



**U.S. Department of Housing and Urban  
Development**  
New England Office of District Inspector General  
for Audit, 1AGA  
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February 3, 2000

Audit Memorandum  
No: 00-BO-101-0801

MEMORANDUM FOR: Donna J. Ayala, Acting Director, Office of Public  
Housing, 1APH

FROM: William D. Hartnett, District Inspector General, Office of Audit, 1AGA

SUBJECT: Settlement Agreement With Creative Choice Homes, Inc.  
Housing Authority of the City of Bridgeport,  
Bridgeport, Connecticut

We are currently auditing the Housing Authority of the City of Bridgeport (Authority) and became aware of the subject agreement during our review of the Father Panik Village replacement status. In addition, certain payments made by the Authority to Creative Choice Homes, Inc. (CCH) are not in accordance with contract terms and conditions. We are issuing this memorandum in advance of our audit report to provide our recommendations to you so that corrective actions can be initiated. We are recommending that the Authority's request for \$1.8 million in funds for a termination settlement of its contract with CCH not be approved. We also recommend that you require CCH to resubmit invoices supporting \$881,680 of planning cost to comply with contract terms and conditions.

### ***Background***

In 1987, tenants of Father Panik Village filed a class action lawsuit claiming that the Authority had not provided them with decent, safe and sanitary housing. The lawsuit was settled in 1990 when the Authority agreed to replace all 1,063 units at Father Panik Village. In 1993, the Settlement Agreement was modified to complete the replacement no later than March 1997. HUD agreed to provide approximately \$132 million in funds to the Authority for replacement housing

In May 1995, the plaintiffs filed a motion with the Court citing lack of progress on unit replacement. At that point, the Authority had replaced only 260 units of low-income housing. To

resolve the issue with the plaintiffs, the Authority agreed to turn management of the replacement effort over to an outside developer. On March 27, 1996, Creative Choice Homes, Inc. (CCH) was competitively selected to manage the replacement effort. A contract between the Authority and CCH was executed on August 13, 1996. The contract called for CCH to prepare a plan and develop between 350 and 412 units for a total cost not to exceed \$42,262,045. Compensation for CCH was separated into 3 phases, as follows:

Planning Phase	\$ 881,680
Pre-Construction Phase	2,989,060
Construction Phase	<u>38,391,305</u>
Total	<u>\$42,262,045</u>

As of January 17, 2000, disbursements to CCH were:

Planning - From Replacement Funding	\$ 668,862
Planning - From Low-income Operating Reserves	212,818
Pre-Construction - From Replacement Funding	132,331
Construction - From Replacement Funding	<u>819,958</u>
Total Reimbursed at 1-17-2000	\$ 1,833,969
Settlement Funds Requested - From Replacement Funding	\$ <u>1,800,000</u> *
Total	\$ <u>3,633,969</u>

\* The proposed settlement amount for pre-construction does not agree with amounts actually invoiced by CCH. The Authority included \$1.3 million in its settlement proposal while the amount invoiced by CCH is \$1,362,438, a difference of \$62,438.

At January 17, 2000, CCH had accomplished the following:

Low-income housing units Completed	20
Low-income housing units Under Construction	10

On November 10, 1999, the Authority submitted to your office, for review and approval, a proposed settlement agreement to terminate a portion of the contract with CCH. The cover letter stated that the Authority was seeking the release of \$1.3 million owed for completion of the Neighborhood Plan and an additional \$500,000 for mutually ending its relationship with CCH.

The scope of our review included:

- Review of the contract executed on August 19, 1996 between the Authority and CCH .
- Review of all invoices paid to CCH.
- Review of the Authority, CCH, and HUD files and records.
- Interviews of Authority, CCH, and HUD officials.

### ***Audit Results***

The Authority's request for \$1.8 million in funds for a termination settlement of the contract with CCH should not be approved as documentation submitted by CCH to support the amount does not in conform with the contract terms and conditions. In addition, you should require CCH to resubmit invoices for planning cost totaling \$881,680 to comply with contract terms and conditions. Details on these matters are included in Attachment A.

We recommend that you take action to assure development funds are not improperly disbursed for costs that are not reimbursable under the contract. We are also recommending that you determine whether or not the Contract with CCH should be terminated. You should provide the Authority assistance in settling any claim that CCH might bring against the Authority. Your staff should review future invoices submitted by CCH to assure the costs are allowable under the contract.

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

If you have any questions, please contact our office at (617) 565-5259.

# Finding 1

## *Request To Pay \$1.8 Million In Settlement Costs Is Not Adequately Supported*

On November 10, 1999, the Housing Authority of the City of Bridgeport (Authority) sent your office a letter requesting release of \$1.8 million of Father Panik replacement funds for a termination settlement of the Father Panik development contract with Creative Choice Homes, Inc. (CCH). The Authority's request states that \$1.3 million is owed for completion of the Neighborhood Plan and the \$500,000 is a settlement claim for mutually ending the contract relationship while providing for completion of in-process construction. Our review disclosed that the costs are not adequately supported and should not be approved.

Authority officials stated to us that the basis for the amount related to the Neighborhood Plan completion is a \$1,362,438 invoice submitted by CCH to the Authority on June 1, 1999. The invoice states that CCH is billing for pre-construction effort for the period of October 1997 through April 1999. This differs from the Authority's November 10, 1999 cover letter to you that states the amount is for completion of the Neighborhood Plan. The June 1, 1999 invoice has not been paid by the Authority. The Authority's finance director stated that she had not authorized payment of the invoice as it did not meet the terms and conditions of the contract (Contract) between CCH and the Authority. The Finance Director, stated that Section 7.2 of the Contract requires CCH to list work product and the date the work was completed in order for pre-construction costs to be paid and that CCH's invoice did not meet those requirements.

The Authority's Executive Director, agreed with the Finance Director's assessment that CCH's June 1, 1999 invoice did not meet Contract requirements. The Executive Director stated that CCH had been delayed in completing the planning phase of the Contract because all of the parties involved in the planning process could not agree on what should be done. The Executive Director stated that CCH had been required to attend meeting after meeting at which nothing was accomplished. This delay caused CCH to incurred planning expenses in excess of Contract limitations, therefore, CCH had submitted the June 1, 1999 invoice for pre-construction expense to avoid the contract ceiling on planning. The Executive Director further stated that in order to avoid a lawsuit by CCH against the Authority and HUD, it was necessary to pay CCH the \$1.8 million. The Executive Director also said that it is necessary to remove CCH from the project as the community of Bridgeport had lost faith in CCH's ability to complete the project.

We discussed the Settlement Agreement with the Chairman of the Board of Commissioners on January 21, 2000. The Chairman stated that the Board was unaware that the \$1.3 million for completion of the neighborhood plan had not been paid to CCH. He stated that the Board had

approved only an additional \$500,000 to be paid to CCH. The Chairman stated that another \$1.3 million payment to CCH could not be justified based on what had been accomplished to date. On January 26, 2000, the Chairman stated to us that he had ordered the Authority not to pay CCH any settlement cost until the settlement agreement could be discussed at the February 12, 2000 Board meeting.

The Settlement Agreement should not be approved for the following reasons:

- Section 10.4 of the Contract requires that CCH notify the Authority in writing of any breach of the Contract to allow the Authority 30 days to take corrective action. CCH has not notified the Authority of any breach of the Contract regarding additional planning effort. Without the required notice of default, CCH has no basis to file a lawsuit. In our opinion, paying \$1.8 million to avoid a possible lawsuit that does not appear to have merit is unreasonable.
- The Executive Director's conclusion that CCH was delayed because of numerous meetings and the parties involved in the development could not agree on a plan is refuted by the Contract. CCH was unable to obtain approval of a Development Plan until May 1998 for one Bridgeport neighborhood and December 1998 for the four remaining neighborhoods because CCH did not prepare the Development Plans in accordance with HUD's overriding need requirements discuss in Section 3.2 (b) of the Contract. We do not dispute that CCH attended many meetings and that approval of the development plan was difficult to obtain, however, Contract terms specifically require CCH to attend meetings and obtain agreement among the parties. Section 1.4 of the Contract state " In the event the Authority declines to approve the proposed Development Plan, the Preferred Developer shall modify the proposed plan and resubmit the plan as many times as necessary to obtain the Authority's Approval. Section 3.2 (h) of the Contract states that CCH shall "Establish as a specific portion of the plan a procedure which the Preferred Developer shall use to coordinate activity among the Authority, HUD, the City, CLSI, Connecticut Housing Finance Authority, ("CHFA") and such other governmental agencies as may be involved in the development of the Project." Section 3.2 (k) of the contract states that CCH is required to establish a schedule and agenda for monthly meetings with all involved parties to check progress. Section 3.2 (j) states that CCH shall "Undertake all necessary measures on a timely basis to facilitate any necessary HUD review and approval for specific housing development sites...". Based on the above Contract terms, CCH was not delayed or forced to incur costs for work not contemplated under the Contract.
- Section 1.4 of the contract between CCH and the Authority states that "In no event shall the Authority permit the Preferred Developer to continue into the Implementation Phase of the Project unless and until the Authority, CLSI, and HUD approve the Development Plan for the Project." Further, Section 1.4 states ..."In the event the Authority declines to approve the proposed Development Plan, the Preferred Developer shall modify the proposed plan and resubmit the plan as many times as necessary to obtain the Authority's Approval. In no event

shall the Authority be obligated to pay the Preferred Developer for services relating to or arising from the preparation of the Development Plan any more than the lesser of Eight Hundred Eighty One Thousand Six Hundred and Eighty Dollars (\$881,680), or so much of the fees as may actually be billed for this work.” (emphasis added). As CCH has been paid the entire \$881,680 for planning, providing CCH additional funds for planning would violate the Contract terms.

- The \$500,000 requested to mutually end the relationship is not supported by invoices from CCH and is not provided for in the Contract. The Executive Director stated to us that the \$500,000 is reasonable in that it avoids the risk of a lawsuit from CCH that the Authority and HUD might lose at significant cost. CCH sent the Authority and HUD letters on January 5 and 7, 2000, respectively, threatening to file a lawsuit unless payments under terms of the proposed settlement agreement were made within seven days. This is not in accordance with Section 13.1 of the Contract which requires that disputes be settled by Arbitration. Regardless of the possibility of a lawsuit or request for arbitration by CCH, the fact remains that the \$500,000 in proposed settlement cost is not support by invoices and is not provided for in the Contract, therefore, the amount should not be paid to CCH.

In addition to the costs involved, there is the issue of should CCH be terminated and progress on replacing the Father Panik units. The Authority obtained comments from its Attorney on the proposed settlement agreement.

Page 2 of the Authority Attorney’s comments, dated December 7, 1999, states that “...Based on the facts provided to me, and summarized in Section I of this letter, there do not appear to be grounds for the Authority to Terminate CCH based on a declaration of default under (2), (3), or (4) above. The only potential grounds for declaration of default by the Authority would be under (1) or (5) above. It is clear the CCH has not met the Development Schedule...”

The Authority believes that CCH has performed as best it can, and it could not meet the development schedule because the parties involved could not agree on a plan. The Executive Director had no verifiable support for her contention that the community had lost faith in CCH. The Authority has not performed a cost analysis of continuing on with CCH versus termination. The Authority was authorized the use of \$1,390,000 in replacement funds to administer the CCH replacement process. As of September 1997, the Authority had incurred expenses for and drawn down all of the \$1,390,000 in administrative funds and had reassigned the personnel administering the replacement process. If CCH is terminated, the Authority would have to manage the process with existing staff or obtain approval for the use of replacement funds to hire additional staff. CCH is currently under contract with specified limitations on cost. You need to determine if it would be more cost effective to use CCH to manage the process.

The Authority could not provide us with a detailed plan on how it intends to complete the replacement on a timely basis once CCH is terminated other than to say it would continue the replacement process on a site by site basis at scattered sites as it had prior to CCH being hired.

This appears to be unacceptable to the plaintiffs who filed the lawsuit that resulted in the Contract with CCH. The Authority obtained comments from its Attorney on the proposed settlement agreement. Page 3 of the Attorney's comments state: "...A final factor which must be kept in mind when making decisions regarding settling with CCH is the Judgment in the Concerned Tenants of Father Panik Village lawsuit. There is a Settlement Agreement which was approved by the Court and which binds the Authority and HUD. Further, the Authority and the plaintiffs also signed a Memorandum of Agreement, as required by HUD, relating to the Father Panik Village Replacement Housing Plan. The Settlement Agreement and the Memorandum of Understanding provide for certain time frames for replacement housing which have not been met. Connecticut Legal Services ("CLS") has indicated on several occasions it will return to court to seek enforcement of the Settlement Agreement and to seek legal fees reimbursement for what it alleges is the Authority's failure to meet its obligations under the Settlement Agreement. The Authority has been working with CLS to prevent any further legal proceedings. However, the Authority needs to take all reasonable steps to move forward as quickly as possible with the replacement housing program or face the real possibility that the Authority and HUD will be back in Federal Court in the Concerned Tenants matter."

Regarding the above comments by the Authority's Attorney, the Executive Director stated that Connecticut Legal Services, Inc. CLSI should not be allowed to dictate the replacement process as it had in the past. The Executive Director believed that the Authority had done a good job in replacing units prior to CCH being hired. The Executive Director further stated that HUD had not backed the Authority in its past disputes with CLSI, therefore, the Authority had been forced to hire CCH which resulted in the current lack of process. The Executive Director went on to say that the Authority believes that if CLSI brings another lawsuit, the Authority will be able to demonstrate that it can complete the replacement process in a timely manner.

The Authority has not provided you with adequate support as to how it can manage the replacement process efficiently and economically. The Authority has not demonstrated that it is better equipped to carry out the replacement than CCH given that the replacement is to be carried out on a scattered site basis. Prior to approving the termination of CCH, you need to obtain such documentation.

## Recommendations

We recommend that you:

- 1A Not approve the Settlement Agreement With CCH.

1B Review the Authority's rationale for terminating its Contract with CCH and managing the replacement process from this point forward.

1C Provide the Authority assistance to defend itself should CCH file a lawsuit or request arbitration

1D Instruct the Authority that payments to CCH for pre-construction costs will not be approved until CCH specifies work product produced and the date the work was accomplished per Contract terms.



## Finding 2

### *Invoices Supporting Payment of \$881,640 To CCH For Planning Not In Accordance With Contract Terms and Conditions*

We reviewed invoices submitted by CCH to the Authority to determine if the invoices met the terms and conditions of the Father Panik Village development contract. As of January 17, 2000, CCH had paid the following amounts:

Planning - Paid From Replacement Funding	\$ 668,862
Planning - Paid From Low-income Operating Reserves	212,818
Pre-Construction - Paid From Replacement Funding	132,331
Construction - Paid From Replacement Funding	<u>819,958</u>
Total	\$ <u>1,833,969</u>

#### Planning Invoices

The invoices submitted by CCH for planning were not in accordance with Contract terms in that the invoices did not list work product or the date the work was completed. Therefore, the invoices should not have been paid and CCH should be required to resubmit the invoices to comply with the following contract terms: Section 7.1 of the Contract set forth payment terms. Section 7.1 states: “...The Preferred developer shall submit monthly requisitions for payment in accordance with the terms of the project budget, which requisitions shall be reviewed and, subject to such review, approved and paid by the Authority within fifteen (15) days of receipt. The requisition shall set forth the work product for which reimbursement is requested, the date the work was completed, and the amount requested for the billing period including, without limitation, the Preferred Developer’s overhead and profit...” (emphasis added).

In addition, our review of the Contract disclosed the possibility that CCH was over reimbursed \$817,480 for planning because it has not identified specific sites to be developed. Section 1.4 of the Contract states “...In no event shall the Authority be obligated to pay the Preferred Developer for services relating to or arising from the preparation of the Development Plan any more than the lesser of Eight Hundred Eight One Thousand Six Hundred Eighty (\$881,680) dollars, or so much of the fees as may actually be billed for this work.” (emphasis added). Section 3.2 of the Contract sets forth 13 planning activities under the Development Plan that CCH is responsible for. These activities include (c) Identification of the Properties; (d) Evaluation of the Properties; and (j) HUD review and approval.

CCH has met the requirements under Section 3.2, activities (c), (d) and (j) for only 30 units of the 350 to 412 units to be produced under Contract terms. Therefore, based on our reading of

Section 1.4, CCH is entitled to a substantially lessor amount than the \$881,680 of payments it has received. Exhibit E of the Contract sets forth the allowable Fee for the planning phase. That Fee is \$2,140 per unit. The allowable planning Fee earned would therefore be \$64,200 (30 units times \$2,140). Based on the above, the Authority should recover \$817,480 of unearned planning Fee from CCH (\$881,680 - \$64,200).

The Authority does not agree with our interpretation of Sections 1.4 and 3.2 of the Contract. The Authority believes that CCH met all planning requirements when it gained approval of the Neighborhood Plans from HUD. A letter dated February 6, 1998 from HUD Connecticut Office of Public Housing to the Authority appears to indicate that HUD believes that the planning process is not complete until specific sites for development are approved. The letter states: “. . . HUD is as anxious as all of the other participants in the planning effort to get to the implementation phase of this project. We want very much to avoid confusion about what remains to be done: approval of a plan is not the same as approval of a proposal or set of proposals. We want very much to work closely with you and your staff on making the proposal submission and approval smooth. Please keep in mind that any actual proposal approval needs to be site specific, i.e., must include street addresses. . . .”

As discussed above, CCH should be required to resubmit its planning invoices to show work product and date the work was accomplishment. Once the invoices are resubmitted, the work accomplishments should be evaluated based on the Contract terms in Sections 1.4 and 3.2 to determine if CCH was over reimbursed for planning effort to date.

We take no exception to the \$132,331 and \$819,958 paid to CCH for pre-construction and construction as the invoice met the Contract terms and conditions.

## Recommendations:

We recommend that you:

- 2A Direct the Authority to have CCH resubmit its planning invoices to conform with contract terms and conditions regarding work product produced and date the work was accomplished.
- 2B Review all planning invoices to assure the payments made are in accordance with the terms and conditions of the contract.
- 2C Review Sections 1.4 and 3.2 of the Contract to determine if CCH should be limited to \$64,200 reimbursement for planning work accomplished.

Attachment B

# Distribution

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