership Seminar and Town Meeting (January 28, 1995) and the Mayor's Conference on Public Housing (February 11, 1995).

meetings met the intent of the scope of work under the contract.

TAI Comments

In its written response to the draft report, TAI indicated:

- The draft report "...hints of an element of bias" and noted (1) the draft report's reference to TAI as "Tucker," (2) HUD and Authority officials not named in the report or whose input was omitted from the draft, (3) OIG's "most grievous omission" in not properly characterizing the Authority's instability at the time, and (4) the draft report's inadequate coverage of key issues such as the threat of federal takeover, struggling interim Authority management, and HUD's knowledge of the Authority's problems. TAI believes the OIG is trying to make TAI the scapegoat for HUD and Authority failures.
- It was the best qualified respondent to the draft report, and HUD approved the selection. TAI states the OIG's position that the Authority does not know who served on the selection committee and has no basis for selection is inconsistent with statements mentioning the Committee Chair and his assistant, and its comments regarding the Authority being in disarray.
- The OIG's contention that TAI prepared the scope of work and other respondents did not have an opportunity to respond to the actual scope is baseless. Also, the OIG erred when it stated the scope of work was not established until after contract award. TAI contends the Request for Proposal contained the scope of work to be performed, all offerors had opportunity to respond or seek clarification, and it is common federal procurement process to negotiate a contract after selection.
- It believed the contract was fixed price "...not because of the language contained in the contract, but because of key clauses which would have clearly identified the contract as cost reimbursement were missing from the document." TAI claims its actions were consistent with their understanding that the contract was fixed price. As a result, it rejects the costs questioned in the draft report. Also, regarding general and administrative costs, TAI claims the costs would be allowable even if the contract

were cost reimbursable because it has consistently used an established method of allocating these costs in compliance with the Federal Acquisition Regulation and accepted by the Defense Contract Audit Agency.

OIG Evaluation of
Authority and TAI
Comments

Neither the Authority's nor TAI's responses warrant making significant changes to the draft report. In its simplest terms, the audit found: (1) its City and Authority connections appear to have given TAI the inside track to a high dollar contract and (2) the Authority's poor procurement procedures and TAI's actions during a period of high vulnerability for the Authority resulted in excessive charges to the Authority.

Selection and award. The Authority's lack of records and poor memory, and TAI's refuge in Federal Acquisition Regulation (FAR) technicalities only add to the already strong appearance that TAI's selection was a foregone conclusion. HUD's monitoring may have been deficient, but that did not absolve the Authority from properly procuring the contract. Competition appears absent when the Authority issues a very weak Request for Proposal, the proposals are evaluated by an outsider associated with the Strategic Planning Committee Chairman who has a relationship with Mr. Tucker, selection is made in 2 days despite scope changes, negotiations are conducted with only one respondent, and an award is made that is \$104,000 (32 percent) above the original proposal. In its written response the Authority discusses our concerns regarding conflict of interest, while TAI's lengthy response is silent on the issue.

Excessive charges. Despite the contract wording, both the Authority and TAI maintain this was a fixed price contract. The Authority's response states "...all references for specific cost were for the purpose of providing justification for the overall fee to fulfill the requirement of cost analysis." However, the Authority did not get accurate cost data. TAI submitted defective data regarding subcontractor costs and charged the Authority \$43,282 more (including profit) than estimated. Even if the contract was fixed price, the Authority has legitimate claim for recovering the \$43,282 based on the defective cost data TAI submitted. HUD and the Authority

relied on the cost data TAI supplied; the data was not independently verified.

TAI, in taking issue with our protest with the contract selection, complains that the draft did not properly characterize the disarray the Authority was in at the time the contract was procured. However, it is precisely this disarray, which TAI was well aware of, that made the Authority *vulnerable* during the period. TAI is inconsistent in arguing on the one hand the Authority's instability during procurement, and on the other hand claiming the Authority had proper notice the contract was fixed price based on wording in the third invoice, a letter the Authority has no record of, and conversations the Authority has no recollection of. TAI states it was "...clearly concerned that the contract language was ambiguous on the issue of fixed price versus cost reimbursement." However, TAI does not explain why it entered into a contract it believed contained ambiguous language. Even if the language had initially escaped TAI's notice, it subsequently should have obtained written confirmation from the Authority. Also, TAI has been unable to provide any evidence regarding the Defense Contract Audit Agency's alleged advice on the matter.

TAI is also inconsistent in its comments regarding general and administrative percentage applied to subcontractor costs. In its cost data submitted to HUD and the Authority, TAI did not apply general and administrative expenses to estimated subcontractor costs. However, in its billings, TAI did apply the general and administrative percentage to actual costs and now says in its response to the draft report that this was appropriate. The significance of the general and administrative costs becomes magnified considering TAI submitted defective cost data regarding estimated subcontractor costs (\$50,000 estimated versus \$214,982 actual).

Regarding the questioned subcontractor costs relating to the change order, both the Authority and TAI reject our position because they consider the contract fixed price. We disagree. However, even setting aside the issue of fixed price versus cost reimbursement, we still consider the excess cost ineligible. The change order was approved in September 1995, well after the change order work was performed (TAI

performed the work in April and May 1995), and actual costs had already been incurred. Therefore, how can the Authority justify paying TAI a higher estimated amount when actual costs were known, and then allow TAI to keep the difference as "cost savings"?

In considering the long history of the Authority's troubles, and the great social and financial cost of trying to improve its operations and condition of its housing units, it concerns us that the Authority's current management believes this was an acceptable procurement and contract execution. This procurement: (1) did not hold the contractor to the terms and conditions of the contract, including method of reimbursement; (2) did not deal with conflict-of-interest issues; (3) allowed, after selection and award, significant increases in costs without a commensurate increase in services to be performed; (4) paid for work not performed; and (5) paid for costs not incurred.

Recommendations

We recommend you:

- 1A. Have the Authority recover the \$43,282 in unsupported costs that TAI charged to the original contract based on the contract being cost reimbursement and because TAI submitted defective cost data.
- 1B. Have the Authority recover the \$43,619 in unreasonable general and administrative expenses and related profit for subcontractor costs based on TAI's submission, which did not include these costs, and because TAI submitted defective cost data. (Note: Although questioned for different reasons, the \$43,619 and the \$43,282 amount questioned in Recommendation 1A overlap. Therefore, a \$43,619 recovery would resolve both recommendations.)
- 1C. Have the Authority recover the \$4,466 in excessive charges for subcontractor costs relating to the contract change order based on the contract being cost

reimbursement, because TAI submitted defective cost data, and because actual costs were known at the time of the change order award.

- 1D. Have the Authority determine and recover any amounts for work not performed.
- 1E. Initiate debarment action against TAI if it refuses to repay questioned amounts to the Authority.

Management Controls

In planning and performing our audit, we obtained an understanding of the management controls that were relevant to our audit. Management is responsible for establishing effective management controls. Management controls, in the broadest sense, include the plan of organization, methods, and procedures adopted by management to ensure that its goals are met. Management controls include the processes for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

The audit objectives were concerned only with the award and performance of one contract for the Authority's Comprehensive Strategic Plan. To achieve the audit objectives, we reviewed available contract documents and interviewed appropriate personnel. We did not need to review management controls to achieve the audit objectives. As such, we neither reviewed nor relied upon management controls in conducting the audit.

Schedule of Questioned Costs

<u>Recommendation Number</u>	<u>Ineligible</u> ¹	<u>Unsupported</u> ²
1A		\$43,282
1B		\$43,619
1C	\$4,466	_____
TOTALS	<u>\$4,466</u>	<u>\$86,901</u> ³

1 Costs clearly not allowed by law, contract, HUD, or local agency policies or regulations.

2 Costs not clearly eligible or ineligible but which warrant being contested (e.g., lack of satisfactory documentation to support the eligibility of the cost, etc.).

3 As noted in recommendation 1B, the \$43,619 and \$43,282 overlap, so that recovery of \$43,619 would resolve both recommendations.

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