



Issue Date	October 11, 2002
Audit Report Number	2003-AO-0001

TO: David Gibbons, Director, Office of Budget, FO

[Signed]

FROM: Sandra G. Elion, Director, Headquarters Audits Division, GAH

SUBJECT: Review of the Financial Activities of the Commission on Affordable Housing and Health Facility Needs for Seniors in the 21st Century

INTRODUCTION

At the request of the Senate Committee on Banking, Housing, and Urban Affairs and House Committee on Financial Services, we completed an audit of the financial activities of the Commission on Affordable Housing and Health Facility Needs for Seniors in the 21st Century (Commission).¹ The objective of our audit was to determine if the Commission expended funds in compliance with Federal laws. To accomplish this objective, we examined financial records, contracts, invoices, travel, and personnel records; interviewed Commissioners and Commission staff; and reviewed laws applicable to the Commission. We are addressing this report to the CFO's office as a means of conveying our audit results and recommendations to the Administrator of General Services under the Federal Advisory Committee Act. This report contains no recommendations to HUD nor is HUD required to follow up on corrective actions taken.

We examined the Commission's financial transactions recorded during FY 2001 through May 2002 for compliance with applicable laws and regulations. The General Services Administration (GSA) provided administrative and financial support services to the Commission on a reimbursable basis. We limited our examination to those transactions GSA recorded for the Commission.

Our review methodology consisted of a random selection of all payment transactions over \$100. We reviewed 41 of 405 transactions meeting these criteria. We noted problems with consultant payments and expanded our review to an additional 26 transactions involving the consultants included in our original selection. Our finding and conclusions apply only to the selected items and may not be representative of all transactions recorded by the Commission.

¹ The Commission was originally called the "Commission on Affordable Housing and Health Care Facility Needs in the 21st Century" when it was established by Public Law 106-74.

We performed our work in Washington, DC, from June to August 2002 and covered the period FY 2001 through May 2002. Our audit complied with generally accepted government auditing standards for performance audits.

Should you or your staff have any questions, please contact me at (202) 708-1342.

SUMMARY

The Commission received \$1,998,900 from HUD's appropriations and expended \$1,337,858 during the period March 2001 through May 2002. The Commission expended \$364,257 in FY 2001 and \$973,601 during the first 8 months (through May) of FY 2002. The details of expenditures are presented in Table 1 below.

Table 1: Expenditures for FY 2001 through May 2002

	FY 2001	FY 2002	Total
Personnel Services & Benefits	\$258,142	\$364,519	\$622,661
Travel & Transportation	27,648	109,945	137,593
Rent, Communications & Utilities	2,967	16,892	19,859
Printing & Reproduction	9,494	2,026	11,520
Consulting	60,780	476,336	537,116
Supplies & Materials	5,136	2,788	7,924
Software/ADP Hardware	90	1,095	1,185
Total	\$364,257	\$973,601	\$1,337,858

Approximately \$661,042 was available to be expended during the remaining 4 months (June through September) of the Commission.

The Commission did not obtain adequate supporting documentation for consulting payments and made prepayments to consultants before services were rendered. These deficiencies occurred because the Commission did not use invoice procedures defined in the Memorandum of Understanding with GSA or follow procurement regulations. As a result, the Commission incurred \$99,000 in unsupported costs.

BACKGROUND

The Commission was established October 20, 1999, by Public Law (P.L.) 106-74 and terminated on September 30, 2002. The Commission's overall purpose was to report on the housing and health needs for the next generation of seniors and offer policy and legislative recommendations for enhancing services and increasing the available housing for this rapidly growing segment of our society. Upon completion of its research, the Commission was to deliver a report of its recommendations and advice to the Senate Committee on Banking, Housing, and Urban Affairs and House Committee on Financial Services by June 30, 2002².

To finance these efforts of the Commission, Congress provided the Commission with specific budgetary authority through HUD's Appropriations Acts for FYs 2001 and 2002. HUD did not provide any oversight over the Commission because the legislation that established the Commission did not require HUD to do so. HUD transferred these funds directly to the Commission. GSA was authorized to provide administrative support services, including accounting and procurement services, to the Commission on a reimbursable basis.

² The Commission delivered a draft report to Congress on June 28, 2002.

FINDING 1

COMMISSION INCURRED UNSUPPORTED COSTS FOR CONSULTANTS

The Commission made payments to consultants without obtaining adequate supporting documentation and made prepayments to consultants before services were rendered. These deficiencies occurred because the Commission did not use invoice procedures defined in the Memorandum of Understanding with GSA or follow procurement regulations. As a result of the payments to consultants, the Commission incurred \$99,000 in unsupported costs.

Criteria

The Memorandum of Understanding with GSA required the Commission to certify invoices in accordance with Subpart 513.370 of the GSA Acquisition Manual. Subpart 513.370 required suppliers to submit itemized invoices and that the Commission verify that the supplies and services have been received and accepted.

According to the Federal Acquisition Regulation, prepayments may be authorized as advance payments (Subpart 32.408) or progress payments (Subpart 32.501-2). However, in order to qualify for such payments, the contractor must meet certain conditions that clearly demonstrate the need for upfront funding in order to provide services.

Unsupported Invoices

The Commission paid \$74,000 for six of the invoices we reviewed without obtaining an itemization of the costs or any other documentation from Susan Davis International (Davis), a consultant who provided media relations services. None of the invoices included the services provided, hourly consultant rates, or the hours worked.

Davis did not itemize these six invoices, yet the Commission paid these invoices without any detailed explanation for the charges.

Prepayments to Consultants

The Commission also paid Davis \$25,000 for two additional invoices. These invoices were dated the same date the contracts were signed and each invoice stated that the invoice was for “an initial fee,” but did not include a description of the services that were to be provided, consultant rates, or the number of hours expected to perform the services. In addition, the Executive Director and Deputy Executive Director of the Commission could not substantiate what the Commission received for these payments or what services were provided by Davis. The Commission representatives erroneously believed that the prepayments were necessary so that funds appropriated for FY 2001 would be expended prior to the end of the fiscal year. The Commission representatives did not understand Federal budgetary accounting and stated that they were advised that the funds should have been expended prior to fiscal year end.

Limited Experience and Oversight

The staff responsible for the daily operations of the Commission did not have any experience with Congressional commissions. In addition, they did not receive guidance from HUD (the agency whose appropriations provided funding to the Commission) or GSA (the agency identified in P.L. 106-74 as responsible for providing administrative services to the Commission).

This situation was further compounded by the fact that P.L. 106-74 exempted the Commission from advertising requirements otherwise applicable to Federal procurements, but did not explicitly state what regulations (such as the Federal Acquisition Regulation) should be followed when procuring services or products. Therefore, the Executive Director presumed he had full contractual authority to award and execute contracts on behalf of the Commission. To accomplish this, the Executive Director had his Deputy, who had had prior legal experience as an attorney, draft the contracts after he (the Director) had negotiated the terms. But this process did not include documenting the competitive sources used, preparing estimates of the costs for services to be provided or documenting the justification for sole source selections. In effect, the Executive Director had sole authority to procure services, as no other approvals (by HUD or GSA) were required to negotiate and award contracts. The Executive Director awarded contracts, but did not follow the Federal Acquisition Regulation. As a result, none of the prepayments made by the Commission met the statutory requirements for authorizing advance payments.

A lack of written guidance (policies and procedures) for reviewing and approving invoices also contributed to payments being processed without adequate documentation to support what specific services were provided. The Director of Administration processed all invoices by assigning accounting control transaction numbers, and object and cost element codes; signing and dating the invoices; and submitting the invoices to GSA for payment. The Executive Director did not routinely review or approve the invoices, he only became involved when there were questions on the invoices.

The Director of Administration stated she authorized these payments to Davis because the contract stated specific amounts that would be paid “upon signing” the contracts. These contracts also stated the first payment would be made “upon receipt of proper invoice” for the services outlined in the contracts. However, such payments were not in accordance with the GSA Acquisition Manual. As a result of the contracts the Commission awarded, \$99,000 was paid for unsupported costs.

AUDITEE COMMENTS

The Executive Director of the Commission did not agree that it should be subject to the Federal Advisory Committee Act or the Federal Acquisition Regulation. The Executive Director also believed that prepayments to consultants were justified based on the contractual agreements and suggested that we clarify the number of unsupported invoices.

OIG EVALUATION OF AUDITEE COMMENTS

Public Law 106-74, Title V, Section 525 exempted the Commission from advertising for its contracts as required by Section 3709 of the Revised Statutes (41 U.S.C. 5) and from Section 14(a)(2)(B) of the Federal Advisory Committee Act. However, we concluded that the Commission's exemption from Revised Statutes 41 U.S.C. 5 and Section 14(a)(2)(B) did not exempt it from complying with all other sections of these laws. We also believe that the Commission's contracting operations were subject to the provisions of the Federal Acquisition Regulation except those provisions relating to advertising.

We revised the report to clarify the number of unsupported invoices and included the Director of Administration's justification for making prepayments. We also revised our report and recommendations to exclude invoice payments that were subsequently supported with adequate documentation.

RECOMMENDATIONS

We recommend that you request that GSA:

- 1A. Obtain sufficient documentation from consultants to support all previously unsupported costs of \$99,000 or return these funds to the U.S. Treasury.

MANAGEMENT CONTROLS

In planning and performing our audit, we considered the management controls relevant to processing and recording transactions to determine our audit procedures, not to provide assurance on the controls. Management controls include the plan of organization, methods and procedures adopted by management to ensure that its goals are met. Management controls include the processes for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

We determined that the following management controls were relevant to our audit objectives and considered them to the extent necessary to gain an understanding of the Commission's operations:

- Policy
- Personnel Administration
- Procurement Procedures
- Disbursement Procedures

It is a significant weakness if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet an organization's objectives.

Based on our review, we believe that disbursement processing was a significant weakness because the Commission did not follow any established policies or procedures when approving invoices for payment.

FOLLOW-UP ON PRIOR AUDITS

There were no prior audits of the Commission.

CONSULTANTS INCLUDED IN SAMPLE

Consultant	Contract Period	Contract Amount
Susan Davis International	09/18/01 – 09/30/02	\$87,000
	09/18/01 – 09/30/02	\$75,500
Howell Consulting Group	02/21/02 – 04/30/02	\$140,300
Stephen Golant	08/20/01 – 01/09/02	\$19,800
	09/12/01 – 06/30/02	\$10,000
	04/18/02 – 06/30/02	\$5,000
Wilden and Associates	09/07/01 - 02/10/02	\$15,000
National Housing Trust	01/07/02 – 02/11/02	\$14,800
Joseph Foote	09/19/01 – 07/15/02	\$22,800
	04/19/02 – 06/30/02	\$34,200
Dorna Allen	04/11/02 – 05/15/02	\$5,000
Total Contract Value		\$429,400

SCHEDULE OF QUESTIONED COSTS

<u>Recommendation Number</u>	<u>Type of Questioned Cost</u>	
	<u>Ineligible 1/</u>	<u>Unsupported 2/</u>
1A	\$0	\$99,000

1/ Ineligible costs are costs charged to HUD appropriations that the OIG believes are not allowable by law, contract or Federal policies or regulations.

2/ Unsupported costs are costs charged to HUD appropriations and eligibility cannot be determined at the time of audit. The costs are not supported by adequate documentation or there is a need for a legal or administrative determination on the eligibility of the costs.

AUDITEE COMMENTS

Commission on Affordable Housing and Health Facility
Needs for Seniors in the 21st Century

an independent federal agency

September 26, 2002

Ms. Sandra G. Elion
Director
Headquarters Audit Division
Office of Inspector General
U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Room 8184
Washington, DC 20410

Dear Ms. Elion:

In response to the Draft Audit Report of the Review of the Financial Activities of the Commission on Affordable Housing and Health Facility Needs for Seniors in the 21st Century, there are several items in the report requiring explanation, clarification and correction.

Overview

First, I want to note that, according to the Agency Liaison Division and the Regional Counseling Office of GSA, the Commission does not fall under the requirements of the Federal Advisory Committee Act (FACA) or the Federal Acquisition Regulation (FAR). This exemption was conveyed early on to Commission staff, and based upon this guidance, staff performed its duties accordingly. GSA officials were adamant in this position, and subsequently informed the Inspector General Auditor-in-Charge of this exemption during her investigation. However, the Auditor-in-Charge chose to underscore examples and findings throughout the report based upon FAR, despite its inapplicability.

Second, I want to register a complaint on the brief amount of time accorded the Commission to respond to this Draft Audit Report. While your letter accompanying the report is dated September 23, 2002, we received it shortly before a meeting the following morning to discuss its contents. The Commission was then given 2 days to draft a response, despite the Auditor-in-Charge having full knowledge we were in the midst of closing our offices with our computers being removed on the morning of September 25, and our files packed in boxes and ready for shipment to the National Archives. This time period under the foregoing conditions is grossly inadequate to prepare a proper response, and is significantly less than the 10 days we were told by you that we would have to respond.

Findings

In the section, "Unsupported Invoices," it states that three of seven consultants were paid "without obtaining itemized invoices or any other documentation." This sweeping statement is misleading. The reader is left with the impression that the consultants were paid in all instances

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without the Commission obtaining itemized invoices, when in fact, the Audit questions six out of eleven invoices from Susan Davis International, and questions three invoices out of nine from Stephen Golant, and Wilden and Associates. Commission staff obtained more detailed documentation and itemization from each of these consultants for the invoices in question, and submitted them to your office.

In the section, "Prepayments to Consultants," in all instances the "initial fee" was paid to consultants as a condition of a contract between the consultant and the Commission. Since it was determined that FAR does not apply to the Commission, this contractual arrangement would not be prohibited. Additionally, these contracts were negotiated and executed in August and September 2001, shortly after staff was told by HUD that we needed to spend our funds or they would be lost at the end of the fiscal year.

In the section, "Limited Experience and Oversight," the statement is made,

"...this process did not include documenting the competitive sources used, preparing estimates of the costs for services to be provided, documenting the justification for sole source selections, or justifying why open-ended (service and fee) contracts were awarded.

Once again, broad and sweeping statements are made out of context and without consideration of the types of services being procured. It should be pointed out that Susan Davis provided media relation services, Stephen Golant provided research and data analysis, and Joseph Foote provided writing, editing and proofreading services. In each instance, staff sought to find experts in the field who could provide the best services needed at the best price possible. For example, Stephen Golant was selected after an extensive review of many researchers—whose biographies were provided to the Commission's Needs Assessment Task Force for review—and Susan Davis was selected after staff solicited and reviewed bid proposals from David Egnor of Nicholas•Dezenhall, and Philip Armstrong of EPB PR. This information and documentation was provided to the Auditor-in-Charge.

The section also includes the following passage,

"In effect, the Executive Director had sole authority to procure services, as no other approvals (by HUD or GSA) were required to negotiate and award contracts. The Executive Director awarded contracts but did not follow the Federal Acquisition Regulations. As a result, none of the prepayments made by the Commission met the statutory requirements for authorizing advance payments."

This statement (and its full paragraph) is unnecessarily critical, biased, and inaccurate. As stated previously, FAR does not apply. Additionally, the Commission's Budget Officer was given delegated authority to approve and process for payment all consultant invoices—in accordance with their contract—subject to approval by the Executive Director for those invoices deemed questionable by the Budget Officer.

Recommendations

Recommendations 1B. and 1C. should be deleted since the Commission has obtained for GSA, and provided to your office, the documentation and itemization for the invoices in question.

Sincerely,



Gerard Holder
Executive Director

REVIEW OF THE FINANCIAL ACTIVITIES OF THE COMMISSION ON AFFORDABLE HOUSING and HEALTH FACILITY NEEDS FOR SENIORS IN THE 21ST CENTURY

**Audit Report Number
2002-AO-000x**

The following comments to your draft report are forwarded in response to your letter dated September 23, 2002:

Finding 1; Page 5; Limited Experience and Oversight

Your paragraph:

"The Director of Administration authorized unsupported payments to the consultants. As a result of the contracts the Commission awarded, \$119,955 was paid for unsupported costs as shown in Table 2".

That statement is not based on or supported by fact and is emphatically untrue.

During the course of this review the Director of Administration was interviewed on several occasions by the Auditor-in-Charge and the process for paying invoices was discussed many times. The Auditor-in-Charge was told that invoices received from the consultants (all invoices for that matter) were paid in accordance with and based on the terms stipulated in each respective negotiated and signed contract. Further, as each invoice was received, the Director of Administration together with the designated subject matter expert (who was responsible for the contract) reviewed the invoice and obtained the subject matter expert's assurance that the work represented by the invoice had been completed. At that point and only then was payment for the invoice authorized and processed. A copy of an approved contract for each of the named consultants is on file and was provided to the Auditor-in-Charge.

Finding 1; Page 6; Table 2. Unsupported Costs Paid to Consultants Included in Our Sample

Your graph:

<u>Unsupported Invoices</u>	<u>Costs</u>
Wilden and Associates	\$9,000

The correct amount for the Wilden and Associates invoice should be \$1,000.

DISTRIBUTION OUTSIDE OF HUD

The Honorable Joseph Lieberman, Chairman, Committee on Government Affairs
The Honorable Fred Thompson, Ranking Member, Committee on Governmental Affairs
Sharon Pinkerton, Senior Advisor, Subcommittee on Criminal Justice, Drug Policy &
Human Resources
Andy Cochran, House Committee on Financial Services
Sherry Little, Professional Staff, Senate Banking, Housing and Urban Affairs Committee
Clinton C. Jones, Senior Counsel, Committee on Financial Services
Kay Gibbs, Committee on Financial Services
Stanley Czerwinski, Director, Housing and Telecommunications Issues, U.S. GAO
Steve Redburn, Chief Housing Branch, Office of Management and Budget
Linda Halliday, Department of Veterans Affairs, Office of Inspector General
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Nancy Hooks, Co-chair, Commission on Affordable Housing and Health Facility Needs
for Seniors in the 21st Century
Gerard Holder, Executive Director, Commission on Affordable Housing and Health
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