



Philadelphia Housing Authority, Philadelphia, PA

Public Housing Operating Funds



To: Monica Hawkins, Director, Office of Public Housing, Pennsylvania State Office,
3APH
//signed//

From: David E. Kasperowicz, Regional Inspector General for Audit, Philadelphia,
Region, 3AGA

Subject: The Philadelphia Housing Authority, Philadelphia, PA, Did Not Comply With
Procurement and Conflict-of-Interest Requirements

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

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, appendix 8M, requires that OIG post its publicly available reports on the OIG website. Accordingly, this report will be posted at <https://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at 215-430-6735.



Audit Report Number: 2020-PH-1001

Date: April 20, 2020

**The Philadelphia Housing Authority, Philadelphia, PA, Did Not Comply
With Procurement and Conflict-of-Interest Requirements**

Highlights

What We Audited and Why

We audited the Philadelphia, PA, Housing Authority's use of public housing program operating funds because we received a complaint alleging that the Authority misused U.S. Department of Housing and Urban Development (HUD) funds. Our objective was to determine whether allegations from the complaint had merit. We focused the audit on whether the Authority properly procured (1) relocation services, (2) job training services, (3) a vehicle, (4) tablet computers, and (5) an office chair in accordance with HUD requirements. We also wanted to determine whether it was owed funds from its agent, the City's Redevelopment Authority, for past projects and followed its procedures for approving its chief executive officer's salary.

What We Found

Of the seven allegations in the complaint, two allegations had merit. The Authority could not show that proposals for relocation services were evaluated based on the established evaluation criteria. It also violated conflict-of-interest requirements when procuring job training services. These conditions occurred because the Authority (1) lacked procedures to monitor its agent's compliance with procurement requirements, (2) believed that an intergovernmental agreement was sufficient to address the conflict-of-interest situation, and (3) lacked controls to ensure that it obtained a waiver from HUD to avoid conflict-of-interest situations. As a result, (1) HUD had no assurance that the proposal of the vendor that the Authority paid \$860,132 for relocation services was the most advantageous to the project, and (2) the Authority made ineligible payments totaling \$156,675 for job training services. The Authority properly procured a vehicle for its chief executive officer, tablet computers, and an office chair. It also was not owed funds from its agent, and it followed its procedures for approving its chief executive officer's salary.

What We Recommend

We recommend that HUD require the Authority to (1) provide documentation to show that the proposal of the vendor that it selected and paid \$860,132 was the most advantageous or reimburse its program from non-Federal funds for any amounts that it cannot support, (2) develop and implement controls to monitor its agent to ensure that it procures products and services in accordance with procurement requirements, (3) reimburse its program \$156,675 from non-Federal funds for the ineligible payments it made due to the conflict-of-interest situation identified by the audit, and (4) develop and implement controls to ensure that it obtains waivers from HUD before entering into agreements that create conflict-of-interest situations.

Table of Contents

Background and Objective	3
Results of Audit	5
Finding: The Authority Did Not Comply With Procurement and Conflict-of-Interest Requirements	5
Scope and Methodology	8
Internal Controls	10
Appendixes	11
A. Schedule of Questioned Costs	11
B. Auditee Comments and OIG’s Evaluation	12

Background and Objective

The U.S. Housing Act of 1937 initiated the Nation's public housing program. That same year, the City of Philadelphia established the Philadelphia Housing Authority under Pennsylvania laws to address housing issues affecting low-income persons. The Authority is the Nation's fourth largest public housing agency and serves nearly 80,000 people in Philadelphia. The Authority employs 1,400 people and has an annual budget of approximately \$400 million. It receives most of its funding from the U.S. Department of Housing and Urban Development (HUD). The Authority is governed by a board of commissioners consisting of nine members. Its main office is located at 2013 Ridge Avenue, Philadelphia, PA. HUD's Pennsylvania State Office of Public Housing has oversight responsibility for the Authority.

In 1996, Congress authorized the Moving to Work Demonstration program as a HUD demonstration program. This program allowed certain public housing agencies to design and test ways to promote self-sufficiency among assisted households, achieve programmatic efficiency, reduce costs, and increase housing choice for low-income households. Congress exempted participating housing agencies from much of the Housing Act of 1937 and associated regulations as outlined in the Moving to Work agreements. Participating housing agencies have considerable flexibility in determining how to use Federal funds. In February 2002, HUD signed a 7-year agreement with the Authority that was retroactive to April 2001. From April to October 2008, the Authority continued to operate under a HUD-developed plan to transition back to traditional HUD program regulations because the term of its Moving to Work agreement had expired. In October 2008, HUD entered into a new 10-year Moving to Work agreement with the Authority. In April 2016, HUD extended its Moving to Work agreement with the Authority through March 2028.

On February 21, 2014, the Authority executed a memorandum of understanding with a local college for its public housing residents to receive job training, such as workforce readiness, automotive repair, and customer service. The initial agreement covered the period December 2013 through December 2014 with the option to extend the agreement through December 2016. The training cost was not to exceed \$275,000 for the initial year, \$250,450 for the first option year, and \$312,815 for the second option year.

On June 18, 2014, the Authority entered into an agreement with the Philadelphia Redevelopment Authority for \$10 million for the acquisition of properties through eminent domain for the revitalization project in the City's Sharswood-Blumberg neighborhood. In accordance with Title 35 of the Pennsylvania Statutes, section 1746.1, the Authority designated the Philadelphia Redevelopment Authority as its agent for the project because the Philadelphia Redevelopment Authority had expertise and resources in acquiring properties through eminent domain. The revitalization project was estimated to cost more than \$44 million. As part of the project, the agent hired a company to assist displaced parties by providing relocation assistance advisory services and assistance with the preparation of claims in accordance with all applicable Federal and State requirements.

In July 2016, we received a complaint alleging that the Authority misused HUD funds. Specifically, the complaint alleged that the Authority improperly disbursed (1) \$10 million to its agent for the acquisition of properties for the Authority's neighborhood revitalization project, (2) \$40,000 to purchase its chief executive officer a vehicle for his business and personal use, (3) \$7,200 to purchase tablet computers for the board of commissioners, (4) \$5,000 in 2014 and 2015 to a local college, and (5) \$800 to purchase its chief executive officer an office chair. The complaint also alleged that (1) the Authority's agent owed the Authority \$1.5 million for project costs related to past development projects and (2) the Authority's board of commissioners had evaluated the chief executive officer's performance and approved salary increases of \$25,000 per year for the past 2 years.

Our audit objective was to determine whether allegations from the complaint had merit. We focused the audit on whether the Authority properly procured (1) relocation services, (2) job training services, (3) a vehicle, (4) tablet computers, and (5) an office chair in accordance with HUD requirements. We also wanted to determine whether the Authority was owed funds from its agent for past projects and followed its procedures for approving its chief executive officer's salary.

Results of Audit

Finding: The Authority Did Not Comply With Procurement and Conflict-of-Interest Requirements

Of the seven allegations in the complaint, two allegations had merit. The Authority could not show that proposals for relocation services were evaluated based on the established evaluation criteria. It also violated conflict-of-interest requirements when procuring job training services. These conditions occurred because the Authority (1) lacked procedures to monitor its agent's compliance with procurement requirements, (2) believed that an intergovernmental agreement was sufficient to address the conflict-of-interest situation, and (3) lacked controls to ensure that it obtained a waiver from HUD to avoid conflict-of-interest situations. As a result, (1) HUD had no assurance that the proposal of the vendor that the Authority paid \$860,132 for relocation services was the most advantageous, and (2) the Authority made ineligible payments totaling \$156,675 for job training services.

The Authority properly procured a vehicle for its chief executive officer, tablet computers, and an office chair. It also was not owed funds from its agent for past projects, and it followed its procedures for approving its chief executive officer's salary.

The Authority Could Not Show That Proposals for Relocation Services Were Evaluated Based on the Established Evaluation Criteria

The Authority did not ensure that its agent maintained documentation to show that it properly evaluated proposals as required. The agent issued a request for proposals to solicit bids for relocation services. The agent received three bids in response to its request for proposals and awarded a contract to one of those bidders. Regulations at 24 CFR (Code of Federal Regulations) 85.36(b)(9)¹ required the Authority to maintain records sufficient to detail the significant history of the procurement. Regulations at 24 CFR 85.36(d)(3)(i) required its agent to publicize requests for proposals and identify all evaluation factors and their relative importance when using the competitive proposal method of procurement. Regulations at 24 CFR 85.36(d)(3)(iv) further required that contracts be awarded to the responsible firm with the proposal most advantageous to the program, with price and other factors considered. The agent's request for proposals stated that it would make a selection for award based on the following criteria:

- Superior ability or capacity to meet particular requirements of the contract opportunity and needs of the agent.

¹ Although the procurement requirements applicable to HUD programs are currently located at 2 CFR Part 200, we reference 24 CFR 85.36 because that is where the HUD procurement requirements were located before December 26, 2014, and the Authority entered into the subject agreement with the Philadelphia Redevelopment Authority on June 18, 2014.

- Superior prior experiences of various scales and demonstrated relative strength, reputation, and successful experience providing services.
- Eligibility under Philadelphia Code provisions relating to campaign contributions.
- Compliance with the agent's standards for contracting, such as indemnification and nondiscrimination.
- Competence and a proven track record working with the private sector, governments, and development organizations.
- Administrative and operational efficiency, requiring less agency oversight and administration.
- Demonstrated ability to meet timelines and milestones.
- Any other factors the agency considers relevant to the evaluation of the responses from applicants.

The Authority could not provide documentation to show that its agent evaluated the proposals based on the evaluation criteria and selected the vendor that submitted the proposal that was most advantageous to the project. This condition occurred because the Authority lacked procedures to monitor its agent's compliance with procurement requirements. As a result, payments it made to a vendor using operating funds totaling \$860,132 were unsupported.

The Authority Allowed a Conflict-of-Interest Situation To Exist

The Authority entered into a memorandum of understanding agreement with a local college for job training services for its public housing residents, which created a conflict-of-interest situation. The Authority was prohibited from entering into the agreement because the Authority's board chairwoman also served as the vice president of marketing and government relations at the local college. Section 19(A) of the Authority's consolidated annual contributions contract states that the Authority must not enter into a contract or arrangement in connection with the program in which any present or former member or officer of the Authority has an interest, direct or indirect, during his or her tenure or for 1 year thereafter. Paragraph 14.4D of HUD Handbook 7460.8, REV-2, required the Authority to submit requests for waivers to the HUD field office for approval by HUD headquarters if the HUD field office recommended approval. During the period January 2015 through May 2016, the Authority paid the local college \$156,675 for job training services for its public housing residents.

This violation occurred because the Authority believed that executing a memorandum of understanding agreement with the local college acted as an intergovernmental agreement, which was sufficient to address the conflict-of-interest situation. It also lacked controls to ensure that it obtained a waiver from HUD before entering into agreements that created conflict-of-interest situations. Although the use of intergovernmental agreements allowed the Authority to obtain goods and services without following the competitive procurement process, the Authority was

still required to follow conflict-of-interest requirements in its consolidated annual contributions contract. Before the Authority's board of commissioners voted to select the local college as the entity to provide job training services to its public housing residents, the board chairwoman recused herself from the vote in accordance with the Authority's conflict-of-interest policy. However, the Authority did not obtain a waiver from HUD before entering into the agreement.² Without a waiver, the Authority violated its consolidated annual contributions contract and made ineligible payments using operating funds totaling \$156,675.

Other Allegations in the Complaint Had No Merit

The Authority maintained documentation to show that it complied with requirements to purchase a vehicle, tablet computers, and an office chair. The Authority also was not owed funds from the City's Redevelopment Authority for past projects, and it followed its procedures for approving its chief executive officer's salary.

Recommendations

We recommend that the Director of HUD's Pennsylvania State Office of Public Housing require the Authority to

- 1A. Provide documentation to show that the proposal of the vendor that it selected and paid \$860,132 was the most advantageous or reimburse its program from non-Federal funds for any amounts that it cannot support.
- 1B. Develop and implement controls to monitor its agent to ensure that it procures products and services in accordance with applicable Federal procurement requirements.
- 1C. Reimburse its program \$156,675 from non-Federal funds for the ineligible payments it made due to the conflict-of-interest situation identified by the audit.
- 1D. Develop and implement controls to ensure that it obtains waivers from HUD before entering into agreements that create conflict-of-interest situations.

We also recommend that the Director of HUD's Pennsylvania State Office of Public Housing

- 1E. Provide training and technical assistance to the Authority to ensure that it understands the proper use of intergovernmental agreements in accordance with HUD requirements.

² In March 2014, 1 month after the Authority executed the agreement with the local college, it requested HUD's permission to waive the conflict-of-interest situation. In January 2017, HUD denied the Authority's waiver request.

Scope and Methodology

We conducted the audit from January 2017 through September 2019 at the Authority's offices located at 12 South 23rd Street and 2013 Ridge Avenue, Philadelphia, PA, and our office located in Philadelphia, PA. The audit covered the period June 2014 through December 2016 but was expanded to include the memorandum of understanding agreement between the Authority and the local college in February 2014 for job training services for its public housing residents and correspondence between the Authority and HUD staff related to the conflict-of-interest situation as of January 2017.

To accomplish our objective, we reviewed

- Applicable laws, regulations, HUD's program requirements at 24 CFR Part 85, HUD Handbook 7460.8, REV-2, the Authority's Moving to Work agreement and amendments, and other guidance.
- The Authority's employee listing, organizational chart, policies and procedures, financial records, procurement files, annual audited financial statements for its fiscal years ending March 31, 2015 and 2016, agreement with the Philadelphia Redevelopment Authority, and consolidated annual contributions contract.

We also interviewed Authority employees, Philadelphia Redevelopment Authority employees, and HUD staff.

To achieve our objective, we relied in part on computer-processed data, such as disbursement registers. Although we did not perform a detailed assessment of the reliability of the data, we did perform a minimal level of testing and found the data to be adequate for our purposes. The testing entailed comparing computer-processed data to the documents supporting disbursements, such as invoices.

As of December 2016, the Authority's agent, the Philadelphia Redevelopment Authority, had paid 169 contractors and parties associated with the eminent domain more than \$10.5 million for activities related to the neighborhood transformation project. Of the more than \$10.5 million, more than \$6.8 million was related to relocation costs. The agent procured the services of one contractor to perform relocation assistance advisory services and assistance with the preparation of payment claims. The agent had paid the contractor \$860,132 as of December 2016. We selected this contract to determine whether the Authority ensured that its agent properly procured relocation services.

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

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:

- Effectiveness and efficiency of program operations – Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Validity and reliability of data – Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.
- Compliance with applicable laws and regulations – Policies and procedures that management has implemented to reasonably ensure that the use of resources is consistent with laws and regulations.

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 lacked procedures to monitor its agent's compliance with procurement requirements (finding).
- The Authority lacked controls to ensure that it obtained a waiver from HUD before entering into agreements that created conflict-of-interest situations (finding).

Appendixes

Appendix A

Schedule of Questioned Costs

Recommendation number	Ineligible 1/	Unsupported 2/
1A		\$860,132
1C	\$156,675	


- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.
- 2/ 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.

Appendix B

Auditee Comments and OIG's Evaluation

Ref to OIG
Evaluation

Auditee Comments



PHA
PHILADELPHIA HOUSING AUTHORITY
OPENING DOORS TO OPPORTUNITIES

2013 RIDGE AVE
PHILADELPHIA, PA 19121
215.684.4174
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KELVIN A. JEREMIAH
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September 6, 2019

Mr. David Kasperowicz, Regional Inspector General for Audit
Philadelphia Region, 3AGA
U.S. Department of Housing and Urban Development
Office of Inspector General
100 Penn Square East, Suite 10205
Philadelphia, PA 19107

RE: OIG Audit of PHA's Use of Public Housing Operating Funds

Dear Mr. Kasperowicz:

Kindly allow this letter to serve as response to the U.S. Department of Housing and Urban Development Office of the Inspector General's ("HUD OIG") audit of the Philadelphia Housing Authority ("PHA") use of Public Housing Program Operating Funds ("Report").

PHA strongly disagrees with the several components of the Report including, but not limited to, its conclusions, timeliness, and presentation.

Importantly, PHA regularly welcomes the review of its activities to ensure that it is complying with required the HUD regulatory requirements. As you may be aware, PHA has implemented changes to its policies and procedures when past deficiencies have been accurately identified by the Office of Inspector General. However, in this instance, PHA does not agree that the Report fairly represents PHA's activities and regulatory compliance with the use of Public Housing Program Operating Funds.

Our reasons for disputing the: "[Finding: The Authority Did Not Comply with Procurement and Conflict-of-Interest Requirements](#)" are detailed below.

I. A FACTUAL REVIEW PROVIDES ASSURANCE THAT RELOCATION SERVICES WERE PROPERLY PROCURED BY PHA'S AGENT

The Report states that PHA did not properly ensure that our agent, the Philadelphia Redevelopment Authority ("PRA"), properly procured relocation services as part of the Sharswood/Blumberg Eminent Domain Project. More specifically, the report erroneously states that PHA did not ensure that PRA, as PHA's agent, prepared an independent cost estimate for relocation services. However, not only did PRA prepare an independent cost estimate, PHA

Comment 1

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments

Comment 2

PHA's Response to HUD OIG's Report
Page 2 of 9

repeatedly provided this document to the multiple and changing HUD OIG auditors handling this during the three (3) year duration of this audit (the estimate is attached to the Agency Agreement, a copy of which is again provided, as Appendix 1). The cost estimate, contained at Exhibit A to the Agency Agreement, was provided to PHA from PRA before any bids were issued and services were performed. Consequently, PHA submits that this statement needs to be removed.

Comment 1

Moreover, PHA notes that the total cost for the relocation services was reasonable and in line with the independent cost estimate referenced above.

Comment 3

The report also states that PRA could not provide documentation to support its selection of the vendors for relocation services. The HUD OIG has chosen to omit the reason that the documentation could not be provided, despite both PHA and PRA detailing the extremely unusual yet explainable circumstances around this matter. However, PHA considers it consequential to provide this information in the report, to explain the situation. The loss of the documentation was not a result of any failure of supervision or oversight by PHA. Rather, as the HUD OIG knows, PHA reiterates that certain agency files were lost during a computer system conversion of PRA records, in a manner that was completely unforeseen and unexpected by all parties. This was out of PHA's hands and not something that could have been averted by any reasonable oversight by PHA.

Comment 3

Nonetheless, PHA provided the HUD OIG with contemporaneous e-mails that show PHA was consistently providing reasonable review and oversight of the procurement process to ensure that PRA, as PHA's agent, was complying with all required procurement activities under 24 CFR 85.36. PHA provided those e-mails to the HUD OIG on May 15, 2019. PHA also demonstrated that based on contemporaneous records, PRA received three bids based on a request for proposals ("RFP") that was conducted in a manner providing full and open competition as required by 24 CFR 85.36; the bids were received from Keystone Acquisition Services Corporation, O. R. Colan Associates and Universal Field Service, Inc.

Comment 1

Accordingly, the conclusion that the independent cost estimate was not prepared is blatantly incorrect, as that has been repeatedly provided. The conclusion that the loss of the records occurred, which unforeseeable loss PHA has explained was due to a computer malfunction, "because the Authority lacked procedures to monitor it's [sic] agent's compliance with procurement procedures," simply lacks a reasonable basis.

Comment 3

II. RECUSAL SUFFICED FOR THE CHAIR, AS THE LEVEL OF "INTEREST" DID NOT IMPLICATE THE ACC PROHIBITIONS; ALTERNATIVELY, A WAIVER SHOULD BE GRANTED FOR GOOD CAUSE OR A DENIAL THAT PROVIDES FOR THE ISSUE TO BE RESOLVED BY HER NO LONGER BEING EMPLOYED BY CCP (AS CONSISTENT WITH OTHER HUD WAIVER DETERMINATIONS)

The Report finding that PHA "violated conflict-of-interest requirements when procuring job training services" is surprising given the extensive and determinative information that PHA has provided to HUD with regard to the MOU that it entered into with the Community College of

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments

Comment 4

Comment 5

Comment 5

PHA's Response to HUD OIG's Report
Page 3 of 9

Philadelphia ("CCP"), a governmental entity, and why it was both appropriate from a procurement perspective and from a conflict-of-interest perspective.

PHA's previous communications with HUD regarding this request for waiver (with the first HUD response to the request being received almost three years after the request was submitted), required PHA to provide a competitive analysis regarding CCP's qualifications, which PHA did. It was inferred that PHA violated its procurement policy by not having a competitive procurement, while PHA maintained that because CCP is a governmental entity, it was an intergovernmental agreement and no competitive process was required.

This confusion seems to be resolved in the Report, which acknowledges that CCP is a governmental entity, so that no competitive process was required: "Although the *use of intergovernmental agreements allowed the Authority to obtain goods and services without following the competitive procurement process*, the Authority was still required to follow conflict-of-interest requirements in its consolidated contributions contract." (Pg. 6-7 of the Draft Report, emphasis added.)

Accordingly, the remaining issue is only whether there was a conflict-of-interest issue under the ACC (19)(A) that required PHA to either forego the MOU or wait until a waiver had been granted, due to Chair Brown-Sow being a salaried employee of CCP at the time that the MOU was approved by the Board and subsequently entered into, despite her having properly recused herself from all discussion or vote regarding the Board's approval of that MOU.

PHA's position is that, based on the ethics training and examples provided by HUD to PHA and its Commissioners in 2013, the nature of the "interest" that the Chair had was not of the level that triggered the ACC restrictions. The recusal procedures that were observed sufficed for the level of "interest" that the Chair had in the contract, due to merely being a salaried employee of CCP, especially since Pennsylvania law has held that intergovernmental agreements do not implicate conflict-of-interest situations.

Even if HUD now determines that its 2013 training was incorrect, so that a waiver was required, the waiver should be granted for good cause, based on the factors set forth below.

Alternatively, if there is a denial, HUD should only require that the Chair remove herself from CCP, which she has done (this is also the previous remedy suggested by HUD in its first response to this request, in January of 2017, and in its determinations on PHA waiver requests for conflicts involving Commissioner Diaz on 1/28/14; Commissioner Brown-Sow relating to YAP on 4/12/16 and 8/3/16; and Commissioner Camarda relating to the Salvation Army, on 3/12/18).

A. PHA Ethics Procedures

On April 26, 2013, the day that PHA ended its two years in receivership with HUD, a new Board of Commissioners, as appointed by the Mayor after approval by a majority of the city Council (the statutory mandate), was installed, on April 26, 2013. Lynette Brown-Sow was elected as the

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments

Comment 6

PHA's Response to HUD OIG's Report
Page 4 of 9

Chair of the PHA Board at that meeting, which position she has had to this day. At that meeting, the Board adopted By-Laws, which had been reviewed and approved by HUD, and which included the following Code of Ethics Section (then Section 500, now 600) that expressly allows for recusal as a way to avoid a conflict-of-interest situation, and states:

Section 601. CODE OF ETHICS.

All Board members and employees of the Authority are bound by the provisions of the Pennsylvania Public Officials and Employee Ethics Act, 65 Pa. C.S. §§ 1101-1113 ("Ethics Act") and by any code or policy of the Authority in the nature of the code of ethics or conduct ("Authority Code").

Section 602. ABSTENTION.

Any Board member or employee of the Authority who, in the discharge of his or her official duties, would be required to take an action or make a decision that would be inconsistent with any of the provisions of the Ethics Act or any Authority Code, shall instead take the following actions:

- (a) Prepare a written statement describing the matter requiring action or decision and the nature of his or her interests affected with respect to such action or decision.
- (b) Cause copies of such statements to be delivered to the Ethics Officer of the Authority with a copy to the Secretary.
- (c) If a Board member, the individual shall also deliver a copy of such statements to the Chair or presiding officer, and shall abstain from participating in discussion of or vote on the matter at Board meetings and otherwise. The presiding officer shall cause such statements to be noted in the minutes and shall exclude the member from any votes, deliberations, and other action on the matter.
- (d) If an employee and not a Board Member, the individual shall withdraw from participation in the matter and his or her superior shall assign it to another employee not supervised by the employee who is withdrawing from participation.

Consistent with this, the Board developed a Recusal Policy, which was distributed to the Board by the then General Counsel, Barbara Adams, on April 26, 2013, the requirements of which have been scrupulously adhered to ever since. In addition, the Commissioners are required to fill out Potential Conflict of Interest forms on a yearly basis, so that their employment and other affiliations that might constitute a conflict can be known in advance and recusal procedures timely followed. Should an upcoming resolution require recusal, all Commissioners are advised by an emailed Recusal Alert sent with the draft resolutions being circulated, identifying the Commissioner who might have the conflict, the nature of the conflict, and a reminder that there is to be no discussion regarding the resolution with that Commissioner, who also will leave the Board room during discussion of the resolution (as noted in the minutes) and also submit a recusal memo.

B. HUD's guidance as to what constitutes an "Interest" under the ACC shows that Chair Brown-Sow had no "Interest" under that provision, so that the observed recusal procedures sufficed to avoid a conflict-of interest

PHA's Recusal Policy, based on the HUD-approved abstention provisions in the By-Laws, may be said to be meaningless if a Commissioner has an "interest" in a contract under the ACC, since

Comment 6

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments

PHA's Response to HUD OIG's Report
Page 5 of 9

recusal is not an option. The contract must be avoided, or a HUD waiver of a conflict-of-interest obtained.

Therefore, in order to make sense of HUD's approval of the abstention/recusal procedures that PHA instituted (which are also in accordance with Pennsylvania Ethics law, as has been noted in several of PHA's previous explanations and in the waiver request in this instance and which law, by jurisprudence, requires both intent and a pecuniary gain), the meaning of "interest" must be consistently and narrowly defined by HUD.

In the HUD Ethics training provided to the Commissioners in April of 2013, prior to their being installed as Commissioners, the following example was provided and discussed by HUD (attached as Appendix 2):

Illustration #2

- Citizen Kane was recently appointed a Commissioner of the Elysian Fields HA.
- Mr. Kane is the Community Affairs Director of Reliance Hospital and serves in an unnamed capacity with the Rio Grande Recovery Program, an affiliate of the Hospital
 - The Recovery Program leases office space from the HA.
 - Mr. Kane is a salaried employee of the Hospital with no stock and/or other ownership interest in the Rio Grande or Reliance Hospital.

Can Mr. Kane remain on the HA Board?

Answer #2

YES

Mr. Kane's appointment as a Commissioner of the Elysian Fields HA does not constitute a conflict of interest with his employment at Reliance Hospital under Section 19 of the ACC.

Mr. Kane has no interest in the lease which Reliance has with the HA. He is merely a salaried employee of the Hospital and has no ownership in either the Hospital or its affiliate, the Rio Grande.

This example is exactly the case as is presented here, where the Chair was a salaried employee of CPP, with no ownership interest, so therefore, no "interest" under the ACC.

Since the Chair has no "interest" under the ACC, the provisions for avoiding a conflict-of-interest would then be those relating to recusal, which were observed. This would be consistent with the HUD-approved By-Law provisions for recusal as well as the provisions of Pennsylvania law and the Pennsylvania Ethics Act, 65 Pa.C.S. §§ 1101 *et seq.* It is again noted that, while Commissioner Brown-Sow recused herself and followed all the appropriate abstention procedures, under Pennsylvania Law, there is no conflict-of-interest when the pecuniary benefit flows to a Governmental entity, which HUD has acknowledged that CCP is (see, April 21, 2017 letter from PHA to HUD and citations therein).

Accordingly, there is no conflict-of-interest issue under the ACC or otherwise and no waiver needed.

Comment 7

Comment 7

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments

Comment 8

Comment 9

PHA's Response to HUD OIG's Report
Page 6 of 9

C. Were HUD to determine that Chair Brown-Sow had such an "Interest" as to create a conflict that could not be alleviated by recusal, a waiver should be granted

In an excess of caution, despite PHA's having determined that a conflict-of-interest of such a nature that would preclude contracting with CCP did not exist, given adherence to the recusal procedures, in 2014, PHA sought a waiver from HUD regarding the MOU, to which HUD responded in January of 2017.

In HUD's January 2017 response to PHA's waiver request, it stated that the waiver request was denied but that the remedy was that: "**PHA must comply with one of the following: Provide additional information**, which shows exactly how many organizations offer ABLE services, the qualifications of each organization and how CCP ranks higher than the rest; the Board Chairperson must terminate her position with the Community College of Philadelphia; or the Board Chairperson must terminate her position with the PHA Board." (Emphasis added).

PHA notes that PHA has had other contracts for resident job training services and, as detailed in its April 21, 2017 letter to HUD, which was provided to multiple HUD OIG auditors throughout the audit, research has documented that CCP is the superior entity for the services being provided under the MOU. Additionally, PHA asserts that the \$156,675 paid to CCP for the period of January 2015 through May 2016 for job training services of PHA's residents is beyond reasonable for the level and amount of service provided, as documented in several invoices and back up documents provided to multiple HUD OIG auditors throughout the audit.

In any case, PHA did as instructed by HUD, providing the information sought in the first option, in April of 2017, supplying more information when requested in October of 2017, then waiting for more direction. In the interim, the Chair retired from CCP and PHA heard nothing more until 2019.

D. Timing of Requests for Waiver

The average time for HUD's response for waivers, for the twelve requests that PHA has submitted since the new Board began in 2013, is two years, even for an interim response. Therefore, it is impractical to file requests for waivers then wait for years, ignoring business needs, for a response. That is especially true in this situation this situation, where PHA and CCP had a business relationship that well pre-dated the Chair's being appointed to the Board.

Therefore, in situations where PHA has less than two years to act on a resolution and does not believe that the "interest" of an affected Commissioner rises to the level implicated in the ACC, the recusal procedure is followed and a request for a waiver may be filed slightly after the fact. Of course, in a clear situation where a Commissioner has an ownership interest in an entity that seeks to contract with PHA, PHA would consider the ACC prohibition to come into play, to require HUD waiver in advance or avoidance of the contract.

Further, should HUD have concerns about the timing of the process to obtain waivers, it is suggested that HUD provide: 1) new clarification and guidance as to what constitutes an

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments

Comment 10

Comment 10

Comment 10

Comment 10

PHA's Response to HUD OIG's Report
Page 7 of 9

"interest" under the ACC, since the previous example provided by HUD seems not be uniformly followed in HUD's determinations; and 2) a timeline for HUD's rendering decisions on waiver requests, such as two (2) months, that would make filing the requests in advance of proposed agreements practical, if a conflict is possible under HUD's definition of "interest" under the ACC. Otherwise, the Pennsylvania law interpretation of "interest" would be followed and the recusal procedures deemed sufficient.

E. Previous HUD Decisions Support a Finding of No Waiver Needed or One Should be Granted, Under the ACC

For the sake of consistency and a clear interpretation of "interest" under the ACC, the following decisions by HUD for PHA Commissioners should be noted, where waivers were granted, and recusal was deemed an appropriate procedure.

A waiver request for Commissioner Eiding was granted even though he had a paid position (in an audit capacity) with an entity with which PHA was contracting and was President of the Philadelphia Council AFL-CIO. The March 13, 2018 HUD letter noted that it was noted that Commissioner Eiding's affiliations include serving on six (6) boards where the organizations "have pre-existing or imminent contracts with PHA" but "The Department determined that it is permissible for Mr. Eiding [to serve as a Commissioner] with the understanding that he will, as stated by PHA, recuse himself from any conflict of interest that arises while sitting on the Board."

A determination in that March 2018 letter of a waiver request for Commissioner Purnell, based on his position as Deputy Director of the City of Philadelphia Housing and Community Development, Board of Philadelphia Development Corporation, and employee with the City also allowed for recusal. However, HUD noted that since the request was filed, approximately two years earlier, it understood that he was no longer a City employee. In the interim however, according to PHA's procedures and while waiting for a HUD determination, Commissioner Purnell recused himself six times.

A waiver was also granted for Commissioner Wetzel, in January of 2017, with a determination that despite PHA routinely contracting with the City and Commissioner Wetzel therefore having recused himself once (but it was impractical for him to recuse himself from all resolutions involving the City), he had no involvement in his job position "with any agreements," so "Commissioner Wetzel does not have a conflict to analyze."

Chair Brown-Sow was not involved with the MOU and appropriately recused herself from any discussion or vote regarding it, announcing the same at the meeting and submitting a recusal memo. Accordingly, and consistent with HUD's other determinations, HUD should make a determination a waiver that there is no "interest" under the ACC that requires a waiver.

Even were HUD to decide that the Chair's interest in CCP was the equivalent of an ownership interest, so as to implicate the ACC restriction, good cause has been shown to either grant a waiver (based on the evidence provided as to recusal, the informal competitive options that had

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments

Comment 11

PHA's Response to HUD OIG's Report
Page 8 of 9

been considered, similar decisions by HUD in previous requests, and the benefit to PHA residents) or have the same requirement that HUD has had in previous denials of a waiver, which is for the Implicated Commissioner to leave the entity with which associated or the Board, and the Chair has not been employed by CCP for some time (and has no ownership interest in it).

III. THE UNTIMELINESS OF THE REPORT AND ITS FAILURE TO PRESENT ALL THE FACTS SHOULD BE RECTIFIED, AND ITS "FINDINGS" PRESENTED AS "RECOMMENDATIONS" UNDER THE CIRCUMSTANCES

This audit was started in July of 2016 and has now taken *over three years* to provide PHA with a Report. PHA has spent three years and several hundred hours working with the HUD OIG to answer its questions. The unusually long time that it took to conclude this audit is in no way due to PHA's lack of cooperation in the audit. The HUD OIG had what can be described, at best, as high "employee turnover" during of the review when various auditors departed the HUD OIG office and therefore PHA was required to repeatedly present the same materials and explanations of the parties and processes involved.

Comment 12

Additionally, Chair Brown-Sow filed her request for a waiver in 2014. In 2017, PHA was told to provide more information or for the Chair to step down from her position with CPP, which she has done. To make a determination, in 2019, that PHA should be required to pay HUD for what it now sees as a conflict that was not properly addressed, is not only inconsistent with its previous waiver determinations and remedies, but seeks to penalize PHA for its good faith and reliance on HUD's representations.

Comment 13

Moreover, it must also be noted for the record that the audit was commenced by a complaint received by the HUD OIG. PHA also received and reviewed the exact same complaint, which was not anonymous and was lodged by a disgruntled former PHA employee who was investigated and ultimately terminated for both racist and misogynist conduct in the workplace.

Comment 14

Finally, PHA objects to the unusual presentation format, wherein the audit report lists all allegations from the "anonymous complaint," noted above, but does not address the factual basis for the allegations that were dismissed.

Comment 14

For instance, the office chair purchased for the President & CEO was, in fact, not \$800 but less than half of that price (\$336). This information was as discussed and supported with documentation during the audit, however, the HUD OIG intentionally chose not to disclose this fact in the report. We recommend that the HUD OIG either remove any mention of the allegations that it has deemed unfounded or note the allegations and specify why they were determined to be unfounded. Doing so will provide the public with a better record of the basis for the findings, more accurate and complete information.

Comment 3

Similarly, as noted in the section regarding the reason for the loss of documentation in Section I, those facts should be disclosed should the HUD OIG choose to make findings rather than recommendations. The latter is encouraged, given the unusual nature of the facts for both the PRA and conflict situations at issue.

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments

PHA's Response to HUD OIG's Report
Page 9 of 9

Thank you for allowing me to clarify PHA's position with regards to the above and I look forward to your thoughtful consideration of our position and explanations.

Sincerely,



Kelvin A. Jeremiah
President & CEO, Philadelphia Housing Authority.

Attachments (2)

Appendix 1 – Agency Agreement (Independent Estimate)

Appendix 2 – Ethics Training Presentation

Cc: Board of Commissioners PHA
Audit Committee, PHA
Larry Redican, General Counsel, PHA
Janes Jordon, EVP PHA

OIG Evaluation of Auditee Comments

- Comment 1 The Authority did not agree with our conclusion that it did not have an independent cost estimate for the relocation services. Based on the discussion at the exit conference and documentation that the Authority provided with its written response, we have removed from the report the lack of an independent cost estimate as an issue.
- Comment 2 As indicated in Comment 1 above, we reevaluated the issue of the lack of an independent cost estimate and removed that issue from the report.
- Comment 3 The Authority contended that the loss of documentation to support its agent's selection of the vendor for relocation services was not a result of any failure of its supervision or oversight. It stated that certain agency files were unexpectedly lost during a computer system conversion of the agent's records. The Authority asserted that it provided emails to show that it provided reasonable review and oversight of the procurement process to ensure that its agent complied with all required procurement activities under 24 CFR 85.36. It also asserted that it provided records to show that its agent received three bids based on a request for proposals that was conducted in a manner providing full and open competition as required by 24 CFR 85.36.

We do not agree that the emails provided by the Authority showed that it routinely provided reasonable review and oversight of the procurement process to ensure that its agent complied with all required procurement activities under 24 CFR 85.36. Also, although the Authority provided records showing that its agent received three bids, it did not provide documentation to show that the agent evaluated the three bids based on the evaluation criteria in the request for proposal as required.

As stated in the audit report, the Authority did not have procedures to monitor the agent's compliance with procurement procedures. The Authority was responsible for ensuring that its agent awarded the contract to the responsible firm with the proposal most advantageous to the program, with price and other factors considered, and for maintaining documentation to support these actions. If the Authority had a properly implemented monitoring process it would have had adequate documentation to support that the agent followed procurement requirements and would not have had to rely on obtaining records from the agent after the fact.

- Comment 4 The Authority stated that the nature of the "interest" that the board chairwoman had was not of the level that triggered the annual contributions contract restrictions, based on the ethics training and examples provided by HUD. We disagree. As stated in the audit report, the Authority was prohibited from entering

into the agreement with the local college because the Authority's board chairwoman also served as the vice president of marketing and government relations at the college. Section 19(A) of the Authority's consolidated annual contributions contract states that the Authority must not enter into a contract or arrangement in connection with the program in which any present or former member or officer of the Authority has an interest, direct or indirect, during his or her tenure or for 1 year thereafter. Paragraph 14.4D of HUD Handbook 7460.8, REV-2, required the Authority to submit requests for waivers to the HUD field office for approval by HUD headquarters if the HUD field office recommended approval. In March 2014, a month after the Authority executed the agreement with the local college, it requested HUD's permission to waive the conflict-of-interest situation. In January 2017, HUD denied the Authority's waiver request.

- Comment 5 The Authority stated that if HUD determines that the 2013 training it gave to the Authority and its board of commissioners was incorrect and a waiver was required, HUD should grant the waiver for good cause. It also stated that HUD should require only that the board chairwoman remove herself from the local college, which was already done. We disagree. As stated in the audit report, the Authority violated its consolidated annual contributions contract and made ineligible payments using operating funds totaling \$156,675 because it did not receive a waiver. We recommended that HUD require the Authority to reimburse its program \$156,675 from non-Federal funds for the ineligible payments it made due to the conflict-of-interest situation. The Authority should work with HUD to resolve the finding and recommendations in the report.
- Comment 6 The Authority stated that its board adopted bylaws, which had been reviewed and approved by HUD, which included a code of ethics that allowed for recusal as a way to avoid a conflict-of-interest situation. As stated in the audit report, we acknowledge that the board chairwoman recused herself from the vote in accordance with the Authority's conflict-of-interest policy. However, the Authority violated its consolidated annual contributions contract by entering into the agreement with the local college before receiving a waiver from HUD as required. Although the Authority submitted a request for a waiver after it executed the agreement with the college, HUD denied the request.
- Comment 7 The Authority stated that there was no conflict-of-interest issue under the consolidated annual contributions contract because the board chairwoman was a salaried employee of the local college with no ownership interest. It further stated that because the board chairwoman had no interest under the consolidated annual contributions contract, the provisions for avoiding a conflict of interest would then be those relating to recusal, which was observed and consistent with the HUD-approved bylaw provisions for recusal and the provisions of Pennsylvania law and the Pennsylvania Ethics Act. We disagree. Although the board chairwoman was a salaried employee of the local college with no ownership interest, the Authority was required to submit a request for waiver to the HUD

field office for approval by HUD headquarters if the HUD field office recommended approval. The HUD field office denied the Authority's waiver request. Therefore, the Authority violated its consolidated annual contributions contract.

- Comment 8 The Authority asserted that the \$156,675 it paid to the local college was beyond reasonable for the level and amount of service provided. However, as stated in the audit report, the Authority violated its consolidated annual contributions contract by entering into the agreement with the local college before receiving a waiver from HUD as required. Because the Authority violated its consolidated annual contributions contract, the payments it made totaling \$156,675 were ineligible and need to be reimbursed to its program.
- Comment 9 The Authority stated that it was impractical to file requests for waivers and then wait years, ignoring business needs, for a response, especially in this situation, in which it had a business relationship with the local college that well predated the board chairwoman's appointment to the Authority's board of commissioners. We disagree. Although the Authority had a prior business relationship with the local college, it was still required to submit requests for waivers to HUD. The Authority was aware that it needed a waiver and should have known that taking action without first obtaining the waiver would make the payments to the college ineligible.
- Comment 10 The Authority stated that in previous situations HUD granted several waiver requests and the Authority believed that recusal was appropriate. It further stated that the board chairwoman was not involved with the memorandum of understanding agreement and appropriately recused herself from any discussion or vote. However, as stated in the audit report, the Authority requested HUD's permission to waive the conflict-of-interest situation a month after it executed the agreement with the local college. At that point, the Authority violated its consolidated annual contributions contract as it did not obtain a waiver from HUD before entering into the agreement with the local college. HUD ultimately denied the Authority's waiver request.
- Comment 11 The Authority stated that the unusually long time that it took to conclude this audit was in no way due to its lack of cooperation in the audit. We agree. We appreciate the courtesy and cooperation that the Authority extended to our auditors during our audit.
- Comment 12 The Authority stated that the board chairwoman filed her request for a waiver in 2014. It also stated that it was told to provide more information or for the board chairwoman to step down from her position at the local college, which she had done. Further, it stated that to make a determination in 2019 that it should be required to pay HUD for what it now sees as a conflict that was not properly addressed was not only inconsistent with its previous waiver determinations and

remedies, but sought to penalize it for its good faith and reliance on HUD's representations. We disagree. As stated in the audit report, the Authority did not obtain a waiver from HUD before entering into the agreement as required. Without a waiver, the Authority violated its consolidated annual contributions contract and made ineligible payments using operating funds totaling \$156,675.

Comment 13 The Authority stated that the audit was started based on a complaint received by HUD OIG. It also stated that it received and reviewed the same complaint, which was not anonymous and was lodged by a disgruntled former employee who was investigated and dismissed. As stated in the report, we audited the Authority because we received an anonymous complaint through our hotline alleging that it misused HUD funds. We have not provided a copy of the complaint to a third party, nor have we asked the Authority whether it received any complaints. Therefore, we cannot attest to the Authority's statement that it received the same complaint that we received.

Comment 14 The Authority stated that it objected to what it considered an unusual presentation format, in which the audit report lists all allegations from the "anonymous complaint" but does not address what the Authority considered the factual basis for the allegations that were dismissed. It also recommended that we either remove any mention of the allegations that we deemed unfounded or note the allegations and specify why they were determined to be unfounded. The audit report addresses the audit objective. As stated in the audit report, our audit objective was to determine whether allegations from the complaint had merit. We focused the audit on whether the Authority properly procured (1) relocation services, (2) job training services, (3) a vehicle, (4) tablet computers, and (5) an office chair in accordance with HUD requirements. We also wanted to determine whether the Authority was owed funds from its agent for past projects and followed its procedures for approving its chief executive officer's salary. To address the audit objective and for complete disclosure, the report identifies the allegations that did not have merit. The report states that the Authority properly procured a vehicle for its chief executive officer, tablet computers, and an office chair. The Authority also was not owed funds from its agent, and it followed its procedures for approving its chief executive officer's salary. We did not deem it necessary to provide further details of the allegations that we determined had no merit.