



U.S. Department of Housing and Urban Development

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August 21, 1996

Audit Related Memorandum
No. 96-AT-241-1824

MEMORANDUM FOR: John Perry, Director, Office of Community Planning and
Development, 4AD

FROM: Nancy H. Cooper
Acting District Inspector General for Audit, Southeast/Caribbean, 4AGA

SUBJECT: Limited Review of
Gwinnett County HUD Program Operations
Lawrenceville, Georgia

We completed a limited review of Gwinnett County's operation of the Community Development Block Grant (CDBG) and Home Investment Partnerships Act (HOME) Programs. Our review focused on the County's procurement of the contract administrator. We reviewed records maintained at HUD, Gwinnett County and the contract administrator. We also interviewed the staffs at the respective locations. We performed the review during June 1995 through April 1996.

We noted indications of deficiencies that warrant additional attention by HUD and County staff. We did not develop the administrative deficiencies as we normally would to meet reporting standards for generally accepted government auditing standards. Our review was not an audit of County activities and our observations are related to our limited review.

SUMMARY

The County needs to improve its contracting procedures for obtaining a professional consultant to administer its HUD funded and related programs.

We found that:

- The County did not (a) clearly describe whether its HUD program administrator's contract was a fixed price or cost reimbursable agreement, (b) adequately analyze the reasonableness of the contractor's proposed rate for overhead/profit, (c) adequately solicit proposals, and (d) document its price analysis.

- The County paid for additional rehabilitation inspection and work-write-up services (\$51,416) which the contract administrator should have performed.
- The County paid its contract administrator \$159,459 for personnel costs that were not supported by proper time and attendance records.

Details of our findings and recommendations are discussed in Attachment 1. We discussed the results of the review with Gwinnett County officials during the review and at an exit conference held on June 5, 1996. The County's written response is included as Attachment 3.

Within 60 days, please give us, for each recommendation in Attachment 1, a status report on: (1) the corrective actions taken; (2) the proposed corrective actions and the date to be completed; or (3) why actions are considered unnecessary. Also, please furnish us copies of any correspondence or directives issued as a result of this review.

We provided a copy of this memorandum to the auditee.

If you have any questions, please contact James D. McKay, Assistant District Inspector General for Audit or Narcell Stamps, Senior Auditor, at (404) 331-3369.

Abbreviations

- CDBG - Community Development Block Grant
- ESGP - Emergency Shelter Grant Program
- HOME - Home Investment Partnerships Act
- RFP - Request for Proposal
- WFN - W. Frank Newton, Inc.

Attachments:

- 1 - Findings and Recommendations
- 2 - Schedule of Ineligible and Unsupported Amounts
- 3 - Auditee Comments
- 4 - Distribution

Background

Since 1986 the County has used the same consultant, W. Frank Newton Inc., (WFN) to administer its CDBG and related HUD programs. The latest contract, which started June 16, 1993, was still in effect during the time of our on site review. WFN's administrative contract was for three consecutive one year periods. The last renewal expired June 15, 1996.

The contract provided for the administration of the following HUD programs with funding levels as indicated:

<u>Programs</u>	<u>Funding Level for Program Years</u>		
	<u>1993</u>	<u>1994</u>	<u>1995</u>
CDBG	\$2,120,710	\$2,300,000	\$2,633,000
HOME	50,220	73,301	77,492
ESGP	<u>25,000</u>	<u>62,000</u>	<u>83,000</u>
Total	<u>\$2,195,930</u>	<u>\$2,435,301</u>	<u>\$2,793,492</u>

The County used the competitive negotiation method to solicit and obtain proposals for a contract administrator. The County asked the bidders to provide a separate price for each of the three one year periods to be covered by the contract. The County received only two proposals and awarded the contract to WFN. WFN agreed to administer the programs for the following amounts:

<u>Year</u>	<u>Total Compensation</u>
1993	\$ 223,176
1994	232,871
1995	240,916

We found no amendments to the contract amounts.

The County, in addition to the contract price, provided WFN with an office for his staff and other related support using HUD funds. The other support costs included items such as office equipment, telephones, copiers, office supplies, and reimbursement for travel.

FINDINGS AND RECOMMENDATIONS

Finding 1 - Procurement Practices Need Improvement

Gwinnett County should improve its procurement practices for contracting with a consultant to administer its HUD funded programs. We noted that the County did not (a) clearly describe whether its contracts with WFN were fixed price or cost reimbursable agreements, (b) adequately analyze the reasonableness of WFN's proposed contract rate for overhead/profit, (c) adequately solicit proposals, and (d) conduct a proper price analysis. These issues may have resulted in excessive and unreasonable contractor overhead/profit and unduly restricted competition.

We reviewed the County's 1993 contract award to WFN for compliance with HUD requirements and evaluated the contract's compensation provision for reasonableness. The contract, which started June 16, 1993, was for three one year periods.

Contract Compensation Provisions Not Clear

The County's contracts with WFN did not clearly state whether WFN would be compensated based on a fixed price or a cost reimbursable type agreement. Some of the contract language indicated the contract was a cost reimbursable contract. For example, paragraph II.C. of Attachment B of the contract dated June 16, 1994 provides that the consultant will prepare compensation reimbursement requests which detail consultant individual and total salary/personnel expenses, plus a standard factor of .5 of salaries for all consultant administration/overhead burden expenses. This language implies that the consultant is to be compensated on a cost reimbursable basis. Other language, however, implied that the contract is a fixed price contract. For example, paragraph I of Attachment B states the total cost of this contract is \$232,871. The County provided a legal opinion, dated January 11, 1996, which stated, "In our opinion, both the 1994 and 1995 contracts are hybrid cost-reimbursable agreements with fixed price, not to exceed ceilings".

Our legal counsel reviewed a sample WFN contract, noted the ambiguous wording concerning compensation, and suggested that we rely on the County's intent regarding the compensation method.

The County provided an additional legal opinion (from the same attorney) dated June 5, 1996, which states in part, "... the County all along intended for these contracts to be treated as fixed price contracts not cost reimbursable contracts".

We believe the County needs to clarify future contracts in order to prevent misinterpretation. The contract method of compensation is important because it determines the level of documentation required to support progress payments. Cost reimbursable contracts require a higher level of

documentation for costs. For instance, cost reimbursable contracts require compliance with rules that govern direct (e.g., personnel) and indirect (administrative/overhead) costs.

High Overhead/Profit Rate Not Evaluated

The County's contract with WFN allowed the firm a 50 percent markup (\$263,418) for overhead/profit. The contract did not designate how much of the 50 percent rate was for overhead and how much was for profit. The County revised the contract, effective September 16, 1995, to provide for compensation using fixed hourly rates as opposed to personnel costs times the 50 percent overhead/profit factor. The maximum contract price remained the same. Thus, the maximum price under the revised contract still includes the 50 percent mark-up.

In our opinion, the 50 percent rate was not reasonable, because the County made separate direct payments for a major portion of WFN's overhead costs. For instance, the County paid for office space, equipment, supplies etc., to provide and equip the offices utilized by WFN's staff. Considering these separate payments, the 50 percent rate for overhead/profit seems excessive. We believe the County should have negotiated a reduction in the 50 percent rate giving consideration to the County's separate CDBG expenditures to support WFN's office operations.

Insufficient Bid Advertisements

Federal procurement regulations specify that proposals must be solicited from an adequate number of qualified sources. The County's requirements specify that advertisements for bids shall be published for two consecutive weeks in the official organ of Gwinnett County.

The files indicated the County advertised in the Atlanta Journal on April 11 and 18, 1993 and mailed notices to 13 potential firms. Only two bidders responded to the advertisements.

In our opinion, the County did not run the bid advertisements long enough and did not give prospective bidders enough time to respond with responsible bid proposals. The County ran the advertisement for two days (April 11 and 18), in the legal section of the Atlanta newspaper. The advertisement gave prospective contractors until 2:50 p.m., April 29, 1993 to respond. This time frame allowed only 11 days from the second advertisement date for bid preparation (18 days from the first advertisement).

The County's multi-million dollar array of HUD programs involved a mixture of complex activities. Therefore, prospective contractors were required to submit a lengthy proposal package to demonstrate the experience, expertise, and past performance needed to take on the job. The short response time, in our opinion, did not allow prospective bidders sufficient time to prepare and submit such a proposal.

Price Analysis Not Documented

Federal procurement requirements specify a price analysis will be used in determining the reasonableness of the proposed contract price (24 CFR 85.36(f)(1)).

The County did not formally document a price analysis they claim was performed and used as the basis for analyzing reasonableness of the proposed contract. County personnel stated they used the history of prior contracts with an estimated inflation factor in evaluating the reasonableness of the two bids. They acknowledged the analysis was not formally documented and promised to provide this documentation for future contracts.

Auditee Comments

Contract Compensation Provision Not Clear

At the exit conference, County officials said they intended the contract to be a fixed fee, lump sum agreement. They said the Request for Proposal (RFP) requested lump sum amounts for each annual period on the pricing page and that the 1993-1995 Contract Budget reflected the lump sum amounts.

Excessive Profit and Overhead Rate/Unsupported Billing Rates

County officials said they did not evaluate the 50 percent rate because the WFN contracts were fixed fee agreements and they do not negotiate fixed price offers if the lowest offer is from a responsible firm.

Bid Advertisements

The County contends it complied with local purchasing guidelines and state procedures in the handling of the bid advertisements. County officials said they published the ad in its legal organ once a week for two weeks (the legal organ publishes legal advertisements on Fridays only each week). The County also posted the advertisements in its Purchasing Department, mailed RFP's to 13 potential firms, and posted the ad on its Bid Hotline. They said no firm indicated a problem with the timeframe allowed for the bids.

Price Analysis Not Documented

County officials said they performed a price analysis.

OIG Evaluation

Contract Compensation Provision Not Clear

The County did not dispute the finding issue that the contract compensation provision was not clear.

Excessive Profit and Overhead Rate/Unsupported Billing Rates

The RFP did not contain specific language requesting prospective contractors to provide a "lump sum" contract price. Furthermore, the competitive procurement process does not preclude, but allows for, negotiation of fair and reasonable compensation.

We believe the circumstances raised a compelling question about the reasonableness of the overall procurement transaction. Specifically, WFN submitted a contract proposal showing proposed maximum contract prices calculated using personnel costs times a 50 percent overhead/profit factor. In addition, the County used CDBG funds to provide and equip the offices WFN and his staff used to administer the contract. Given this extra level of support, we believe the County, despite WFN's low bid, should have attempted to negotiate a reduction in the 50 percent overhead/profit rate.

Bid Advertisements

We recognize that there is no specified minimum time frame to allow bidders to respond to advertisements and/or RFPs. The time frames in this case seemed too short considering the nature of the procurement and the details required to be included in a responsive bid proposal.

Price Analysis Not Documented

The County provided a document which they claim is a price analysis. However, the document showed only a comparison of the two proposals. It did not provide an independent estimate based on prior and expected costs.

Recommendations

We recommend that you:

- 1A. Determine the eligibility of the 50 percent profit and overhead rate.
- 1B. Require reimbursement to HUD programs for any portion of the costs your office determines not to be a reasonable program charge.

We also recommend you instruct the County to improve its controls to:

- 1C. Ensure that the language in future HUD program administrative contracts clearly describes whether the contracts are cost reimbursable or fixed price agreements.
- 1D. Consider and evaluate the reasonableness of overhead/profit rates.
- 1E. Advertise for a longer period of time and provide a longer period for response.
- 1F. Perform and document a proper price analysis.

Finding 2 - Dual Payments for the Same Rehabilitation Services, \$51,416

The County contracted with an inspector to perform services which WFN was required to perform. Thus, the County paid an unnecessary \$51,416 for rehabilitation inspection and work-write-up services. The inspector was also an employee of WFN who performed inspections for another non-HUD program. The additional contract reduced funds available for other eligible program purposes and created a possible conflict of interest situation.

Separate Inspection Contract

The County contracted with a separate inspector to perform work write-up and construction inspections. The County paid the inspector \$51,416 for the period January 1, 1993 through January 31, 1996.

The inspection services RFP stated the functions to be performed will be equivalent to those ordinarily performed by a Housing Rehabilitation Advisor. Included in these duties will be the inspection of rehabilitation properties (initial inspection and construction-in-progress inspections), on site receipt of signatures from homeowners on various documents, and advisory assistance to the homeowner and contractor in performing the housing rehabilitation work.

WFN's Responsibilities

The wording in the County's RFP, WFN's proposal, and WFN's contract indicates that WFN was to perform all housing rehabilitation inspections and work write-ups. The following excerpt from the cited documents illustrate WFN's responsibilities:

County's Request for Proposal (RFP) The RFP required proposed contractors to submit bids that would provide for the:

"Continued administration of existing CDBG, Rental Rehab, HOME, ESG, HOPWA, LIHEAP, WAP, and Oil Overcharge programs including complete program management such as project implementation, monitoring, and reporting...." (Section III, Scope of Services).

The RFP did not indicate the County would need or elect to award separate contracts to assist in providing project service delivery, such as rehabilitation inspection services.

WFN's Proposal WFN's proposal included a separate amount for the administration of the County's CDBG and HOME housing rehabilitation programs. WFN's proposal included a detailed explanation of the firm's distinction between the price proposed for

general administration and the price proposed for rehabilitation project delivery services (project administration). Specifically, WFN's proposal provided:

"These activities are separate from the CDBG Program Administration activities since it is for the delivery of eligible housing/housing rehabilitation Project Service Delivery activities. (Section 18.II)

"WFN has designed and implemented the only computerized work write-up Housing Rehabilitation Program in the State of Georgia, and possibly the Southeast, which contains all Work Write-up information, Cost Estimator, and Program/Client Database information, which includes over 100 fields of information. Attachment 5 - Sample Housing Rehabilitation Work Write-up, exemplifies the type of computerized Work Write-up which WFN personnel are able to prepare for eligible Gwinnett County clients. Without such a system, Gwinnett County would need at least one-two additional clerical positions to handle all the housing rehabilitation Work Write-ups and related documentation." (Section 15 H)

WFN's Contract with the County The contract provided that WFN would:

Conduct all necessary rehabilitation advisor activities including, (a) application taking and screening, and (b) structure qualification, economic feasibility, and types of improvements necessary to meet minimum standards and general property improvements. (Section 6.18)

We believe the above documents indicate that WFN was obligated to provide all rehabilitation inspections and work write-ups. As mentioned in the firm's proposal, WFN had developed a computerized system to document inspection results and to generate work write-up and cost estimates. The firm's marketing of the system in the RFP indicates WFN would run the system as part of WFN's contract price.

We also interviewed representatives of the only other company that bid against WFN for the County's administrative contract. The representatives stated that they also interpreted the RFP to require rehabilitation inspection and work write-ups and that their proposed price included an amount for all services.

Possible Conflict of Interest

Federal procurement standards provide that no employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when, "the employee, officer or agent, any member of his immediate family, his or her partner, or an organization which employs, or is about to employ, any of the above, has a

financial or other interest in the firm selected for the award." (24 CFR 85.36(b)(3))

The inspector was also an employee¹ of WFN. WFN employed the individual to perform inspections and work write-ups for another non-HUD program (Georgia Power Weatherization Program). For CDBG and HOME inspections, WFN notified the individual of needed inspections and reviewed and approved requests for payment prior to forwarding them to the County for final approval and payment. In our opinion, this dual affiliation created a conflict of interest which increased the potential for fraud and abuse.

County officials stated that they had a contract with the inspector before he was first employed by WFN and that they were aware of the inspector's working relationship with WFN. The officials said the County continued contracting with the individual because they had difficulty locating qualified² inspectors willing to participate in the program. The officials stated that the inspector was the only bidder who responded to their RFP who met their qualifications.

Auditee Comments

County officials stated that WFN's proposal did not include a price for rehabilitation inspections and work write-ups and that WFN knew from prior experience that the County contracted separately for those services. They also contend that the inspections noted in WFN's contract represents oversight control over the rehabilitation work and provided a quality control assurance of the work performed by the inspector.

They also did not believe there was a conflict of interest. They contend there is no conflict of interest with WFN hiring the inspector for the sole purpose of conducting Georgia Power energy audits.

OIG Evaluation

The County's comments address WFN's oversight role, a responsibility we agree the firm was contracted to perform. However, the County's position does not acknowledge and is not consistent with wording in the RFP, WFN's contract proposal, WFN's contract and information provided by the opposing bidder which shows the firm offered and contracted to provide rehabilitation program implementation services.

¹ WFN classified this and other workers as contract consultants. However, the Department of Labor did a review and determined the individual was an employee. WFN has appealed that decision, which was unresolved when we completed our site work.

² The inspector must be certified by Southern Building Code Congress International, Inc.

The explanation also indicates WFN had information about the scope of services being less than that cited in the RFP which the opposing bidder did not have. If this was the case, the County should have advised the opposing bidder to also omit the services from its bid and revise the contract to clearly exclude the work.

We disagree that the situation does not involve a conflict of interest. WFN, an agent for the County, was prohibited from participating in the administration of contracts supported by Federal funds if a conflict of interest, real or apparent, would be involved. The conflict exists because WFN administered the contract (as signed properties for inspection and reviewed and authorized payment requests) with the inspector who was also a WFN employee.

Recommendations

We recommend that you:

- 2A. Disallow \$51,416 paid to the inspector and additional payments of this type since the dates of our review, and require reimbursement to the HUD programs.
- 2B. Instruct the County to establish controls to prevent similar unnecessary payments in the future.
- 2C. Instruct the County to refrain from entering into future contracts with WFN employees as long as WFN is the County's HUD program contract administrator.

Finding 3 - Inadequate Support for Personnel Costs Charged to HUD Programs

Gwinnett County paid WFN \$159,459 for personnel costs that were not supported by proper time and attendance records.

Paragraph 5 of the 1993 and 1994 contracts specified that WFN would be paid an amount based upon staff days worked, up to the maximum amount of the contract.

We reviewed WFN's time records. According to a WFN representative, the firm developed supporting time records by applying predetermined percentages to the hours in each bi-monthly pay period. The billings reflected evidence of that methodology. For instance, the billings generally showed the same salary amounts to HUD programs over consecutive pay periods. The payroll costs for individuals who devote time to multiple activities normally vary from pay period to pay period because the level of effort between programs generally vary from day to day. WFN did not have appropriate time records to support the predetermined percentages.

Between January 1993 and September 15, 1995 the County paid WFN \$159,459 for personnel who devoted time to HUD and non-HUD activities. The amount included \$64,689 for WFN's president and \$94,770 for another individual. Since WFN did not have proper time records to support the predetermined percentages, WFN could not demonstrate that the salary costs (\$159,459) were reasonable.

During the on site review, County officials also stated they intended and thought WFN billed for personnel costs based on the actual time workers spent performing duties for HUD programs.

Auditee Comments

During the exit conference, County officials stated they intended for the contracts to be fixed fee, lump sum agreements. They contend the RFP requested lump sum amounts for each annual period on the pricing page and that the 1993 through 1995 budgets reflected the lump sum amounts. They also contend that WFN was not required to maintain time distribution records to support billings for personnel costs because the contract was a fixed price contract.

OIG Evaluation

The RFP did not contain specific language requesting prospective contractors to provide a "lump sum" contract price.

Also, the position is not consistent with the contract wording nor with WFN's billing method. WFN's billings to the County included copies of time and attendance records for each worker shown on the billing.

Recommendations

We recommend that you:

- 3A. Determine the eligibility of the \$159,459 spent for personnel who worked on HUD and non-HUD activities.
- 3B. Require reimbursement to HUD programs for any portion of the \$159,459 your office determines not to be a reasonable program charge.
- 3C. Instruct the County to ensure that the administrator maintains proper time and attendance records to support future personnel charges to HUD programs.

ATTACHMENT 2

SCHEDULE OF INELIGIBLE AND UNSUPPORTED AMOUNTS

<u>Recommendation</u>	<u>Ineligible Costs</u> ³	<u>Unsupported Costs</u> ⁴
1A		\$263,418
2A	\$51,416	
3A	_____	<u>159,459</u>
Total	<u>\$51,416</u>	<u>\$422,877</u>

³ Costs not allowable by law, contract, HUD or local agency policies or regulations.

⁴ Unsupported amounts do not obviously violate law, contract, policy or regulation but warrant being contested for various reasons such as the lack of satisfactory documentation to support eligibility and HUD approval.

Distribution

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