

RESPONSE TO DRAFT  
AUDIT REPORT ON  
HUD CONTRACTING

An Attachment to HUD  
Office of Inspector General  
Audit Report Number  
97-PH-163-0001  
Issued September 30, 1997



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
THE DEPUTY SECRETARY  
WASHINGTON, D.C. 20410-0050**

September 8, 1997

MEMORANDUM FOR: Susan M. Gaffney, Inspector General, G

FROM: Dwight P. Robinson, ED

SUBJECT: Response to Draft Audit Report on Contracting

Thank you for the opportunity to respond to the Draft Report on Contracting conducted by the District Inspector for Audit, Mid-Atlantic.

The report is the latest in a series of recent undertakings by the Department to review its contracting and procurement systems. At the Secretary's direction, an intensive review of the Federal Housing Administration (FHA) procurement system was conducted by the National Academy of Public Administration (NAPA). The study found that the current system neither responds effectively to Department needs nor adequately ensures accountability. As a result of the NAPA review, the Secretary incorporated contract reform as a priority in the HUD 2020 Management Reform Plan. The report calls for NAPA to engage in a top-to-bottom redesign of HUD procurement system, with an emphasis on "safeguarding taxpayer dollars with a system that ensures quality and value," Management Reform Plan, page 16. In addition, Congress gave its support to HUD by authorizing the agency to retain NAPA to assist with the procurement redesign.

The Inspector General's (IG) draft report validates the conclusions reached by NAPA and the Secretary and provides further support for HUD's contract reform efforts. The IG's recommendations will be provided to NAPA for consideration as part of the contract system redesign. I also invite you and your staff to join the NAPA team in the redesign effort. I am sure that you will agree that there is no better way to ensure that the expertise and experience of the IG is fully utilized in resolving the issues identified by NAPA and your office. We look forward to your participation in this crucial effort.

While I am encouraged that the conclusions reached by the draft report demonstrate that HUD's contract reform efforts are on the right track, I must also advise you that the Assistant Secretaries have raised serious questions about the factual accuracy of the report as a whole.

Indeed, as outlined in the attachment, we have identified the following problems with the text of the report:

- o Material factual errors in virtually all of the contractor profiles.
- o Failure to review documentation and files.
- o Failure to interview or the conduct of only cursory interviews of key contracting personnel and Government Technical Representatives.
- o Material omissions in the contractor profiles.
- o Headings which make sweeping generalizations based on a single contract action.

In short, the responses of the program offices indicate that the draft report is flawed in its methodology, contains factual inaccuracies, and unbalanced in its characterization of specific contract actions. While recognizing this is only a draft, these deficiencies are inconsistent with **Generally Accepted Government Auditing Standards**, which require that audit reports be accurate, and objective, and conducted with due professional care. I am told that you expressed your concern at a meeting with the Assistant Secretaries when you learned of these problems with the report, and stated that you would not release a report with factual inaccuracies. I share your concern that these shortcomings undermine the accuracy of the draft report making it less useful as a tool to assist HUD's management reform efforts. Consequently, I request that you carefully review the attached comments before issuing the report. To the extent that these comments do not change the report, I request that you incorporate this memorandum and the attached comments from the Department managers within the report, per *Government Auditing Standard 7.38, 7.39 and 7.42*.

Once again, we look forward to continuing to work with you and your staff to improve the Department's contract systems.

Attachment



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MEMORANDUM FOR: Susan Gaffney, Inspector General, G

FROM: *Marilynn A. Davis*  
Marilynn A. Davis, Assistant Secretary, Administration, A

Jacquie M. Lawing, Assistant Secretary, Community Planning  
and Development, D *J.M. Lawing*

Kevin G. Chavers, President, Government National Mortgage  
Association, T *Kevin G. Chavers*

Nicolas P. Retsinas, Assistant Secretary for Housing  
Federal Housing Commissioner, H *Nicolas P. Retsinas*

Kevin E. Marchman, Acting Assistant Secretary for Public  
and Indian Housing, P *Kevin E. Marchman*

SUBJECT: OIG Draft Audit Report on HUD Contracting

This memorandum includes specific comments to the Contract Profiles listed in Section V of the draft audit report. These comments, prepared by our program staff and the Office of Procurement and Contracts, respond directly to the OIG comments on each contract, and point out serious factual and methodological flaws in the draft report. Some of the generalized observations include:

I. The Draft Audit Report Lacks Objectivity and Factual Accuracy

Under generally accepted government auditing standards, audit reports should be objective, i.e., the report be accurate, balanced in content and tone, and fair and not misleading. The significant number of factual errors in the draft report, inflammatory characterizations of findings, and failure to note the efforts that GNMA, FHA and OPC have made to improve the procurement process undermine the credibility and usefulness of the report. With regard to the factual errors, Generally Accepted Government Auditing Standards state that "one inaccuracy in a report can cast doubt on the validity of an entire report...and can damage the credibility of the issuing audit organization...". Government Auditing Standard 7.54. With regard to objectivity, the auditing standards state that the report should be "balanced in content and tone" and must "guard against the tendency to exaggerate or overemphasize deficient performance". Government Auditing Standards 7.57, 7.58. The specific comments which follow document that these and over a dozen other

auditing standards were repeatedly violated in the draft report. The final report should be substantially revised to address these deficiencies.

## II. Failure to Interview Key Contracting Officials

Auditors have an obligation to obtain sufficient, competent and relevant evidence before reaching a conclusion in an audit report. Many of the specific factual errors that are delineated in the attached contract profiles, which led to erroneous or overstated audit findings, could have been avoided if the auditors had discussed the contract actions with contracting officials. This was not done in this audit. For example, the Director of the Office of Procurement and Contracts was not interviewed. The Government Technical Representative (GTR) on the Department's largest contract, the Lockheed Martin contract was interviewed only at the entrance conference and briefly on GTM qualifications. Many other GTRs report having been interviewed for only 15 minutes. Had these individuals been interviewed, and initial findings and recommendations shared with them in advance of a draft audit, they would have provided additional information that would have led to a more accurate and credible audit report.

## III. The Audit Methodology is Unclear and Undocumented

An audit report should explain the evidence gathering and analysis techniques used in the audit, and where a sampling technique is used, describe the sample design and state why it was chosen. The draft report, however, fails to explain the methodology, including the sampling criteria, which was used to select the 30 contractor profiles upon which the audit conclusions are based. HUD awarded and administered over 9600 contract actions during the period covered by the audit, yet the audit conclusions are derived from an examination of only 30 contracts, seven of which were awarded before the contract audit period of 1992-1996. This relatively small sample of HUD contracts, and lack of information as to why these particular contracts were examined (particularly since 108 contracts were originally reviewed by the OIG), calls into question the validity and credibility of the audit findings. See also Auditing Standard 6.64a (requiring documentation of sampling techniques and methodology), 7.15 (requiring the Report to describe the sample design and state the rationale behind the sample).

Thank you for the opportunity to comment.

## **RESPONSES TO CONTRACT PROFILES (SECTION V OF DRAFT AUDIT)**

### **Abt Associates**

The flaws in this section of the draft OIG report, which are repeated numerous times in the other contract reviews, give rise to our concern that the auditors did not follow "Generally Accepted Government Auditing Standards (GAGAS)" in their review. As discussed below, the contract review of the ABT contract does not discuss all of the relevant facts concerning the contract work. This failure to obtain and consider all relevant evidence before reaching a conclusion on the Department's actions demonstrates that the auditors did not meet the GAGAS requirements with respect to sufficiency of evidence. See, GAGAS 6.46. The auditors' apparently did not interview the appropriate program and contracting staff to develop completely the facts surrounding this particular contract, leading to an inaccurate portrayal of the contract. This evidences a lack of understanding of the underlying contract being audited (6.9), and a lack of professional care in conducting the audit (3.26). Accordingly, the report should be revised to give a more complete, accurate and balanced perspective. See, GAGAS 7.51, 7.52, 7.54. We have noted in the narrative discussion of each of the contract profiles similar concerns where it appears that the auditors did not adhere to the auditing standards.

### Contract Tasks Awarded Non-Competitively

There is no factual support offered for the general statement that "it would have been in HUD's best interest" to compete tasks which we were not required to compete. The amount of time required for the competition, the additional staffing effort required by it and its impact on other procurements in process **are** legitimate factors any manager should consider in developing a procurement strategy. They become even more significant when the work involves troubled public housing agencies in need of immediate attention.

### **Management Recommendation:**

**The report should be revised to state that the procedures followed were in HUD's best interest.**

### Lack of Competition May Have Resulted in Higher Costs or Inferior Product

The IG's first example under this heading relates to Task Order #2 under Contract HC-18374 which was issued to Abt Associates to provide technical assistance to five of the seventeen large troubled public housing authorities in the country. Initially, Office of Troubled Agency (OTAR) staff estimated that the level of effort to recover the five housing authorities would require approximately \$500,000 in contractor costs. As recovery efforts began, the Department soon realized that the level of effort was far greater than originally estimated. In addition, with the Department's takeover of the Springfield Housing Authority and the placement of a Receiver in the District of Columbia, it was determined that it was appropriate to substitute Springfield for the District on this Task Order.

#### **Management Recommendation:**

**The report should note these facts in order to give a complete picture.**

The second example in this section relates to work for the Chicago Housing Authority. The IG observed that HUD did not compete the task order and concluded that the Department might have obtained a lower cost or a superior product if it had. The Department selected Abt because it knew that Abt had previous experience in conducting resident surveys in the Chicago Housing Authority for the National Institute of Justice. The Department believed that because of its prior experience, Abt would certainly be the most knowledgeable about the challenges and pitfalls that it would confront in conducting such a survey. The Department also believed that Abt's previous experience might result in some cost savings overall. It is unlikely that competing the task order would have resulted in selecting a firm that would have produced a superior product given Abt's credentials in this area. It is possible that other vendors might have had lower costs but unlikely that they could have matched the overall value of Abt for this project.

#### **Management Recommendation:**

**The report should acknowledge that this was a reasonable procedure for the Department to follow. See GAGAS 7.58.**

Secondly, the IG looked at the negotiations regarding cost and scope and ultimately concluded that the Department agreed to an inferior product at reduced cost without adequate justification. The original government cost estimate indicated that the proposed project should cost \$500,000 and included sufficient data to measure resident satisfaction in 7 developments under CHA management. Abt's initial response to the task order was more than \$400,000 in excess of the government cost estimate. After examining Abt's proposal and consulting with PD&R (based on their expertise in the area of conducting surveys), the GTM concluded that the government's original cost estimate was unrealistic given the sample sizes required to come up with

development level data. The GTM presented PIH senior management with options to either increase the resources devoted to the project or to re-scope the project to fit within the existing budget. Senior management elected to re-scope. In addition, it should be pointed out that some of the cost savings that resulted from negotiations came about through changes in approach rather than simple reductions in scope.

**Management Recommendation:**

**The IG report should note that the Department acted responsibly and in the best interests of the Department. See GAGAS 7.50.**

In hindsight PIH might have been better served to involve PD&R in the process of generating the government cost estimate given the specialization of conducting statistically valid surveys. However, it is likely that if the original government cost estimate had been more realistic, it would simply have advanced the decision making point regarding scope to an earlier part of the process rather than changing the outcome.

Contractor Established Scope and Cost of Work

The file does not support the auditors comments concerning Task Order 2 of Contract 18374. A Request for Services (with SOW) was received on 10/13/94 and forwarded to ABT for response. Subsequently, an award was made on 2/27/95 with an effective date of 10/28/94. On 12/5/94, ABT submitted a revised SOW and cost proposal for consideration. A note in the file indicates that the GTR instructed the specialist to disregard the package. No further action was taken.

**Management Recommendation:**

**The IG report is factually inaccurate. This comment should be deleted, per GAGAS 7.54.**

Poor Oversight and Monitoring by HUD

The IG comments regarding the monitoring of Task Order 2 are not accurate. The specific work performed at each authority was thoroughly discussed by the Government Technical Monitor with the housing authority and with the contractor prior to any of the tasks being performed. Throughout the period of performance, the contractor regularly provided progress reports, which could be matched back to invoices.



**Management Recommendation:**

**IG apparently failed to review these files. This demonstrates lack of due professional care on the part of OIG. The comment should be deleted.**

### Poor Contract Planning

The statement in the audit that, "*HUD did not properly design for its contracting needs upfront prior to setting the parameters of the contract. The contract amount has had 40 modifications.*", is completely unsupported. The number of contract modifications has nothing to do with contract planning as cited in this audit. Contract modifications are executed for a wide variety of reasons, including exercising options, adding funding, and increasing contract authority. This is a cost reimbursement level of effort contract which requires frequent changes to contract support levels as workload shifts. The auditors do not understand the purpose of contracting out these functions, which is to be able to increase/decrease resource levels as workload changes. Each change requires a contract modification. This evidences a lack of knowledge by the auditors concerning federal procurement principles in the exercise of contract modifications or in the use of a cost reimbursement type of contract. See, GAGAS 3.4. As a result, the conclusion reached by the auditors concerning poor contract planning or that the cost was unreasonable is unsupported. See GAGAS 6.46.

Since award of this contract, many new and expensive technologies have evolved, and the cost of personnel has increased dramatically. The Office of IT has used this contract extensively to support major Departmental initiatives of Internet, Business Process Reengineering, Warehousing, Electronic Data Interchange, Computer Aided Systems Engineering development, Financial Systems Integration, etc. All of these Departmental initiatives required highly skilled contractor support. The estimated cost of the contract was necessarily based on assumptions of how many hours would be expended at each labor category. The purpose of the estimate is to provide a basis for initial funding and negotiating the fixed fee. If salary costs increase or there is a need to include a greater mix of higher skilled staff in performing the actual work, the original estimated cost will increase. However, the fixed fee will remain the same unless the overall level of effort is changed.

### **Management Recommendation:**

**IG auditors need training on procurement procedures. The auditors failed to understand the proper use of contract modifications. The comment should be deleted.**

### Contract Type May Have Resulted in Unreasonable Costs

The audit report provides **no** information to support the statement that, "*Contract Type May Have Resulted in Unreasonable Costs.*". The Cost-Plus-Fixed-Fee contract type is a legitimate instrument prescribed by FAR, which has shown excellent results in providing contract services for HUD's major initiatives. No reason is provided in the

audit report for concluding that it is an inappropriate instrument in this instance nor is an alternative suggested. In addition, the section contains the erroneous statement that overhead costs “are based on a percentage of the contractor’s costs incurred.” Overhead costs are indirect expenses which are provisionally allocated as a percentage of an appropriate base (direct labor for example). At the conclusion of the contractor’s fiscal year, actual costs are determined, and adjustments to previous billings are made. Costs incurred under this contract are closely monitored and the contractor’s incurred costs will be audited upon completion.

**Management Recommendation:**

**Violates GAGAS 6.46; no evidence is provided for this conclusion. The comment should be deleted.**

Inaccurate Data Maintained by HUD

We agree that there are numerous data errors in the database for this contract, including deobligations recorded as obligations and other errors. The errors will be corrected.

Contract Modifications Not Performed Timely

These contract modifications were required to address major Departmental initiatives which needed to be performed for the FHAMIS project. At the time, funds were not available in the FHAMIS Budget, and funds were subsequently provided to cover these contract modifications. The Office of IT has monitored this situation to ensure no reoccurrence.

## **American Management Systems Inc.**

### HUD Circumvented Procedures In Selection Process

HUD staff did not circumvent procedures in awarding a contract to AMS. The contract was procured under the General Services Administration's (GSA's) multiple award Financial Management Supply Schedule (FMSS) (KECP-94-001). Therefore, the normal solicitation procedures (responses due 30 days from the issuance of the RFP) as defined in the Federal Acquisition Regulations (FAR) did not have to be followed. The auditors failed to understand that it was appropriate and more efficient to acquire the needed services utilizing the GSA schedule rather than conduct a separate procurement. This calls into question the adequacy of the qualifications of the auditing staff to review for compliance with statutory and regulatory contracting requirements. See GAGAS 3.3, 6.9.

### **Management Recommendation:**

**The IG did not understand the rules in this area. The IG comment should be deleted.**

### HUD Restricted Since AMS Owns Software

AMS is the only source of technical support to modify their COTS package, in order to keep the warranty intact. However, HUD has reduced dependency on AMS for those technical support services not directly affecting the warranty. AMS' presence has been reduced from 75%-85% to 44% of the monthly total HUDCAPS hours delivered. For the Administrative Accounting portion of HUDCAPS, which represents three quarters of HUD's work, AMS only provides 35% of the monthly resource hours for the project.

### **Management Recommendation:**

**The report should note the decrease in AMS support services per GAGAS 7.57.**

### Inaccurate Data on Contract Maintained by HUD

A review of the example cited in the report showed no risk to HUD having overpaid AMS. The software purchase was correctly recorded in the official HUD financial

system, HUDCAPS. All invoices and task orders balanced.

**Management Recommendation:**

**The IG comment is unsupported by facts and should be deleted.**

Close-Out Audit Not Performed

A final audit has not been requested since the contractor has not yet submitted its final invoice under the contract. Our understanding is that the contractor is awaiting DCAA completion of an indirect cost audit for 1996 in order to prepare its final invoice to HUD.

Closeout procedures will begin upon submission of the final invoice and OIG assistance will be sought in determining the scope of the final audit of the time and materials portions of this contract.

**Management Recommendation:**

**The IG report should note this information.**

## **Andersen Consulting L.L.P.**

### Poor Control Over Costs

The IG's comments relate to allowing Andersen to perform work "without benefit of predetermined labor, general and administrative, overhead or profit rates." It should be pointed out that even if all the costs of this effort had been negotiated prior to commencing the work, the contractor would still have been paid on a cost plus fixed fee basis. Labor, overhead and general and administrative expense rates would only serve as the basis for provisional reimbursement and subject to adjustment at the conclusion of the contractor's fiscal year. While it is always preferable to have agreement on the estimated cost and fixed fee in advance, the reader should not be left with the impression that large elements of costs could have been "predetermined. These audit comments show a lack of understanding of cost reimbursement contracting, evidencing a lack of qualifications to make sound assessments concerning contract issues (GAGAS 3.3. 6.9)."

### **Management Recommendation:**

**OIG demonstrates lack of understanding of the Government contracting process. The comment should be deleted.**

In this case, there were compelling reasons for authorizing the work in advance of final agreement. The Housing Authority of New Orleans (HANO) has been troubled since 1979. During the period just prior to the Department's takeover action, HANO was assessed a score of 25% under the Public Housing Management Assessment Program (PHMAP). That score resulted in HANO's having the dubious distinction of being the very lowest performing large housing authority in the Nation.

A detailed Independent Assessment of HANO provided the Department with an analysis of HANO's PHMAP performance, an administrative and operational prognosis and included a series of recommendations for remedial corrective action. Based on the Independent Assessment, it was clear to the Department that HANO was a completely dysfunctional agency with pronounced deficiencies in every functional and operational area and that HANO could not, without substantial support from both the Department and the community, improve its management or operational performance to an acceptable level. The dysfunction within the agency and the abhorrent conditions at all of HANO's developments compelled the Department to take aggressive, decisive and immediate action to protect life and property in New Orleans.

During the period immediately preceding the HANO takeover in February 1996, the HUD employees - including OPC and PIH - were furloughed. The furlough adversely impacted the timing of the Department's takeover action in HANO.

Once the furlough ended, the Department moved very swiftly to execute a Cooperative Endeavor Agreement (CEA) with the City of New Orleans that resulted in a partnership arrangement. A breach action was served on HANO, the Board of Commissioners resigned and the Department was able to take over control of HANO both administratively and operationally.

The CEA included specific provisions for and formally recognized the importance of the Tulane and Xavier Universities and the critical role that these universities could play in revitalizing, transforming and improving public housing in New Orleans.

Once the CEA had been executed, it was critical to have a contractor on-site, as soon as possible, to begin in-depth assistance to the Department in developing and implementing a comprehensive recovery plan. The audit should have included a discussion of the context of the consulting contract and its supplemental relationship to the cooperative arrangements made with HANO, the City of New Orleans, and Tulane and Xavier Universities (GAGAS 7.57).

Using an IQC, Andersen Consulting was brought on-site on February 8, 1996 to deal with HANO operational issues. Although the Task Order has not been definitized by OPC, regular monitoring is conducted as Andersen completes its work and continues the recovery efforts.

#### **Management Recommendation:**

**At a minimum, these facts should be included in the body of the report.**

#### Vague Statement of Work Inhibits Competition

The major thrust of the IG comments in this section is another argument against the use of broad-based indefinite quantity contracts. For the reasons outlined previously, we disagree. The Department also disagrees with the IG's assertion that overlap exists between the Andersen Consulting contract and the Cooperative Agreement with Tulane University. The specific nature of the IG's concerns here are unclear. Andersen Consulting has concentrated a collaborative effort to improve internal functions, site operations and the administration of HANO. Tulane University, under a separate cooperative agreement with the Department, provides residents with a series of viable

welfare reform strategies such as job training and development, educational enhancement, and economic development as well as direct assistance to residents in establishing resident owned and operated businesses.

**Management Recommendation:**

**IG appears to have completely misunderstood the goals of the contracts. The comments should be withdrawn.**



**Aspen Systems Corp.**Procurement Method Questionable

The IG conclusions with regard to contracts 18417 and 5980 are incorrect. In the case of 18417, the award of an indefinite quantity contract was determined to be an appropriate contract type based on the nature of the services being procured. These services were competitively solicited on a full and open basis by published advertisement in the Commerce Business Daily. Records indicate that the solicitation document was mailed to 120 prospective offerors and 7 proposals were received. OPC can neither predict nor control the number of offers received. The determination of technical acceptability is based on an independent evaluation of the proposals, the results of which can never be predicted. In situations where only one firm is in the competitive range, OPC relies on available data, historical information and/or formal audits to determine price/cost reasonableness. The services under contract 5980 were also competitively solicited on a full and open basis by published advertisement in the Commerce Business Daily. Records indicate that the solicitation was mailed to 130 prospective offerors and 3 proposals were received. The IG report argues that because Aspen was deemed to be the only technically qualified contractor for these two awards, "there was little or no competition for these contracts." This was clearly not the case.

These factual inaccuracies indicate that the auditors based their conclusions on insufficient evidence. This demonstrates a lack of professional care in conducting the audit, and a failure to have a reasonable evidentiary basis to support the auditors' conclusion. See. GAGAS 3.26, 6.46, 7.54.

**Management Recommendation:**

**The IG comment is not factual and should be withdrawn.**

Poor Control over Costs

Although task order 7 was not definitized until May of this year, the statement of work remained stable for the period in question, and monthly review of the contractors vouchers were performed.

**Management Recommendation:**

**The IG comment should be deleted since there is no factual support.**

### Cost Estimates Were Often Vague or Non-Existent

- The example cited for Contract 16724 indicated that the GTR "used another agency's costs for operating a library to prepare the government's cost estimate, but that the other agency's library was also operated by Aspen. " However, the GTR states that the Government cost estimate was based on historical pricing data from past awards with a moderate escalation applied. A detailed cost estimate was provided as part of the Request for Services package. The fact that Aspen is HUD's incumbent contractor for the library (won competitively on several occasions) does not invalidate using their cost experience with HUD as a basis for the Government estimate. In fact, it is a far more valid basis for prospective pricing than is normally available.

#### **Management Recommendation:**

**IG should revise or delete this comment.**

- The IG report indicates that contract 18417 had about **110** task orders. To date, **only 2 task orders** have been issued under Contract No. HC-18417. To manage workload and control costs, the Task Specification System was set-up under the GTR. Under this System, every request for service and/or activity is assigned a Task Specification No. At the time of the audit, there existed 110 task specifications. All services/activities requested in the 110 task specifications are eligible for TA funds in the contract under either I. Basic Information Clearinghouse Services or II. Expanded Information Clearinghouse (Computer-Based) Services as outlined in the Statement of Work of the RFP. Regarding the Request for Contract Services for American Communities: Information Center for the Office of Community Planning and Development, a cost estimate was submitted to the Office of Procurement and Contracts. This cost estimate was used by OPC to negotiate the terms of the contract. Copies of the estimate are maintained in locked contract files of the GTR and were made available to the auditor for his review.

Regarding the Task Specification System, each task specification has its own file. As part of the file, there are line-item budgets estimating the costs for each service and/or activity requested. The cost estimates are not accepted and approved by the GTR until each is reviewed by both the requestor of the service/activity and the GTR. The documentation cited is contained in the files of the GTR and these were made available to the auditor.

**Management Recommendation:**

**IG comment is factually inaccurate and should be deleted per GAGAS 7.50.**

- The comments about contract 5980 are not accurate. A review of the contract file indicates that Task Order 6 is indeed supported by an independent government cost estimate for the follow-on conferences.

With respect to the PD&R portion of the contract, the disparity between the contract amount and the independent government cost estimate is not unusual because the cost estimate is not the only means of determining cost/price reasonableness prior to award. The GTR took no exception to the methodology proposed to perform the work or the level of effort associated with the methodology. A preaward audit of the proposal was obtained and it was determined to be an acceptable basis for negotiations. These processes together were used to determine reasonable estimated costs for this effort.

**Management Recommendation:**

**IG comment is factually inaccurate and should be deleted.**

**BBDO**Inadequate Oversight by HUD

The IG report indicates that the GTR does not maintain adequate files and documentation for administration of the contract. In fact the Headquarters GTR maintains records and weekly reports that reflect the status of current contract activities. Local offices operating independently are charged with maintaining their own records and monitoring the contractor on local projects. All Headquarters expenditures are monitored, and invoices carefully reviewed. The auditors should have included these fact, their failure to do so resulted in an incorrect characterization of the GTR files as inadequate. See, GAGAS 6.46. More significantly, the auditors failed to consider and discuss in the draft report evidence that contradicts its conclusion that the advertising contract has been cost beneficial.

**Management Recommendation:**

**IG auditor apparently did not review these files. The comment should be deleted.**

Contract Modifications Not Performed Timely/HUD Does Not Review Sufficient Documentation to Ensure Invoiced Amounts Are Proper

These findings are consistent with the results of a special review of the contract conducted at the request of the Secretary. In addition, the HUD 2020 Management Reform Plan calls for a restructuring of Housing's marketing and outreach efforts. These changes will have a significant impact on the management of the BBDO contract. Consequently, the Secretary determined that local advertising and marketing expenditures should be suspended while Housing's activities for this area are restructured, and the BBDO marketing plan is revised accordingly.

## **Computer Science Corporation**

### Competition limited in awarding of subcontractor

No evidence was found in the files to support the auditors comment that the "request was written by Andersen." Otherwise the IG comments in this section support the proposition that the contracting office did its job properly and that competition was obtained. They do not support the negative characterization implied by the heading.

#### **Management Recommendation:**

**The heading should be deleted per Generally Accepted Government Auditing Standard 7.53.**

### HUD paid higher costs due to limited competition

It is a completely normal and acceptable process for a prime contractor to be paid a fixed fee which takes into account the projected subcontract costs. The comment about the Department saving \$200,000 if it had contracted directly with Andersen ignores the time and costs involved in conducting a separate procurement and the additional costs of administering another contract.

The comment that Andersen's "hourly rates were about three times those paid to CSC employees" is wrong. The average hourly labor rate for CSC during the period was \$46.71 compared to \$79.26 for Andersen. A simple comparison of labor rates also ignores the likelihood that labor costs for Andersen employees would likely to be less than those incurred for individuals not already familiar with the project.

#### **Management Recommendation:**

**The comments are factually inaccurate and should be deleted.**

### Task Order and Modifications approved after work nearly completed

This is not accurate. Verbal authority to proceed was provided in a timely manner for the extensions (reasons for most of the modifications - increase in scope had minimal impact), and are documented in the file. Some of the completion dates listed in the table are also incorrect.

**Management Recommendation:**

**The comment is factually inaccurate and should be deleted.**

**D.M. Saunders and Assoc., Inc.****Contract Negotiations by HUD May Have Resulted in Unreasonable Costs**

We do not agree that the contract file "did not adequately document the reasonableness of negotiated costs for the contract." Our review of the file indicates that the Specialist verified the proposed direct and indirect rates either through the cognizant audit agency or by contractor payroll records. The contractor had the responsibility of conducting training sessions in numerous cities throughout the U.S., and the group sizes ranged from 25 to 45 individuals. These sessions were to be designed for each office or group to meet their individual and particular needs. Preparation for each session would vary depending the size, diversity and area need. The work entailed interviews by the contractor, sometimes lengthy, with each Public Housing Director to best fulfill the objectives of training needs for that particular office. While design of basic course material was covered in Tasks 1 and 2, it was also necessary to build in additional preparation time to accommodate the specific tailoring described above.

**Management Recommendation:**

**The OIG should note the above facts.**

## Data Prompt, Inc.

### Clarification to "Contracts Reviewed" and "Amount of Modifications" summary chart

The amounts shown as "original contract amount" are not the full initial contract amounts for the contracts shown. Each of the contracts is an indefinite quantity contract and was written for a multi-year base period and several option periods. The estimated contract value on an indefinite quantity contract is expressed in terms of a minimum and maximum value. In this type of indefinite quantity contract, where there are fixed unit prices in the contract schedule, the actual contract value results from whatever volume of units and mix of units are actually performed. The estimated values for all three of these contracts are based on the number of cases (mortgages loans, single family, or multifamily properties) in HUD's inventory. The initial values are estimates only. Typically, only a portion of the initial contract value is actually obligated with the initial award, and the balance of funds are obligated as they are needed throughout the base or option periods. Modifications to the contract to provide this "incremental funding" are therefore within the overall contract value. Similarly, when the base period ends and an option is exercised, the maximum value increases by the amount negotiated at the time of award for the option period. Then this new maximum will have incremental funding modifications towards its full value. The initial values shown on the chart for the listed contracts reflect either the initial obligation or value of the base period alone and not the full estimate of the ultimate contract value including the base and option periods or optional quantities provided for in the base period. In the case of contract #14488, the amount shown of \$29,117 is only the minimum value and was sufficient to fund the contract for only one month. The maximum for the base period was \$2,271,235. Therefore, the "amount of modifications" shown for each contract includes incremental funding and exercising of option modifications and does not represent only unanticipated growth in the work. It should also be noted that the value of these contracts is dependent on external factors, such as the quantity of mortgages, loans, or properties in inventory which will necessarily fluctuate from original estimates.

### Background

#### Background, HC-12644

- When the original contract was awarded, the contract provided for more than just an automated system. For example, it also provided for support services such as the billing and processing of mortgage note collections, disbursement for payment of taxes, monthly accounting and reconciliation, and the training of HUD staff.



## Background, HC-14488

- HC-14488 was awarded on September 20, 1988 and not September 1986.
- The cost of the contract from September 1988 through June 1997 is \$29,893,252 and not \$41,988,018.
- When the original contract was awarded, the contract provided for more than just an automated system. For example, it also provides telecommunication services and other related services such as:
  - o Review, input security access forms
  - o Reconcile daily lockbox deposits with the system
  - o Provide a "Help Desk"
  - o Review invoices for proper approval
  - o Make disbursements and mail checks
  - o Retain source documents
  - o Reconcile disbursement to the PMS bank account
  - o Monitor Budgets
  - o Microfiche accounts payable documents
  - o Setup projects and input data to the system
  - o Perform accounting
  - o Provide for independent audit
  - o Provide training to HUD and Property Managers

## Management Recommendation:

**The above background should be incorporated into the OIG comments, per Generally Accepted Auditing Standards 7.51.**

## Contracts Poorly Planned

The original Statement of Work for the MARS contract did not require that a contractor build a new automated system from scratch. The objective was to obtain the "utilization of an existing commercially available mortgage loan processing services which without extensive modification can provide the required service within a reasonable time frame." Because the system was not developed totally for the government and a proprietary system was modified, the government never owned the system that was obtained in 1985. The cost of the system should be compared to other contracts that provide an automated system with similar support services to determine if the costs are unreasonable. Also, when a system is contracted out or brought "in-house", there is an initial system development cost and HUD staffing cost to convert a system. In addition, to bring the system "in house" HUD needs to have staff resources available to develop

the system and to perform the support services that were previously done by the contractor.

The original Statement of Work of the PMS contract did not require that a contractor build a new automated system from scratch. The objective was to obtain "automated, integrated, interactive system with current technology." It was believed that most contractors would propose a modified system in order to meet HUD's short implementation schedule. Because the current system was not developed totally for the government and because a proprietary system was modified, the government does not totally own the system. The User Manual copyright issue was resolved in Modification 32, Section VII. This modification gave HUD the right to distribute the User Manual to almost anyone. As in the case with MARS, the cost of the PMS system should be compared to other contracts that provide an automated system with similar support services to determine if the costs are unreasonable. Also, when a system is contracted out or brought "in-house", there is an initial system development cost and HUD staffing cost to convert the system. In addition, to bring the system "in house" HUD needs to have staff resources available to develop the system and to perform the support services that were previously done by the contractor.

**Management Recommendation:**

**The OIG comment should be deleted and revised to reflect these facts.**

Contract Modifications exceed Original Intent of Contract

Contrary to the auditor's opinion, the MARS, PMS and SAMS modifications were within scope. The original contract was not just for an automated system. It includes support services such as billing and processing of mortgage note collections, disbursement for the payment of taxes, monthly accounting, and training. Therefore, related services would be in-scope. The auditors failure to accurately review and understand the contract statement of work apparently caused them to incorrectly conclude that the contract modifications were outside the scope of the contract. See, GAGAS 7.54.

**Management Recommendation:**

**The OIG comment is factually incorrect and should be deleted.**

Poor Contract Negotiations Resulted In High Prices

Modification #42: The auditor's statement that "DPI was not satisfied with this and offered to do it for \$37.12 per hour." is incorrect. The \$37.12 per hour rate was the

initial price offered by DPI based on the system modification rate awarded under the contract. OPC was dissatisfied with the \$37.12 per hour rate. The negotiated \$22.58 per file rate is the award amount after several rounds of negotiations and two revised proposals. The services required under Mod. #42 are not for system modification but rather for duplication of mortgage files. Therefore, DPI agreed to submit a revised proposal which contained a rate consisting of the appropriate labor categories (clerical ) and estimated hours. The auditor surmises that since the awarded \$22.58 per file rate is based on a 1/2 hour duplication time, HUD is essentially paying \$8.04 more than the initial \$37.12 per hour rate offered by DPI. The auditor is confused, and mixes the per hour price with the per file price inappropriately. The derivation of the \$8.04 amount is incorrect. As explained below, it was more advantageous for the Government to accept the \$22.58 **per file** price versus the \$37.12 **per hour** price--the contractor would receive only \$22.58 per file no matter how long it took to complete the required services per file. In duplicating the files the contractor must contend with or perform the following:

- 1) varying sizes/lengths of paper
- 2) stapled pages
- 3) missing documents (each file contains certain identical type documents)
- 4) recording of problems encountered
- 5) set up pages duplicated into another file
- 6) prepare a list of contents for each storage box forwarded to HUD.

This Specialist and the GTR agreed that duplication time could be more than an hour for a good number of files.

Photocopying the 1009 mortgage note files are within scope. This modification relates to work previously being performed. See modification 27. Also, please note that this contract was not solely for an automated system. There are other support services in the original contract.

### **Management Recommendation:**

**The OIG comment should be revised to state that the negotiated price was in the best interest of the Department.**

### Inaccurate Data Maintained on Contract

MARS - The audit report states that modifications representing nearly \$18 million for MARS are either not in the database or contain errors. There is one modification missing from the database, modification #27; it is a change order and has no cost impact. There are two errors in the database on modifications #22 and #40, the combined effect of which is an overstatement of the correct contract value by \$400,000.

These errors will be corrected. Out of 44 modifications, these are the only errors. The obligated amount shown in the database is \$26,819,294 which exactly agrees with the correct obligation amount of the contract document as of modification 44. The value and obligation amounts shown in the contract file of \$38,539,294 as of modification 44 are in error, a carryover error from modification 39 which increased the maximum ordering limitation of the contract by \$14,000,000.; this amount was erroneously portrayed as contract value. Even though MIS sheet was submitted showing the \$14,000,000 as intended, MIS staff entered only the obligation as a value change, so the error in the contract never got into MIS. Also, subsequent mods to mod 39 which added millions in obligations also were shown in the file as additive to value, resulting in a very inflated value by mod 44. The contract will be corrected.

SAMS - The audit report states that modifications representing nearly \$3 million were either not included in the database or contained errors. Only one modification (out of 54) is missing from the database, and it is a change order not affecting value or obligation amounts. There is no modification 15 in the file nor in the database. The value in MIS is overstated by \$2,903,720, showing \$45,987,398 instead of \$43,083,678. The MIS overstates actual contract obligation by only \$15,000, showing \$43,098,678 instead of \$43,083,678.

PMS - The audit report states that modifications totaling over \$4 million were not included in the database. All modifications except modifications 8 and 14 are in the database. Modification 8 was never executed, and modification 14 was an unpriced action having no effect on value or obligation. There were several errors in entering contract value, primarily stemming from data entry errors by support staff for modifications which shifted funds between line items or definitized pricing on change orders, but within the existing contract value and obligation: The amounts shown in the modification were picked up as increases rather than as within-ceiling changes. There was also an error where an obligation of \$700,000 should also have been recorded as a value change and was not. The total impact of the errors was an overstatement of the contract value in the database by \$346,741; the database shows \$34,829,554 instead of \$34,482,813. However, there are no errors to the contract obligation, and it is correctly shown at \$34,482,813.

#### **Management Recommendation:**

**As noted above, the errors will be corrected. In addition, the IG report should be revised to clarify the points discussed above.**

#### Poor Cost Estimates

MARS-We assume that these estimates were done prior to the award of the contract in 1984. These estimates were most likely based on the low inventory levels at that time and no additional modifications. Since then, several things have occurred to increase the costs, the mortgage note inventories have increased (until recently), the contractor has gotten yearly price increases of about 5%, several contract modifications have been issued, and we have converted from the HP computer to the Amdahl computer.

PMS-We assume that these estimates were done prior to the award of the contract in 1988. These estimates were most likely based on the low inventory levels at that time and no additional modifications. Since then, several things have occurred to increase the costs, the property inventories have increased (until recently), training was provided, the contractor has gotten yearly price increases of about 5-8%, and several contract modifications have been issued.

**Management Recommendation:**

**The OIG report should note these circumstances.**

**Frank Destefano and Associates**Inadequate Competition in Contract Award

There is nothing in this section that supports the conclusion of "inadequate competition." The statement that only a single offer was received in response to the competitive request for proposal for the proposed contract is correct. The statement that "The three other contractors solicited are large government contractors who did not respond to the solicitation" is incorrect. Four potential offerors were identified by the requesting program office as recommended sources. However, the contract opportunity was published in the Commerce Business Daily on December 19, 1994. As a result, the request for proposal was distributed to 81 sources who responded to the publication notice and the four sources recommended with the procurement request. Appropriate competition was sought for the contract opportunity.

**Management Recommendation:**

**The comment is factually inaccurate and should be deleted.**

Contractor Performed Inherently Governmental Functions/Contract Created an Employee/Employer Relationship

We disagree with the auditors' opinion that the contractor performed an inherently governmental function. In reaching that conclusion, the auditors have misstated provisions in the Office of Federal Procurement Policy (OFPP) Policy Letter on Inherently Governmental Functions (Appendix 5 to OMB Circular A-76 on Commercial Activities) to infer that the contract services performed included inherently governmental functions. In that regard, the OFPP letter specifically provides in its policy section, paragraph 6.(c), that:

While the approval of a Government document is an inherently governmental function, its drafting is not necessarily such a function. Accordingly, in most situations the drafting of a document, or portions thereof, may be contracted, and the agency should review and revise the draft document, to the extent necessary, to ensure that the final document expresses the agency's views and advances the public interest.  
(emphasis supplied)

Admittedly the OFPP guidance provides, as a matter of policy, that even though the drafting function is not an inherently governmental function it may be inappropriate for appearance reasons to use contractors to draft Congressional correspondence. The

draft audit report, however, unfairly and inaccurately cites a single instance of the drafting of a letter to a Committee Chairperson as the basis for a blanket conclusion that the contract as a whole was for inherently governmental services. This conclusion is unwarranted by the facts.

In its policy letter, OFPP recognizes that the gathering of information for or providing advice, opinions, recommendations, or ideas to Government officials is not an inherently governmental function. OFPP Policy Letter at paragraph 5. This is precisely the type of work performed under the scope of services of the contract as referenced by the auditors. Under these facts, and in the absence of any indication that HUD officials did not exercise their discretion or judgement in any final documents that went to Congress, there is simply no basis for the assertion that the contractor performed an inherently governmental function. The draft audit report should therefore delete this erroneous section.

Similarly, the conclusion that the contract created an employee/employer relationship, i.e., an improper personal services contract, is also unjustified. The determination as to whether a government contract improperly creates an employee/employer relationship is a judgemental decision that is necessarily made on a case-by-case basis. The key in making that determination is whether the government exercises continuous supervision and control over the contract personnel performing the contract. See, Federal Acquisition Regulation (FAR) Part 37.104(c).

The auditors offer no explanation or analysis as to how they concluded that an employee/employer relationship was created by this contract other than to refer to three of the elements that a contracting officer may consider in determining whether the contract is for personal services. In fact, the FAR permits the type of advisory services contract performed by the contractor (see FAR 37.2), there is no limitation of advisory contracts to one year, and there is no indication that the contractor did not exercise independence in its work by being under the direct control or supervision of a HUD employee. Accordingly, the auditors unexplained and unsupported conclusion that HUD entered into a personal services contract should be withdrawn.

#### **Management Recommendation:**

**The OIG conclusion is not supported by the facts and should be deleted.**

#### Contract Need Questionable

The heading title for this issue appears to be inappropriate. In order to process the next option, the GTR awaited confirmatory evidence (the performance report) that all the work had been completed. The contractor continued to perform (at his own risk) in

the absence of a signed option agreement. The basis for the delay in submitting the required reporting documentation was his need to continue to be responsive to pending community development issues. We also question on what basis the IG auditor is qualified to determine the need for contract support.

**Management Recommendation:**

**The comment should be deleted.**

Poor Contract Administration by HUD

The statement that "At the time of our review, a final audit of the contract had not been performed or requested" is accurate but inappropriate. The contract was awarded on a labor hour basis. Fixed hourly rates were established for two labor categories, consultant and secretarial, for the base and three option periods of the contract. Under a labor hour contract, no variation in the fixed hourly rates paid for services performed is permitted based on the contractor's actual costs. Travel and administrative expenses not to exceed a total of \$30,274 throughout the maximum contract period were to be reimbursed based on actual cost. A final audit would thus not be necessary since \$500,000 in claimed reimbursements is the threshold for closeout audits.

**Management Recommendation:**

**The OIG comment displays a total lack of understanding of procurement regulations and should be deleted.**



## **GNMA-Compliance Audit and Review Service (CARS) Contract**

Note: All GNMA exhibits or attachments referred to in this response are included in an overall Exhibit 1 to this response. Within Exhibit 1 are other Exhibits, not sequentially numbered.

### Contractors Performing Inherently Governmental Function

The Office of the Inspector General ("IG") previously raised this issue in an audit report of Ginnie Mae Contract Compliance and Review Services issued on November 30, 1993. This report reviewed the rationale for the CARS contract. Based on the CARS contract being awarded, a material weakness identified in September 1991 (that Ginnie Mae was not reviewing master subservicers) was considered corrected and removed in the 1993 report. (See Exhibit 7, OIG Audit Report 94-AO-171-0001, p.7.)

### Contract Requirements Hindered Competition

The last paragraph on Page 18 of Section V does not appear to belong in this section of the Draft Report.

### Contract Procedures May Have Been Circumvented

Page 19 of the Draft Report states that contract procedures may have been circumvented when the Source Selection Official selected Williams, Adley & Company for award. This procurement was done under the Best Value approach.

In accordance with HUD's Procurement Policies and Procedures Handbook, the Source Selection Official has the ability to select a firm not recommended by the TEP if he provides a written justification. (See Exhibit 8, HUD Procurement Policies and Procedures Handbook 2210.3 REV 8.) Since a written justification was provided, we are perplexed as to why this is cited in the Draft Report.

The contract contemplated making an award to "approximately three" firms. "Approximately" typically suggests two, three, or four firms in this context. The Technical Evaluation Panel selected the firms which technically ranked first, second, and fourth. The third firm was not selected due to excessive cost. The Source Selection Official declined to award to the second placed firm because he believed a conflict of interest or at least the appearance of a conflict of interest was present (based on such firm's status as an existing contractor in another area and the resulting desire to prevent such contractor from auditing itself or other contractors/competitors),

and selected the sixth placed firm, instead. The fifth firm was eliminated due to cost considerations.

The Source Selection Official was then advised that the potential conflict issue he had concerns about (existing contracts with Ginnie Mae) had been addressed in a question and answer session that stated all contractors would be permitted to bid on the subject contract. Accordingly, the Source Selection Official approved the award to the firm making it the fourth firm selected by the Source Selection Official.

The Draft Report indicates that the auditor believes the best value in a fourth firm would have been the seventh technically ranked firm, Bond Beebe, whose price was \$22,665 lower than the fifth ranked firm. Note that the comparison made by the auditor is to the fifth ranked firm (which was not selected) and not to Williams Adley. The difference in proposed price between Williams Adley and Bond Beebe was \$11,329. However, an error in the evaluation report transposed the prices for Williams Adley and Bond Beebe. The error was only discovered in responding to this audit report. The underlying source documentation of the evaluation shows that Williams Adley had a technical score that was **higher** (1 point) **and** a proposed price that was **lower** (by \$11,329) than Bond Beebe's. Therefore, no additional support for the selection of Williams Adley was actually required, but this was not apparent at the time. The rationale for the selection of Williams Adley at the (erroneous) higher price was a weakness of Bond Beebe that was noted in the evaluation. This weakness was that Bond Beebe would require a large investment of oversight or instructional time by GNMA or contractor staff. It was GNMA's belief that this investment would cost more than the price differential between the two firms. The auditors failure to accurately state the facts and process of how GNMA's best value selection was made evidences a lack of diligence in obtaining all relevant information, and lack of expertise or qualifications in making a credible judgement in assessing the contract award process. See, GAGAS 3.3, 7.54.

**Management Recommendation:**

**The OIG report should delete this comment or revise it to reflect the above information.**

## **GNMA-Chase Manhattan Bank**

Note: All GNMA exhibits or attachments referred to in this response are included in Exhibit 1 to this response. Within Exhibit 1 are other Exhibit numbers which are not sequential.

### Contract Requirements Hindered Competition

The Draft Report indicates that "GNMA hindered competition by allowing Chase to maintain ownership of the automated systems." The systems referred to here were Chase Manhattan Bank proprietary systems; therefore it is incorrect to state that competition was hindered because Ginnie Mae allowed Chase to maintain ownership. We could not provide systems that did not belong to Ginnie Mae but were proprietary to Chase Manhattan Bank. In fact, there are a number of large financial institutions who have capabilities and systems to perform the tasks required under these contracts.

The Draft Report incorrectly states that for contract #96-PA-02 Chase Manhattan Bank was the only bidder when there were two. On contract #96-PA-03, the Draft Report states there were two bidders when Chase was the only bidder.

The Draft Report indicates that Ginnie Mae is in the process of making such systems proprietary to Ginnie Mae which would eliminate this as an issue for the next contract renewal in the year 2002. In fact, Ginnie Mae is striving to accomplish this prior to year end 1999. (See Exhibit 9, Detail Technical Architecture GNMA RFD 92-1-1, June 1995, p.ES-1; Exhibit 10 Ginnie Mae Information Technology Initiatives, pp.2-3; and, Exhibit 11 RFP GNMA-96-PA-02, p.31 and RFP GNMA-96-PA-03, p.61.)

### **Management Recommendation:**

**The report should be revised to delete the reference to hindering competition, and to recognize Ginnie Mae's progress in developing proprietary systems.**

**GNMA-Ernst and Young 93-8-1**

Note: All GNMA exhibits or attachments referred to in this response are included in Exhibit 1 to this response. Within Exhibit 1 are other Exhibit numbers which are not sequential.

**Contract Amendments Far Exceed Original Intent of Contract**

This contract is for financial advisory services for the multiclass program, not the MBS program as stated in the Draft Report. Ginnie Mae believes that all task orders awarded under this contract, including the one to FHA under an interagency agreement, conformed to the statement of work for the modification adding task orders to the contract. Before adding the modification allowing task orders, the Contracting Officer sought the opinion from the Ginnie Mae Vice President for Finance, who was the Chairman of the SEB. (See Exhibit 12.) The SEB Chairman argued that the modification was appropriate given the circumstances. Ginnie Mae has now developed a statement of work to soon be advertised for full and open competition under a new FAR contract for services that are now being performed by way of the task order modification. No further task orders will be awarded under this contract, and in response to the draft audit report GNMA has suspended all task order activity under this contract pending further review by the OIG.

The Draft Report is not clear as to what additional services performed under this contract should have been re-competed as a FAR contract. We agree with the SEB Chairman's statement in his memo on this issue that: "a reasonable prudent contractor would never enter into a contract where they would be required to provide everything as opposed to providing services that are appropriate and helpful in its advisory capacity. There appears to have been times when Kenneth Leventhal, out of programmatic necessity, performed advisory/operational duties within the spirit of the subject contract but beyond what could have reasonably been contemplated when the RFP was developed. Any attempt to interpret the subject contract to include the concept of "all" appears to me to be legally indefensible and absolutely not what was intended by the original drafters of the subject RFP." (See Exhibit 12.)

**GNMA Ernst & Young 96-C-12**

Note: All GNMA exhibits or attachments referred to in this response are included in Exhibit 1 to this response. Within Exhibit 1 are other Exhibit numbers which are not sequential.

### Competition Hindered

Competition was held among seven (7) offerors who presented oral proposals. When urgent contracting procedures are used, the FAR does not require advertising the procurement or that written offers or qualifications be presented. Significant effort was made to provide for competition as indicated by the number of bidders. Even though written offers or qualifications were not required, Ginnie Mae maintains videotapes of all oral offers presented.

It was originally planned that the work under this contract for investor education services would be awarded by way of task order under Contract No. 93-8-1. Under advice of OGC, it was determined that the work would be outside the scope of that contract. Accordingly, a new contract was awarded using urgent need contracting procedures. This service was urgently needed in order to respond to prevailing market conditions during a novel, expanding market trend. A "Justification for Urgent Procurement" was prepared prior to procurement. (See Exhibit 15.)

There was an immediate need to support Ginnie Mae products. As Ginnie Mae asked its capital markets program participants and institutional investors how to support its securities under the prevailing market conditions, the clear response was: produce reference materials and present yourself on par with the competing product offerings in the marketplace. This was initiated quickly due to the urgency of these responses and the vulnerability of our market share to alternative products.

The IEI Contract is expected to have a continuing positive effect on MBS and Multiclass demand. As Ginnie Mae effectively educates its customers to the value of the Full Faith and Credit guarantee, investors will request Ginnie Mae securities specifically, in making investment decisions. This demand increases the price of our securities, stimulates production, and lowers mortgage rates for low- and moderate-income homebuyers in support of our statutory mandate.

As shown in Exhibit 16, Price Graph for Ginnie Mae 7.5% MBSs, the price for Ginnie Mae MBSs was volatile. The information to the market about the benefits of the full faith and credit guarantee on single class MBSs and the multiclass products contributed to stabilizing the pricing for the securities as shown over the period January 3 through February 14 and again from April through July 1997.

### **Management Recommendation:**

**The OIG report should be revised to reflect the circumstances described above.**

### Questionable Contracting Practices May Have Been Used

The report indicates that contracting procedures may have been circumvented, but fails to identify what those practices were. Ginnie Mae complied with all appropriate contracting procedures for this procurement. (See Exhibits 17 and 18 regarding oral proposals and urgent contracting procedures.) However, in response to the draft audit report, GNMA has suspended all task order activity under this contract pending further review by the OIG.

**Golden Feather Realty Services, Inc.**Adequate Justification Not Given for Contract Award

The report concludes that evaluation "...ratings failed to provide adequate justification for the points given" and "...panel members did not award points based on the criteria specifically set forth in the instructions." The conclusion is incorrect since it relates only to the individual score sheets of panel members. The formal evaluation and recommendation is documented through a technical evaluation report signed by all panel members. Handbook 2210.3 REV 8, Section 5-7.F.2 states:

The TEP should rate and rank proposals through a consensus process whenever practicable. In such a process, the TEP, as a group, will consider the merits of, and determine a single score or rating for each proposal.

Variation in the scoring by individual panel members or differing depth of justification on individual score sheets are not cause for finding an evaluation process unjustified when the report of the full panel clearly identifies the reasons for the ratings and the strengths and weaknesses of each offeror. Frequently, individual readers note different aspects of competing proposals and change their initial ratings after panel discussion in the consensus-building process. The process allows and encourages this provided the group report documents the reasons for the group scoring. In the case of the award to Golden Feather, the final evaluation report, which includes factor by factor comments on each of the three finalists, met this requirement. Two of the three finalists were considered technically equivalent. The third finalist was considered to be significantly less capable than the other two finalists. Selection was based on the lowest priced of two technically equivalent finalists. The above discussions indicates that the auditors were not knowledgeable concerning federal procurement principles in the evaluation of technical proposals. This resulted in an erroneous conclusion that an inadequate evaluation was conducted. See, GAGAS 3.4.

**Management Recommendation:**

**The OIG comment is factually inaccurate and should be deleted.**

Funding Increase Questions Contract Estimate and Planning

The statement that funding increased is accurate. However, the contractor receives compensation for services based on a percentage of sales price structure. The increase in funding results from under-estimating the number of properties to be assigned for contract services as well as the volume of reimbursable property repair

expenses, not any increase in the compensation paid to the contractor for services rendered.

**Management Recommendation:**

**The comment should be revised to reflect this information.**

Cost Estimates Not Documented

The cost estimate was prepared using data retrieved from the Single Family Acquired Asset Management System on the expenditures for appraisals, advertising and maintenance expenses. The maintenance and operating expenses were underestimated for expenses of a non-recurring nature (i.e. repairs relative to safety and health issues).

**Management Recommendation:**

**The OIG comment should be revised to reflect this information.**



**ICF Incorporated**HUD Did Not Benefit From Some of the Contracted Products

The report lacked specific identification of those Task Orders awarded against IQC Contract HC-5888 which were awarded for the development of 4 guidebooks for the HOPE Programs and were subsequently cancelled; however, we were able to identify Task Order 001 based upon the description of services and the extension dates stated in the report. The following information is provided concerning that Task Order.

The Task Order was awarded on September 13, 1991 not 1992 as stated in the report.

The contractor was to design two (2) HOPE Homeownership Program Guides at the estimated cost plus fixed fee of \$208,432. The file supports the IG findings that the performance periods were extended (dates are correct) due to HUD's untimely review (untimely to the IG seems to mean everything contracted for is static, when in fact HUD and the Congress was making changes to the program as the guidebooks were being developed, and we wanted to be sure that the guides reflected the latest changes to the programs.) of the Contractor's delivered draft work products. The Task Order expired 1/94, and the work had not been completed. Subsequently, by memorandum dated March 25, 1994, PD&R management requested that the Contracting Officer direct the Contractor to cease all work on the proposed guidebooks and to provide the HUD/GTR with all materials developed to date. All of the materials developed for the guide under this contract was used to successfully complete the project under a new task order

(H-5966 TO3) after the computer system was installed. OPC does not have any records readily available to verify how much was expended prior to the cancellation. PD&R comments that it is not unusual for research findings to be inappropriate for publication if the data cannot be used to draw meaningful and supportable conclusions. However, findings that were useful were used to augment in-house studies. The auditors should have discussed with and considered PD&R's view on whether PD&R may have benefited from the contract research even though the contract work itself was not itself published. See, GAGAS 6.9. HUD obligated \$25,000 for this work, not \$49,970 quoted by the IG. See H-5888T12.

**Management Recommendation:**

**The statement that HUD did not benefit from the contracted products is inaccurate and should be deleted.**

Products Not Completed Timely

Task Order 10 - IG finding is accurate as it relates to the fact that the performance period was extended twice (extension dates are correct). However, the file supports that both extensions were due to Government caused delays. Specifically, the delays were problems encountered with the Bureau of Census approving ICF staff as Census Officials to allow them access to confidential American Housing Survey records, obtaining Census data and Government delay in providing ICF with data tape for LA county which was to be included in the study. However, ICF submitted a 3rd request for an extension to July 31, 1993. The Contracting Officer determined that no excusable delay existed and issued a forbearance letter to ICF dated 7/13/93 preserving the Government's right to terminate and allowing the Contractor to continue work in a delinquent status through July 31, 1993 (date contractor requested). GTR assessment has been completed and is located in the file. The assessment supports the IG finding that the final report was late (Aug 96). Assessment further indicates the work was completed within estimated costs and that the lateness of the report has not affected its usefulness.

**Management Recommendations:**

**The OIG comment should be revised to reflect this information.**

GTRs Did Not Adequately Administer Contracts

The Associate Deputy Assistant Secretary of the Office of Research Evaluation and Monitoring and others in the Office met with the IG auditor numerous times concerning Contract H-5888. The auditor did not, and after reviewing the report still does not, understand what an IQC contract is. See, GAGAS 3.4, 6.9. The auditor continually referred to a questionnaire which had little relevance to an IQC contract. More than 20 times (no exaggeration) the role of the GTR relative to the GTM was explained in terms of how different it was from a standard contract. The auditor never understood, as evidenced by the audit report. The auditor was given the name of each GTM, and we understand that he contacted each and located the information he accused the GTR of not having. Our explanation that the GTR maintained administrative records, and GTM maintained the technical records does not appear in the report, either due to ignorance or inattention.

**Management Recommendation:**

**The OIG auditor evidences a lack of due professional care and a failure to gain a basic understanding of the subject matter. The section should be deleted. See Generally Accepted Government Auditing Standards 3.26 and 6.9.**

Regarding the comment: "In another case, under contract 18351 our review found that the GTR did not complete the final Performance Assessment report for a task order because she did not believe that it was necessary."

It was not the determination of the GTR that a final Performance Review was unnecessary, it was a matter of the timing of the review. Due to extensive ongoing related work still being performed by the contractor, the GTR had made the appropriate notation to the file on the apparent quality and timeliness of the product, but had not completed the final assessment on the task order cited. The product, a videotape, was still in active use in training sessions and workshops and its effectiveness and cultural sensitivity was still being determined. This Performance Review has been finalized.

**Management Recommendation:**

**The IG report is factually incorrect. This comment should be deleted.**

Inaccurate Data on Contract Maintained by HUD

The audit report correctly states that the total of all amounts to ICF under Contract 5888 should be \$2.5 million rather than \$5.5 million for the value amount for the actions shown in the database. The error was in modification number 2 to the contract which recorded the maximum ordering limit of \$3,000,000 as the value rather than zero dollars. On an IQC the value is the sum of the obligations at any point in time. There were a few small errors in the listed actions, resulting in a net error of the obligation's being overstated in MIS by \$1,000. However, modification #1 to T.O. #3 was missing from the MIS; it obligated an additional \$190,000.

The audit report is in error for the data associated with Contract #5813 to ICF; it states that task orders 1,3,4,5,6,7,9, and 10 were missing from the database. In fact, all of them were there, as well as all other task orders and their modifications, through task order 23. All recorded amounts are correct.

**Management Recommendation:**

**The IG report is factually incorrect and should be revised to reflect the above facts.**

## Intown Properties

### Poorly Worded Clause in REAM Contracts is Resulting in Excessive Payouts

- Note 2 to the standard REAM contract format used throughout the agency for several years is acknowledged to have resulted in significant contract settlement expenses. The HUD Board of Contract Appeals has decided that contractors are entitled to payment of actual direct property expenses and related settlement expenses based on Note 2.
- The conclusions reached related to the number of times that 30 percent listing fees were paid for the identified Santa Ana contracts are **incorrect**. Despite Note 2, REAM contractors are entitled to payment of listing fees only once. For the case of the Santa Ana contracts, this will be verified from a further examination of actual per property payments under these contracts that the Denver ASC has begun. The results of this payment verification will be provided to OIG. Note 2 requires that if a property is not listed or sold at contract expiration that the contractor will receive a payment not to exceed the stated contract per property price for actual expenses. If a property has been assigned the REAM but the property has not yet been listed as of contract expiration, the REAM could claim costs associated with trying to get the property listed as its Note 2 settlement proposal. If a property has been listed and the REAM has received the stated 30 percent listing fee, but the property has not been sold as of contract expiration, the REAM could claim costs incurred after listing associated with trying to sell the property as its Note 2 settlement proposal. Note 2 caps these claims at the contract per property price. Since the property inventory transfers to a new contract, a property not listed under a prior contract could mean that HUD would pay a settlement amount for costs to try to list the property under the old contract and if the property listed and sold under the successor contract, the full listing and sales prices stated in that contract. This would result in HUD paying approximately 130 percent of the price of the successor contract for the property but not the \$2181 per property expense (about 230 percent) cited in the audit. Note 3 to the standard REAM contract states that previously listed properties provided to a new contractor can only earn the 70 percent sales fee.
- The Office of Housing's issuance of Notice H 97-10 with the inadvertent inclusion of old Note 2 was immediately noted by field contracting staff. OPC and ASC Contracting Directors agreed that this portion of the notice would not be implemented due to the acknowledged problem with Note 2. In addition, a memorandum will be sent to all Field Offices advising of the deletion of old Note

2 and the substitution of new Note 2 language.

### **Management Recommendation:**

**The IG report should be revised to reflect this information.**

### Selection Process Questionable

- HUD's continued award of REAM contracts to Intown is questioned based on an alleged poor performance history. However, the actual performance record of Intown as a HUD single and multi-family property management contract is mixed. For example, the final performance assessment for Contract C506S92CA001, which was among the contracts reviewed, indicates the contractor performed all requirements and the quality of performance was good. Interim assessments under multifamily property management Contracts CPMF53692001 and H05C93001000000 indicated Intown was performing all services in a timely fashion and that no performance problems were evident. Generalizing as to a contractor's performance record without considering all relevant performance information would be an unfair practice on the part of HUD.
- The statement that 25 percent of the ranking was based on obsolete selection criteria is not completely accurate. Two of the six criteria were worth 25 percent. The first, property management experience, clearly related to contract work requirements. The second factor consisted of two parts. The first part related to property pricing experience, the second part to repair listing and estimating experience. The first part did not relate to a contract task since property listing prices were to be based on appraisals obtained under separate contract. The second part related to contract service item 19. An accurate finding would be that 12.5 percent of the technical evaluation criteria did not relate to a stated contract requirement.
- The statement that Contract H01C940002000 "...was not awarded to the lowest qualified bidder" is misleading. Under the "best value" competitive proposal method of procurement used for this contract, award must be made to the offeror found most advantageous considering stated technical and price factors. The October 26, 1993 source selection official approval of the evaluation board recommendation documents a decision to pay a higher price to obtain a more qualified prospective contractor. This selection decision is consistent with this procurement method and case law. Other officials evaluating the same recommendation could reasonably arrive at an alternate selection. The finding serves only to substitute the judgment of the reviewer for that of the selection official and evaluation board. This demonstrates a lack of knowledge by the

auditors of federal procurement principles related to the contract award process. See, GAGAS 3.4.

**Management Recommendation:**

**The OIG comments are over-generalizations, factually inaccurate, and misleading and should be deleted or revised.**

Poor Administration and Monitoring over Contracts

The conclusion that "HUD poorly administers and monitors the Intown contracts" is apparently based on problems locating files and the expressed need of an Santa Ana employee for more than a six-fold increase in staffing. The Denver ASC indicates that the solicitation file, which documents the events leading up to contract award, for Contract H09C94007100000 cannot be located and is believed to be in storage in the San Francisco record center. However, the contract files, which identify official contract activity after contract award, are in the Denver ASC for each of the three cited Santa Ana REAM contracts with Intown. This hardly constitutes evidence of "poor administration and monitoring." This reliance on inaccurate and incomplete data concerning the location and maintenance of contract files is an inappropriate basis on which to conclude that the contracts were poorly administered. See, GAGAS 6.46, 7.54.

**Management Recommendation:**

**The OIG comment is conclusory and a generalization not based upon evidence. The comment should be deleted. See Generally Accepted Government Auditing Standards 7.53, 7.58, and 7.60.**

**J. Walter Thompson****Background Clarification:**

The \$13,917,185 amount cited as the total amount under four funding contract modifications is incorrect. Modification #3 is the only contract modification evidenced by the contract file as having incorporated funds--that amount being \$970,082. No records exist in OPC to verify how much the contractor received under the contract.

The audit report incorrectly stated that HUD did not exercise the last option. It did exercise it in part; i.e., the Government exercised only 8 months of the 12-month option period.

**Unfavorable Type of Contract Agreement:**

The IG finding that a more appropriate contract type, other than the fixed price arrangements negotiated is based upon a January 1994 DCAA audit (requested by OPC) to review the cost incurred under delivery orders awarded to date. In conducting this review, the audit revealed that the Contractor's booked costs were significantly less than the fixed price negotiated for Delivery Order 1, Task 4 of Delivery Order 9 and Task 6 under Delivery Order 10. Given this information coming to light, it was agreed in conjunction with the GTR that future delivery order requirements would be reviewed closely to determine the most appropriate type of arrangement, i.e. cost reimbursement or fixed price. Proposed delivery order 13 was the only subsequent requirement received which was never definitized for the reasons stated. See discussion below on delivery order 13.

With the award of the follow-on national advertising contract, all headquarter's Task Orders for annual marketing/advertising plans were negotiated on a cost reimbursement basis.

**Management Recommendation:**

**The above comments should be incorporated in the IG report.**

**Inadequate Control of Costs:**

Regarding the overbilled amount of \$124,357 and the double billings for the same services provided by JWT and HUD making payments for each billing, the audit findings are correct. However, OPC negotiated a monetary reduction under Delivery

Order #11 for a more fair and reasonable firm fixed price; i.e., from \$642,367 to \$395,653.35--a reduction of \$246,713.65 which more than satisfied the total questioned costs set out in the DCAA audit (ref: HUD Audit 94-AO-262-6009).

**Management Recommendation:**

**Without this information, the OIG report is highly misleading. The section should be deleted or revised.**

Inadequate Contract Administration and Monitoring by GTR

The IG report maintains that the GTR did not maintain a working file that provides a history of the monitoring of the contract. In fact, the GTR has voluminous records and reports detailing the monitoring of this contract. The interviewer did not specify that a file or other records were required for review. Because this contract was completed over two years ago, locating files and/or records would have required advance notice. The auditors should not have reached a conclusion without obtaining and reviewing this information. See, GAGAS 6.46, 7.54.

**Management Recommendation:**

**This is yet another example of lack of professional due care by the IG's auditors. The section should be deleted. (We also recommend that the IG consider additional training for the auditors.)**



**KAJAX Engineering, Inc.**Contractor Performs Inherently Governmental Functions

There is no support for the statement that "Kajax employees, located in the HUD building, represent themselves as HUD employees". Housing staff are not aware of any contract employees who represent themselves as HUD employees unless the auditor is referring to operations of the support center. One GTM was asked by an auditor to determine why the contractor was representing itself as HUD. The GTM replied that Kajax is the front line/first line of contact for the public for HUD and that they are trained to answer questions on HUD's behalf; and further explained that when the contractor staff is unable or not responsible for answering certain questions, the control mechanism is that the contractor refers those questions to Headquarters on a daily basis. Consequently, the contractor staff, when answering the telephones, and on the automated voice response system script, answers with, the "Department of HUD Support Service Center", which is exactly who they are and what they do. Otherwise, how would the public know that they are providing services for HUD.

The functions performed under this contract/task orders are **not** inherently governmental functions. Guidance concerning inherently governmental functions is contained in the Federal Acquisition Regulation at Subpart 7.5. FAR 7.503(c)(17) specifically excludes the following financial services from the definition of inherently governmental functions: "collection of fees...or other charges...where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard case management techniques; and routine voucher and invoice examination." The FAR also states that in general, inherently governmental functions "do not normally include gathering information for...Government officials. They also do not include functions that are primarily ministerial and internal in nature..." (FAR 7.501(b)). The IG provides no evidence for its opinion that Kajax is involved in inherently governmental functions, rather the auditors demonstrate a lack of knowledge and understanding of OMB and FAR guidance regarding inherently governmental functions and personal services contracts. See, GAGAS 3.26, 6.9.

The KAJAX contract requires the contractor to perform numerous mail, clerical, data entry, teleprocessing and research functions (less sophisticated than the information gathering performed in a basic financial audit). For example, the contractor responds to telephone and written inquiries according to a script and fixed schedule for response. The contractor initiates traces of checks that are not received by clients. The contractor responds to requests for general information such as the address for the submission of claims. The contractor maintains daily activity reports to record each call received. The contractors updates accounting information by making data entries. The

contractor sorts documents and collects and processes mail according to specific guidelines. See SOW, TO 2. None of these functions are inherently governmental.

**Management Recommendation:**

**The IG "opinion" is not supported by fact or law and should be deleted.**

Contract Created an Employee/Employer Relationship

The contract does **not** create an employee/employer relationship requiring Government direction and supervision. Although the bulk of services provided by KAJAX are performed off-site at a contractor facility, there is a small KAJAX unit in the HUD building (14 of 74 KAJAX employees assigned to this contract) because the records which are necessary for the performance of certain aspects of the contract cannot be removed from the HUD building, because of concurrent use by HUD staff and for security reasons. That unit is supervised by an on-site contract supervisor (See page 9, SOW, 3-8-96 Revision, for TO 7) and performs research, data entry, tracking, case correction, and correspondence functions. Each of these functions falls squarely within the examples provided by OMB in A-76 and none of these functions involves the exercise of discretion, the making of value judgments, or the creation of an employer-employee relationship.

These on-site contractor employees are not subject to close or continuing supervision by federal employees, but are supervised by their own managers. Although performance of the contract is based on explicitly stated government standards, those standards are expressed through the terms of the contract and are implemented through contractor management acting in performance of the contract. The government's role is strictly limited by the terms of the contract. For example, the contract provides that "HUD will provide technical and programmatic materials for the Contractor employees. Such materials will be made available to new Contractor employees as needed by the contractor at the Contractor site. Additionally, assistance and periodic updates on program/policy changes will be available, through the GTR, on an as needed basis. Technical updates will be provided by the Government, through the GTR, from time to time as needed for smooth and uniform dissemination of information and computer user skills."

In summary, Kajax does not perform inherently governmental functions or provide personal services. None of the work is of a policy/ decision-making or managerial nature. Management and policy decisions are made by HUD management. The contractor executes routine and repetitive assignments.

**Management Recommendation:**

**The IG comments are factually inaccurate. This section should be revised or deleted.**

Competition Limited

The Kajax Engineering, Inc. contract is an 8(a) action which did not require competition under the SBA guidelines that were in existence at the time of award. This contract was a follow-on contract from the Mitchell Titus Certified Public Accountant contract which provided for a small HUD-site support service center answering the phones and handling correspondence. The telephone calls and correspondence became so voluminous that HUD had to take the work off-site.

Mitchell Titus CPA graduated from the 8(a) program and could not retain the contract. Consequently, Kajax Engineering, Inc. was selected essentially for its ability to set up an off-site support service center with several highly integrated systems. When a contract starts in the 8(a) program, it is Small Business Administration policy that the work should remain in the 8(a) program.

An 8(a) contract can have a life of up to five years, and adding options is not abnormal in the contracting business. Initially, it was planned to execute the contract for five years, however, due to funding and other uncertainties, it was decided to provide contractual services for three years and add the option years later.

**Management Recommendation:**

**The IG report should include this background information.**

Poor Contract Administration and Monitoring by the GTR

There is nothing that supports the conclusion suggested by the above heading. The auditor was informed that on-site monitoring reviews are required once or twice a year, however, on-site monitoring reviews are performed frequently on Kajax and any deficiencies are taken care of almost immediately. The GTR, GTMs, and sometimes HUD management, have monthly meetings with the contractor, alternating HUD site one month and contractor site the next. There is also a monthly report by task order that is required of the contractor. The contract/task orders provide for certain reports/tools for monitoring purposes, including such reports to monitor contractor payroll, performance, and negotiable instruments, and are monitored by the GTR and GTMs. Also, the GTR and GTMs separately do site visits.

The auditor never asked about other monitoring techniques, never reviewed the GTR and GTM files, never reviewed the automated system data (monthly reports), and never interviewed all of the appropriate staff, HUD and contractor. This failure to make adequate inquiry concerning the Department's monitoring techniques on this contract undercuts the credibility of the audit findings. GAGAS 6.46.

**Management Recommendation:**

**Once again, the IG failed to provide information directly relevant to the audit. This section should be deleted.**

## Lockheed Martin

Note: The Lockheed Martin response contains references to tabs. All tabs are contained in two spiral notebooks labeled Exhibit 2, book 1 and Exhibit 2, book 2.

### Overreliance on Contractor

Prior to HIIPS, the Department's ADP and telecommunications services were provided through 60 separate contracts. Having a single contractor has allowed HUD to respond quickly to technological changes, improve technical performance, and decrease contract administration. It was the government's intention to seek a long-term contract with a single systems integrator to resolve the issues inherent with having numerous contracts with multiple contractors, namely: "finger-pointing" between contractors on problems; burdensome procurement and contract administration requirements; and the lack of performance accountability. See Tab 1a for the 1986 Mission Needs Statement.

The award fee provision of the HIIPS contract also motivates Lockheed Martin to perform acceptably. Lockheed Martin's profit on the cost reimbursable portion of the contract is held in an award fee pool and earned based on their performance. Every six months, an award fee panel evaluates Lockheed Martin's performance and recommends the percentage of fee to be earned. See Tab 1b for extracts from Section G of HIIPS contract, the Award Fee criteria, roll-up summary of Award Fees, and the Award Fee Determination letters. Over \$1 million is contained in the award fee pool for each six-month evaluation, and Lockheed Martin has earned between 83 and 92 percent of the pool.

IG comment: There has been no effort by HUD to pursue any other avenues than the LMC contract.

HUD Response: There has been no need to pursue other avenues for HIIPS. The Department went through a costly, lengthy effort to transition to HIIPS in order for HUD to realize the significant benefits provided by integration. The procurement phase of the contract began in April 1985, and the HIIPS contract was awarded in November 1990. The cost to transition to HIIPS was almost \$60 million (see Tab 3). This vehicle allows the Department to implement new technology in the Department quickly and efficiently. In short, this contract provides "value added" to HUD. To revert back to multiple contractors for technical support would compromise the original goal and benefits of HIIPS.

IG Comment: HUD does not appear to have the expertise in-house to perform the technical monitoring functions being performed by NYMA.

HUD Response: The functional areas of HIIPS are managed and monitored by ten GTMs who possess substantial technical experience and expertise. For example, the Telecommunications GTM has 25 years of experience in telecommunications operations and management. See Tab 2 for description of experience of HIIPS GTR and GTMs. HUD staff have not abdicated their responsibility or authority in managing the HIIPS contract to NYMA. NYMA's role is to assist the Contracting Officer, GTR and GTMS with the substantial amount of work associated with monitoring a contract of this size and complexity.

IG comment: Many invoices do not contain sufficient documentation to ensure that they are HIIPS related charges or whether the charges claimed by the contractor pertain to HUD operations.

HUD Response: HUD receives 300 - 400 pages of supporting documentation for the monthly HIIPS invoices. See Tab 4a for the July 1997 cost reimbursable invoice and supporting documentation. HUD thoroughly reviews each invoice and the supporting documentation to ensure that charges are appropriate, allowable, and accurate. We are not aware of any charges which HUD has approved for payment that were not related to HIIPS. Our level of review for cost reimbursable invoices goes well beyond the "reasonable" standard set forth in HUD's "Procurement Policies and Procedures Handbook," 2210.3 REV 8, Section 12-6(A)(2). That is, "...the costs must meet three tests:

- They are clearly associated with, and necessary for, work required under the contract;
- They are what a prudent person would pay for the item or service. This means that the amount is fair in light of the marketplace, if one exists, or by using other standards; and
- They are not unallowable under Part 31 of the FAR.

GTRs are not expected to know all the rules governing allowability of costs. The GTR shall consult with the Contracting Officer regarding any costs that appear questionable. The Contracting Officer will make a final determination of allowability."

In addition, HUD has requested on several occasions that DCAA perform an audit of HIIPS invoices. Documentation of these audits is attached at Tab 4b. Any improprieties were determined to be either not significant or were addressed.

### Costs Are Excessive

IG Comment: HUD is paying a higher price than needed for the \$71.6 million hardware and peripherals purchased on the Contract. HUD has not required LMC to decrease the prices to reflect current market prices.

HUD Response: HUD does require Lockheed Martin to update pricing of hardware and peripherals on a regular basis. Lockheed Martin has updated pricing for the entire IDIQ list annually. See Tab 5a for examples from 1996 and 1997. The HIIPS contract was also modified to allow HUD to request pricing updates on "core" items, and we have done so twice. See Tab 5b for 1995 and 1997 "core" item reprices and the rationale for omitting 1996 "core" item reprice. Also, HUD received, on an on-going basis, pricing updates in response to technology upgrades. (See Tab 5c.)

Before the recent changes in Government procurement regulations to allow ADP purchases from the GSA schedule, the HIIPS contract was a convenient and cost effective way for HUD to fill large orders for workstations and peripherals without requiring a lengthy and costly competition for each order. It was not uncommon for the Department to require several million dollars of equipment at one time to support implementation of Departmental systems. The HIIPS contract allowed HUD to fill orders within 30 days. In addition, the workstations purchased for HUD through HIIPS had more stringent specifications than those offered on the open market for personal use. The workstations advertised in local papers and computer magazines would not work acceptably in HUD's complex computer network environment.

The finding fails to recognize that HUD has greatly decreased its use of the HIIPS IDIQ over the past two years. As a result of the recent changes in procurement regulations, HUD has aggressively used the GSA Schedule to order equipment. So far in FY-97, we have placed GSA Schedule and direct buy orders totaling \$8.5 million, containing over 712 different products and 69,000 individual items (see Tab 5d). The annual dollar volume of orders placed through the HIIPS IDIQ has declined dramatically:

<u>Fiscal Year</u>	<u>Value</u>
1994	\$7,763,161
1995	\$21,476,281
1996	\$11,199,406
1997 (to date)	\$ 3,634,030

IG Comment: It has cost HUD more for these products since the price HUD was charged did not reflect the lower price that Lockheed paid for the products. We believe that the contractor is an agent acting for HUD, and as such, has a fiduciary responsibility to charge HUD the lower prices which they are paying.

HUD Response: The auditor is incorrect to state that the contractor is HUD's "agent."

Agency has a very specific legal meaning. It refers to a party (the "agent") who acts as if it were the government itself. For example, if an agent awards a subcontract, then the subcontractor would have recourse for claims and disputes directly against the government itself, the same as if the government had taken the action and not the agent. Under a procurement action, an aggrieved subcontractor only has recourse to the prime contractor. A contractor under a Federal procurement is **not** normally an agent of the government.

The statements in this finding do not recognize the nature of a standard Federal Indefinite Quantity/Indefinite Delivery (IDIQ) contract. In this case, the IDIQ items are put under contract as firm fixed-price items. Under FAR, at Subpart 16.2, "a firm-fixed-price provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience.... This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss...." Section 16.202-2 states that such a contract is "suitable for acquiring commercial items or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications when the contracting officer can establish fair and reasonable prices at the outset, such as when. . .there is adequate price competition, ...reasonable price comparisons with prior purchases of the same . . .supplies made on a competitive basis,. . .or supported by valid cost or pricing data." (See Tab 6).

#### Cost-Benefit Analysis Over Computer Maintenance Plan Never Performed

IG Comment: HUD has performed no review to determine the cost-effectiveness of the Personal Computer/Local Area Network (PC/LAN) Maintenance portion of the contract.

HUD Response: HUD has evaluated PC/LAN maintenance pricing three times since the original award in 1991. Documentation of these reviews is available in GTR and contract files, but was not requested.

In 1992, Lockheed Martin conducted a full and open competition for these services. In August 1992, Lockheed Martin submitted a request for consent to subcontract to Banctec Services Corporation for FY 1993. The consent package contained complete documentation of the competition, including bids from all the responsive vendors and documentation of the bid evaluation process. After review of the documentation, HUD granted consent to Lockheed Martin to award the contract to Banctec. As a result of this recompetition, FY 1993 maintenance costs decreased by over \$2 million from FY 1992 costs. See Tab 7a for the request to consent to subcontract, HUD's review and consent, and comparison of obligations for FY 1992 and FY 1993.

The Banctec subcontract expired at the end of FY 1993, and Lockheed Martin conducted another full and open competition for PC/LAN maintenance services. The solicitation covered FY 1994 and also included 3 one-year option periods for FY 1995 through FY 1997. In July, 1993 Lockheed Martin submitted a request for consent to award the subcontract to Banctec. After reviewing the award documentation, HUD



granted consent (see Tab 7b). By having Lockheed Martin conduct two full and open competitions, HUD substantiated the cost-effectiveness of the maintenance services.

In November, 1996 Lockheed Martin submitted a proposal that offered PC/LAN maintenance pricing through the year 2000 based upon a sole source award to Banctec. HUD evaluated the proposal and determined that it was in the best interest of the Government (see Tab 7c). Banctec is the warranty service provider for Dell computers and are, therefore, able to offer attractive maintenance pricing for the 6,000+ Dell computers purchased by the Department. In addition, Lockheed Martin lowered the per unit maintenance cost for the other PC/LAN maintenance items beginning in January 1997. This update of unit pricing for 1997 saved the Department in excess of \$400,000 (see Tab 7d).

#### Inadequate Monitoring of Inventory on Maintenance Plan by HUD

IG Comment: A review of the systems equipment listing disclosed that old and obsolete equipment is not being removed from the Maintenance Plan Inventory listing.

HUD Response: HUD has issued numerous requests to Lockheed Martin to remove items from inventory for which maintenance is no longer needed. This documentation is readily available and shows the removal of individual and classes of equipment, such as 8088, 286, and 386 computers. The removal of these items alone has saved the Department \$2,908,893 annually (see Tab 8a).

We acknowledge that HUD had paid for maintenance on 14 GRID computers after they were no longer in use. However, the total annual maintenance cost for the 14 GRIDs was very low - \$2,241. When the GRID issue was brought to our attention by OIG, we immediately issued a letter instructing Lockheed Martin to remove them (see Tab 8b). In addition, operating procedures have been revised (see Tab 8c) to require a quarterly review of maintenance rates to identify maintenance categories with very low rates. These categories of items will then be reviewed as candidates for removal. The first review has resulted in the removal of 1,554 items which will save HUD \$275,500 annually (see Tab 8d).

IG Comment: We are concerned about the cost-consciousness of HUD staff since it adds new inventory immediately onto the Maintenance Plan, even though the new products are covered under the manufacturer's warranty. According to HUD staff, they decided that they would not use the warranties, but instead use the Maintenance Plan, because the Maintenance Plan would probably shorten repair time.

HUD Response: Providing an adequate level of service to HUD staff is, indeed, one of the reasons that the Department does not normally take advantage of warranty agreements. The maintenance agreement with Lockheed Martin requires that a technician respond to a problem within four hours and repair or replace the equipment

within 24 hours. This agreement covers staff in all HUD sites throughout the country. The terms and conditions of warranties can vary widely among vendors. For example, some warranties require that an item be packed and shipped back to the manufacturer for repair. This arrangement is inconvenient because it requires staff to pack and ship the unit, to track the item until it is returned, and can leave the user without operable equipment for an extended period of time.

Taking advantage of warranties would also present a significant management challenge. At present, HUD staff call the User Assistance Branch in Headquarters to report equipment problems. The User Assistance Branch then dispatches the call to Banctec via an automated system - i.e. they have "one-stop" service for equipment repairs. In order to take advantage of warranties, the User Assistance Branch would need to determine whether an item was still covered by a warranty, and if so, how to request the service. They would need to know the date the item was purchased (and possibly the purchase order number), the period of warranty coverage (which varies from manufacturer to manufacturer), the warranty provisions (e.g. onsite repair vs. return to manufacturer), and how to contact the warranty provider. In FY 1996, we ordered over 67,000 items of equipment. Maintaining this information on this volume of items would be virtually impossible.

HUD did evaluate the use of warranty service for Dell computers because Banctec is the warranty service provider for Dell. (See Tab 9.) We concluded that use of the warranty service was not feasible for several reasons:

- it required each user to be at the workstation and on the phone with the vendor's technician to describe the problem.
- it required users to receive FEDEX deliveries of spare parts.
- non Dell components, such as Madge token ring cards, are usually installed in the PC and would not be covered by the warranty.
- use of the warranty would require HUD staff, rather than Lockheed Martin, to monitor Banctec performance under the warranty and resolve problems.
- The warranty service did not conform to HUD's 4/24 hour service levels.

#### Annual Reevaluation of Contract is Not Being Performed

Every six months LMC's overall performance is formally evaluated by a HUD Performance Evaluation Board (PEB), the members of whom are the GTMs, which is chaired by the HIIPS GTR. Evaluation results of the PEB are documented in an Award Fee Report and the overall evaluation determines the amount of profit LMC earns for all cost-reimbursement activities under the Contract. Upon completion of that report, the

GTR discusses its findings with LMC management.

In addition, there are regularly scheduled oversight meetings between HUD and LMC managers, including: monthly Prime Contract Reviews (PCR); biweekly Configuration Control Board (CCB) meetings; weekly QA Status Reviews; daily Computer Operations morning status meetings; periodic Contract negotiation sessions; periodic new technology briefings; and periodic GTR/GTM on-site visits to HIIPS facilities.

The auditor misunderstood the FAR requirement regarding "reevaluation." FAR 17.207(c) lists the conditions that must be met to exercise an option. These conditions do not require that alternatives to exercising the option be considered each time an option is exercised, provided that certain conditions are met. It also provides that the factors considered should take into account the Government's need for continuity of operation and potential costs of disrupting operations.

IG Comment: There are six remaining option years on this contract and HUD as already obligated over \$504 million of the original contract life estimate of \$525 million. If the remaining six options are exercised, the total contract could exceed \$1 billion.

HUD Response: The original Contract life estimate of \$525 million was based on the then known baseline using present value dollars and plans for technology improvements at HUD. Since that time there have been major additional technology improvements in response to HUD's Management Reform efforts:

- rehosting of critical housing application systems, including SAMS, SFMNS, HECMS and DCAMS
- major upgrades to the HDS and Unisys host computers needed to handle growth in processing requirements
- installation of new telecommunication networks to handle additional data traffic
- installation of a full Internet capability
- installation of the HUD Television Network
- installation of a videoconferencing network

These technology improvements were not scheduled in the original contract baseline and thus were not included in the original estimate of life cycle costs. Also excluded from the original baseline was the contract value of all Delivery Orders. Thus, when these items are excluded, the amount obligated to date is \$420.8 million (see Tab 11).

#### **Management Recommendation:**

**As demonstrated above, the IG's analysis of Lockheed Martin is replete with factual errors, a failure to review available files, and failure to review**

**relevant facts. This failure by the auditors to review all relevant evidence results in the draft audit findings lack credibility, balance and completeness. The section should be deleted in its entirety, or at a minimum substantially revised to reflect the above information. See, GAGAS 3.4, 6.46, 6.9, 7.51.**

## National Conference of States on Building Codes and Standards

### Scope of Work Exceeds Federal Requirements

Contrary to the IG report, the scope of work performed by the contractor does not exceed Federal requirements as established in the Federal Regulations and the Act. Title VI of the National Manufactured Housing Construction and Safety Standards Act declares that its purposes are: to reduce the number of personal injuries and deaths, the amount of insurance costs and property damages resulting from manufactured home accidents, and to improve the durability and quality of manufactured homes. The contractor's scope of work fully considers the inclusion of these purposes in its review and inspection activities, which assist HUD in adequately administering this nationally preemptive program. The auditors should have properly interpreted and understood the statutory authority of the manufactured housing program. Their failure to do so undermines the credibility of their findings. GAGAS 3.4, 6.9.

### **Management Recommendation:**

**The auditor failed to understand Title VI. The section should be deleted.**

### Competition Being Hindered

The audit report states that the contract requirement has "a history of lacking competition." In fact, this requirement has been competed using full and open competition (including a synopsis in the Commerce Business Daily) for several renewals of these services, but few proposals are received. This may be due to many factors, including the complexity and nationwide nature of the work, the knowledge and engineering skill required related to housing and building standards, and the expertise the incumbent contractor has built over many years of performing the work. Therefore, new offerors may be reluctant to invest the necessary resources to submit a proposal if they believe the incumbent will be hard to overcome. However, far from wishing to limit the competition, both the program office and OPC have been concerned about the lack of serious competitors to NCSBCS and have taken affirmative action to stimulate more competition. For example, in the solicitation for Contract # 18141, the evaluation criteria were drafted in such a way that firm need not have specific manufactured housing or manufactured housing code experience but could demonstrate the relevance of related experience. It should be noted that the Association for Regulatory Reform represents the manufactured housing industry.

The audit report has already stated that OPC is taking the additional step of seeking industry comment on the next solicitation in an effort to stimulate competition.

### **Management Recommendation:**

**The IG report should be revised to incorporate these facts.**

Inadequate Financial Systems

Contrary to the IG's position, financial controls regarding contractor drawdowns through the Voice Response System are adequate. Procedures involve HUD receipt of a drawdown statement (HUD Form 27053) sent by the contractor's comptroller to the finance office, with a copy to the GTR. These Forms are then available for comparison with the financial information submitted in the contractor's monthly financial report to the GTR. While the contractor's billing cycle does not always coincide with their drawdowns, that does not constitute a "circumvention" of HUD's systems controls by the contractor.

**Management Recommendation:**

**Again, the auditor apparently does not understand the relationship between billing cycles and drawdowns. The section should be deleted.**

## **National Loan Servicer, Inc.**

### Overcharging By NLS

A March 24, 1989 audit report disclosed that under Contract 14753, NLS inflated its performance levels to improperly earn incentive fees totaling \$119,402. The Contractor was notified in writing and directed to bill at the lowest incentive rate specified in the contract. Since it was argued that the incentive language in the contract may have led to some of the inflated performance levels, the contract language was subsequently modified.

The \$514,847 is the net effect from the establishment of multiple overhead rates from 3 different cost centers maintained by NLS in Fiscal Year 1986. The applicable contract is HC-10732. Through a final decision of the Contracting Officer, it was requested that the \$514,847 be repaid to the Department. NLS disputed the amount. The "Dispute" process ran from the time the final decision letter was issued in July 1989, until initial notification in April, 1995, that NLS had filed for bankruptcy.

### Inaccurate Data on Contract Maintained by HUD

The audit report states that modifications 1,2,3, and 6 through 10 are missing from the database. In fact, all 27 modifications are entered in the database. There are numerous errors, however, including obligations being incorrectly recorded as value changes, and value changes that were not entered correctly. Some of these are in very large amounts, usually over \$3 million each. The **net** result of the errors is that the contract value is overstated in the MIS by \$601,226, showing \$129,485,491 instead of \$128,884,265. The contract obligation is understated in MIS by \$3,273,000, showing obligations of only \$125,513,265 instead of \$128,786,265.

### Contracted Work Products Not Adequate

The statement made by OIG is essentially correct. In consultation with the program office, CDSI (the follow-on contractor), disclosed that there was information in the Section 312 loan portfolios that was either missing, incomplete or unavailable for a variety of reasons. Twenty of the initial 86 cases cited in the audit had been satisfactorily resolved. To the best knowledge of this office, NLS continued in its effort to correct deficiencies until its resources were exhausted.

### Close-Out Audit Never Performed

A final audit was requested on 7/16/97.

### **Management Recommendation:**

**The IG report should be revised to reflect the above information.**



## **The Nickerson Group**

### Adequate Competition Questioned

The IG report supplies no documentation to support the case for a lack of competition. All firms had an equal opportunity to compete for this contract according to U.S. Department of Housing and Urban Development's Procurement Policy and Regulations.

According to the Nickerson Group's Technical Proposal, they formed their team of subcontractors and consultants based on their strengths and ability to respond to future task orders related to the National Homeownership Strategy. HUD wasn't in any way involved in their selection process.

The Source Evaluation Board followed proper procedures in developing the competitive range, and scoring was based on the subjective opinion of the evaluators. The Board unanimously decided that the proposal submitted by the Nickerson Group was determined to be the sole technically acceptable offer and in the competitive range based on its strengths and overall technical score of 91 points out a possible 100.

A debriefing was held with KPMG Peat Marwick hosted by Jim J. Park, the chairperson of the SEB and Government Technical Representative, and Constance V. Chesley, the contracting officer. KPMG Peat Marwick did not protest the SEB's evaluation.

According to the evaluator's scoring sheets, KPMG Peat Marwick's overall average score was 71 out of a possible 100 points. This score was considerably low. It was agreed that based on their proposal, due to some glaring weaknesses, especially their lack of community-based expertise, weak understanding of trade associations, and insufficient staff skills dealing with trade associations and non-profits, they were not capable of managing the contract.

As stated in the final report for the procurement of technical assistance to the Department in implementing phase three of the National Homeownership Strategy, from Jim J. Park, Chairperson of the SEB and Government Technical Representative to Annette Hancock, Contracting Officer, Program Support Division; our initial \$247,000 cost estimate for RFP 18512 Task Order was low. We didn't anticipate the dramatic growth and success of the National Partners in Homeownership effort, and as a result, the added demands. Due to strong national interest, the Partnership has approved 60 local partnerships across the country, in addition to the 58 national partners, currently being managed by the contractor. Continued growth and interest is expected. The demand for our National Summit held in Washington D.C., was so strong, seven regional summits were held throughout the summer.

### **Management Recommendation:**

**There is no factual support for the IG conclusion which seems based on a misunderstanding of the procurement process. It should be deleted. See, GAGAS 3.4.**

#### HUD Paid for Services Without Benefit

Contrary to the assertion in the IG report, HUD did not pay the Nickerson Group \$285,000 to organize the Summit. In Task Order 3, HUD requires that the Nickerson Group fulfill many tasks, including: development of a workplan, implementation of partnership activities, creating local partnerships, preparing keynotes and other publications, identifying and assisting new partners, organizing meetings, and planning the National Homeownership Summit and Week.

In late spring, the Department determined that a national homeownership summit based in Washington, DC was not the most effective means of reaching out to housing providers across the nation. The initial plan was to conduct a large summit in Washington, DC to be followed by a modest homeownership week in communities across the nation. The final plan adopted in late spring was to cancel a DC-based summit and create a more cost effective and highly visible "National Homeownership Week" that would take place in literally hundreds of communities across the nation. Such a Homeownership Week would put the focus on emerging local homeownership partnerships, be more visible to prospective public and private participants (lenders, builders, real estate professionals, nonprofits), and be more responsive to the needs of first-time homebuyers.

National Homeownership Week became a resounding success. More than 600 events were conducted during the Week, including more than 80 homebuyer fairs, 100 seminars and workshops, more than 80 elected official proclamations and over 50 open houses. In addition, cancellation of the Summit and focus on the Homeownership Week resulted in a savings of more than \$200,000 in contract costs.

#### **Management Recommendation:**

**The IG comment is factually incorrect and should be deleted.**

#### Possible Conflict in Hiring Subcontractor

There is nothing inappropriate in firms subcontracting with one another on different efforts. Aspen's direct experience in planning and managing the first National Summit was a relevant factor for the Nickerson Group to consider in awarding them the subcontract.

#### Questionable Oversight and Monitoring

Throughout the pre-award phase and months into the post-award phase of this contract, the Government Technical Representative was Jim J. Park. Jim J. Park left the Department to pursue other opportunities, and Richard Greenfield was designated GTR. The IG interviews took place shortly after the transition of GTR responsibilities. At that time Richard Greenfield was enrolled for future GTR training, as explained to the interviewer.

The GTR has maintained adequate information evidencing the contractor is performing required tasks. The GTR requested a **current** status of deliverables for the interviewer. It was explained that information was still in transition. The GTR meets regularly with the contractor to discuss the status of deliverables. In addition, regularly scheduled briefings are held with the FHA Commissioner to discuss the progress and issues of the National Homeownership Strategy.

**NYMA, Inc.**Contractor Performing an Inherently Governmental Function

IG Comment: Work being performed by NYMA is an inherently governmental function; the contractor is performing the same functions as HUD staff; is attending staff and technical meetings; is taking assignments and direction from HUD Managers; and is doing work on HIIPS that HUD staff should be doing.

HUD Response: NYMA is not performing the same functions as HUD staff. HUD staff are monitoring and managing the HIIPS Contract, while NYMA is providing work support under HUD's technical direction. While NYMA staff participate in technical meetings, they do not attend HUD staff meetings, nor do they do any of the technical and management tasks that are HUD's responsibility. NYMA is a work-support contractor to HUD on the HIIPS program, which is very large and needs that support. They do not sign contract documentation and do not make any decisions affecting management of the Contract.

According to the guidance provided in Appendix B of Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, "Inherently Governmental Functions", none of the items mentioned by the OIG in this finding are exclusively governmental activities. We're also puzzled by the OIG's assertion that "making suggestions" is an inherently governmental function, and something that "only HUD staff should be doing". The intent of the NYMA contract is to provide technical support to HUD. "Making suggestions" would seem to be an appropriate role for the contractors and is referred to in FAR 7.501(b) as an activity that is usually **not** inherently governmental. Again, the auditors apparently do not understand relevant OMB and FAR guidelines on determining what are inherently governmental functions or when an employer-employee relationship exists. See, GAGAS 3.4, 6.46.

**Management Recommendation:**

**The IG comments are unsupported by the facts, and frankly, bizarre. This section should be deleted.**

Contract Created an Employee/Employer Relationship

IG Comment: The contract creates an employee/employer relationship per guidance in Handbook 2210.3. Contractor is performing services for which HUD does not have the authority to procure.

HUD Response: NYMA employees working on HIIPS are managed and evaluated by the Contractor, not HUD. They perform work-support tasks only, and may be moved across HIIPS functional areas in order to provide staff support where it is most needed.

They do not rely on supervision by government staff, nor are they all co-located with HUD staff. In fact, a staff of five NYMA employees work full time on HIIPS in a separate office outside the HUD Headquarters. All NYMA employees are supervised daily by a NYMA manager, who reviews and approves their work assignments. The work done by NYMA is not integral to the Office of Information and Technology (OIT) in the performance of its function, but is supportive within the context of HUD's technical direction for the HIIPS program.

The OIG refers to Handbook 2210.3 REV 8, paragraph 6-2 B.6.a, identifying three factors that were identified that constitute the employer/employee relationship. However, paragraph 6-2 B.6.b in the Handbook points out that, "The final determination as to whether the contract establishes an employer-employee relationship rests with the Contracting Officer. This determination *is not based on any single factor or combination of factors. It must be the result of the Contracting Officer's professional judgment considering all factors and their relative importance in the individual case.*" The Contracting Officer has determined that the factors cited by the OIG are not determinative.

#### **Management Recommendation:**

**The IG conclusion is not supported by the facts and should be deleted.**

#### Inadequate Monitoring by HUD

IG Comment: The GTR has never been formally trained and was not aware of over \$328k incorrectly charged to the wrong fiscal year. Prompt Payment Procedures were violated in four instances.

HUD Response: The GTR for the NYMA Contract has over 11 years in the field of contracting and budget management. This experience was gained through previous Federal employment as the Associate Director for Administration with the United States Peace Corps, and through assignment as a Government Technical Monitor (GTM) for the HUD/HIIPS contract. This experience was conveyed to the OIG auditor. Furthermore, he has just completed formal GTR training, and is fully qualified to act as GTR on this contract.

The GTR actively reviews the HUDCAPS fiscal reports every month for this and other Departmental contracts. Every effort is made to rigorously review all invoices and process these documents in a timely manner. Here is information concerning the invoices related to the \$328,000:

Invoice 4121-93-0013: This invoice's charges were correctly distributed by the GTR – citing two fiscal years – and this information was transmitted to the Office of Finance & Accounting. A copy of this transmittal is available in the GTR's invoice file. The GTR will resubmit the original distribution worksheet to OFA and will work with them to

ensure that an appropriate correction is made;

Invoice 4121-93-0021: This invoice was received in the beginning of FY96. Because of delays in processing new fiscal year obligations due to the Continuing Resolution, this charge for FY96 services was applied against the available FY95 obligation. The GTR acknowledges that a revised distribution should have been prepared once the FY96 obligation was made. The GTR will prepare a revised invoice distribution worksheet and submit it to OFA so that this adjustment can be made;

Invoice 4121-93-0022: This invoice's charges were correctly distributed by the GTR – applying the invoice against the FY94 obligation. This information was transmitted to the Office of Finance & Accounting. A copy of this transmittal is available in the GTR's invoice file. The GTR will resubmit the original distribution worksheet to OFA and will work with them to ensure that an appropriate correction is made;

Invoice 4121-93-0023: A copy of the invoice distribution record was not located in the GTR's file. We will investigate this further and will submit a revised distribution if its determined that the original invoice distribution was inaccurately prepared by the GTR.

Invoice 4121-93-0036: The GTR acknowledges that these charges were distributed against the wrong fiscal year. A corrected distribution will be prepared and submitted to the HUD Office of Finance & Accounting.

IG Comment: We also note the four interest penalties charged due to apparent violations of the Prompt Payment Procedures.

HUD Response:

Invoice 4121-93-0018: This invoice was received by the HUD Office of Finance & Accounting on August 24, 1995. However, it was not forwarded to the GTR until September 14, 1995 – over three weeks after receipt by OFA. The invoice was approved by the GTR on September 22, 1995. According to HUDCAPS records, the invoice was processed for payment by OFA in mid-December, resulting in an interest penalty. It appears that the OFA processing delay significantly contributed to the \$1,889.65 penalty.

Invoice 4121-93-0027: The invoice was received by OFA on April 16, 1996, and forwarded to the GTR on April 17<sup>th</sup>. The GTR submitted questions to the vendor, challenging a specific invoice charge. The invoice was subsequently disputed on May 7<sup>th</sup>. The disputed invoice was reviewed and cleared by OPC on May 8<sup>th</sup> and subsequently scheduled for payment by OFA on June 26<sup>th</sup> – approximately 1 ½ months after OPC clearance. It appears that the OFA processing delay significantly contributed to the \$1,188.17 penalty.

Invoice 4121-93-0034A: This invoice was received by OFA and forwarded to the GTR on November 14, 1996. It was approved by the GTR on December 2, 1996, and

scheduled for payment on December 25, 1995. This processing schedule resulted in an interest payment of less than \$16.00;

Invoice 4121-93-0034B: This invoice was received by OFA and forwarded to the GTR on November 14, 1996. It was approved by the GTR on December 2, 1996, and scheduled for payment on December 25, 1995. This processing schedule resulted in an interest payment of less than \$13.00.

**Management Recommendation:**

**The IG report should be revised to reflect the above facts.**

Reliance on Contractor

IG Comment: HUD pursued no other avenues for this responsibility other than continuation of the NYMA Contract.

HUD Response: The NYMA contract was awarded under the 8A program with the understanding that the option years would be renewed under that program unless there was inadequate contractor performance. In addition, there is no need to pursue other avenues as this is a work-support contract, and there are no technical functions performed by the contractor that need to be "learned by HUD." HUD is not at a disadvantage in using this contract and could obtain similar kinds of work-support from other contractors. HUD has not seen any advantage in hiring additional staff to do this work, especially in light of the Department's goal to reduce government staffing.

## Price Waterhouse

### Contractor Purchased Equipment

This statement is not accurate. The contractor used contract funds to purchase a laptop computer for each of 10 generalists hired under the contract. When the generalists were terminated by Price Waterhouse in March of 1997, ownership of the laptops reverted to the Department in accordance with the standard terms and conditions of the contract. Generally, the lease or purchase of equipment for contractor employees' use during performance of a contract is neither improper nor imprudent as long as the need for the equipment is properly justified and it is being used for fulfillment of the contract requirements. Secondly, there is nothing contractually inappropriate by allowing the application of an additional charge (e.g.G&A) to the acquisition cost of authorized equipment purchases as long as such application is consistent with the firm's accounting system and indirect pool structure.

### **Management Recommendation:**

**The section is factually inaccurate and should be deleted. See, GAGAS 7.54.**

### Inadequate Contract Administration

According to the file documentation, each task order issued under this contract is supported by an independent government cost estimate. No detailed estimate is required to establish the ceiling amount of an indefinite quantity contract. The work carried out by Price Waterhouse consultants on an on-call discontinuous basis has since been conducted by ICF under the provisions of its award. Work being carried out by Price Waterhouse was not shifted, but new requests made for contractor assistance were responded to by ICF. Even if the IG report comments in this section had been accurate, they would not constitute "inadequate contract administration."

### **Management Recommendation:**

**The comments are factually inaccurate and should be deleted.**

### Excessive Modifications Were Costly

Contract modifications were not used as a means of avoiding competition for additional work. Section B of the contract provides for the maximum ordering authority to be increased from \$8M to \$10M as long as the ordering period has not expired. All Task Orders were placed within the established ordering period and within the maximum ordering authority allowable.

The IG comments about the original amounts for Task Orders 7 and 9 are very



misleading. In particular, Task Order 7 and 9 were issued as Unpriced Orders pursuant to Section I, Clause 2452.216-75 of the Basic Contract, "Unpriced Orders", to allow the Contractor to begin working immediately pending the execution of a supplemental agreement definitizing costs and all terms and conditions. The amounts of \$100,000 and \$250,000 were not-to-exceed dollar amounts obligated to allow the contractor to incur costs as they begin the work pending the definitization. The Government's estimate for Task Order 7 requirements was approximately \$4M, and the Government's estimate for Task Order 9 requirements was \$2.25M. Each Task Order was subsequently definitized, by modification.

#### Contractor Established Scope of Work

There is no file documentation to support that the contractor, rather than HUD, appears to have dictated the scope of services to be performed under modification number 10 to Task Order 007. The OIG report included a quotation from a single short memorandum that appeared to suggest that "the contractor suggested to HUD (that it ) modify TO#7 because '..a complex new statement would lead to a difficult cost proposal and negotiation...'" (Perry Pocros, PW, 8/14/96). A review of the full file, however, shows that this short memo is of no moment and had no impact whatsoever on HUD's plans or pricing of Task Order No. 7. The GTR's memos of 5/15/96 and earlier show that the Department had decided much earlier than August to modify T.O. No. 7 and had priced the task at a cost of more than \$7 million to carry out all the work it wanted done but compromised and reduced the total level to the \$5.5 million the IG report noted. The full record clearly shows that the Department was in full control of this task order from the beginning and that it, not the contractor, dictated the scope and cost of services to be performed.

#### **Management Recommendation:**

**The section is inaccurate and should be deleted.**

**Ralph G. Moore & Associates (RGMA)**

IG Comment: It appears that the training materials under this contract were never reviewed.

HUD Response: This statement is untrue and demeaning. It appears that the auditor made this finding based on the fact that she was given several unopened pieces of information. One simple question to the GTR would have resolved the issue. The training materials provided to the auditor were one of three (3) complete sets of materials (as required under the contract). Since the set of materials given to the auditor was the exact same set that had previously been reviewed and approved by the GTR, so there was no need to open the materials given to the auditor. Moreover, all training materials had been previewed and revised based on staff input provided by the Chicago office at a training session utilizing the products from this contract. The GTR review of all documents delivered under this contract found them to be of excellent quality and in full compliance with contract requirements.

**Management Recommendation:**

**The finding is unsupported by any facts and should be deleted.**

IG Comment: The GTR was enrolled in an executive development program and did not monitor the contract during that time.

HUD Response: This contract was monitored in its entirety throughout the full term of the contract. At no time did the GTR fail to monitor this contract and perform her responsibilities. The fact that the GTR was enrolled in an Executive Development Seminar during the final five (5) months of the contract has absolutely no bearing on this contract. All GTR responsibilities for this contract (with the exception of the final closeout) continued to be carried out efficiently and expeditiously. The GTR was able to do this by conducting long distance conference calls with the contractor from her own residence, on her own time and at no expense to HUD to address program issues, etc. On two occasions she interrupted her detail to another agency to meet with the contractor to review and advise on changes to training documents. On another occasion, while assigned to another agency outside of the metropolitan area, the GTR prepared and hand delivered to the Office of Procurement and Contracts a request for an expedited payment following the disruption in the contractor's voucher processing because of the lengthy government furlough.

Vouchers were processed, quarterly progress review meetings were held with the contract specialist, contractors and sub-contractors and vouchers and work products were reviewed, acted upon and processed according to GTR requirements. Evidence of processed vouchers, quarterly progress meetings, correspondence concerning revisions to contract documents/tasks were all provided to but overlooked by the

auditor of record. Copies of same are available in the GTR file for this contract.

**Management Recommendation:**

**The audit report is factually inaccurate. The inaccuracies could have been avoided had the auditors conducted sufficient interviews with program officials. The comment should be deleted. See, GAGAS 3.27, 3.4, 6.46.**

IG Comment: There has been no final closeout of the contract.

HUD Response: This statement is true. However, this GTR will complete the final Contractor's Performance Report (Form HUD-24002) within the next 30 days.

Contract Specifications Not Met

This statement is not true. The contractor, RGMA, successfully completed each task and produced every deliverable required under this contract. The GTR assigned to the contract took steps above and beyond any reasonable expectations to insure the delivery of the work products and monitor the level of effort required under this contract.

**SOZA & Company, Ltd.**Insufficient Monitoring

The IG comment here pertains to a lack of documentation regarding monitoring the limitations on subcontracting provision of the contract which requires that at least 50% of the cost of contract performance incurred for personnel shall be expended by the 8(a) SBA firm. A review of the invoices maintained by the GTR clearly indicates that the contractor **is** in compliance with the provision. The Office of Housing will advise GTRs to note in the file that part of their invoice review included compliance with the provision.

Inaccurate Data Maintained by HUD

The audit report states that the five modifications shown on the chart for task orders 1 and 2 under contract #18392 were not in the database resulting in an understatement of \$635,963. This is incorrect. All of the modifications shown **are** in the database. In addition, the chart in the report lists incorrect amounts for the actions. The amounts shown for modifications 7 and 8 to task order 1 have their respective amounts reversed, and modification 8 to task order 2 which shows (\$6,514) on the chart in fact resulted in no net change to the order. The listing of (\$6,514) resulted from the auditor's misunderstanding of what modification number 8 was doing. It was summarizing underrun amounts against increased work being added with the modification, showing the offset of one against the other. After the offset, \$6,514 in excess funds were left, but they were not deobligated from the order, nor was the order value decreased. Work was still ongoing.

There were two data entry errors in contract value, one a typo in value where \$202,851 was entered instead of \$292,851 (the same as obligation in that case), and another where value was entered as \$310,000 (the same as obligation) instead of \$373,023; total adjustment to value would be an increase of \$153,023. The corrections will be made.

**Management Recommendation:**

**The section is factually incorrect and should be deleted. See, GAGAS 7.54.**

**Strategic Mortgage Services, Inc.**Contract Did Not Meet Intended Purpose

We disagree that the intent of HUD's contract with SMS was not met. The purpose of procuring a national contract was to provide local offices with a national appraisal services contractor so that understaffed local offices would not have to undertake tasks associated with implementing their own appraisal services contracts. In our opinion, we believe that this objective has been met.

It was not assumed that the second national appraisal services contract would result in more competitive pricing and lower overall costs to the Department. The first contract had expired, and we wanted to be sure that the local offices had the services of a national appraisal services contractor available for use. The Department's original appraisal services contract HC20000 with TRW/SMS was awarded on August 27, 1990; the duration of the contract was not to exceed 36 months (August 1993). In view of the delay in awarding the reprocurement, the contract was extended pursuant to FAR Clause 52.217-8, Option to Extend Services. In fact, the contract was extended three times through January 31, 1994. In addition, with a program as large as the Single Family Property Disposition Program, a national contract helps to have appraisals performed as uniformly as possible.

The report indicates that the contract did not provide for wider pricing variations based on geographical areas, lower costs to the Department, or result in a decrease in the use of local appraisers. RFP 18150 was designed to give bidders the opportunity to submit pricing proposals that would be more consistent with fees being charged by local sources rather than one standard fee. SMS provided a pricing proposal by Region. The fees indicated on their original proposal were approximately constant throughout all the Regions with the exception being increases in Regions VIII, IX, and X. Oral discussions were held and after several pricing submissions, we were able to negotiate lower fees than those proposed, which resulted in standard fees for all offices with the exception of Puerto Rico, Hawaii, and Alaska.

The draft audit report indicates that since the price per appraisal was not lowered, many local offices obtained appraisal services locally. This is not exactly a true statement. Local offices have always had the option of obtaining appraisals via other sources when the national contract does not satisfy an individual local offices needs, or may not be the most cost-effective means within a particular jurisdiction. Historically, approximately half the local offices utilize the national appraisal services contract, and price is not always the issue for not using the national contract. We did not have a surge of offices dropping the national appraisal services contract because lower prices were not negotiated.

**Management Recommendation:**

**The section fails to state relevant facts and should be revised or deleted.**

Poor Cost Estimates:

It is acknowledged that the GTR could not locate the written support documentation used to estimate the cost of the base year of the contract. However, the cost estimate of \$13,000,000 was established as follows:

The number of acquisitions for FY 93 (63,698) was converted to monthly acquisitions (5,308). Since approximately one half of all appraisals were being performed by SMS, the total monthly acquisitions were divided by two (2,654 or 3,000).

It was estimated that the Department would order approximately 3,000 appraisals from SMS per month during the base year. The cost of an appraisal was estimated to be \$350. Thus, the estimated cost for the term of the contract during the base year was \$13,000,000.

$$3,000 \text{ appraisals} \times 12 \text{ months} \times \$350 = \$12,600,000 \\ \text{(rounded to } \$13,000,000)$$

Appraisal fees were obtained from local offices to assist the SEB in evaluating the pricing proposal. In our opinion, it does not appear ironic that local appraisal prices are lower than the negotiated price with SMS. The national contractor must perform any appraisal ordered. Often times local offices order appraisals from the national contractor in areas that local appraisers are not available. Further, the IG criticism ignores the staff costs that HUD would incur to conduct individual procurements at the local level.

**Management Recommendation:**

**The IG comment is factually inaccurate and misleading and should be withdrawn.**

Cost-Effectiveness of Contract and Periodic Needs Assessments Never Performed

Due to staffing shortages, the Department has the national contract in place and available for local office use in order to alleviate the field from undertaking duties to implement local appraisal services contracts. Real Estate Asset Managers are not normally licensed appraisers and could not provide independent and bona fide appraisals to support listing prices.

Poor Contract Monitoring

The report indicates that HUD did not adequately monitor the contract. We disagree that the contract is poorly monitored and that local offices received no oversight from the GTR. Numerous detailed instructions have been given to the local offices on how to order, monitor, and pay for appraisal services ordered under the national appraisal services contract with SMS. Instructions were included in the following memoranda from:

John J. Coonts, Director, Office of Insured Housing, dated October 26, 1993, April 15, 1994, and November 24, 1995

Courtland H. Wilson, Acting Director, Single Family Property Disposition Division, dated February 28, 1994

Emelda P. Johnson, Deputy Assistant Secretary for Single Family Housing, dated March 8, 1995

Ann Sudduth, Director, Single Family Property Disposition Division, dated May 10, 1995

The GTR has been closely involved with local offices and the contractor involving various issues concerning payments, quality of work, warranty claims, liquidated damages, etc. It would not be practicable for the GTR located in Headquarters to order appraisals, process and review invoices for properties located throughout the country.

Local offices review monthly invoices and approve them to ensure that they are proper before payment. It is unclear as to why the report indicates that "the payment system did not provide adequate feedback to the FOs to ensure that payments to the contractor were proper and the GTR did not review invoices prior to payment."

**Management Recommendation:**

**The IG comment is unsupported by the facts and should be deleted.**

## Youthbuild USA

### Background

The first paragraph in this section makes very broad statements about the purpose and activities of Youthbuild USA (YBUSA). The GTR indicated that the information in these statements was not based on any conversations she had with Kathy Paul of the IG's office who conducted research on the YBUSA contract. As these statements may be read by some as negative, we believe the IG should verify the accuracy and tone of these statements with YBUSA.

The second paragraph in this section describes the HUD contract with YBUSA. There are two factual errors in this section. First, the HUD contract with YBUSA is not to "provide technical assistance to cities..." as the IG report states. By statute, the assistance is to be provided to sponsors of Youthbuild programs and to eligible entities which intend or desire to submit Youthbuild applications. The legislation continues by saying that community-based organizations should be given first priority in the provision of such assistance.

Second, the description of the funding structure under the contract is not exactly correct. The total amount to be awarded under the contract could not be specified at the time the contract was awarded due to the fact that the statute specified that 5% of the amount appropriated under the program should be used for technical assistance. There was no way to know prospectively the exact amount that would be appropriated for the program over a four year period. As a result, the contract was structured with an initial year's funding and future options. The contract structure also provided for funding increases based on the amounts appropriated by Congress.

### **Management Recommendation:**

**These factual errors in the IG report should be corrected. See, GAGAS 7.54.**

### Overpayments by HUD

This statement is not accurate. The reason YBUSA was paid twice for some vouchers is that the Department was changing the way they were paying invoices from the old "write-in" system to LOCCs. As soon as the mistake was pointed out, it was corrected. Only 2 vouchers were involved.

### **Management Recommendation:**

**The section is misleading and should be revised or deleted.**

### Poor Monitoring by GTR



This item is problematic in several respects.

- The introductory paragraph states that the GTR did not "monitor the contractor's grantees." The contractor does not have grantees; only HUD has grantees since HUD makes grants under the program. The contractor provides technical assistance to HUD grantees.
- The contract did not call for the monitoring of the Youthbuild sites. Grantee submission of semi-annual reports is a program requirement, not a requirement of the technical assistance contract.
- It is difficult to understand how the second bullet on page 55 pertains to this audit. It is not the contractor's job to monitor the grantees. Therefore, this is not a contracting issue.
- The third bullet states that HUD has not enforced the contract requirement that YBUSA submit reports of the on-site technical assistance provided to the grantees and notes that as of May 15, 1997, YBUSA had not submitted reports covering the FY 94 and 95 grantees. This bullet also included the statement that "From September 1995 to December 1996, Youthbuild USA averaged seven on-site reviews a month." It is not clear what this statement is intended to convey. If it is meant to relate to reports HUD should have received related to the on-site technical assistance provided by YBUSA, it reflects a misunderstanding on the IG's part. There is no contract requirement that YBUSA provide a report on each site visit they make. Instead, YBUSA is required to provide one closeout report per approved site.
- The fourth bullet addresses the use of consultants by YBUSA. The statement indicates that in the past, HUD had questioned the type of work performed by some of the consultants. This is not exactly accurate. The issue was not the type of work performed by consultants. The issue was the requirement in the contract for HUD approval of consultants. There was confusion over whether a particular dollar threshold affected whether the contractor needed HUD approval and over whether the paperwork requirements related to consultants made sense in a contract of this type where the contractor is constantly using individuals for specific, short-term, relatively low-cost activities. The bullet goes on to state that YBUSA indicated that they would keep HUD informed of the type of work consultants were doing but that HUD did not have appropriate documentation on 22 out of 45 (49%). We cannot determine the source of these numbers nor any context for them.

**Management Recommendation:**

**The IG comments are confused and confusing. The section should be clarified or deleted.**

Products not Completed Timely

This section refers to the contract requirement that YBUSA develop one program manual and six handbooks. It states incorrectly that these documents were to be produced during the two year contract period; they were to be produced over the four year life of the contract.

**Management Recommendation:**

**The IG is comment is factually inaccurate and should be deleted.**