



U. S. Department of Housing and Urban Development
Office of Inspector General
New York/New Jersey Office
26 Federal Plaza – Room 3430
New York, NY 10278-0068

MEMORANDUM NO. 2009-NY-0802

July 24, 2009

MEMORANDUM FOR: Joan Spilman, Director, Office of Public Housing, 2CPH

Karen Campbell

FROM: for Edgar Moore, Regional Inspector General for Audit, 2AGA

SUBJECT: Significant Flaws Identified at the Lackawanna Municipal Housing Authority may affect its Capacity to Administer American Recovery and Reinvestment Act Funds

INTRODUCTION

We are conducting an audit of the Lackawanna Municipal Housing Authority's (Authority) administration of its capital fund program. We selected this auditee because the Authority pledged its future capital fund appropriations to perform a special project as part of the Capital Fund Financing Program. Specifically, the Authority incurred a \$4.25 million long-term liability to perform lead abatement and modernization work at 90 project units. The objectives of our review are to determine whether the Authority is (1) disbursing capital funds and (2) procuring contracts in accordance with U.S. Department of Housing and Urban Development (HUD) requirements. To date, this review has raised an issue of concern that we wish to bring to your attention, related to the Authority's capacity to fairly and reasonably administer its capital fund program in light of its receiving an additional \$1.5 million in capital funds under the American Recovery and Reinvestment Act of 2009.

In accordance with HUD Handbook 2000.06, REV-3, within 60 days, please provide us, for each recommendation in this memorandum, a status report on (1) the corrective action taken, (2) the proposed corrective action and the date to be completed, or (3) why action is considered unnecessary. Additional status reports are required 90 days and 120 days after this memorandum is issued for any recommendation without a management decision. Also, please furnish us copies of any correspondence or directives issued because of this review.

Should you or your staff have any questions, please contact Karen Campbell, Assistant Regional Inspector General for Audit, at (212) 542-7977.

METHODOLOGY AND SCOPE

To gain an understanding of the Authority's administration of the capital fund program, we reviewed applicable laws, regulations, and HUD program requirements. In addition, we reviewed the Authority's procurement policy, conducted interviews with Authority personnel to gain an understanding of the internal controls, and tested the system of controls to determine whether the controls are functioning as intended. We also, analyzed contract files and disbursement records for the period July 2005 through June 2008.

We performed our on-site work from October 2008 through May 2009 at the Authority's office located in Lackawanna, New York. Although our tests of contract files and disbursement records were through June 2008, our observations made through May 2009 found that the Authority has not mitigated the risks. For this interim capacity report, our work was not conducted in accordance with generally accepted government auditing standards. Under the American Recovery and Reinvestment Act of 2009, inspectors general are expected to be proactive and focus on prevention; thus, this interim report is significantly reduced in scope.

BACKGROUND

On February 17, 2009, the President signed the American Recovery and Reinvestment Act of 2009 (Recovery Act). This legislation includes a \$4 billion appropriation of capital funds to carry out capital and management activities for public housing agencies as authorized under section 9 of the United States Housing Act of 1937. The Recovery Act requires that \$3 billion of these funds be distributed as formula funds and the remaining \$1 billion be distributed through a competitive process.

The Office of Management and Budget provided guidance establishing requirements for various aspects of Recovery Act planning and implementation. These requirements are intended to meet crucial accountability objectives; specifically,

- Funds are to be awarded and distributed in a prompt, fair, and reasonable manner;
- The recipients and uses of all funds are to be transparent to the public, and the public benefits of these funds are to be reported clearly, accurately, and in a timely manner;
- Funds shall be used for authorized purposes, and instances of fraud, waste, error, and abuse are to be mitigated;
- Projects funded under this Act should avoid unnecessary delays and cost overruns; and
- Program goals are to be achieved, including specific program outcomes and improved results on broader economic indicators.

The Authority received a Public Housing Assessment System score of 73 for its fiscal year 2007. Based on this score, the Authority was found to be in a "substandard physical" category. Thus, it is subjected to HUD's extended oversight.

RESULTS OF REVIEW

The Authority's current management did not follow its own procurement policy, HUD regulations, and New York State General Municipal Law when awarding a lead-based paint abatement and modernization contract. Specifically, the Authority accepted a proposal for lead abatement/modernization work in July 2007 with a known omission pertaining to \$400,000 in plumbing work that was excluded from the proposal documents. We attribute this deficiency to the Authority's not establishing operational procedures to implement its procurement policy to ensure compliance with all applicable regulations. As a result, capital funds were used for questionable expenditures, and the Authority lacks assurance that the contract price was reasonable and that services contracted for were provided as intended.

The contractor did not include the cost of installing toilets, sinks, tubs, faucets, cleaning drains, and other plumbing related work in its proposal for work pertaining to the lead abatement/modernization project. Although the omission was acknowledged by the contractor in correspondence with the architect/engineer and officials for the project, the Authority did not follow New York State General Municipal Law when awarding the contract. Section 103 of the New York State General Municipal Law requires the rejection of proposals containing mistakes; however, the Authority accepted the proposal and awarded the \$3.4 million contract. Moreover, the Authority opted to go against the advice of its own legal counsel and awarded the contract in spite of the omission of the plumbing related work. In doing so, it inappropriately restricted competition. As of May 2009, the Authority has paid more than \$1.9 million for contracted abatement work. In addition, it did not maintain documentation, including cost analyses, to justify \$285,380 in change orders to the contract. The Authority has increased the original contract amount by approximately 13 percent and significantly modified the scope of services to be provided. Accordingly, we consider the use of more than \$2.2 million in capital funds to be ineligible. The Authority should be prohibited from using program funds for the remaining contract balance for unfinished work and projected future change orders.

In addition to the above, our on-going audit has identified other capital fund deficiencies pertaining to competitive and noncompetitive proposal contracts and small purchases that will be addressed in our final audit report planned for issuance subsequent to this report. These deficiencies provide additional concerns with the Authority's capacity to administer Recovery Act funds.

CONCLUSION

The Authority has not established the operational procedures to implement its procurement policy to ensure compliance with all applicable regulations. As a result, it lacks assurance that capital fund expenditures were necessary or reasonable and that services contracted for were provided as intended. This lack of oversight by the Authority to ensure that capital fund contracts are awarded in a prompt, fair, and reasonable manner is a major concern in light of the Authority's receiving an additional \$1.5 million in capital funds under the American Recovery and Reinvestment Act of 2009. Specifically, the Authority has budgeted \$600,000 in Recovery Act funds to complete change orders to the lead-based paint abatement and modernization contract at one of its projects.

RECOMMENDATIONS

We recommend that the Director of HUD's Buffalo Office of Public Housing

- 1A. Review the content of the change order and, if appropriate, prohibit the Authority from using recovery funds for change orders associated with the lead abatement and modernization contract.
- 1B. Certify that the Authority's new procedures established meet the federal procurement requirements as required by 24 CFR Part 85.

We also recommend that the Director of HUD's Buffalo Office of Public Housing, instruct the Authority to

- 1C. Establish and implement operational procedures to ensure compliance with all applicable federal, state, and local procurement policies and regulations for all future procurement activities when obtaining goods and services.
- 1D. Obtain HUD approval for all procurement activities including (1) performing cost estimates and/or price analyses, (2) adequately soliciting and documenting all proposals submitted in response to a request for proposals for professional services to substantiate the selection, (3) properly executing contracts for professional services provided, and (4) adhering to small purchase threshold limitations.
- 1E. Establish and implement a training program on procurement procedures for all Authority staff and board members involved in the contracting process.
- 1F. Establish performance measurements as a method to evaluate that the requirements of the procurement process are met.

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

Lackawanna
Municipal
Housing
Authority

July 13, 2009

Edgar Moore
Regional Inspector General for Audit
U.S. Dept of Housing and Urban Development
26 Federal Plaza, Rm. 3430
New York, N.Y. 10278

Dear Mr. Moore,

The Lackawanna Municipal Housing Authority has reviewed the U.S. Department of Housing and Urban Development Office of Inspector General Draft Audit Reports that was submitted to us on June 11, 2009. and June 19, 2009.

The attached documents present LMHA management's responses to the 2 draft audit reports.

Sincerely,

Thomas J. Radich
Executive Director

135 Odell Street * Lackawanna, New York 14218-2238* (716) 823-2551 * Fax: (716) 823-4419

LACKAWANNA MUNICIPAL HOUSING AUTHORITY

Comments on Draft Interim Capacity Memorandum dated June 11, 2009
of the Office of Inspector General
of U.S. Department of Housing and Urban Development

July 13, 2009

The Lackawanna Municipal Housing Authority (the “Authority”) offers the following comments on the Draft Interim Capacity Memorandum (the “Draft Memorandum”) prepared by the Office of Inspector General (“OIG”) of the U.S. Department of Housing and Urban Development (“HUD”) which was delivered to the Authority by letter dated June 11, 2009, from Edgar Moore, Regional Inspector General for Audit.

OIG Evaluation Comment 1

Comment 1. Sealed Bid. On page 3, the Draft Memorandum alleges that the Authority accepted a sealed bid for work relating to lead-based paint abatement and modernization in violation of New York law and the advice of its own counsel. This allegation is incorrect. When the Authority was considering the bids it received for the project, one of the bidders advised that it had neglected to include the cost of certain plumbing work in its bid. The Authority’s counsel advised that the Authority could permit the contractor to withdraw its bid due to the mistake and could rebid the project, but could not modify the bid to correct the mistake. Since the successful bidder was willing to stand by its original bid, without modification, the Authority had the right under the law to accept that bid, which it did. Consequently, the Authority believes that the contract is legal and enforceable, and that it does not have grounds to seek its rescission.

OIG Evaluation Comment 2

The Draft Memorandum further criticizes the approval of various change orders in connection with the lead abatement and renovation project, alleging that the Authority failed to “maintain documentation, including costs analyses, to justify” the change orders. In fact, the change orders all pertain to additional work discovered during the renovation process, and the required documentation, which was not requested by the HUD auditors prior to the Authority’s exit interview, is in the possession of the Authority’s architectural and engineering firm. All change orders were reviewed and approved by the architectural and engineering firm prior to submission to the Authority for its approval.

OIG Evaluation of Auditee Comments

- Comment 1** Officials for the Authority state that the Authority’s counsel advised that they could permit the contractor to withdraw its bid and then rebid the lead-based paint and modernization project, but they could not modify the bid to correct the plumbing mistake. Officials contend that since the successful bidder was willing to stand by its original bid, without modification, the Authority had the right under law to accept that bid. Regardless of the official’s interpretation of its counsel advice, the opinion issued by its counsel and Section 103 of New York State General Municipal Law requires the withdrawal and re-bid of proposals containing mistakes. Accordingly as recommended, any change orders should be reviewed by HUD, and if appropriate, the Authority should be prohibited from using Recovery funds to pay them.
- Comment 2** Officials for the Authority contend that the change order documentation, which was reviewed, approved and maintained by its architectural/engineering firm, was not requested by the auditors. In accordance with HUD regulations, the Authority’s contract officer, and not the architectural/engineering firm, is responsible for reviewing and approving change order documentation including cost analyses. Further, in response to repeated requests, Authority officials failed to provide documentation to support the cost reasonableness of the change orders. The absence of these documents was discussed during our review, at the end of our onsite fieldwork, and at the exit conference. As such, any additional documentation obtained should be submitted to HUD officials for review during the audit resolution process.