audit report

OFFICE OF INSPECTOR GENERAL

Issue Date	March 13, 1996
Audit Case Number	96-NY-204-1001

TO: Carmen Valenti, Director, Office of Public Housing
New Jersey State Office

FROM: A. Paul Kane, District Inspector General for Audit
New York/New Jersey

SUBJECT: Housing Authority of the City of Hoboken
Low Rent Housing Program
Hoboken, New Jersey

We have completed an audit of the Housing Authority of the City of Hoboken, New Jersey (hereafter called the PHA) pertaining to selected operations of its Low Rent Housing Program. The audit generally covered the period from October 1, 1993 through June 30, 1995, and, where appropriate, was extended to December 31, 1995. The objectives of the audit were to determine whether the PHA complied with the U.S. Department of Housing and Urban Development (HUD) requirements and policies pertaining to: 1) personnel practices; 2) procurement; 3) maintenance; and 4) housing quality standards.

Generally, the PHA maintained its housing units in decent, safe and sanitary condition. In particular, we found that the PHA's housing stock met the required Housing Quality Standards and can be considered comparable to that of commercial apartment buildings in the area. However, this report contains two findings that warrant your attention. The findings showed that the PHA entered into an employment buyout arrangement with its Executive Director that in our opinion was not necessary and reasonable. Also, the PHA procured professional legal services in a manner that did not provide for full and open competition. As a result, we consider $171,476.42 as unnecessary and unreasonable costs and $17,482.10 as unsupported costs.

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

Should you or your staff have any questions, please contact William H. Rooney, Assistant District Inspector General for Audit on (212) 264-8000 extension 3978.

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Executive Summary

We completed an audit of the Housing Authority of the City of Hoboken (PHA) pertaining to selected operations of its Low Rent Housing Program. Our objectives were to determine whether the PHA complied with HUD's requirements and policies pertaining to: 1) personnel practices; 2) procurement; 3) maintenance; and 4) housing quality standards.

Our review disclosed that the PHA complied with HUD's regulations and requirements pertaining to the housing quality standards. Also, the housing units were well maintained and comparable to commercial units in the area. However, in regard to personnel practices and procurement, we questioned an employment buyout arrangement existed with the PHA's Executive Director and we questioned the procurement of the PHA's legal services.

Buyout Arrangement With Executive Director Was Unnecessary

The PHA paid its Executive Director $171,476.42 in excess of his annual salary to buyout the last nine months of his five year employment contract. According to PHA Commissioners, the health of the Executive Director was a major concern. However, one year after the buyout, the Executive Director was still functioning in the same capacity. We consider the buyout arrangement as unnecessary resulting in unreasonable charges to the PHA.

PHA Legal Services Contracts Are Questionable

The PHA awarded a legal service contract that had a different scope of services and different method of payment than the advertised request for proposals. Also, the PHA extended a legal contract and without justification changed the method of payment. The PHA contends that the changes in scope of services and method of payment were recommended by HUD, however the PHA could not provide supporting documentation to verify this. Therefore, we consider $17,482.10 in legal costs as unsupported.

Recommendations

We recommend that you take the appropriate actions against the Board of Commissioners for authorizing the buyout and that you require the PHA to instruct the Executive Director to return the buyout payments to the PHA. Additionally, we recommend that you make a determination as to the eligibility of the current and future fees paid to the attorney. Any costs found to be ineligible should be reimbursed by the PHA from non-Federal funds.

Exit Conference

The results of the audit were discussed with PHA Officials during the course of the audit and at an exit conference held on March 5, 1996 attended by:

PHA Officials

Dominic M. Gallo, Acting Executive Director
Carmen Matarazzo, Assistant Comptroller
James L. Bosworth, PHA General Counsel

HUD - New Jersey State Office Official

Edward DePaula, Acting Director, Office of Public Housing

HUD - Office of Inspector General

William H. Rooney, Assistant District Inspector General for Audit
Karen A. Campbell, Auditor in Charge
Joseph F. Vizer, Auditor

The Auditee's comments are included as Appendix A to this report. In addition, the comments have been summarized and provided after each finding in the report. Where appropriate, we have prepared an evaluation of the Auditee's comments.

Table of Contents

ACC	Annual Contribution Contract
CIAP	Comprehensive Improvement Assessment Program
CFRs	Code of Federal Regulations
CGP	Comprehensive Grant Program
HUD	U.S. Department of Housing & Urban Development
IA	Independent Accountant
OIG	Office of Inspector General
RFPs	Request For Proposals

Introduction

The PHA is governed by a Board of Commissioners consisting of seven unpaid members who formulate and direct the PHA's policies and procedures. The Chairman of the Board is Eugene G. Drayton. Dominic M. Gallo, is the Acting Executive Director responsible for general management and supervision over the administration of PHA business and affairs.

As of year ended September 30, 1994, the PHA operates 1353 units of Federally-assisted low rent public housing units under Consolidated Annual Contributions Contract NY-432 and administers 312 units under its Section 8 Program. The PHA received $2,888,406 in operating subsidies and $5,697,368 in Comprehensive Grant Program (CGP)/Comprehensive Improvement Assessment Program (CIAP) in fiscal year 1994.

The books and records are maintained at the PHA's Management Office, which is located at 400 Harrison Street and at its Rental Collection Office, 221 Jackson Street, in Hoboken, New Jersey.

Audit Objectives

The audit objectives were to determine whether the PHA complied with HUD's requirements and policies pertaining to:

- personnel practices,
- procurement,
- maintenance and
- housing quality standards.

Audit Scope and Methodology

The audit covered the period from October 1, 1993 through June 30, 1995. However, we reviewed activity prior and subsequent to the audit period as necessary through December 31, 1995. The audit site work was conducted from July 25, 1995 through January 26, 1996.

To accomplish our audit objectives, interviews were conducted with HUD, State Office, and PHA officials. We evaluated the PHA's organizational structure and reviewed the PHA's policies and procedures for managing overall operations. Also, audit procedures included an examination of records and files. In addition, we performed detailed audit testing of selected transactions in the areas reviewed.

The audit was conducted in accordance with generally accepted government audit standards.

A copy of this report has been provided to the PHA's Acting Executive Director.

Buyout Arrangement With Executive Director Was Unnecessary Resulting in Unreasonable Charges

In January 1995, the PHA paid its Executive Director $171,476.42 in excess of his annual salary to buyout the last nine months of his five year employment contract that would have ended in September 1997. According to the PHA commissioners, the PHA was concerned about the Executive Director's health; therefore, they agreed to buyout his contract and retain his expertise by moving him to a less stressful position. However, one year after the buyout, he was still functioning as the Executive Director. In our opinion, the buyout payments were unnecessary and unreasonable charges to the low-rent housing program. Therefore, we question the entire buyout arrangement and the applicable payments.

Criteria

Part 85 of Title 24, Code of Federal Regulations requires Public Housing Authorities to follow Office of Management and Budget Circular A-87, Costs Principles for State and Local Governments. This Circular, specifically Attachment A, provides that costs must be necessary and reasonable in order to be charged to a program.

PHA enters into five year employment contract

On October 1, 1992, the PHA entered into a five year employment contract with the Executive Director that would have ended on September 30, 1997.

On March 17, 1994, the Board of Commissioners passed a resolution which amended the Executive Director's employment contract and provided compensation upon termination. Specifically, the resolution said that the Executive Director would be paid salary and benefits from the date of termination to the end of his contract period.

On December 15, 1994, the Board of Commissioners passed a resolution stating that the PHA agreed to purchase the last nine months of the Executive Director's contract (January 1, 1997 through September 30, 1997). The PHA would make immediate payments based upon the current wage structure and fringe benefits.

In January 1995, the PHA paid the Executive Director the following amounts totalling $171,476.42:

-- $84,284.84 Salary payments for the period January 1, 1997 through September 30, 1997.

-- $8,108.63 Annual leave payments that the Executive Director would have accrued between January 1, 1997 and September 30, 1997.

-- $56,330.37 Annual leave payments for leave that the Executive Director accrued as of December 31, 1994.

-- $22,752.58 Sick leave payments for leave that the Executive Director accrued as of December 31, 1994.

Discussion with HUD Officials

The Newark Office Housing Specialist responsible for assisting this PHA recalls discussing the five year employment contract with a PHA representative, but it was never formally approved as required by the Annual Contribution Contract (ACC).

The Newark Office, Director of Public Housing said that he was not aware of this five year employment contract. He quoted Section 315 of the ACC, which provides that the PHA should not enter into any management agreement when the initial period is in excess of two years, unless prior written consent is obtained from HUD. The Director explained that he has never approved an employment contract that exceeded two years, much less a five year employment contract.

More importantly, neither the Housing Specialist nor the Director of Public Housing were aware that the commissioners passed a resolution amending the employment contract entitling the Executive Director to a buyout. Furthermore, they were not aware of any monies paid to the Executive Director much less the magnitude of the monies paid.

The Director of Public Housing explained that buyouts may be eligible; it would depend upon the terms of the buyout and the reason to execute a buyout provision. For example, if the PHA desired to buyout the last month or two of an employment contract, depending upon the circumstances regarding the need for the buyout, he probably would not object. Finally, the Director said that in this situation the buyout was unnecessary and unreasonable.

Discussion with PHA Commissioners

In December 1995, we discussed the buyout with the commissioners who authorized the buyout payments. The commissioners explained that in March 1994, the Executive Director told them that he was not healthy and the that job was too stressful. Subsequently, he suggested that the commissioners appoint a temporary Executive Director. Also, he suggested that a new position (Reorganization Officer) be created and that he be selected for this position. According to the commissioners, as Reorganization Officer, he would make suggestions to the PHA regarding cost effectiveness.

The commissioners said during their December 1994, meeting, the Executive Director indicated that he was having occasional chest pains; therefore, he requested that his contract be bought out and that he become the Reorganization Officer. The commissioners agreed because they believed that he was doing a good job and that they desired to keep his expertise at the PHA.

In January 1995, according to the commissioners, they bought out the last nine months of the Executive Director's contract, moved him to the Reorganization Officer position and appointed an Acting Executive Director. However, the newly appointed Acting Executive Director died three weeks later. Therefore, the prior Executive Director assumed the functions of the Executive Director. However, one year after the buyout, he was still functioning as the Executive Director. We asked the commissioners why. They said that they desired to promote from within the PHA, but they have not been successful. It should be mentioned that during our field work, we did not observe the PHA actively recruiting another Executive Director and the Commissioner agreed that they were not actively seeking a new Executive Director.

Funds received from local electric company

We attempted to determine how the PHA was able to fund a buyout of this magnitude. We found that in 1989, Public Service Gas & Electric, the local electric company, needed access to PHA land. As part of the electric company's standard business practice, it paid the PHA $175,000 for easement rights. In 1990, the monies were put into an escrow fund because of discrepancies that arose during a title search. In early January 1995, these discrepancies were resolved and the monies were deposited into the PHA's general fund. When we asked the Executive Director about the source of funds from which the PHA paid the buyout, he responded that it came from the Public Service Gas & Electric funds mentioned above and that he considered these non-Federal funds. We discussed this issue with a HUD attorney who advised that once non-Federal funds are co-mingled with Federal funds, the monies are considered Federal funds.

The buyout is unnecessary and unreasonable

The OIG defines unnecessary costs as costs which are not generally recognized as ordinarily, prudent, relevant and/or necessary within established practices. Likewise the OIG defines unreasonable costs as costs which by their very nature and amount, exceed the costs incurred by the ordinarily prudent person in the conduct of a competitive business.

We believe that the buyout arrangements and the applicable payments are unnecessary and unreasonable for the following reasons:

- In January 1995, the commissioners created the Reorganization Officer position for the Executive Director because the Executive Director position was too stressful. However, he was to continue to receive the $112,380 annual salary that was budgeted for the Executive Director position. In short, there was no corresponding reduction in salary for a position with less responsibility.

- The PHA did not identify the duties of the Reorganization Officer. There were hand written notes which the Executive Director presented to the commissioners with some suggestions as to how he could save the PHA money.

- In December 1994, the Executive Director presented the Reorganization Officer idea to the commissioners. However, in July 1994 and May 1995 when the PHA submitted its original and revised budgets this position was not listed.

- The PHA's Personnel Policies dated April 1987, provide that an individual is entitled to accumulate a maximum of 50 vacation days. Therefore, upon leaving employment with the PHA, an individual could be reimbursed for a maximum of 50 vacation days. As part of this buyout the PHA paid the Executive Director for 130 days.

- The Personnel Policies dated April 1987, provide that the maximum compensation to be paid by the PHA for sick leave was $15,000. As part of the buyout the PHA paid the Executive Director $22,752.58.

- The Executive Director position was believed to be too stressful; therefore, his contract was bought out. Yet one year after the buyout, he was still functioning as the Executive Director and the commissioners have not been actively searching for another Executive Director.

- According to the commissioners, the PHA bought out the last nine months of the Executive Director's contract (January 1, 1997 through September 30, 1997) because in January 1997, he would have sufficient years to receive a civil service retirement. Also, the commissioners desired to keep the Executive Director at the PHA in another position because of his expertise. In our opinion, if the commissioners desired to retain the Executive Director at the PHA they could have transferred him to another job until January 1997 without buying out his contract.

- For the year ended September 30, 1995, the Executive Director received $171,476.42 as a result of the buyout out, plus his annual salary of $112,380 for compensation totalling $283,856.42. We believe that this an unreasonable amount for a PHA to compensate an employee.

In summary, the low-rent housing program must be managed in the most economical manner. Therefore, we believe that payments of this magnitude to buyout an employment contract are unnecessary and unreasonable charges to the low-rent housing program. In addition, we believe that the commissioners exercised poor judgement when it approved the buyout arrangements and authorized the payments.

Auditee Comments

The PHA provided a detailed explanation of this finding and it is included in its entirety as part of Appendix A to this report. Generally, the response provides that HUD was made aware of the five year contract, amendments to the contract, the buyout and its source of funding through Board minutes and resolutions forwarded to HUD. As for the funding source of the buyout, the easement compensation was not federal funds.

OIG Evaluation of Auditee Comments

HUD Field Office personnel simply do not have the time to read all the Board of Commissioner minutes and resolutions sent to them. Furthermore, as mentioned in the finding, Section 315 of the ACC requires the PHA to obtain written consent from HUD for any management or personnel services contracts that exceed two years. This was not done.

The funds from the sales of the easement were deposited into the PHA's General fund. According to the HUD Field Office attorney, once funds are deposited into the General Fund, the funds are considered Federal funds.

Recommendations

We recommend that you:

1A. Require the PHA to instruct the Executive Director to return the buyout payments to the PHA.

1B. Take the appropriate action against the Board of Commissioners for authorizing the buyout.

PHA Legal Services Contracts Are Questionable

The PHA awarded a legal service contract that had a different scope of services and different method of payment than its advertised request for proposals (RFP). Also, the PHA extended a legal contract for six months and without justification changed the method of payment from an hourly rate to a retainer basis. A PHA official said that the changes in the scope of services and the changes in methods of payment were recommended by the HUD attorney; however, the official could not provide any documentation to verify this. Therefore, we consider $17,482.10 in legal costs as unsupported pending a HUD eligibility determination.

Criteria

Title 24, Code of Federal Regulations (CFRs) Part 85.36 provides that all procurement transactions will be conducted in a manner providing full and open competition.

HUD Handbook 7460.8 REV-1, Procurement Handbook for PHAs, Chapter 4 provides that the procurement of legal services should follow the competitive proposal method identified in Part 85.36(d) of the CFRs. According to Paragraph 4-25 of this Handbook, contracts shall be awarded only in accordance with the terms of the RFP. Furthermore, Paragraph 4-21 provides that if changes in the RFP are needed, a written amendment should be issued by the PHA. If the change is substantial the RFP should be canceled and a new RFP issued.

Our review objectives included a determination whether legal services were obtained in compliance with procurement standards. Therefore, we examined the method of procurement used by the PHA to contract for legal services and we examined the contracts and billings related to the scope of services.

PHA requests legal services

On January 31, 1995 and February 10, 1995, the PHA advertised a RFP for legal services. The PHA requested an attorney for a one year period to review legal matters which would arise in connection with the business and management of the PHA's various housing programs.

The scope of legal services requested encompassed the PHA's ordinary business. The services to be provided were as follows:

(A) Attendance at all PHA meetings and legal supervision of the PHA's minutes;

(B) Attendance at committee meetings when requested;

(C) Confer with and advise the officers, employees and members of the PHA on legal matters, when requested;

(D) Advise and assist the PHA in the preparation of all legal documents, papers, contracts, specifications, bonds, waivers, and other legal drafting when required;

(E) Appear for the PHA in all routine litigation;

(F) Approve the legality of contracts;

(G) Handle all legal questions and matters arising under contracts of the PHA and render legal opinions on all matters submitted by the PHA;

(H) Give notice to and consult with the PHA's insurance carriers in all cases of injury to person or property involving the PHA; and

(I) Review and approve all documents pertaining to temporary and permanent financing of the PHA's projects covered by this agreement.

The RFP required that all qualified candidates interested in submitting a proposal for legal services submit a written proposal based upon an hourly rate .

Two proposals submitted in response of RFP

Our review noted that the PHA received two proposals in response to the RFP. One proposed to charge the PHA at a rate of $115.00 per hour with an annual fee not to exceed

$25,000 per year. The scope of legal services to be performed encompassed the exact scope of services outlined in the RFP.

The second proposal, received from the PHAs' attorney for the past 18 years, was in two parts. In the first part, the attorney offered to represent the PHA for standard PHA contractual work at the rate of $115.00 per hour with an annual fee not to exceed $25,000. In the second part, the attorney offered that if the PHA required legal services related to the Comprehensive Grant Program (CGP)/Comprehensive Improvement Assessment Program (CIAP) the rate would be $115.00 per hour with an annual fee not to exceed $25,000. In short, there were two parts to the proposal, each part had a maximum annual fee of $25,000.

PHA did not award legal services contract in accordance with RFP

On April 1, 1995, the PHA awarded its attorney for the past 18 years a legal services contract for a one year period ending March 31, 1996. This contract provided for an annual fee of $50,000 payable in twelve equal installments. The contract provided for two components with separate billings:

General Counsel at $25,000.
CIAP/CGP at $25,000.

According to a PHA official, the contract provisions were verbally recommended by the HUD attorney; however, the official was unable to provide any documentation to verify this.

Our review determined that the RFP asked for an hourly rate pertaining to legal matters for the various housing programs. Therefore, in our opinion the contract was not awarded in accordance with the RFP. Specifically, the PHA awarded the contract based upon 12 monthly equal installments when the RFP asked for an hourly rate. Also, the RFP asked for legal services pertaining to various housing programs; however, the PHA awarded the contract in two components: general counsel and CIAP/CGP. We believe that the CIAP/CGP should have been included as part of the various housing programs and not as a separate component.

Our review disclosed that for a seven month period ending October 31, 1995, the PHA paid the attorney a total of $29,166.62 in equal monthly installments of $4,166.66. However, our review of the attorney's billing determined that he worked a total of 135.4 hours during this period. In our opinion, if the PHA had awarded the contract based upon an hourly rate as requested in the RFP and used the $115.00 hourly rate that was included in the attorney's proposal, only $15,571 would have been charged to the PHA (135.4 X $115.00). Therefore, we consider $13,595.62 as unsupported legal costs ($29,166.62 minus 15,571) pending a HUD eligibility determination.

PHA extended legal contract

The PHA entered into a contract for legal services for a one year period ending September 30, 1994. The contract provided for a fee based upon an hourly rate of $115.00 with a maximum not to exceed of $25,000.

On October 13, 1994, the PHA's Board of Commissioners passed Resolution No. 5518 authorizing the extension of the legal services contract on a month to month basis until a committee reviewed the professional services procurement policy and recommended revisions to the policy. Our review determined that the PHA extended the contract for six months ending March 31, 1995.

Our review of attorney's billings for the original contract determined that for the one year period prior to the extension of the contract, the PHA paid the attorney $21,835.50 ($115.00 per hour for general counsel and $65.00 per hour for associate counsel).

However, our review of the six month extension ending March 31, 1995, disclosed that the PHA did not pay for legal services in accordance with the terms of the original contract. Specifically, in six monthly installments, the PHA paid the attorney a total of $12,499.98. In short, the PHA switched from an hourly rate to a $2,083.33 monthly retainer. Again the PHA official said that the HUD attorney recommended this arrangement, but the official could not provide any documentation to verify this. In our opinion, the payments for the extended six months should have continued at the rate determined in the original contract

($115.00 per hour for general counsel services) and not switched to the retainer basis.

From the attorney's billings, we determined that during this six month extended period, the attorney charged 74.90 hours for general counsel services at $115.00 per hour amounting to $8,613.50. The difference between the amount that the PHA actually paid for legal services ($12,499.98) and the amount it should have paid ($8,613.50) equals $3,886.48. Therefore, as a result of switching from the hourly rate to the retainer basis, we believe that the PHA paid excessive legal costs amounting to $3,886.48.

Auditee Comments

The PHA provided an explanation to this finding and its is included in its entirety as part of Appendix A to this report. Generally, it provides that as a result of the New Jersey Strike Force that the RFP was interpreted to mean an annual retainer supplemented by an hourly billing for monitoring purposes. The PHA official said that this interpretation was obtained from HUD counsel. Also, when the 1993-1994 contract had to be extended the PHA extended it, an annual retainer concept because it was recommended by HUD.

OIG Evaluation of Auditee Comments

Our discussion with HUD Field Office counsel indicated disagreement. Therefore, we recommended that the Field Office make a determination on the eligibility of the attorney fees.

Recommendations

We recommend that you:

2A. Make a determination as to the eligibility of the current and future fees paid to the attorney. Any costs found to be ineligible should be reimbursed by the PHA from non-Federal funds.

2B. Instruct the PHA to comply with the provisions of 24 CFR Part 85.36 to ensure that procurement of all future professional services is conducted in a manner providing for full and open competition.

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Internal Controls

In planning and performing our audit, we evaluated the internal controls of the Project to determine our auditing procedures and not to provide assurance on internal controls. Internal controls are the process by which an entity obtains reasonable assurance as to achievement of specific objectives. Internal controls consist of interrelated components, including intergrity, ethical values, competence, and the control environment which includes establishing objectives, risk assessment, information systems, control procedures, communication, managing change, and monitoring.

Relevant Controls

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

- Controls over cash receipts and disbursements.
- Controls over petty Cash and change funds.
- Controls over accounts receivables and security deposits.
- Controls over payroll.
- Controls over investments.
- Controls over general accounting and administrative controls.

Internal Controls Assessed

We evaluated all the relevant control categories identified above by determining the risk exposure and assessing control design and implementation.

A significant weakness exists if internal controls do not give reasonable assurance that resource use is consistent with laws, regulations, and policies; that resources are safeguarded against waste, loss and misuse; and that reliable data are obtained, maintained, and fairly disclosed in reports.

Assessment Results

Based on our review, the following controls have significant weaknesses:

Controls over payroll (Finding 1).

Controls over general accounting and administrative controls (Findings 1 and 2).

Follow Up On Prior Audits

The latest audit of the PHA was performed by the Independent Auditor (IA) Polcari & Company, for the twelve month period ended September 30, 1994. The report contains two recommendations pertaining to the PHA's Drug Enforcement Project. At the completion of our audit field work, all of the recommendations had been resolved.

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Schedule of Unnecessary/Unreasonable and Unsupported Costs

Finding Number	Unnecessary/ Unreasonable (1)	Unsupported (2)
1	$171,476.42	
2		$17,482.10

(1) Unnecessary/
Unreasonable Costs - Unnecessary costs are those which are not generally recognized as ordinary, prudent, relevant, and/or necessary within established practices. Unreasonable costs exceed the costs that would be incurred by the ordinarily prudent person in the conduct of a competitive business.

(2) Unsupported Costs - Costs not clearly eligible or ineligible but which warrant being contested. These costs require future decision by HUD program officials. This decision may involve legal interpretation or clarification of applicable policies and regulations.

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