



Weslaco Housing Authority, Weslaco, TX

Public Housing Programs - Legal Services Procurement



To: David G. Pohler, Director Office of Public Housing, 6EHP

//signed//

From: Kilah S. White, Regional Inspector General for Audit, 6AGA

Subject: The Weslaco Housing Authority, Weslaco, TX, Did Not Follow Federal, State, and Authority Requirements for Legal Services

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of the Weslaco Housing Authority, Weslaco, TX.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG website. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at (817) 978-9309.



Audit Report Number: 2019-FW-1002

Date: May 15, 2019

The Weslaco Housing Authority, Weslaco, TX, Did Not Follow Federal, State, and Authority Requirements for Legal Services

Highlights

What We Audited and Why

We audited the Weslaco Housing Authority, Weslaco, TX, based on a referral to our office concerning issues with the Authority's process for awarding its 2014 legal services contract. Our audit objective was to determine whether the Authority procured its U.S. Department of Housing and Urban Development (HUD) Housing Choice Voucher Program- and operating subsidy-funded legal services contract in accordance with Federal, State, and Authority requirements.

What We Found

The Authority did not follow Federal, State, and Authority procurement and Federal cost principle requirements when contracting for legal services. Specifically, it (1) did not competitively procure its 2014 legal services contract and (2) paid unreasonable and unsupported costs. These conditions occurred because the Authority's chairman of the board mistakenly believed that State rules allowed the Authority to list a professional services contract on the board meeting agenda and approve it without competition or a cost analysis. Thus, the Authority could not support that it obtained the best provider and price for its legal services, resulting in its paying \$118,170 in unsupported and unreasonable costs for legal services.

What We Recommend

We recommend that the Director of HUD's San Antonio, TX, Office of Public Housing require the Authority to (1) support or repay \$118,170 in questioned costs paid for legal services, (2) revise its procurement policies to include current Federal cost principles, and (3) provide training on Federal procurement requirements and cost principles to its board members and staff.

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Background and Objective

The Weslaco Housing Authority was established in 1950 to serve the residents of Weslaco, TX. The Authority’s mission is to provide safe, decent, and sanitary housing conditions for very low-income families and to manage resources efficiently. It also promotes personal, economic, and social upward mobility to provide families the opportunity to make the transition from subsidized to nonsubsidized housing.



The Authority’s main office in Weslaco, TX

The mayor appoints a five-member board of commissioners with staggered 2-year terms to govern the Authority. The board is responsible for establishing operating policies and overseeing the executive director, who manages the Authority’s day-to-day operations. Four separate executive directors have led the Authority since the beginning of its 2013 fiscal year.¹ The Authority has 10 employees, including the executive director.

The Authority operates 127 public housing units and administers 484 housing choice vouchers. It received the following funding from the U.S. Department of Housing and Urban Development (HUD) as shown in the table.

The Authority’s HUD funding for fiscal years 2014 to 2018

Public housing program	Fiscal year 2014	Fiscal year 2015	Fiscal year 2016	Fiscal year 2017	Fiscal year 2018
Public Housing Operating Fund	\$ 515,348	\$ 358,036	\$ 380,767	\$ 509,566	\$ 348,922
Public Housing Capital Fund	247,141	243,577	247,178	259,098	377,550
Housing Choice Voucher Program	2,088,135	2,141,379	2,044,614	2,158,044	2,219,926
Total	2,850,624	2,742,992	2,743,630	2,926,708	2,946,398

¹ The Authority’s fiscal year runs from October 1 to September 30.

HUD's Office of Public and Indian Housing (PIH) oversees the Authority's public housing programs. To perform its function the office develops and monitors national policies, procedures, standards, methods and administrative requirements for public housing programs.

As a grantee, the Authority was required to follow Federal administrative requirements, which included Federal procurement requirements² and cost principles.³ Effective December 26, 2014, the Office of Management and Budget (OMB) issued updated Federal uniform administrative requirements, which included procurement requirements and cost principles.⁴ According to a HUD notice,⁵ public housing agencies had until December 26, 2015, to implement the new procurement standards. On November 18, 2015, the Authority adopted a new procurement policy, which included references to the new uniform administrative procurement requirements,⁶ but it did not reference the new cost principles.⁷

The Authority awarded its first legal services contract in January 2014 and made payments totaling \$118,170 with HUD funds from April 2014 to January 2018. It awarded its second legal services contract in December 2017 and made payments totaling \$18,467 with HUD funds from February to June 2018.

Our audit objective was to determine whether the Authority procured its HUD Housing Choice Voucher Program- and operating subsidy-funded legal services contract in accordance with Federal, State, and Authority requirements.

² 24 CFR (Code of Federal Regulations) Part 85, Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments. See 24 CFR 85.36 for procurement requirements. See also appendix C.

³ 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87). See also appendix C.

⁴ 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. See appendix C.

⁵ HUD Notice SD-2015-01, Transition to 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance, issued February 26, 2015. See appendix C.

⁶ Weslaco Housing Authority Procurement Policy, approved November 18, 2015, referenced 2 CFR 200.317 to 200.326.

⁷ 2 CFR 200, Subpart E - Cost Principles. See appendix C.

Results of Audit

Finding: The Authority Did Not Follow Federal, State, and Authority Requirements for Legal Services

The Authority did not follow Federal, State, and Authority procurement and Federal cost principle requirements when contracting and paying for legal services. Specifically, it (1) did not properly procure its 2014 legal services contract and (2) paid unreasonable and unsupported costs. These conditions occurred because the chairman of the board mistakenly believed that State rules allowed the Authority to list a professional services contract on the board meeting agenda and approve it without competition. Further, the Authority's procurement policy did not include references to current Federal cost principles to determine allowable contract costs. As a result, the Authority could not show that it obtained the best provider and price for its legal services. In addition, it paid \$118,170 in unsupported and unreasonable legal services costs with Housing Choice Voucher Program and operating funds.

The Authority Did Not Properly Procure Its Interim Legal Services Contract

In January 2014, the board of commissioners improperly procured its legal services using a sole-source, noncompetitive procurement method, which was prohibited by Federal and Authority policy except in certain instances, which did not apply in this case.⁸ It also failed to conduct a cost-price analysis, as required by Federal regulations.⁹ At a special board meeting on January 2, 2014, the Authority's board approved publishing a request for qualifications for general counsel legal services. At this meeting, the board also discussed hiring an interim attorney to provide legal services during the request for qualifications for legal counsel services process. When the chairman asked for recommendations for an interim attorney, a vice chairman offered the name of one attorney. This recommendation was approved unanimously by the board. At the next regular board meeting on January 22, 2014, the meeting minutes stated that the board would consider and possibly approve an interim legal services contract with the attorney approved at the prior meeting. Although, the meeting minutes stated that the board unanimously approved a contract for interim legal services, the approved contract was not an interim contract as it (1) did not include interim language; (2) contained a 2-year period of performance; and (3) allowed the contract period to continue indefinitely on a monthly basis after the 2-year period, which violated HUD's procurement handbook guidance limiting a contract period to 5 years.¹⁰ Further, the board did not discuss soliciting a request for proposals for general counsel legal services, and the Authority could not show that it sought requests for

⁸ 24 CFR 85.36(d)(4). Weslaco Housing Authority Procurement Policy, Procurement Methods and Requirements, F. Non-Competitive Proposals, approved July 29, 2009. See appendix C.

⁹ 24 CFR 85.36(f). See appendix C.

¹⁰ HUD Handbook 7460.8, REV-2, Procurement Handbook for Public Housing Agencies, dated February 2007, Chapter 10, Miscellaneous Requirements, 10.8, Use of Options, C. Limitations, 2. Time and Quantity. See appendix C.

proposals until August 2017, more than 3 years after the 2014 legal services contract was awarded.

The chairman stated that he believed State law allowed professional services contracts to be approved as long as the item was on the agenda and was acted on by the board. This statement contradicts Federal, State, and Authority requirements as

- Federal procurement requirements state that all procurement transactions will be conducted in a manner providing full and open competition and a cost or price analysis must be performed in connection with every procurement action.¹¹
- State law required that professional services be awarded based on demonstrated competence and qualifications for performing the services for a fair and reasonable price.¹²
- The Authority's policy stated that a request for proposals was the preferred method for procuring professional services.¹³

The Authority's board initially took appropriate steps to competitively procure its legal services when it stated that it wanted to seek requests for proposals. However, the board did not properly follow the process and instead entered into an improper, noncompetitive, sole-source contract. As a result, the Authority could not support that it obtained the best value for the legal services provided from January 2014 through December 2017 totaling \$118,170.

The Authority Paid Unreasonable and Unsupported Costs

The Authority's 2014 legal services contract was poorly written and included language that a prudent person would not have accepted as a reasonable contract cost.¹⁴ Specifically, the contract included a nonrefundable monthly retainer of \$1,000 even if the Authority did not receive legal services during the month. The contract also stated the following:

As part of the retainer fee paid by the Authority, the attorney will attend and provide legal services at regularly scheduled Authority meetings and assist Authority employees in reviewing and posting the [meeting] agenda in order to comply with all legal requirements.

However, for 21 of the 48 months billed, the Authority did not hold a regularly scheduled meeting, and it paid the \$1,000 monthly retainer. In addition, for 19 of those 21 months, the Authority held a special meeting, and the contract allowed the attorney to itemize and bill for the time spent preparing for and attending the special meeting. Thus, the \$21,000 that the Authority spent for the 21 months when there was not a regular meeting did not appear to be reasonable as it paid for services it did not receive. This condition occurred because the Authority's

¹¹ 24 CFR 85.36(d)(4) and (f). See appendix C.

¹² State of Texas Government Code, Title 10, Subtitle F, chapter 2254.003(a). See appendix C.

¹³ Weslaco Housing Authority procurement policy, Procurement Methods and Requirements, E. Competitive Proposals, approved July 29, 2009. See appendix C.

¹⁴ 2 CFR Part 225, appendix A, C. Basic Guidelines, 2, 2.b, and 2.d. See appendix C.

procurement policy did not include or reference current Federal cost principles, which include requirements that costs billed to Federal contracts be prudent, reasonable, and documented.¹⁵ Further, statements by management and the attorney showed a lack of understanding of these requirements. For example, a previous commissioner stated that he thought a retainer fee was a regular legal service cost. However, the previous executive director originally thought the retainer should be offset against the attorney's itemized monthly charges, but the attorney pointed out that contract did not require such an offset. Further, the attorney stated that he provided more services than were covered by the monthly retainer but he did not have "hard files" to support those costs or services.

The contract also stated that the attorney "agrees to provide the first 15 minute increment of the initial telephone consultation for the duration of this agreement at no charge." However, none of the itemized bills, some of which contained billings by the quarter hour and for telephone calls, contained credits for initial telephone consultation. Thus, the Authority lacked assurance that it received all of the credits required by the contract, which is required by Federal cost principles.¹⁶

The Authority Properly Procured Its 2017 Legal Services Contract.

In August 2017, after receiving questions concerning its 2014 legal services contract, the Authority advertised for legal services. In December 2017, it awarded a contract after soliciting and receiving six requests for proposals. A review of the procurement showed that the Authority properly used a competitive process to advertise its requests for the proposals and properly procured its 2017 legal services contract. In addition, it no longer paid a monthly retainer fee for legal services. Thus, the Authority had improved its contracting processes for legal services.

Conclusion

The Authority improperly procured its 2014 legal services contract and could not show that it obtained the best provider or price for its legal services. This condition occurred because the Authority's management at the time did not follow Federal, State, and Authority requirements. As a result, the Authority paid \$118,170 in unsupported and unreasonable legal services costs.¹⁷

Recommendations

We recommend that the Director of the San Antonio Office of Public Housing require the Authority to

- 1A. Support or repay its HUD program accounts from non-Federal funds \$97,170 paid for unsupported legal services, of which \$29,111 was paid with Housing Choice Voucher Program funds and \$68,059 was paid with operating funds.
- 1B. Support or repay its HUD program accounts from non-Federal funds \$21,000 paid for unreasonable and unnecessary retainer fees for those months when the

¹⁵ 2 CFR Part 225, appendix A, C. Basic Guidelines, 1.a., 1.j, and 2. See appendix C.

¹⁶ 2 CFR Part 225, appendix A, C. Basic Guidelines, 1.i. See appendix C.

¹⁷ Although the entire \$118,170 contract amount was questioned as unsupported, \$21,000 of this amount was determined to be unreasonable as the Authority could not support that a prudent person would pay a monthly fee when it did not receive services covered by the monthly fee. Thus, the amount of unsupported legal fees was reduced to \$97,170 (\$118,170-\$21,000).

Authority did not hold a regular meeting, of which \$7,112 was paid with Housing Choice Voucher Program funds and \$13,888 was paid with operating funds.

- 1C. Revise its procurement policies to include, either in their entirety or by reference, the current Federal cost principles.
- 1D. Provide training to commissioners and employees on Federal procurement and cost principles requirements and have them certify that they understand and will comply with the requirements.

Scope and Methodology

We performed our audit from June 11, 2018, through February 6, 2019 at the Authority's office located at 600 North Airport Drive, Weslaco, TX. The audit generally covered the period January 2014 through May 2018. We expanded our scope as necessary and explained in the bullets below.

To meet the audit objective, we reviewed

- The applicable Federal cost principles and uniform administrative requirements, HUD program requirements and handbooks, State of Texas requirements and guides, and Authority policies and procedures. During our audit period, two different versions of Federal uniform administrative requirements and cost principles applied. Prior to December 26, 2014, the requirements were called the Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments Administrative¹⁸ and the Cost Principles for State, Local, and Indian Tribal Governments.¹⁹ After December 26, 2014, the requirements were consolidated and streamlined into the Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards.²⁰ In addition, the Authority had two different versions of its procurement policies: July 2009 and November 2015.
- The Authority's legal services contracts, dated January 2014 and December 2017.
- All of the Authority's payments (100 percent) made for legal services during our audit period. Using its HUD funds, the Authority paid \$118,170 from April 2014 to January 2018 for its 2014 legal services contract and \$18,467 from February to June 2018 for its 2017 legal services contract.
- The Authority's board meeting minutes from October 2013 through June 2018.
- The Authority's financial data for fiscal years 2014, 2015, 2016, 2017, and 2018 to identify legal services charged to the Authority.

We interviewed

- A current Authority employee and its current and former executive directors and board members.
- HUD's Office of Public Housing staff.
- The attorney contracted to provide legal services to the Authority in 2014.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit

¹⁸ 24 CFR Part 85. See appendix C.

¹⁹ 2 CFR Part 225. See appendix C.

²⁰ 2 CFR Part 200. See appendix C.

objective(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Internal Controls

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- effectiveness and efficiency of operations,
- reliability of financial reporting, and
- compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined that the following internal controls were relevant to our audit objective:

- The Authority's controls, including its policies, procedures, and board oversight, to ensure compliance with HUD's, the State's, and the Authority's procurement requirements.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiencies

Based on our review, we believe that the following items are significant deficiencies:

- The Authority's management did not follow HUD's, the State's, and its own procurement policies when it contracted for legal services in 2014 (finding).
- The Authority's management did not ensure that its 2014 legal services contract complied with Federal cost principles (finding).

Followup on Prior Audits

The Weslaco Housing Authority, Weslaco, TX, Paid Travel Costs That Did Not Comply With Federal, State, and Local Requirements, 2017-FW-1008, Issued June 28, 2017

We audited the Weslaco Housing Authority, Weslaco, TX, because of issues noted in the Authority's travel while reviewing its independent public accountant's audited financial statements. Our audit objective was to determine whether the Authority complied with Federal, State, and local requirements for its travel payments.

The Authority paid its commissioners and employees for ineligible, unreasonable, unnecessary, and unsupported travel costs. This condition occurred because the Authority lacked controls and oversight, its staff was intimidated and did not question travelers' costs, and travelers did not understand or disregarded the requirements. As a result, the Authority paid a total of \$23,138 in questioned travel costs.

We recommended that HUD's Office of Public Housing require the Authority to support or repay questioned costs totaling \$23,138. We also recommended the Authority adopt travel policies and procedures that complied with Federal, State, and local requirements. In addition, we recommended that the Departmental Enforcement Center take appropriate administrative sanctions and seek civil money penalties against the commissioners.

HUD's Office of Public Housing required the Authority to repay the questioned travel costs totaling \$23,138 and adopt travel policies and procedures that complied with Federal, State, and local requirements. HUD's Departmental Enforcement Center is reviewing the information provided to determine whether it will take administrative sanctions against the commissioners cited in the report.

Appendixes

Appendix A

Schedule of Questioned Costs

Recommendation number	Unsupported 1/	Unreasonable or unnecessary 2/
1A	\$97,170	
1B		\$21,000
Totals	97,170	21,000

- 1/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.
- 2/ Unreasonable or unnecessary costs are those costs not generally recognized as ordinary, prudent, relevant, or necessary within established practices. Unreasonable costs exceed the costs that would be incurred by a prudent person in conducting a competitive business.

Appendix B

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments



600 N. AIRPORT DR.
WESLACO, TEXAS 78596

April 12, 2019

Kilah S. White
Regional Inspector General for Audit
U.S. Department of
Housing and Urban Development
Office of Inspector General
819 Taylor Street, Suite 13A09
Fort Worth, Texas 76102

RE: U.S. Department of Housing and Urban Development, Office of Inspector General's Draft Audit Report dated March 29, 2019

Dear Mrs. White:

The Housing Authority for the City of Weslaco (hereinafter referred to as the "WHA") is in receipt of the Draft Audit Report your office issued on March 29, 2019 (hereinafter referred to as the "Audit"). Specifically, the Office of Inspector General (hereinafter referred to as "OIG") audited WHA legal services procurement that occurred in 2014. The finding is that from January 2014 through December of 2017, the WHA did not properly procure legal services and paid unsupported and unreasonable costs. Please accept this letter as the WHA's response to the draft audit report.

Comment 1

To begin, it is important to note that none of the then-commissioners or administrative staff of the WHA are still employed, on the board, or have any control over decision-making of the WHA. Moreover, this is an issue that was self-reported by the WHA's new administration. Even prior to the audit taking place, the WHA took measures to remedy the issues.

Comment 2

The Authority Did Not Properly Procure Its Interim Legal Services Contract
The minutes of a January 2, 2014 (Exhibit 1 hereto) meeting indicate that the then-Board of Commissioners discussed the immediate need for legal counsel given several pending matters. It was further discussed that Interim legal counsel would be retained until a formal Request for Qualifications was published. For unknown reasons, the RFQ was never published.

Comment 1

Comment 2

Comment 3

Since that time, the WHA procurement procedures have been rewritten (Exhibit 2). All commissioners and administrative staff are required to attend procurement training given by a third-party consultant. The first of these trainings was given by [REDACTED] on February 17, 2018. Commissioners and administrative staff are currently scheduled to attend a Housing Alliance conference in May of 2019 where they will receive further procurement training given by various consultants and the OIG. These trainings will be a mandatory annual occurrence.

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments

Comment 4

Finally, and most significantly, the audit report finds that the Authority properly procured its current legal counsel. So, the procurement issue has been fully resolved.

The Authority Paid Unreasonable and Unsupported Costs

The draft audit report indicates that the WHA paid \$118,170 in unreasonable and/or unsupported costs, including \$21,000 for unreasonable retainer fees as the contract allowed for payment even in months where no legal services were provided, which did not appear to be reasonable or prudent.

Comment 5

The WHA does not dispute the finding that the retainer fees of \$21,000 paid were not prudent given the circumstances. WHA will be asking the OIG to reach a repayment agreement in order to repay these funds over time. This will be difficult as the WHA has only one source of unrestricted funds (a PFC called the Weslaco Housing Opportunities Corp.) and the funds coming into, and therefore out of, this fund are minimal.

Comment 6

With respect to the additional \$97,170 in unsupported costs, the Authority can show that although it did not properly competitively procure the contract, they still obtained a reasonable value for the services provided and did in fact receive the services called for in the contract.

Comment 6

The hourly rate at which the WHA was being billed was of reasonable value by any measure. The attorney in question was billing the WHA at \$175.00 per hour. Comparables will affirm that this hourly rate is reasonable, even low, relative to other attorneys, even those who discount their rates for governmental entities. The table below indicates the names and rates of law firms that currently represent governmental entities and PHAs and/or firms that responded to the December 2017 RFP.

Comment 2

FIRM NAME	HOURLY RATE
[REDACTED]	\$195.00
[REDACTED]	\$250.00
[REDACTED]	\$275.00
[REDACTED]	\$250.00
[REDACTED]	\$375.00
[REDACTED]	\$225.00

Moreover, the hourly rate of the then-lawyer was never inflated over the four-year period, remaining steady at \$175.00 per hour. It is clear that the actual value of the services was fair and reasonable.

Comment 6

Further, most of the invoices submitted for payment detail legal work on multiple issues of a general nature and also involving litigation in which the WHA was a party during this time. The invoices detail exactly what was billed for in any given month. This is not a situation that was intended to defraud, misappropriate, maliciously misspend, or spend funds and receive nothing in exchange. These services were necessary for the proper functioning of the Housing Authority and the protection of the agency and the residents it serves.

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments

Comment 2
Comment 6

This is not a circumstance where there were no services or benefits received by the WHA, on the contrary, services were needed and rendered. Attached for your reference (Exhibit 3), are the invoices in question, which clearly document how the time in question was spent and that the services were in fact rendered.

Comment 6

This was clearly an oversight on the part of a past WHA Board that was not intentional and in which no actual pecuniary losses were incurred, as services were necessary, reasonable priced, and received.

Comment 6

Accordingly, the WHA would like to formally request absolution from repayment of the \$97,170 paid for actual services received, given the circumstances and the fact that the services paid for (AND RECEIVED) were both reasonable and necessary by even the most objective standards.

Conclusion

Comment 1

After reviewing the finding in the Audit with the OIG, the WHA and the commissioners accept responsibility for the shortcomings of its past administration. WHA has implemented policies and procedures to ensure procurements are in accordance with Federal, State and Local regulations. The WHA will collaborate with the OIG and HUD to coordinate the payback/reimbursement as recommended.

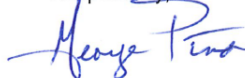
Comment 1

The WHA does not seek to make any excuses for the actions of prior WHA administrations. Our intent is always to act in a manner that is ethical and permissible, unfortunately because of oversight or lack of enforcement, this procurement was in conflict with standards. More importantly, it directly contradicts the values and principals of the WHA.

Comment 1

Through actions and initiatives, we have worked hard to address all the concerns identified in the OIG's Draft Audit Report and will continue to do so. The current WHA administration and commissioners are dedicated to making continued strides and implementing policies and procedures to prevent similar findings in the future. Such commitment includes training and education to ensure compliance. Further, the WHA looks forward to working with the U.S. Department of Housing and Urban Development and with the Office of Inspector General to resolve the recommendations made in the Draft Audit Report.

Respectfully,



George Piña

Executive Director
Weslaco Housing Authority

Central Office (956) 969-1538
Section 8 (956) 968-5433
Public Housing Low Rent (956) 969-1538
TDD/TTY 1-800-735-2988
Fax (956) 969-8718 • E-mail: weslaco@cow.org



OIG Evaluation of Auditee Comments

- Comment 1 The Authority and its commissioners accepted responsibility and noted that the finding was because its prior board did not publish a request for qualifications for unknown reasons.
- We acknowledge the Authority and its commissioners taking responsibility and taking steps to address the finding. We agree that the prior administration should have issued a request for qualifications. HUD's Office of Public Housing will need to confirm that the new policy is implemented and effective.
- Comment 2 The Authority provided three exhibits and included personal information in its response.
- We did not include the exhibits in our report due to their voluminous nature and because they contained personal identification information. We also redacted the personal information from the response due to privacy concerns.
- Comment 3 The Authority stated that the procurement procedures have been rewritten. Further, all commissioners and administrative staff are required to attend procurement training in May 2019.
- We acknowledge the Authority statements. HUD's Office of Public Housing will need to confirm that its new policies and procedures are effective and that the training occurs.
- Comment 4 The Authority stated that it properly procured its current legal counsel resolving the procurement issue.
- We acknowledge the Authority statements as the report did not note any issues with the current legal counsel procurement.
- Comment 5 The Authority did not dispute that it should repay \$21,000 of legal fees.
- We acknowledge the Authority statements. It will need to work with HUD's Office of Public Housing to arrange for repayment of the amount.
- Comment 6 The Authority requested absolution from repayment of the \$97,170 in unsupported legal fees. The Authority stated that (1) it received necessary services, (2) the hourly wage was less than its current contract and did not increase, and (3) the billings were not fraudulent.
- We disagree. Although the Authority received legal services, it could not show the services were competitively obtained. Further, comparing its current hourly legal costs to its legal services costs obtained in January 2014 does not support the reasonableness of the costs. Finally, the audit report did not determine that the costs were fraudulent. HUD's Office of Public Housing will need to review the

costs and supporting documentation to determine if the costs billed were reasonable, prudent, and supported.

Appendix C

Criteria

2 CFR Part 200 - Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards

Subpart D - Post Federal Award Requirements

Section 200.318 General procurement standards.

- (a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section....

Section 200.319 Competition.

- (a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:...

- (4) Noncompetitive contracts to consultants that are on retainer contracts;...

Section 200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

- (d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- (2) Proposals must be solicited from an adequate number of qualified sources;
- (3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered;...

- (f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

Subpart E - Cost Principles

Section 200.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles....
- (g) Be adequately documented.

Section 200.404 Reasonable costs.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

- (a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award....
- (b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.
- (c) Market prices for comparable goods or services.
- (d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal government.

2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)

Appendix A to Part 225 - General Principles for Determining Allowable Costs

C. Basic Guidelines

1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:
 - a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards...
 - i. Be the net of all applicable credits.
 - j. Be adequately documented.
2. Reasonable costs. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally-funded. In determining reasonableness of a given cost, consideration shall be given to:
 - a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.
 - b. The restraints or requirements imposed by such factors as: Sound business practices; arm's-length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.
 - c. Market prices for comparable goods or services.

- d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.

24 CFR Part 85 - Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments

Subpart C - Post Award Requirements

Section 36 Procurement.

(b) Procurement standards.

- (1) Grantees and sub grantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(c) Competition.

- (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 85.36. Some of the situations considered to be restrictive of competition include but are not limited to:...

- (iv) Noncompetitive awards to consultants that are on retainer contracts,...

(d) Methods of procurement to be followed.

- (3) ***Procurement by competitive proposals.*** The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
 - (ii) Proposals will be solicited from an adequate number of qualified sources;
 - (iii) Grantees and sub grantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
 - (iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered...

- (4) ***Procurement by noncompetitive proposals*** is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

- (i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:
 - (A) The item is available only from a single source;
 - (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (C) The awarding agency authorizes noncompetitive proposals; or
 - (D) After solicitation of a number of sources, competition is determined inadequate.
 - (ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required....

(f) Contract Cost And Price.

- (1) Grantee and sub grantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offerer is required to submit the elements of his estimated cost, e.g., under professional consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and the sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price on a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price....

HUD Notice SD-2015-01, Transition to 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance, Issued February 26, 2015

1. BACKGROUND

On December 26, 2013, the Office of Management and Budget (OMB) published (at 78 Federal Register 78590; <https://federalregister.gov/a/2013-30465>) final guidance on the above subject, which is codified at 2 CFR part 200...

HUD adopted this guidance at a new part, 2 CFR part 2400. The uniform guidance also removed: 2 CFR parts 215, 220, 225, and 230. HUD amended 24 CFR parts 84 and 85, which had codified OMB Circulars superseded by 2 CFR part 200, by removing all substantive provisions and including a saving provision that provides that Federal awards made prior to December 26, 2014, will continue to be governed by parts 84 or 85 as codified in the 2013 edition of the Code of Federal Regulations (CFR) or as provided under the terms of the Federal award.

2. EFFECTIVE DATE AND APPLICABILITY TO HUD

The uniform guidance was applicable for Federal agencies, including HUD, effective December 26, 2013. Federal agencies, including HUD, adopted 2 CFR part 200 as requirements for Federal financial assistance programs by the interim final rule published December 19, 2014. It was made applicable to non-Federal entities (recipients of Federal financial assistance) effective December 26, 2014, with one exception: §200.110(a) was revised to give a one-year grace period for implementation of the procurement standards. As will be detailed in the 2015 OMB Compliance Supplement, non-Federal entities choosing to delay implementation for the procurement standards will need to specify in their documented policies and procedures that they continue to comply with OMB Circulars A-87 or A-110 for one additional fiscal year which begins after December 26, 2014. For example, the first full fiscal year for a non-Federal entity with a June 30th year would be the year ending June 30, 2016. See also the General Transition Rules section of this Notice.

**HUD Handbook 7460.8, REV-2, Procurement Handbook for Public Housing Agencies,
Dated February 2007**

Chapter 10. Miscellaneous Requirements

10.8 Use of Options

- A. **General.** In many cases, the PHA [public housing agency] may have a recurring need for specific supplies or services. One method of obtaining firm commitments from contractors for additional quantities or longer time-periods is to include an option clause in the contract. The advantage of awarding a contract with options is that it gives the PHA a continued source of supply or services under contract at known prices.
- B. **Definition.** The option to extend the term of the contract or to order additional supplies or services is the unilateral right of the PHA. The additional supplies or services are ordered at the prices specified in the original contract. A clause that allows an option to be exercised by the contractor is not a legitimate option clause.
- C. **Limitations...**
2. **Time and Quantity.** Contracts shall not exceed a period of five years, including options for renewal or extension. (For PHAs still operating under the “old” ACC [annual contributions contract] – form HUDs-53010 and 53011 – the maximum contract term is two years.) Contracts, other than energy performance contracts, with terms, plus extensions, that exceed a total of five years are viewed as restrictive of competition and in violation of **24 CFR 85.36(c)**.
A Field Office may approve contracts in excess of five years if it determines there is no practical alternative. Energy performance contracts may be for a period not to exceed 20 years in accordance with **24 CFR Part 990** and PIH [Office of Public and Indian Housing] Notice 2006-6. A PHA must also follow its own procurement policy and any applicable local or State laws and regulations. There must be a finite period for a contract, including all options, and a specific limit on the total quantity or maximum value of items to be purchased under an option.

Texas Government Code

Title 10. General Government

Subtitle F. State and Local Contracts and Fund Management

Chapter 2254. Professional and Consulting Services

Subchapter A. Professional Services

Sec. 2254.003. Selection of Provider; Fees.

- (a) A governmental entity may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award:
- (1) on the basis of demonstrated competence and qualifications to perform the services;
and
 - (2) for a fair and reasonable price.
- (b) The professional fees under the contract may not exceed any maximum provided by law.

Title 12. Planning and Development Provisions Applying to More Than One Type of Local Government

Chapter 392. Housing Authorities Established by Municipalities and Counties

Subchapter A. General Provisions

Sec. 392.0565. Purchases Made Under Federal Procurement Program.

(a) An authority may purchase equipment and supplies and award contracts for services or for repairs, maintenance, and replacements in compliance with the consolidated supply program or any other procurement program or procedure established by the federal government. The authority is exempt from applicable state laws to the extent necessary to allow the authority's participation in the program or procedure.

Weslaco Housing Authority Procurement Policy, Adopted July 29, 2009, by Resolution Number 09-05

INDEPENDENT COST ESTIMATES

For all purchases above the Micro Purchase threshold, the WHA [Weslaco Housing Authority] shall prepare an Independent Cost Estimate (ICE) prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

PROCUREMENT METHODS AND REQUIREMENTS

C. Small Purchases (Over \$2,000 but not exceeding \$50,000)...

E. Competitive Proposals

Competitive Proposal is the preferred method for procuring professional services that will exceed the Small Purchase threshold.

- 1) Permits
 - a. Consideration of technical factors other than price
 - b. Discussion with offerors concerning offers submitted
 - c. Negotiation of contract price or estimated cost and other contract terms and conditions.
 - d. Revision of proposals before the final contractor selection
 - e. Withdrawal of an offer at any time up until the point of award
- 2) Conditions for Use
Competitive Proposals (including turn-key proposals for development) may be used if there is an adequate method of evaluating technical proposals and where the WHA determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited.
- 3) Solicitation Method - Request for Proposal (RFP)
 - a. The Request for Proposal (RFP) shall clearly identify the relative importance of price and other evaluation factors and subfactors, including the weight given to each technical factor and subfactor.
 - b. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued.
 - c. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals.
 - d. WHA may assign price a specific weight in the evaluation criteria or the WHA may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.
- 4) Advertising
 - a. Solicitation must be done publicly.
 - b. The WHA must use one (1) or more following solicitation methods, provided that

the method employed provides for meaningful competition.

- Advertising in newspapers or other print mediums of local or general circulations [sic], not less than once each week for two consecutive weeks.
 - Advertising in various trade journals or publications (for construction).
 - E-Procurement. The WHA may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 24 CFR 85.36, State and Local requirements and this Policy.
- c. Notices/advertisements should state, at a minimum the following:
- The place, date and time that the bids are due. A minimum of 15 days shall generally be provided for preparation and submission of Competitive Proposals. The Executive Director may allow for a shorter period under extraordinary circumstances.
 - The solicitation number
 - A contact who can provide a copy of and information about the solicitation.
 - A brief description of the needed items
- 5) Evaluation
- a. The proposals shall be evaluated only on the criteria stated in the RFP.
 - b. Where not apparent from the evaluation criteria, the WHA shall establish an Evaluation Plan for each RFP.
 - c. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement.
 - d. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.
- 6) Negotiation
- Negotiations are exchanges (in either competitive or sole source environment) between the WHA and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract....
- 7) Cost and Price Analysis
- a. The presence of adequate competition should generally be sufficient to establish price reasonableness.
 - b. Where sufficient bids are not received, the WHA must compare the price with the ICE.
 - c. For Competitive Proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the ICE, the WHA must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.
- 8) Award
- Award shall be made on the basis of the proposal that represents the best overall value to the WHA, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest

price, and provided that the price is within the maximum total project budgeted amount established for the specific property or activity....

F. Non-Competitive Proposals

1) Conditions for Use

Procurement by Non-Competitive Proposals (sole-source) may be used **only** when the award of a contract is not feasible using Small Purchase procedures, Sealed bidding, cooperative purchasing, or Competitive Proposals, **and** if one of the following applies:

- a. The item is available from only a single source, based on good faith review of available sources;
- b. An emergency exists that seriously threatens the public health, welfare, or safety of the property, or would otherwise cause serious injury to WHA as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency;
- c. HUD authorizes the use of Non-Competitive Proposals; or
- d. After solicitation of a number of sources, competition is determined inadequate.

2) Justification

- a. Each procurement based on Non-Competitive Proposals shall be supported by a written justification for the selection of this method.
- b. The justification shall be approved in writing by the responsible Contracting Officer.
- c. Poor planning or lack of planning is not justification for emergency or sole-source procurements.
- d. The justification, to be included in the procurement file, should include the following information:
 - Description of the requirement;
 - History of prior purchases and their nature (competitive vs. Non-Competitive);
 - The specific exception in **24 CFR 85.36(d)(4)(i)(A)** through **(D)** which applies;
 - Statement as to the unique circumstances that require award by Non-Competitive Proposals;
 - Description of the efforts made to find competitive sources. (advertisement in trade journals or local publications, phone calls to local suppliers issuance of a written solicitation, etc.);
 - Statement as to efforts that will be taken in the future to promote competition for the requirement;
 - Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and
 - Price Reasonableness. The reasonableness of the price for all procurements based on Non-Competitive Proposals shall be determined by performing an analysis, as described in this Policy.