



U.S. Department of Housing and Urban Development
Office of Inspector General
Region IX
611 West Sixth Street, Suite 1160
Los Angeles, California 90017-3101
(213) 894-8016
FAX (213) 894-8115

Issue Date November 16, 2006

Audit Report Number 2007-LA-0801

MEMORANDUM FOR: Dominique Blom, Deputy Assistant Secretary, Office of Public Housing Investments, PI

Joan S. Hobbs

FROM: Joan S. Hobbs
Regional Inspector General for Audit, 9DGA

SUBJECT: Corrective Action Verification
Seattle Housing Authority's Moving to Work Program
Audit Report 2004-SE-1004

Recently, the Seattle Office of Labor Relations asked us if the subject audit recommendations regarding the applicability of the Davis-Bacon provisions were closed out. We informed Labor Relations that the Office of Public Housing Investment's Audit Liaison Officer closed the recommendations. Labor Relations responded stating that they believed that the recommendation regarding the application of the Davis-Bacon requirements was appropriate and should not have been closed out.

Consequently, we performed a corrective action verification of HUD's actions in implementing the subject audit recommendations for which the Office of Public Housing Investments had total or primary responsibility and for which final action was stated to be completed. The purpose of the corrective action verification was to determine if the selected audit recommendations were implemented and the deficiencies reported in the audit report corrected.

Scope and Methodology

Our Corrective Action Verification focused on Recommendations 1A, 1B, 1C, and 1D from audit report 2004-SE-1004 on the Seattle Housing Authority's Moving To Work Program, issued May 21, 2004.

To accomplish our objective, we reviewed all available correspondence that led to the management decision on the subject recommendations and all available documentation that the Office of Public Housing Investments provided to the Audit Liaison Officer in support of its

request to close out the recommendations. We interviewed HUD Region X staff from the Office of Public Housing, the Office of Community Planning and Development, and the Office of Labor Relations. We also interviewed HUD Headquarters staff from the Office of General Counsel, Office of Departmental Operations and Coordination, and the Office of Public Housing Investments.

Background

On May 21, 2004, we issued audit report 2004-SE-1004 on the Seattle Housing Authority's Moving To Work Program. Finding 1 of the report noted that the Seattle Housing Authority exceeded the authority granted under the Moving To Work Demonstration Agreement when it disregarded select Moving To Work Program requirements applicable to project-based Section 8 assistance. As a result, project-based Section 8 assistance totaling \$1.5 million was provided with no assurance that: (1) impacts on environmental quality were properly considered; (2) prevailing wages were paid; (3) relocation and real property acquisition requirements were met; and (4) the assistance was the minimum needed to provide affordable housing.

We recommended that HUD's Office of Public Housing Investments take action in accordance with the Moving To Work Demonstration Agreement and:

- 1A. Determine if the Seattle Housing Authority complied with statutory and regulatory requirements for environmental reviews, prevailing wages, relocation assistance, and subsidy-layering reviews for the 11 projects discussed in Finding 1.

If it determined that the Authority did not comply with any or all of the applicable requirements per Recommendation 1A, we further recommended the Office of Public Housing Investments to:

- 1B. Direct the Authority to bring the projects into compliance or repay to HUD any of the \$1,516,464 in Housing Assistance Payments that it received for these projects that are ineligible.
- 1C. Review the award of project-based Section 8 assistance to each project in the Seattle Housing Authority Program for similar non-compliance, and take appropriate corrective action.
- 1D. Take the appropriate corrective or remedial actions under the Moving To Work Demonstration Agreement to ensure future project-based Section 8 assistance complies with statutory and regulatory requirements for environmental reviews, prevailing wages, relocation assistance, real property acquisition, and subsidy-layering reviews.

The September 20, 2004 proposed management decision from the Office of Public Housing Investments stated that: "OPHI has presented the issues to the Office of General Counsel (OGC) for legal determination. The OGC attorney assigned to MTW is in the process of working further with the OGC attorneys assigned to the respective program areas (environmental review, Davis-Bacon, and prevailing wages, relocation, and subsidy layering) in order to finalize a determination. Once OPHI receives a final determination from OGC we will be able to respond in full to the finding and recommendations (1A-1D)."

Our office concurred with the proposed management decision. The Assistant General Counsel, Office of Assisted Housing Division, was the attorney assigned to evaluate our recommendations. The Office of General Counsel October 12, 2004 memo stated:

- The Moving to Work statute does not exempt the authority from compliance with laws outside of the US Housing Act of 1937. The memo recommended that the matter be referred to the Office of General Counsel's Government Sponsored Enterprises - Real Estate Settlement Procedures Act division for review and determination. The Office of General Counsel determined that the Davis-Bacon requirements were applicable to the projects discussed in the finding and recommended also referring the matter to the Office of General Counsel's Government Sponsored Enterprises - Real Estate Settlement Procedures Act division for review and determination.
- Moving To Work participants were subject to the Uniform Relocation Assistance and Real Property Acquisition Act. The memo stated that the finding regarding adherence to the Uniform Relocation Assistance and Real Property Acquisition Act is outside the scope of the Moving To Work demonstration program and should be referred to the appropriate Community Planning and Development staff.
- A subsidy layering review was required for these projects.

In an April 26, 2006 memorandum to Audit Liaison Officer, the Office of Public Housing Investments requested closure of recommendations 1A, 1B, 1C, and 1D. On May 25, 2006, the Office of Public Housing Investments certified that final action had been completed on the recommendations.

Results of Review

Our corrective action verification found that the Office of Public Housing Investments had adequate documentation and justification to recommend closure of the above recommendations for relocation assistance and subsidy-layering reviews. However, we found that there was insufficient justification for the closure of the recommendations regarding environmental reviews and prevailing wages.

Environmental Reviews

According to the April 26, 2006 memorandum requesting the closure of the subject recommendations, the Office of Public Housing Investments accepted the City of Seattle's determination that the provisions of the Project Based Voucher assistance was exempt for environmental reviews pursuant to 24 CFR Part 58.34(a)(4) Public Services. The Office of Public Housing Investments interpreted the October 12, 2004 memorandum from the Office of General Counsel as saying that the Seattle Housing Authority had met statutory and regulatory requirements when it complied with 24 CFR Part 58.

The Office of General Counsel opinion agreed that, if the Seattle Housing Authority complied with 24 CFR Part 58, it met the requirements under Part 983. The Office of General Counsel opinion stated that the authority was not required to comply with 24 CFR Part 50, which was

cited in the audit report, since 24 CFR Part 58 provides guidance for conducting environmental reviews involving Section 8 programs and not 24 CFR Part 50. The Office of General Counsel did not give an opinion as to whether the City of Seattle's determination of exemption under 24 CFR Part 58.34(a)(4) for the subject projects was correct. The Office of General Counsel recommended that this matter be referred to the Government Sponsored Enterprises - Real Estate Settlement Procedures Act Division of the Office of General Counsel, for an appropriate review and determination.

Our review found that the criteria used by the City of Seattle does not apply to all of the projects reported in our audit, since seven of the projects were either newly constructed or rehabilitated. 24 CFR 58.34(a)(4) only applies to "Public services that will not have a physical impact or result in physical changes..." . We discussed this with the Office of General Counsel's Government Sponsored Enterprises - Real Estate Settlement Procedures Act division this office agreed with us noting that there could have been some exclusions from the National Environmental Policies Act under 24 CFR 58.35(a)(3), but the Seattle Housing Authority would still have been required to complete some type of environmental review on these projects prior to construction.

The April 26, 2006 Office of Public Housing Investments memo also noted that the construction work for the seven projects was partially financed from the sale of Low Income Housing Tax Credits obtained from the Washington State Housing Finance Commission, and one project, Meadow View, was part of a Hope VI project. The memo stated that the Meadow View project received a separate environmental review under 24 CFR Part 58 and that the Washington State Housing Finance Commission conducted its own environmental reviews for the remaining six tax credit projects. However, the Office of Public Housing Investments did not make a determination that the review conducted by the Washington State Housing Finance Commission met the requirements of 24 CFR Part 58.

We will not reopen recommendations 1B and 1C, since it appears that the Seattle Housing Authority acted in good faith when it accepted the environmental reviews conducted by the Washington State Housing Finance Commission. However, in order to satisfy the audit recommendations 1A and 1D regarding environmental reviews, your office will need to determine if the environmental reviews conducted by the Washington State Housing Finance Commission were sufficient to meet the requirements of 24 CFR Part 58. If you determine that the projects did not meet these requirements, you should take appropriate actions to ensure that construction future Section 8 projects meet the environmental review requirements of 24 CFR Part 58.

Prevailing Wages

According to its October 12, 2004 memorandum, the Office of General Counsel determined that the notification of award for the projects discussed in the audit finding triggered the Davis-Bacon requirements. The memorandum also recommended referring the matter to the Office of General Counsel's Government Sponsored Enterprises - Real Estate Settlement Procedures Act division for review and determination. Nonetheless, in the April 26, 2006 memorandum requesting the closure of the subject recommendations, the Office of Public Housing Investments stated that no contract or agreement was executed prior to construction, as required by Section 12(a). It further

stated that a Housing Assistance Payment contract was executed after the construction was completed for six of the seven construction projects and therefore, Davis-Bacon did not apply to these projects.

We discussed this issue with the Office of General Counsel's Government Sponsored Enterprises - Real Estate Settlement Procedures Act division and were told they were never contacted by the Office of Public Housing Investments in regards to the October 12, 2004 memorandum from the Office of General Counsel. We were told they agreed with the legal opinion expressed in the memorandum, and that the issuance of the contract award letters triggers the requirement for the payment of Davis-Bacon prevailing wages under Section 12 of the Act. They expressed concern that the use of the award letter, in lieu of the Agreement To Enter Into Housing Assistance Payments, could be used to circumvent the Davis-Bacon requirement for future projects. We were told they had discussed this issue with the Office of Labor Relations and wanted the Office of Public Housing Investments to address this issue and provide additional guidance to prevent other housing authorities from using these award (commitment) letters as a means to circumvent Davis-Bacon requirements.

Since HUD's Office of General Counsel has determined that the Davis-Bacon requirements do apply to the subject properties, you will need to provide additional support for recommending closure of Recommendation 1A. If this support is unavailable or incomplete, you should take appropriate actions in accordance with recommendations 1D. Since the construction of the subject properties is completed, it may not be practical to make a determination of Section 8 assistance eligibility based upon compliance with the Davis-Bacon provisions or take any actions against the contractors for not paying the appropriate Davis-Bacon wages. Therefore, we will not be reopening Recommendations 1B and 1C on this issue.

We are reopening recommendations 1A and 1D regarding environmental review and prevailing wage requirements. In accordance with Audits Management System Handbook 2000.06 REV-3, paragraph 8-1C, the reopened recommendations should have the final action taken within 180 calendar days of the date of this memorandum. Within 30 days, please prepare an action plan with target dates for implementing the corrective action for the reopened recommendations. The plan should be provided to us for review and concurrence.

If you or your staff have any questions please contact me at (213) 894-8016, or Edward Schmidt, Assistant Regional Inspector General for Audit, at (206) 220-6444.

cc:

Larry E. McGhee, Director, Audit Coordinator Division, FMA

Peter S. Schmiedel, Audit Liaison officer, PCE

Harland Stewart, Director, Region X Office of Public Housing, OAPH