



OFFICE *of*
INSPECTOR GENERAL
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UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

Stark Metropolitan Housing Authority, Canton, OH

Public Housing Program | 2023-CH-1002

May 24, 2023

Date: May 24, 2023

To: Brian D. Murray
Director of Public Housing Hub, 5DPH

//signed//
From: Kilah S. White
Assistant Inspector General for Audit, GA

Subject: The Stark Metropolitan Housing Authority, Canton, OH, Did Not Always Comply With Federal and Its Own Procurement Requirements

Attached are the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our audit of the Stark Metropolitan Housing Authority's public housing program. 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, as amended, requires that OIG post its 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 Kelly Anderson, Audit Director, at (312) 913-8684.

Highlights

THE STARK METROPOLITAN HOUSING AUTHORITY, CANTON, OH, DID NOT ALWAYS COMPLY WITH FEDERAL AND ITS OWN PROCUREMENT REQUIREMENTS | 2023-CH-1002

What We Audited and Why

We audited the Stark Metropolitan Housing Authority's public housing program based on significant deficiencies noted during our prior audit of the Authority. Our audit objective was to determine whether the Authority complied with Federal and its own requirements for procuring goods and services.

What We Found

The Authority did not always comply with Federal and its own procurement requirements. Specifically, for the contracts reviewed, it did not always (1) maintain complete and consistent documentation detailing the significant history of procurements, (2) properly execute contracts for pest control services, (3) maintain sufficient documentation to support the reasonableness of contract costs, and (4) include the minimum and maximum quantity or amount in its indefinite-quantity delivery contracts. Further, the Authority paid more than the contract value for services procured with one contractor. These issues occurred because the Authority lacked adequate oversight, procedures, and controls over its procurements to ensure compliance with Federal and its own requirements. As a result, HUD and the Authority lacked assurance that the Authority used Federal funds to pay for goods and services at reasonable costs.

What We Recommend

We recommend that the Director of HUD's Cleveland Office of Public Housing require the Authority to (1) support the reasonableness of the costs paid for its unsupported procurement and contracting activities or repay its Public Housing Operating Fund or Capital Fund program from non-Federal funds for any amount determined not to be reasonable; (2) ensure that its staff is appropriately trained on Federal procurement requirements; and (3) implement adequate procedures and controls, including but not limited to, ensuring that proper documentation is maintained, contracts are procured in accordance with Federal and the Authority's procurement requirements, procurement staff complies with Federal procurement requirements, and payments are appropriately reconciled. We also recommend that the Director of HUD's Cleveland Office of Public Housing determine whether the Authority qualifies for an exemption from preaward review.

Table of Contents

Background and Objective	5
Results of Audit	7
Finding: The Authority Did Not Always Comply With Federal and Its Own Procurement Requirements	7
Scope and Methodology	14
Appendixes	16
APPENDIX A – Schedule of Questioned Costs	16
APPENDIX B – Auditee Comments and OIG Evaluation.....	17
APPENDIX C – Federal and Authority Requirements.....	46

Background and Objective


The Canton Metropolitan Housing Authority was created in 1938 in accordance with the provisions of the Ohio Revised Code. Its name was changed to the Stark Metropolitan Housing Authority in 1977. It is a public nonprofit organization, chartered by the State of Ohio, funded in part through the U.S. Department of Housing and Urban Development (HUD). The Authority was established to provide eligible residents of Stark County with quality affordable housing in decent, safe, and nourishing neighborhoods. The Authority is governed by a five-member board of commissioners appointed by the Common Pleas Court, the mayor, and the Stark County Board of Commissioners.

The Authority administers the public housing program, funded by HUD. Public housing was established to provide decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities. The Public Housing Operating Fund provides subsidies to public housing agencies to assist in funding the operating and maintenance expenses of the developments. The Public Housing Capital Fund program provides funds to public housing agencies to modernize public housing developments.

The table below shows the assistance HUD authorized the Authority for its Public Housing Operating and Capital Fund programs for fiscal years 2014 through 2022.

Fiscal Year	Operating Fund	Capital Fund
2014	\$8,301,419	\$3,357,477
2015	8,430,103	3,423,914
2016	8,943,346	3,588,335
2017	8,909,895	3,496,783
2018	9,186,944	5,529,518
2019	9,725,811	6,041,702
2020	9,973,630	6,246,363
2021	10,870,604	6,533,200
2022	9,955,160	8,383,355
Totals	84,296,912	46,600,647

On July 15, 2013, we issued report number 2013-CH-1003 on our audit of the Authority's public housing program. We determined that the Authority inappropriately used more than \$6.3 million in public housing operating and capital funds to pay for ineligible expenses and was unable to support that more than \$4.1 million in operating and capital funds used to pay expenses for its developments and home-ownership program was eligible costs. In addition, our prior audit found the Authority inappropriately entered into an oil and gas lease, encumbering project assets without HUD's approval. The report contained 18 recommendations. As of December 13, 2022, three of the 18 recommendations were still open with executed repayment agreements.



In November 2018, we initiated our audit of the Authority’s procurement practices. Our objective was to determine whether the Authority complied with Federal and its own requirements for procuring goods and services.

Results of Audit

FINDING: THE AUTHORITY DID NOT ALWAYS COMPLY WITH FEDERAL AND ITS OWN PROCUREMENT REQUIREMENTS

The Authority did not always comply with Federal and its own procurement requirements. Specifically, for the contracts reviewed, it did not always (1) maintain complete and consistent documentation detailing the significant history of procurements, (2) properly execute contracts for pest control services, (3) maintain sufficient documentation to support the reasonableness of contract costs, and (4) include the minimum and maximum quantity or amount in its indefinite-quantity delivery contracts. Further, the Authority paid more than the contract value for services procured with one contractor. These issues occurred because the Authority lacked adequate oversight, procedures, and controls over its procurements to ensure compliance with Federal and its own requirements. As a result, HUD and the Authority lacked assurance that the Authority used Federal funds to pay for goods and services at reasonable costs.

The Authority Did Not Always Maintain Complete and Consistent Documentation of Its Procurement Activities

The Authority did not maintain complete and consistent documentation of its procurement activities. HUD's requirement at 2 CFR (Code of Federal Regulations) 200.318(i), states the non-Federal entity must maintain records sufficient to detail the history of the procurement. These records would include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and basis for the contract price. Further, HUD Handbook 7460.8, REV 2, provides a list of the types of documentation that generally should be included in the contract files for each procurement.

For the period April 1, 2014, through September 30, 2018, we reviewed 11 of the Authority's program contracts¹ totaling more than \$2.2 million for compliance with Federal and its own procurement requirements.

For the 11 contracts reviewed,² the Authority did not always maintain complete contract files for procured services in accordance with Federal and its own requirements.³ Specifically, the Authority did not maintain or provide documentation to support that it:

- determined that the contractor bids or offers were responsive to the bid requirements for seven contracts,
- inspected the completion of the work or services for four contracts,
- obtained the contractor's insurance or license for two contracts,
- maintained the scope or statement of work describing work to be performed or services to be provided for two contracts, and

¹ Our methodology for selecting the 11 contracts is explained in the Scope and Methodology section of this audit report.

² Each of the 11 contracts had more than 1 deficiency.

³ See appendix C for criteria.

- notified the unsuccessful bidders for one contract.

These deficiencies occurred because the Authority lacked adequate oversight of its contract files to ensure that complete procurement records were maintained. At that time, the Authority's procurement staff used checklists for various procurement actions to ensure that required documentation was maintained in its procurement files. However, the Authority did not have a quality control process to ensure that its staff appropriately completed the checklists so that required documents were maintained.

For the period January 1, 2020, through April 30, 2022, we selected an additional 12 contracts⁴ totaling more than \$6.5 million to review the Authority's current processes for ensuring that complete procurement records were maintained. For the 12 files reviewed, 6 of the Authority's files were not maintained in a consistent manner.⁵ Specifically, the Authority's files did not contain documentation to support that it

- had inspected the completion of the work or services for five contracts,
- notified the unsuccessful bidders for two contracts,
- published a procurement notice in a local newspaper for one contract and that the required publication ran for two consecutive weeks for two contracts, and
- had the rationale for the procurement method used for one contract.

The Authority has yet to provide the missing documentation.

In October of 2021, the Authority updated and implemented its procurement file checklists. However, the checklists were not being used consistently, resulting in the Authority's procurement records not having all the required documentation.

The Authority Did Not Properly Execute Contracts for Pest Control Services

The Authority did not properly execute a contract for pest control services as required by Federal regulations. It initially entered a contract for the services for a 1-year term from December 1, 2014, through December 1, 2015, with four 1-year renewal options. In a letter, dated March 27, 2017, the contractor's president stated that the contractor would no longer service the Authority and recommended another company as a replacement for the remainder of the contract term. On April 17, 2017, the Authority terminated the contract and stated that the contractor's action was a unilateral change to the contract, which did not occur in accordance with a "written addendum executed by both parties." Yet, the Authority allowed the recommended vendor to begin providing services without executing a new contract. On March 26, 2018, the Authority notified the vendor that the Authority was unable to continue using its services because the Authority needed to procure the services and issue a contract. However, the Authority allowed the vendor to continue providing services until August 2018. From April 13, 2017, through August 16, 2018, the Authority inappropriately paid that vendor \$80,685.

⁴ Our methodology for selecting the 12 additional contracts is explained in the Scope & Methodology section of this audit report.

⁵ A contract may have more than one issue.

The Authority's deputy director stated that the Authority did not execute a contract with the recommended vendor because the services had not been properly procured. Further, according to the former executive director, the Authority was experiencing a severe bed bug infestation at multiple sites during this period. Therefore, he did not want to disrupt services by procuring a new pest control contractor.

During our audit period January 1, 2020, through April 30, 2022, the Authority paid three vendors \$57,902, collectively, for pest control services without an executed contract.⁶ According to the Authority, it solicited quotes from these vendors. The Authority provided quotes for two of the three vendors. On January 17, 2022, the Authority awarded a pest control services contract to the three vendors.

The Authority Did Not Maintain Sufficient Documentation To Support the Reasonableness of Contract Costs

The Authority did not always maintain adequate support for independent cost estimates in excess of the contracted amounts and a cost analysis when there were significant changes in the contract prices after the work had begun.

The Authority's Independent Cost Estimates Needed Improvement

For the period April 1, 2014, through September 30, 2018, the Authority was unable to adequately support the independent cost estimate it had prepared for contract numbers 0917 and 1125. Specifically, for contract 0917, the Authority's cost estimate for this contract was \$83,555 per year for heating, ventilation, and air conditioning services. However, the Authority said that the cost estimate reflected the total amount for these services and did not consider inflation and current market conditions. Considering the Authority's statements regarding the cost estimate's reflecting the contract's total, the Authority paid a total of \$94,367, resulting in a variance of \$10,812⁷ (12.94 percent), over 4 years and 4 months as of April 30, 2019. Additionally, the Authority's cost estimate appeared to have included costs related to furnace services for which the Authority had executed a separate contract for the same period (contract number 1125).

For furnace installation services for contract 1125, the Authority's independent cost estimate ranged from \$1,356 to \$2,144 per unit. The Authority's bid tabulation sheet showed \$2,650 per unit. The Authority contracted for services ranging from \$1,825 to \$2,650 per unit. In comparing the independent estimate to the contracted price, the cost estimate was exceeded by at least 23.6 percent.⁸ The Authority paid \$130,712 for these services as of April 30, 2019. For both contracts (0917 and 1125), the Authority did not provide documentation showing that it had examined and determined the reasons for the significant variances.⁹

For the period January 1, 2020, through April 30, 2022, for 6 of the 12 contracts reviewed, the contract amounts varied from the Authority's independent cost estimates by 20 to 57 percent.¹⁰ The following

⁶ The Authority made payments to the vendors from July 2020 through December 2021.

⁷ \$94,367 - \$83,555

⁸ Using the highest amount

⁹ HUD Procurement Handbook 7460.8, REV-2, section 10.3.E

¹⁰ These figures are rounded.

table shows the contract number, independent estimate, contract price, and variance between the independent cost estimate and the contract price for these six contracts.

Contract Number	Independent cost estimate (a)	Contract price (b)	Percentage variance between (a) and (b) ¹¹
0824	\$250,000	\$300,000	20%
0731	188,331	269,460	43%
0120	210,834	331,322	57%
1105	37,724	25,452	33%
1102	1,398,600	750,000	46%
0216	6,377,149	3,468,239	46%

For the remaining six contracts, the variance between the independent cost estimates and the contract amounts was less than 10 percent for four contracts, and the cost estimates were based on the amount of supplies or the nature of services but did not indicate a total cost for two contracts.

Without a properly prepared independent cost estimate, the Authority would be unable to properly assess the reasonableness of offerors' proposed costs. For instance, for contract 0216, the lowest vendor's bid was \$3.4 million, and the second lowest vendor's bid was \$4.2 million. The Authority selected the lowest vendor's bid; however, during the contract period, the Authority issued multiple change orders totaling more than \$1.1 million, resulting in the Authority's increasing the contract amount to nearly \$4.6 million as of September 2022. Due to change orders, the selected bidder's contract exceeded the second bid amount. Had the Authority prepared a proper estimate, it could have used it as a tool to assess the reasonableness of the contract price. Therefore, the Authority's processes for independent cost estimates needed improvement.

The Authority Did Not Always Support That Cost or Price Analyses Were Performed

For the period April 1, 2014, through September 30, 2018, the Authority did not properly document or adequately support in its files the cost or price analysis performed for two contracts (0917 and 1125) as required.¹² The Authority's deputy director believed that the bids for the contracts were acceptable in comparison to the independent cost estimates; therefore, justification was not warranted. However, as previously mentioned, the variance between the contracts and the independent cost estimates ranged from nearly 13 to 24 percent, respectively.

For the period January 1, 2020, through April 30, 2022, the Authority did not provide cost or price analyses to support the reasonableness of the costs paid for five contracts (0505, 0824, 1023, 0731, and 0216) in excess of their contracted amounts.¹³ For contract 0216, the Authority issued change orders totaling more than \$1.1 million, and for the remaining four contracts (0505, 0824, 0731, and 1023), the

¹¹ (a)-(b)/(a)

¹² HUD Procurement Handbook 7460.8, REV-2, section 8.4.B

¹³ 2 CFR 200.324(a) formerly 2 CFR 200.323(a)

Authority's board amended resolutions to increase the contract amounts by 28 to 100 percent. For the four contracts, the Authority did not provide documentation to support the contract modifications.

In addition, for three of the four contracts (0824, 0731, and 0216), the Authority's independent cost estimates significantly varied from the executed contracts as indicated in the table above. Therefore, the estimates would not have been a useful tool for the Authority to assess cost reasonableness for these three contracts.

The Authority Initially Did Not Include Minimum and Maximum Quantities or Services in Its Indefinite-Quantity Contracts; However, Some Improvements Had Been Made

Of the 11 contracts reviewed for the period April 1, 2014, through September 30, 2018, 4 were indefinite-quantity delivery contracts (0917, 0822, 1125, and 1027). The Authority did not include the minimum and maximum quantity of supplies or services in the four indefinite-quantity delivery contracts as required.¹⁴ According to the Authority's deputy director, the four contracts should have stated a minimum and maximum quantity. However, the Authority had mistakenly excluded these requirements from the contracts. The deputy director did not believe that the oversight negatively impacted the pricing or cost of services or goods or the quality of work. As a result of our audit, the Authority amended its processes to ensure that it complies with HUD's requirements for indefinite-quantity contracts.

To assess whether the Authority implemented its amended processes for indefinite-quantity contracts, we reviewed four of the Authority's indefinite-quantity delivery contracts (0505, 0731, 0824, and 1023) that had been executed during the period January 1, 2020, through April 30, 2022. One (0824) of the four contracts stated a not to exceed amount (maximum) but did not state the minimum amount for services to be provided under the contract. The remaining three contracts contained the required information. Therefore, although improvements had been made, the Authority's contracts still did not fully meet the requirements for indefinite-quantity delivery contracts.

The Authority Paid a Contractor More Than the Contracted Amount

For the period April 1, 2014, through September 30, 2018, the Authority did not pay the correct contract amount for 1 of the 11 contracts reviewed. The Authority executed a contract with a contractor to perform landscaping services with a not-to-exceed value of \$146,842 for a 1-year term from May 1, 2018, through April 30, 2019. However, as of March 31, 2019, the Authority had made payments totaling \$195,152 to the contractor, thereby exceeding the contract amount by \$48,310. The Authority did not provide documentation, such as a contract modification, to justify the excess payments made to the contractor for the landscaping services.

The Authority could benefit from improvements to its contractor payment process. Specifically, it could improve its notification and reconciliation processes to ensure that overpayments do not occur. For instance, in reference to the overpayment of \$48,310, the Authority's former executive director stated that the Authority incorrectly allocated the services in the payment register for the contractor. According to the former executive director, the Authority properly secured all services for the contract, but it should have allocated the services based on the language in article 2 of the executed contract, compensation of

¹⁴ HUD Procurement Handbook 7460.8, REV-2, section 10.1.C.3.a.iii

payment. Article 2 of the contract stated that other services would be on an as needed basis and a purchase order would be issued when the contractor was called out for special services. However, the Authority did not provide documentation to support that (1) these additional payments were for special services and (2) it had issued purchase orders for these services.

For the 12 contracts reviewed during the review period, January 1, 2020, through April 30, 2022, the Authority did not provide complete documentation, such as, invoices, bank statements, etc., confirming the information in its payment register to enable us to determine the payments made under each contract.¹⁵ Therefore, we could not determine if additional instances in which the Authority paid more than the contracted amount occurred.

The Authority Lacked Adequate Oversight, Procedures and Controls Over Its Procurements

The deficiencies described above occurred because the Authority lacked adequate oversight, procedures, and controls over its procurements. During our audit, the Authority made efforts to improve its procurement processes, but it continued to have issues with maintenance of its procurement records, contracts for goods and services, and payments to vendors for pest control services due to its lack of adequate procedures and controls. For instance, the Authority did not consistently use its enhanced procurement file checklists, which resulted in deficiencies in maintaining complete and consistent records detailing the history of each procurement. The Authority also did not have adequate oversight of its procurement staff to ensure that they followed HUD's and the Authority's own policies. In addition, the Authority has experienced turnover with its management and staff for its procurement activities.

Conclusion

The Authority did not always comply with Federal and its own procurement requirements. The deficiencies described in this report occurred because the Authority lacked adequate controls over its procurements. As a result, HUD and the Authority lacked assurance that the Authority used Federal funds to pay for goods and services at reasonable costs. If the Authority improves its controls over procurements and ensures that its staff receives appropriate training on HUD's and its own requirements, it will help to ensure that future procurement actions comply with requirements and that Federal funds paid for goods and services are reasonable.

Recommendations

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

- 1A. Support the reasonableness of \$80,685 paid to a vendor for pest control services without a valid contract or repay its Public Housing Operating Fund or Capital Fund program from non-Federal funds for any amount determined not to be reasonable.

- 1B. Support the reasonableness of the amounts paid for the two noncompetitively awarded contracts (0917 and 1125) that lacked adequate support for the independent cost estimate

¹⁵ According to the Authority's deputy and finance director, to provide this information would take a significant effort due to staffing shortages.

and price analysis or repay its Public Housing Operating Fund or Capital Fund program from non-Federal funds for any amount determined not to be reasonable.¹⁶

- 1C. Support the \$48,310 in excess costs paid for landscaping services or reimburse its program from non-Federal funds.

For the contract activities during the period of January 1, 2020, through April 2022, the Director should require the Authority to

- 1D. Support the reasonableness of \$57,902 paid to three vendors for pest control services without a valid contract or repay its Public Housing Operating Fund or Capital Fund program from non-Federal funds for any amount determined not to be reasonable.
- 1E. Support the reasonableness of the change orders that increased the price of the contract (0216) by more than \$1.1 million or repay its Public Housing Operating Fund or Capital Fund program from non-Federal funds for any amount determined not to be reasonable.¹⁷
- 1F. Support the contract modifications and the reasonableness of the increased costs for four contracts (0824, 0505, 1023 and 0731) or repay its Public Housing Operating Fund or Capital Fund program from non-Federal funds for any amount determined not to be reasonable.
- 1G. Ensure that its staff is appropriately trained and familiar with Federal procurement requirements regarding cost estimates and cost analyses.
- 1H. Implement adequate procedures and controls, including but not limited to ensuring that (1) proper documentation is maintained, (2) contracts are procured in accordance with Federal and the Authority's procurement requirements, (3) procurement staff complies with Federal procurement requirements, and (4) payments are appropriately reconciled.

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

- 1I. Determine whether the Authority qualifies for an exemption from preaward review.

¹⁶ The Authority had not provided adequate documentation showing the total payments made related to the two contracts.

¹⁷ The Authority had not provided adequate documentation showing the payments to date related to the change orders.

Scope and Methodology

We performed our onsite audit work between November 2018 and February 2019 at the Authority's main office located at 400 East Tuscarawas Street, Canton, OH. The audit covered the period April 1, 2014, through September 30, 2018. We expanded our audit period to April 30, 2022, to update our audit results.

To accomplish our audit objective, we interviewed HUD program staff and the Authority's employees. In addition, we obtained and reviewed the following:


- Federal regulations at 2 CFR part 200; HUD notices; HUD Handbook 7460.8, REV-2; and the Capital Fund Guidebook.
- The Authority's accounting records, annual audited financial statements, bank statements, contract and procurement files, policies and procedures, board meeting resolutions, organizational chart, program annual contributions contract, Line of Credit Control System reports, 5-year and annual plans, and program expenditures.

During our audit period, April 1, 2014, through September 30, 2018, the Authority entered into 149 contracts totaling more than \$7.4 million. The Authority's list of contracts included indefinite-quantity contracts. The list did not include contract numbers. The procurements were listed by project name, contractor name, date, amount (when available), and year. Therefore, we reviewed the Authority's check register and general ledger to determine the amount and source of funds disbursed to the contractors. We combined the disbursements made to each contractor that were included in the Authority's check register to establish the total amount of operating and capital funds disbursed to the contractors during the audit period. We used a nonrepresentative method to select 11¹⁸ contracts totaling more than \$2.2 million to determine whether the Authority properly procured the contracts in accordance with Federal and its own requirements. We selected a nonrepresentative sample because we knew enough about the universe to select higher risk procurements. The results of our review were not projected to the universe.

Due to delays with issuing the final audit report, we expanded our audit scope to include contracts executed by the Authority between January 1, 2020, and April 30, 2022, to evaluate the Authority's current operations related to procurements. During this period, the Authority executed 69 contracts totaling more than \$12.4 million. We used a nonrepresentative method to select 12 contracts totaling more than \$6.5 million to determine whether the Authority properly procured contracts in accordance with Federal and its own requirements. We selected a nonrepresentative sample because we knew enough about the universe to select higher risk procurements. The results of our review were not projected to the universe.

We determined that internal controls over compliance with laws and regulations and effectiveness and efficiency of operations were relevant to our audit objective. We assessed the relevant controls. Based

¹⁸ Two of the eleven contracts were awarded to multiple vendors for each contract. Specifically, the Authority awarded one contract to three vendors for its roof replacement project and another contract to three other vendors for its landscaping services. In addition, 4 of the 11 contracts selected were indefinite-quantity delivery contracts, which did not include contract amounts when procured.



on our review, we believe that the Authority did not have adequate controls to ensure that it followed applicable HUD, Federal, and its own requirements.

To achieve our objective, we relied in part on the Authority's computer-processed data. Although we did not perform a detailed assessment of the reliability of the data, we performed a minimal level of testing and found the data to be adequate for our purposes.

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.

Appendixes

APPENDIX A – SCHEDULE OF QUESTIONED COSTS

Recommendation number	Unsupported 1/
1A	\$80,685
1C	48,310
1D	57,902
Total	186,897

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.

APPENDIX B AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation – Auditee Comments



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February 16, 2023

RE: Stark Metropolitan Housing Authority, Canton, Ohio – Audit Report

Dear Ms. Anderson:

The Stark Metropolitan Housing Authority (the "Housing Authority") is in receipt of the Discussion Draft Audit Report Number 2023-CH-100X from the U.S. Department of Housing and Urban Development ("HUD") Office of Inspector General, Office of Audit ("OIG") dated January XX, 2023 (the "Report"). The Report contains one finding by the OIG which states: the Housing Authority did not always comply with Federal and its own procurement requirements.

The Report is a revival of outdated, baseless findings in an Old Audit conducted over two years ago and a repetition of the same previous mistakes for the New Audit period. The findings in the Old Audit are outdated and should be disregarded. For the New Audit period, the OIG makes similar unfounded assumptions and mistakes. The Report often ignores substantial materials provided by the Housing Authority and leaps to unwarranted conclusions. Contrary to

 **Comment 1 >**



Mission Statement

The Stark Metropolitan Housing Authority provides eligible residents of Stark County with quality, affordable housing in decent, safe, and flourishing neighborhoods. By working in partnership with the public and private sectors, the SMHA provides families with housing choices and opportunities to achieve self-sufficiency.



Ref to OIG Evaluation – Auditee Comments

broad statements in the Report, the Housing Authority’s procurement files clearly demonstrate compliance with federal guidelines.

Comment 2 >

For example, the OIG states “deficiencies occurred because the Authority lacked adequate oversight.” Even assuming a deficiency existed, the OIG’s thoughts regarding causation are sheer speculation given that the Report makes no attempt to assess levels of oversight in the Housing Authority. Further, despite its unsupported statement that HUD would lack assurance that the Housing Authority “used federal funds to pay for goods and services at reasonable costs,” the Report only identifies technicalities, and presupposes a danger of noncompliance. The Report does not actually find that the Housing Authority misappropriated, misused or used funds for personal gain, spent funds for unallowable goods or services, or paid for goods or services at unreasonable or uncompetitive prices.

Comment 3 >

The Housing Authority strongly disputes the one, and only, finding in the Report and believes that none of the recommendations are necessary. The Housing Authority appreciates the opportunity to respond to the Report and demonstrate that it complied with all applicable regulations and its own policies. The Housing Authority is pleased to confirm that no harm or negative consequences resulted from the alleged non-compliance. The Housing Authority looks forward to working with HUD to ensure continued compliance in the future.

I. The Findings of the Old Audit Should Be Disregarded.

Comment 1 >

The Report is really two audits wrapped into one. In November 2018, the OIG initiated its audit for the period April 1, 2014, through September 30, 2018 (the “Old Audit”). A draft report of the Old Audit was circulated in April 2020 to which the Housing Authority provided its written response. Two years later, the OIG returned claiming that it was conducting a “continuation” of its audit, but this time for the period spanning January 1, 2020, through April 30, 2022 (the “New Audit”).

Ref to OIG Evaluation – Auditee Comments

Comment 4 >

Though the OIG describes the “New Audit” as a continuation, the Report is a bald attempt to seek a remedy for outdated findings in the Old Audit. Indeed, much of the Report is a simple copy and paste of statements from the Old Audit. HUD previously had an opportunity to address the findings of the Old Audit—in fact, it had *two years* to do so. HUD’s failure to address findings from the Old Audit are the fault of HUD, not the Housing Authority. The Housing Authority is prejudiced in having to respond to the OIG findings from events occurring 4 years or more in the past. Significantly, the Housing Authority’s Executive Director during the time of the Old Audit has since left the Housing Authority. The Housing Authority is prejudiced by the simple fact that perhaps the most knowledgeable person regarding the Old Audit is no longer with the Housing Authority. Further, the procurement staff present during the time of the Old Audit are no longer with the Housing Authority. Whether under legal bases, such as statute of limitations, or equitable bases, including laches, the findings of the Old Audit should be disregarded wholesale.

Comment 5 >

For the sake of completeness, this response also addresses the Old Audit’s finding, though with obvious limitations due to a lack of information available to the Housing Authority. However, the Housing Authority does not waive any right to challenge the OIG’s authority to duplicate the Old Audit and/or HUD’s authority seek relief for findings of the Old Audit.

II. Finding: The Housing Authority Did Not Always Comply with Federal and Its Own Procurement Requirements.

The only finding of the Report is that the Housing Authority did not always comply with federal and its own requirements for procuring services. Specifically, the OIG found that the Housing Authority: (a) did not always maintain complete and consistent documentation of procurement activities, (b) did not properly execute contracts for pest control services, (c) did not obtain approval for its non-competitive proposals and maintain sufficient documentation to support the reasonableness of contract costs, (d) did not include minimum and maximum quantities or

Ref to OIG Evaluation – Auditee Comments

services in its indefinite-quantity contracts, and (e) paid a contractor more than the contracted amount. These findings are incorrect, as explained below.

(a) Maintenance of Contract Files for Procured Services

The Report makes a finding for filing deficiencies. It claims that the Housing Authority did not maintain adequate contract files for procured services because it lacked adequate oversight of its contract files to ensure that complete procurement records were maintained. For the Old Audit and New Audit periods covered by the Report (2014-2018 and 2020-2022), the OIG found that the Housing Authority's files did not contain adequate documentation to support that it: (1) determined that contractor bids or offers were responsive to the bid requirements for seven contracts (Old Audit), (2) inspected the completion of the work or services for four contracts (Old Audit) and five contracts (New Audit), (3) obtained the contractor's insurance or license for two contracts (Old Audit), (4) maintained the scope or statement of work describing work to be performed or services to be provided for two contracts (Old Audit), (5) notified the unsuccessful bidders for one contract (Old Audit) and two contracts (New Audit), (6) received the bids submitted by each vendor for two contracts (New Audit), (7) published a procurement notice in a local newspaper for two contracts (New Audit), (8) had the rationale for the procurement method used for one contract (New Audit). The Report's findings center on the failure to ensure that the Housing Authority's filing checklist was completed.

i. Documentation

The Report's findings on filing deficiencies does attribute any resulting harm, nor is there any such indication. However, as an initial matter, much of the Report's claims for filing deficiencies is incorrect.

Ref to OIG Evaluation – Auditee Comments

Comment 6 >

Regarding purported missing inspection documentation, the Housing Authority does not include documentation of work performed on service contracts, including the service contracts identified in the Report as lacking inspection documentation. Neither HUD nor the Housing Authority has a specific requirement of documentation. Service contracts can be extensive and require a large number of service visits over the life of the contract. The Housing Authority has asset management staff (which may include leadership, property, and/or maintenance staff) oversee and observe the work during and after the service work. Assuming the work meets the approval of the asset management staff, the asset management staff will approve the work as successfully delivered. The payment to the vendor operates as a *de facto* indication that the work was performed to satisfaction. A separate report on inspections is not maintained, nor is such a report necessary or required.

Comment 7 >

The Report makes the following additional errors in its assessment of missing documentation. Among the documents which are not actually missing are: submitted bids for contracts 0824 (attached hereto as Appendix A) and 0120 (attached hereto as Appendix B 7 bids from 2/2 email) and documents indicating publication of procurement notice for contracts 1023 (attached hereto as Appendix C) and 0731 (attached hereto as Appendix D). Far from there being any actual harm for filing deficiencies, the Report fails to accurately assess the documentation that was maintained.

ii. Federal Regulations

Though complaining about filing deficiencies, the Report does not identify or accuse the Housing Authority of violating any federal regulation requiring the Housing Authority to maintain the procurement contract materials highlighted by the Report. The only federal regulation cited on this point is 2 CFR §200.318(i) which vaguely states: “The non-Federal entity must maintain

Ref to OIG Evaluation – Auditee Comments



Comment 8 >

records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.” This regulation does not support the OIG’s finding of non-compliance, because the regulation does not contain any requirement for the specific types of documentation that must be maintained. Rather, the regulation provides some vaguely described categories of information that the documentation should reflect. Importantly, the regulations defer to the Housing Authority’s own procurement policies, 2 CFR §200.318(a), yet the Report does not discuss or assess the contents of the Housing Authority’s policy as it relates to the alleged record deficiencies.

iii. Housing Authority Policy

The Report fails to analyze the various purported filing deficiencies as it relates to the Housing Authority’s Procurement Policy. There are two Procurement Policies implicated given the Report’s (unwarranted) attempt to revive the Old Audit. Appendix E contains the Procurement Policy in effect during the Old Audit (hereinafter referred to as the 2012 Procurement Policy). Appendix F contains the updated Procurement Policy, updated in 2021 (hereinafter referred to as the “2021 Procurement Policy”). Under either Procurement Policy, the checklist is not listed as a “requirement.” *See e.g.*, 2012 Procurement Policy at Section 10; 2021 Procurement Policy at Section 14.C. While the checklist referenced by the Report is a means for the Housing Authority to effectuate the requirements of the Procurement Policy, perfect compliance with the Housing Authority’s checklist is not a strict requirement of the Procurement Policy. Indeed, the 2021 Procurement Policy recognizes flexibility. *See* 2021 Procurement Policy at Section 14.C (“The level of documentation should be commensurate with the value of the procurement”). The Report does not make any attempt at providing a qualitative analysis of the records for the selected



Comment 9 >

Ref to OIG Evaluation – Auditee Comments

contracts vis a vis the procurement policies. Instead, the OIG takes the easy way out by merely reading a checklist and (upon seeing some items not appearing in the checklist) implies that the Housing Authority must be disregarding Federal and its own requirements.

iv. No Harm

To the extent that there were any filing deficiencies, the Report does not indicate that any harm occurred. The Report does not make a finding that federal funds were wasted or misappropriated as a result of the manner in which contract files were maintained. The Report does not make any finding that the manner in which the Housing Authority maintained procurement contract files resulted in harm to the federal government, the Housing Authority’s residents, or private contractors.

 **Comments 3 & 8 >**

The Housing Authority acknowledges that compliance with its own policies is certainly a best practice. Accordingly, the Housing Authority will schedule mandatory training sessions for its staff to review procurement policies to “[e]nsure that its staff is appropriately trained and familiar with Federal procurement requirements,” as suggested by Recommendation 1D of the Report. Further, the Housing Authority believes that its policies, procedures, and controls for procurement contract compliance are adequate, and that staff trainings will be sufficient to ensure that “(1) proper documentation is maintained, (2) contracts are procured in accordance with Federal and the Authority’s procurement requirements, (3) procurement staff complies with Federal procurement requirements, and (4) payments are appropriately reconciled” as suggested by Recommendation 1II of the Report.

 **Comment 10 >**

(b) Proper Execution of Contract for Pest Control Services

The Report makes two findings relating to pest control services, one for the Old Audit period and one for the New Audit period. For the Old Audit period, the Report finds that the

Ref to OIG Evaluation – Auditee Comments

Housing Authority continued to pay for pest control services (\$80,685) following the termination of a contract for pest control services. For the New Audit period, the Report finds that the Housing Authority paid three vendors \$57,902 for pest control services without an executed contract. These findings in the Old and New Audits are incorrect, as described below. Failing to identify a single regulation or policy to support its findings, the OIG further compounds its erroneous findings by ignoring obvious facts that were available at the time of the Old Audit and New Audit.

i. Old Audit—2014-2018

The findings in the Old Audit can be dismissed for four reasons. First, the OIG ignored the fact that the Housing Authority properly procured pest control services. Second, the OIG ignored the fact that the procured contractor quit and terminated the agreement in the midst of a well-documented national bed bug crisis, which was particularly extensive in the greater Cleveland area, including Stark County. Third, the OIG failed to acknowledge that the Housing Authority was able to engage a new pest control service provider at the same price as the original contract, which was competitively awarded. Fourth, with the emergent bed bug infestation, the Housing Authority did not have time to do a new, independent cost exercise, followed by a full procurement – yet another factor completely ignored by the OIG.

The OIG concedes in the Report that the Housing Authority “entered into a contract for the [pest control] services for a 1-year term from December 1, 2014 through December 1, 2015, with four 1-year renewal options.” In March 2017, after the second automatic contract renewal, the contractor unilaterally terminated the contract without cause and advised the Housing Authority that it would no longer perform services under the contract. In the time period immediately following termination of the pest control contract, the Housing Authority received an unprecedented 487 work order requests (which were provided to the OIG during the Old Audit)

 **Comment 11 >**

 **Comment 12>**

Ref to OIG Evaluation – Auditee Comments

from residents relating to a major bed bug infestation impacting the entire region and many parts of the country.¹ This constituted a serious and emergent health and welfare emergency that required quick and decisive action by the Housing Authority. The Housing Authority did not have the luxury of following the archaic, months-long procurement process, and in fact, HUD's own regulations permit the Housing Authority's actions.

 **Comment 13 >**

Consistent with applicable regulations, Section 3(F) of the Housing Authority's 2012 Procurement Policy (attached hereto as Appendix E) expressly permits single-source, noncompetitive, and emergency procurement of services when an emergency situation threatens the public health, welfare or safety of residents. There is no doubt that the bed bug infestation constituted an emergency which threatened health, welfare, and, therefore, the Housing Authority's emergency procurement of pest control services was not only necessary, but was also expressly permitted by federal regulations, HUD guidelines, and the Housing Authority's own policies. Further, in light of the emergency situation, the Housing Authority appropriately treated each work order request as a separate purchase order for pest control services, and each purchase order was below the Housing Authority's micro purchase threshold. See Appendix E at §3(B). Pursuant to Section 5.2 of HUD's Handbook, the Housing Authority is expressly permitted to make individual small purchases and is further permitted to set a micro purchase threshold without soliciting competitive quotations. Not only was the Housing Authority's action related to pest control necessary and appropriate under the circumstances, it was also consistent with HUD's guidelines and the Housing Authority's procurement policies.

 **Comment 12 >**

 **Comment 14 >**

¹ Conspicuously, the Report does not state that the OIG was unable to confirm the presence of a bed bug infestation. In response to the Old Audit, the Housing Authority provided numerous publicly available news articles demonstrating the severity and scope of the bed bug crisis to contradict the unfounded statement in the Old Audit that the Housing Authority failed to provide documentation showing a severe pest infestation.

Ref to OIG Evaluation – Auditee Comments

ii. New Audit—2020-2022

For the New Audit period, the Report faults the Housing Authority for paying three vendors \$57,902 for pest control services without an executed contract. The Report identifies payments made prior to January 17, 2022 when the Housing Authority awarded pest control services to three vendors.

 **Comment 15>**

The Housing Authority's actions were proper as the pest-control services fell under the small purchase thresholds. Under Section 3(D) of the 2021 Procurement Policy and Section 3(C) of the 2012 Procurement Policy, the Housing Authority is permitted to make purchases utilizing the small purchase procedures. *See* Appendix E; Appendix F. Consistent with the Policies, the Housing Authority solicited at least three quotes for services and distributed payments among three vendors. *See Id.* Moreover, the payments to the three vendors were below the \$50,000 limit for qualifying small purchases. Attached hereto as Appendix G are the quotes for services that the Report notes as purportedly missing.

(c) **Requirements for Noncompetitive Proposals/Reasonableness of Contract Costs**

The Report identifies three findings relating to noncompetitive proposals and reasonableness of contract costs. First, the Report found that the Housing Authority did not follow federal requirements for noncompetitive proposals because the Housing Authority "did not obtain and receive approval from HUD to noncompetitively award the contracts as required." Second, the Report finds that the Housing Authority's independent cost estimates needed improvement. Third, the Report finds that the Housing Authority did not always support that cost or price analyses were performed. All three findings are baseless.

i. Noncompetitive Proposals

Ref to OIG Evaluation – Auditee Comments

Comment 16>

The finding regarding noncompetitive proposals concerns only the Old Audit. As recognized by the Report, there were no non-competitive proposals or single-source contracts for the New Audit (2020-2022). The Report's conclusion in the Old Audit is erroneous because the Housing Authority is permitted to self-certify. The Report misunderstands the federal requirements on this point. The Report references Chapter 12 of HUD's Procurement Handbook (No. 7460.8 Rev. 2) with respect to the self-certification process but ignores that the Handbook (which cites 24 C.F.R. § 85.36) expressly permits exemption through self-certification. See HUD Procurement Handbook, section 12.5.A. 24 C.F.R. § 85.36 was rescinded; however, under the relevant provisions of 2 C.F.R. § 200.325, the Housing Authority may "self-certify its procurement system" and, therefore, be "exempt from the pre-procurement review." As a non-federal entity that has self-certified that its procurement process complies with standards set forth in 2 C.F.R. Part 200, the Housing Authority had no obligation to obtain HUD's preapproval for the noncompetitive or single-source contracts referenced in the Report.

Comment 17>

ii. Old Audit: Independent Cost Estimates/ Price Analyses

For the Old Audit, the Report identifies two contracts (0917 and 1125) for which the Housing Authority did not support the independent cost estimate. Prior to awarding the 0917 (HVAC) contract, the Housing Authority performed an independent cost estimate and provided a copy of the estimate to the OIG. The former Housing Authority employee responsible for the independent cost estimate considered contracts awarded in the past but did not account for inflation or current market conditions. Accounting for inflation alone explains the relatively minor 12.94% (\$10,812) variance between the HVAC contract price and the independent cost estimate. Additionally, the Report does not consider the fact that the independent cost estimate was a lump

Ref to OIG Evaluation – Auditee Comments

Comment 18>

sum amount, while the awarded contract was based on an hourly rate. These factors show that the hourly rate was reasonable and consistent with the independent cost estimate.

Similar to the HVAC contract, the amounts paid by the Housing Authority under the 1125 (Furnace Replacement) contract was reasonably consistent with the independent cost estimate, a copy of which was provided to OIG. The independent cost estimate for each furnace was \$2,143.68. The quoted cost was \$2,650 for some units and \$1,825 for others, with an average per unit cost of \$2,237.50. The difference between the estimated cost and the average per unit cost from the winning bid was merely 5%, not 23.6 as stated in the Report. As the Housing Authority explained in its price analysis following receipt of the bid for the furnace contract, a 5% difference between the bid and the independent cost estimate is appropriate, fair and reasonable. For the OIG to recommend the possibility of reimbursing HUD for the full \$130,712 contract amount because of this 5% difference, which was fully explained in a price analysis at the time the bid was accepted, is an outrageous overreach. Even taking a more reasonable position of recommending that the Housing Authority reimburse HUD \$6535.60 (the 5% of the contract price exceeding the independent cost estimate), the OIG would be placing housing authorities across the country in the wholly untenable position of not being able to accept any bid that exceeded the independent cost estimate. This would eviscerate the very definition of an “independent cost *estimate*” and would render moot the HUD guidelines promulgated for the very purposes of explaining differences between estimates and bids.

iii. New Audit: Independent Cost Estimates/Price Analyses

For the New Audit, the Report focuses on seven contracts (0824, 0505, 0731, 0120, 1105, 1102, and 0216) which purportedly varied from the Housing Authority’s independent cost estimates by 20-57 percent. In particular, the Report focuses on contract 0216 where the selected

Ref to OIG Evaluation – Auditee Comments

vendor's bid was the lowest, but, due to change orders, the contract increased to an amount that was more than the second lowest bid. Additionally, the Report states the Housing Authority did not provide cost or price analyses to support costs for four contracts (0505, 0824, 1023, and 0216) in excess of contracted amounts. The seven contracts are addressed in turn and justifications are provided below. It is important to note, however, that the Report does not cite to any specific required variance between an independent cost estimate and contract price; rather, it appears that the OIG applies an unwritten benchmark for the variance. Further, as noted above under the Old Audit, a rigid standard for independent cost estimates would be absurd.

a. Contract 0824

For contract 0824, the Report mistakenly overlooks the fact that this contract was solicited as a Request for Qualifications (RFQ). The independent cost estimate for contract 0824 was based on the prior year's expenditure. The Housing Authority planned to spend capital funds on renovation of developments, and more A&E services were anticipated than prior years. Further, awards for contracts on an RFQ are not based solely on price; accordingly, the Report's sole focus on the variance between the independent cost estimate and contract price is misleading. As for a cost/price analysis, contract 0824 is a service contract for A&E services. The contract was for hourly rates. The Housing Authority's change in direction on use of capital funds for development renovations created an increased demand for A&E services. To accommodate the increased demand, the contract maximum was increased, but the same rates remained. Accordingly, the Report's conclusion that the Housing Authority agreed to an increase in the cost of service is misleading. The Housing Authority merely approved the capacity for more services at the same rates.

b. Contract 0505

 **Comment 19 >**

Ref to OIG Evaluation – Auditee Comments

Comment 20 >

For contract 0505, the purported variance between the independent cost estimate and contract price is due to a mistake during the New Audit period where the OIG may have been provided with an incorrect independent cost estimate. It appears that the independent cost estimate totaling \$205,801 was taken from a forty-page vendor ledger that was incorrectly labeled “ICE.” The solicitation for contract 0505 only requested hourly rates from bidders. The actual independent cost estimate justification was determined by taking the average of the hourly rates among the bidders. See Appendix H. The executed contract had a minimum of \$175,000 and a maximum of \$246,960. Given that the OIG was operating under incorrect information, the Report’s conclusion that the contract price varied too far from the independent cost estimate is erroneous. As for a cost/price analysis, contract 0505 is a service contract for plumbing service. The contract was for hourly rates and materials. An increase in the maximum contract amount does not increase the cost of services. Rather, it merely allows the plumbing contractor to do more needed service work. Accordingly, the Report’s conclusion that the Housing Authority agreed to an increase in the cost of service is misleading. The Housing Authority merely approved the capacity for more services at the same rates.

c. Contract 0731

Comment 21 >

Contract 0731 was awarded to two vendors with maximum amounts of \$130,969.53 and \$138,489.99. The Report misleadingly adds the two maximum amounts to reach the contract price of \$269,460. Naturally, this causes a higher variance between the “contract price” and the independent cost estimate, a variance manufactured only by the OIG’s choice of math. Further, the nature of services for contract 0731 must be considered. Given that 0731 relates to emergency remediation services, the actual contract spend is dependent on the occurrence of inherently unforeseeable emergencies. The independent cost estimate reflects this uncertainty and lists it as

Ref to OIG Evaluation – Auditee Comments

a variable. Due to the uncertainty, the independent cost estimate provides a floor of \$189,000 but appropriately recognizes that expenses may surpass \$189,000. See Appendix I. Accordingly, the Report’s conclusion that the independent cost estimate was a “hard” number of \$188,331 is incorrect.

d. Contract 0120

 **Comment 22 >**

For contract 0120, the independent cost estimate is reasonable when considering the other competitive bid for the contract. The solicitation for contract 0120 had two bidders: [REDACTED] for \$331,322 and [REDACTED] for \$210,577. The independent cost estimate of \$210,834 was in line with the competitive bid of [REDACTED].

e. Contract 1105

 **Comment 23 >**

For contract 1105, the solicitation had four bidders for what was considered a small project: [REDACTED] (\$26,625), [REDACTED] (\$26,705), [REDACTED] (\$86,0473) and [REDACTED] (\$25,452). Given that this was a small project with an independent cost estimate of \$37,724 it is reasonable to expect bidders to be aggressive with their pricing. Additionally, the solicitation for this project occurred in the Fall of 2020 during the height of the COVID-19 pandemic. The unique and challenging market conditions of the pandemic caused contractors to be more aggressive in pricing and resulted in bids lower than the independent cost estimate.

f. Contract 1102

 **Comment 24 >**

For contract 1102, the solicitation was for rates based on bedroom size and difficulty of unit turn (*i.e.* light, moderate, and extensive). The Housing Authority had no prior experience with using a third party for unit turn services, and developing a total price in line with an independent cost estimate was not as important as having competitive rates for different bedroom sizes and

Ref to OIG Evaluation – Auditee Comments

degree of work required. The Report uses an incorrect contract price for contract 1102 by omitting the \$20,000 contracts awarded for Alliance Tower. When including Alliance Tower, the total is \$770,000, not \$750,000. That said, the Housing Authority acknowledges that its lack of previous experience with unit-turn services provided by a third party resulted in a variance between the contract price and independent cost estimate, and the Housing Authority will learn from its experience.

g. Contract 1023

 **Comment 25 >**

The Report does not indicate problems with the independent cost estimate for contract 1023. As for a cost-price analysis of increased contract amounts, contract 1023 is a services contract for flooring services. Rates were requested for flooring services and awarded based on those rates. The amended contract did not increase the cost of services, rather, it merely permitted the flooring contractor to do more needed service work. Accordingly, the Report's conclusion that the Housing Authority agreed to an increase in the cost of service is misleading. The Housing Authority merely approved the capacity for more services at the same rates.

h. Contract 0216

 **Comment 26>**

For contract 0216, the Report ignores the range of bids received for the contract work and the history of the Housing Authority's relationship with the winning bidder, [REDACTED]. The Housing Authority received 7 bids ranging in price from \$3,468,239 to \$6,187,373—the largest of which matched closely with the independent cost estimate of \$6,377,149. See Appendix J. The winning bidder, [REDACTED], has a history of successful completion of previous renovations with the Housing Authority, and a history of successful completion at costs lower than other bidders. Accordingly, the selection of [REDACTED] was reasonable. As for the Report's request for documentation regarding increased contract amounts see Appendix K, which should satisfy the

Ref to OIG Evaluation – Auditee Comments

OIG’s concerns. Appendix K shows that there were many unforeseen events causing changes to the original contract amount. It is unreasonable for the OIG to expect that, in a large-scale construction project, there would be zero changes to the original contract amount. [REDACTED] is a trusted contracting partner of the Housing Authority with a demonstrated history of providing quality, low-cost services. Though the final contract price was increased over the original price, it still did not exceed the independent cost estimate.

(d) Minimum and Maximum Quantities in Indefinite-Quantity Contracts

The Report makes two findings under the Old Audit and New Audit regarding minimum and maximum quantities in indefinite-quantity contracts. As recognized in the Report, the Housing Authority previously addressed the findings of the Old Audit, so this issue is moot. For the New Audit, the Report’s findings are inconsequential.

For the Old Audit, the Report states that four indefinite-quantity contracts did not include a minimum and maximum quantity of supplies or services. Recognizing that this was error, the Housing Authority amended its processes to ensure that it complies with HUD’s requirements for indefinite-quantity contracts.

For the stated purpose of “assess[ing] whether the [Housing] Authority implemented its amended processes for indefinite-quantity contracts, the New Audit reviewed six of the Housing Authority’s indefinite-quantity contracts. Three of the six were found to be compliant. According to the Report, the remaining three contracts (0824, 0922, and 1102) contained maximum amounts but did not state a minimum amount for services. As an initial matter, contracts 0922 and 1102 are not written as indefinite quantity contracts; they are Fixed Price Not to Exceed contracts. A simple reading of contracts 0922 and 1102 indicates this fact. Accordingly, contracts 0922 and 1102 are incorrectly listed as non-compliant contracts due to lacking a minimum quantity.

 **Comment 27 >**

 **Comment 28 >**

Ref to OIG Evaluation – Auditee Comments

Even if the identified contracts were indefinite contracts, the Housing Authority disagrees that a minimum quantity was required where the contract did contain a maximum amount. Notably, the Report does not make any findings that the failure to include a minimum amount caused any negative effect to pricing or costs, nor does the Report recommend any reimbursement on this point. Contracts 0824, 0922, and 1102 are services contracts. The Report does not indicate that services contracts lacking a minimum amount may be non-binding, as the Handbook cautions. See HUD Procurement Handbook 7460.8, REV-2, section 10.1.C.3.a.iii.(B). Theoretically, a services contract without a minimum amount could result in no services provided and a total of \$0 spent. It is difficult to fathom how the possibility of a services contract for \$0 causes any harm whatsoever. Nevertheless, the Housing Authority will strive to ensure that its procedures are followed and that contracts include maximum and minimum quantities where necessary.

 **Comment 29**

(e) Payment to Contractors in Excess of Contracted Amount

Under the Old Audit, the Report finds that the Housing Authority's payments to a landscaping contractor exceeded the value of the contract. The Report does not make any findings regarding excess payment under the New Audit. The finding under the Old Audit is incorrect.

The contract for landscaping services included two headings: (1) the "not-to-exceed value" of \$146,842.43 annually for known landscaping needs; and (2) other services required, but not known at the time of procurement. During the Old Audit, the Housing Authority provided—yet the OIG chose to ignore—documentation that the Housing Authority paid a contractor \$142,519.38 for services provided under the "not-to-exceed" section of the contract. Thus, the Housing Authority paid the contractor \$4,323.05 less than the contract amount.

 **Comment 30 >**

The Additional \$48,310 paid beyond the contract amount was for services covered under the second heading of the landscaping services contract. Specifically, the "as-needed" landscaping

Ref to OIG Evaluation – Auditee Comments

services included yardwork for residents with disabilities, which are required under the Americans with Disabilities Act, responding to weather events, maintenance of vacant properties, services required to avoid or cure municipal code violations, which were ultimately billed back to the residents, and other services not included in the “not-to-exceed” section of the contract. These as-needed services were properly contracted for and paid through separate purchase orders, which are, by their very definition, standalone contracts separate and apart from the broader landscaping services contract. Significantly each purchase order was under the micro purchase threshold and, therefore, was solicited and paid in a manner consistent with Housing Authority policy and federal regulations regarding procurement. See Appendix E, 2012 Procurement Policy at §3(B). Copies of these purchase orders are attached hereto as Appendix I. The attached purchase orders satisfy the Report’s notation that the Authority did not provide documentation “to support that (1) these additional payments were for special services and (2) it had issued purchase orders for these services.” The OIG’s failure to appreciate the nuances of the landscaping services contract, or the manner in which as-needed services were procured does not equate to noncompliance by the Housing Authority.

Conclusion

In summary, it is apparent the OIG’s objective was to conduct a review which generated the largest possible repayment of federal funds from the Housing Authority regardless of facts, laws and regulations. The Housing Authority appreciates the OIG’s input and looks forward to coordinating with HUD to ensure continued compliance with procurement guidelines in the future.

Please do not hesitate to contact me if you have any questions or concerns, or if additional information is required.

 **Comment 31 >**

Ref to OIG Evaluation – Auditee Comments


Sincerely,



Joshua Crites,
Executive Director

Enclosures

cc:


Diana Feitl (dfeitl@raia.w.com)

Michael Syme (mvsyme@foxrothschild.com)

OIG Evaluation of Auditee Comments

General Comment:

The Authority's written response to the draft audit report included documentation, under appendixes A through L, that the Authority asserted supported its written response. We referenced this additional documentation in the following comments but did not include the information in our report. We redacted the names of contractors and OIG personnel from the Authority's written comments to protect the identities of the named individuals.

- Comment 1 We disagree with the Authority's position that some of our findings are outdated and should be disregarded. The finding regarding the Authority's procurements has existed throughout the entire period in which we have performed this audit. Our updated report identified issues with the Authority's policies and procedures, contracts, and independent cost estimates that were similar to those we had previously identified during our review of the Authority's procurement practices.
- Comment 2 We disagree with the Authority's statement that the report does not assess the levels of oversight in the Authority. During our audit of the Authority's procurement practices, we held discussions with the Authority's management and staff regarding policies and procedures, supervision, staffing changes, and training. Our report includes assessments of the Authority's oversight in the context of our findings and recommendations.
- Comment 3 We disagree with the Authority's statement that the report does not find that the Authority misappropriated, misused, or used funds for personal gain; spent funds for unallowable goods or services; or paid for services at unreasonable or uncompetitive prices. During our audit period, the Authority paid more than the contracted amount for one contract and was unable to support the price paid for some contracts. Based on our review of the Authority's documentation, we were unable to determine whether the Authority used Federal funds appropriately by paying for goods and services at reasonable prices. Therefore, as recommended in this audit report, the Authority should support the reasonableness of the amounts paid for those contracts.
- Comment 4 The Authority claimed that findings from our initial review should be disregarded because they were identified more than 2 years ago. We communicated to the Authority that we would include in our final report any findings from our initial review that still existed. We determined that the Authority had made efforts to improve its procurement processes since we first communicated the findings of our initial review, but also that several deficiencies still existed at the time we updated our report. We also identified additional opportunities for the Authority to make improvements.
- Comment 5 We disagree with the Authority's statement that it had limitations in addressing the initial review due to the lack of information available to the Authority. Our audit was

based on documentation provided by the Authority. We provided the Authority with the results of our review many times throughout the course of this audit.

Comment 6 We disagree with the Authority's statements that the Authority does not need to maintain documentation of work performed on service contracts and that a separate report on inspections is not necessary or required. The Authority's contract files included inspection and field reports for plumbing and unit turnover services. Further, according to the Authority's prior and updated checklists, inspection and field reports are required file items. As stated in the audit report, HUD Handbook 7460.8, REV-2, provides a list of the types of documentation that should be maintained, which includes inspection and field reports for the various procurement procedures.

Comment 7 As stated in the audit report, the Authority's procurement files did not contain the bids for contracts 0824 and 0120. The Authority provided the missing documents, under appendixes A and B, with its written comments. We have evaluated the documentation and adjusted page 8 of the audit report to acknowledge receipt of the bid documentation for the two contracts.

In addition, the Authority provided, under appendix C, a receipt of payment for the publication for contract 1023. However, the Authority did not provide the actual advertisement-publication or evidence showing that the publication ran for 2 weeks. The Authority's procurement checklist shows that advertisements are a required document. Therefore, this contract will remain in the report.

The Authority also provided, under appendix D, a job posting for emergency services for contract 0731. This job posting was listed on the Public Housing Authorities Directors Association's website rather than an advertisement in a newspaper or other print media with local or general circulation, in a trade journal, or using e-procurement systems. Further, there was no evidence to support that the solicitation ran for a period of 2 consecutive weeks as required by HUD Handbook 7460.8, REV-2, section 7.1.G. We modified the report to acknowledge the receipt of the publicized notice, but since the publication did not indicate the length of time for the posting, this contract will remain in the report. The Authority should work with HUD to resolve recommendation 1H.

Comment 8 Federal regulations at 2 CFR 200.318(i) require the Authority to maintain records sufficient to detail the history of the procurement. Although the regulation does not specifically identify required documentation, it does identify specific procurement activities for which the Authority should maintain supporting documentation. Additionally, Federal regulations at 2 CFR 318(a) require the Authority to have and use documented procurement procedures consistent with State, local, and tribal laws, and regulations, etc. Therefore, the Authority's procurements should comply with Federal requirements and its own policies and procedures. During the audit, the Authority stated that its checklists were part of its procurement procedures. The checklists specifically identify the documents that will be maintained for the Authority's procurement activities.

Comment 9 We acknowledge that the Authority’s procurement policies, under appendixes E and F, do not list the checklist as a requirement. However, the Authority’s procurement policies state that it will comply with HUD Handbook 7460.8, REV-2. The handbook state that housing authorities must maintain records sufficient to detail the significant history of each procurement action, and provides a suggested checklist, which identifies the documentation that generally should be included in the contract file for each procurement. The Authority’s checklists mimic the suggested HUD checklist and were being used by the Authority’s staff, although not consistently. Further, the report does not state or imply that the Authority must be disregarding Federal and its own requirements due to items being missing from the checklist. The report states that the Authority did not always maintain complete and consistent documentation of its procurement actions in accordance with its procurement checklist.

Comment 10 We disagree with the Authority’s statement that compliance with its own policies is a “best practice.” The Authority should not treat compliance with its policies as optional. Federal regulations at 2 CFR 200.318(a) require the Authority to have and use documented procurement procedures consistent with State, local, and tribal laws, and regulations, etc. Therefore, the Authority’s procurements should comply with Federal requirements and its own policies and procedures.

Further, section 200.303 of the regulation states that the non-Federal entity, in this case the Authority, must establish and maintain effective internal control over the Federal award, which provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, Federal regulations, and the terms and conditions of the Federal award. Therefore, the Authority’s implementation of its own policies and procedures was critical to ensure its compliance with Federal rules, regulations, and laws and the achievement of its mission and goals.

We acknowledge the Authority’s plan to schedule mandatory training sessions for its staff to review procurement policies as related to recommendation 1G of the audit report. However, the Authority should ensure that it also maintains effective quality control and oversight of its procurements. The Authority should work with HUD on the resolution of the recommendations to ensure that policies, procedures, and controls that it implements fully address the deficiencies cited in this report.

Comment 11 As stated in the audit report, the Authority acknowledged that it did not properly procure its pest control services. In a letter, dated March 26, 2018, the Authority notified its vendor that the Authority was unable to continue using the vendor’s services because it needed to procure the services and issue a contract, which was before our audit. Further, the Authority did not provide support showing that it had engaged the new service provider at the same price as that in the original contract, and it also did not perform a cost analysis for the original contract to ensure that the cost for services was reasonable. The Authority allowed the vendor to continue providing services for more than a year and did not provide documentation showing that it was working toward procuring a new and valid contract for the services during that timeframe. Therefore, we did not change the report.

- Comment 12 The Authority did not provide the actual work orders. Instead, it provided an eight-page work order directory for its asset management projects for the period April 1, 2017, to August 31, 2018, concerning bed bugs or other pest control extermination or evaluation services. The work order directory did not contain costs for the various services. The Authority did not provide purchase orders related to services during the audit or with its written response. Therefore, we were unable to determine who performed the services and the associated costs. The Authority provided a copy of its June 2017 procurement policy, under appendix E. Based on our evaluation, no changes to the report are warranted.
- Comment 13 According to HUD Handbook 7460.8, REV-2, a noncompetitive proposal means a procurement through either a “sole source,” when the public housing agency solicits an offer from one source, or a “single source,” when the public housing agency solicits offers from multiple sources but receives only one or the competition is determined inadequate. In this instance, the Authority did not solicit from any vendors; instead, the initial vendor recommended a replacement vendor. The Authority’s policy states that each procurement based on noncompetitive proposals must be supported by a written justification for the selection method. The justification must be approved in writing by the responsible contracting officer. The justification should include the following information: description of the requirement, history of prior purchases and their nature, statement as to efforts that will be taken in the future to promote competition for the requirement, signature of the contracting officer’s supervisor, and price reasonableness. The Authority’s files did not contain a written justification, nor was it included with the Authority’s written response.
- Comment 14 According to Federal regulations at 2 CFR 200.67, a micropurchase means a purchase of supplies or services, the total amount of which does not exceed the micropurchase threshold. Federal regulations at 2 CFR 200.320(a)(1)(iv) state that the micropurchase threshold is \$50,000. However, according to the Authority’s procurement policy, the Authority’s threshold for micro purchases is \$10,000 or less. The policy further states that to the extent practicable, such micropurchases must be distributed equitably among qualified sources and if practical, a quotation must be solicited from a source other than the previous before placing a repeat order. It also states that the Authority must not break down requirements totaling more than the micropurchase threshold, into several purchases that are lower than that threshold. As stated in the audit report, the Authority paid \$80,685 to one vendor for pest control services without a valid contract. Therefore, the Authority’s actions were not consistent with Federal and the Authority’s own procurement requirements and did not meet the definition of a micropurchase.
- Comment 15 As stated in the audit report, the Authority paid three vendors for pest control services without executing contracts. The Authority provided quotes for two of the three vendors with its written comments under appendix G. According to the Authority’s policy, the small purchase threshold is \$50,000. The Authority paid more than \$50,000, collectively, to the three vendors for the same services. For one of the two quotes

provided, the Authority sent a letter to the vendor notifying the vendor that its quote was nonresponsive because it did not include the annual cost. In January 2022, the Authority executed a separate contract with each of the vendors for up to \$75,000 each. We did not remove this issue from the audit report; however, we adjusted page 9 of the audit report to recognize receipt of the quotes for two of the three vendors.

- Comment 16 We agree with the Authority's statement that the provisions under 2 CFR 200.324(c) allow housing authorities to self-certify that their procurement system complies with standards set forth at 2 CFR part 200. Federal regulations at 2 CFR 200.324(c)(2) state that under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review. Therefore, we removed the issue regarding noncompetitive proposals and recommendation 1I from the report. However, based on the issues identified in this report, we kept recommendation 1J cited in the discussion draft audit report, which is now recommendation 1I for this report.
- Comment 17 The Authority awarded an indefinite quantity contract for the heating, ventilation, and air conditioning contract (HVAC contract number 0917). The independent cost estimate showed that the cost of the HVAC contract would be \$83,555 per year, based on previous invoice amounts for the period December 15, 2010, through January 27, 2014. Although the independent cost estimate listed the cost as a yearly amount, the Authority contends that it used the estimate as the total (lump sum) for the procurement action. The Authority had paid a total of \$94,367, resulting in a variance of \$10,812, (\$94,367 - \$83,555) over 4 years and 4 months as of April 30, 2019. The contract was for an indefinite quantity, meaning that the final price of the contract could be higher, thereby further widening the variance over the duration of the 5-year contract term. Also, given that this contract did not identify maximum amounts as required by HUD, we could not determine the hourly rate at the time of our audit. In addition, the basis for the independent cost estimate included invoice amounts for furnace services for which the Authority executed a different contract (contract number 1125 for the same period). Therefore, we did not remove this item from the report.
- Comment 18 The Authority contends that the amounts paid under the contract for furnace replacements (contract number 1125) were reasonably consistent with the independent cost estimate. For the furnace replacement contract, contract number 1125, the Authority noted in its bid tabulation sheet, which it provided during the audit that the unit price was \$2,650, not \$2,237.50. Using the bid amount of \$2,650 and comparing that amount to the independent cost estimate of \$2,144, the bid amount would exceed the independent cost estimate by 23.62 percent. However, if we took the average amount of the Authority's independent cost estimate of \$1,750 and the quoted average cost per unit of \$2,237.50, the percentage of increase would be nearly 28 percent, which is higher than the amount in our report. As cited in the report, the Authority's procurement file did not contain justification for the variance as required by HUD Handbook 7460.8, REV-2, section 10.3.E. Further, the Authority used an indefinite

quantity contract, with no minimum or maximum amounts listed as required by HUD Procurement Handbook 7460.8, REV-2, section 10.1.C.3.a.iii, for a 5-year period. Therefore, no changes are warranted.

- Comment 19 The Authority increased the contract amount for contract 0824 from \$300,000 to \$600,000 due to an increase in the number of construction projects. The Authority provided the hourly rates for 2019 (when it executed the contract) but did not provide documentation of the hourly rates for 2021 to show that the same services were provided at the same costs when it added more construction projects to the contract. Therefore, no changes to the report are warranted.
- Comment 20 The Authority acknowledged that it did not provide us with the correct independent cost estimate for contract 0505. Therefore, the Authority provided the independent cost estimate, under appendix H, with its written comments. Based on our review of the provided document, we removed this contract from page 10 of this audit report regarding the independent cost estimate.
- Comment 21 The Authority awarded contract 0731 to two vendors and the contracted price totaled \$269,460. The independent cost estimate for the contract was \$189,000. The Authority provided a copy of the independent cost estimate with its written comments under appendix I, for the total cost of the work.
- The Authority asserts incorrectly that we determined the independent estimate was a “hard floor.” As stated in the audit report, the variance between the independent cost estimate and the contract amount was more than 40 percent. Therefore, this item will remain in the report.
- Comment 22 The Authority awarded contract 0120 for security services. As stated in the audit report, the variance between the Authority’s independent cost estimate and the contractor’s price for contract 0120 was 57 percent. The Authority did not provide the bids for this contract during the audit (see our response to the Authority’s comment 7) but it provided the missing documentation with its written comments. The bid amount for the unsuccessful bidder was comparable to the Authority’s independent cost estimate. However, the winning bid exceeded the unsuccessful bidder’s estimated cost and the Authority’s independent cost estimate by more than 50 percent. The Authority’s contract file contained a justification for the variance between the independent cost estimate and the contract price as required by HUD Handbook 7460.8, REV-2, section 10.3.E. According to the justification, the Authority’s independent cost estimate was not accurate.
- Comment 23 As stated in the audit report, the Authority’s cost estimates need improvement. The Authority awarded contract 1105 for \$25,452 and estimated the cost for this contract to be \$37,724. Therefore, the variance between the independent cost estimate and the contract amount was 33 percent. According to HUD Handbook 7460.8, REV-2, section 5.5.A.2, generally, price analysis will consist of a comparison of quotations to each other and to other sources of pricing information (for example, past prices paid, catalog

prices, etc.). Section 3.2.D.2 of the handbook states that the independent cost estimate may be based on prior purchases, commercial catalogs, or detailed analyses (for example, purchases for services). The Authority provided an analysis for the independent cost estimate; however, the estimate did not show where the costs were inflated. Without a basis for the expected cost, the independent cost estimate would not be useful in assisting the Authority in assessing price reasonableness. Further, the aggressiveness of the pricing for the Authority's independent cost estimate for this contract was not evident in all contracts executed during the pandemic. Therefore, this issue will remain in the audit report.

- Comment 24 We agree that with Alliance Tower, the procurement action totaled \$770,000. However, the Authority contracted for unit turnover services (contract 1102) in the amount of \$750,000 for its public housing properties. Under the same procurement action, the Authority executed two separate contracts, totaling \$20,000, for Alliance Senior Towers, LLC., which is a separate for-profit HUD-subsidized multifamily entity that is 100 percent owned and managed by the Authority. The Authority paid for these two contracts using funds from its central office cost center, rather than its operating or capital funds. The Authority's independent cost estimate for all services totaled just under \$1.4 million and did not separate identify costs associated with the multifamily property. Therefore, when calculating the variance, we compared the Authority's independent cost estimate with the contracted amount of \$750,000 for unit turnover services associated with its public housing properties.
- Comment 25 The Authority increased the cost for contract 1023 by 100 percent. As stated in the audit report, the Authority did not provide a contract modification or change order for the increased cost and, thus, did not perform a cost or price analysis. HUD Handbook 7460.8, REV-2, section 10.3.C.5, states that when negotiating a modification to any contract (even if the basic contract was awarded competitively through sealed bidding) that changes the scope of work previously authorized and impacts the price or estimated cost, the public housing agency must use cost analysis to arrive at a reasonable cost.
- Comment 26 For contract 0216, the contract price was listed at \$3,468,239 and the Authority's cost estimate was \$6,377,149, resulting in a variance of 46 percent. HUD Handbook 7460.8, REV-2, section 10.3.E, states that documentation is required to demonstrate price reasonableness, including any cost analyses, whenever (1) adequate competition did not exist, (2) adequate competition existed but the public housing agency received only one bid or proposal, or (3) the price obtained varied significantly from the independent cost estimate, in which case the contracting officer should notate and explain the reasons for the difference (for example, poor estimate, etc.). The Authority provided appendixes J (the bid listing) and K (the change orders for this contract) along with its written comments. We acknowledge that the Authority selected the lowest vendor's bid; however, during the contract period, the Authority issued multiple change orders totaling more than \$1.1 million, resulting in the Authority' increasing the contract amount to nearly \$4.6 million as of September 2022. Due to the change orders, the selected bidder's contract exceeded the second bid amount. Had the Authority

prepared a proper estimate, it could have used it as a tool to assess the reasonableness of the contract price.

- Comment 27 The Authority acknowledged that it did not include minimum and maximum amounts on the four indefinite-quantity contracts and amended its process to ensure that it complied with HUD's requirements. We commend the Authority for amending its processes. The Authority should work with HUD to ensure that its changes align with HUD's requirements.
- Comment 28 We acknowledge that contracts 0922 and 1102 were fixed-price contracts. We removed these two contracts from page 11 of the report. However, the remaining contract (0824) stated that it was an indefinite-quantity contract and provided a not-to-exceed amount. Therefore, this contract will remain in the audit report. The Authority should work with HUD to ensure that its contracts comply with HUD's requirements.
- Comment 29 According to HUD Handbook 7460.8, REV-2, for a contract to be binding, a minimum quantity must be more than a nominal quantity. Therefore, the contract should not list zero as a minimum. We commend the Authority for striving to ensure that its procedures are followed and that contracts include minimum and maximum quantities when required.
- Comment 30 According to article 2 of the Authority's contract for landscaping services, other services would be on an as needed basis, and a purchase order would be issued when the contractor was called out for special services. However, the Authority did not provide the issued purchase orders for these services. Instead, it provided invoices and a letter, under appendix L, stating that it had revised the allocation that the Authority had spent on the contract. The contract was initiated on May 2, 2018, with a not-to-exceed amount of \$146,842. As of March 2019, more than 1 month remained for the first contract year, and the Authority had spent \$195,192 for these services. The contract term was for 1 year with four renewal options. Based on the revised reallocation, the Authority adjusted the amounts spent under the contract to \$142,519 and special services to \$52,633. This total amount paid for special services exceeded the Authority's micropurchase threshold of \$10,000 and the small purchase threshold of \$50,000. According to the Authority's policy, it must not break down requirements, totaling more than the micropurchase or small purchase threshold, into several purchases that are lower than those thresholds. Further, 2 CFR 200.1 defines a micropurchase as a purchase of supplies or services, the total amount of which does not exceed the micropurchase threshold. According to 2 CFR part 320, the micropurchase threshold is \$50,000.
- Comment 31 In the conclusion of the Authority's written response to the updated draft report, the Authority alleged incorrectly that our objective was to conduct a review that generated the largest repayment of federal funds for the Authority. This is a false assertion. We conducted the audit to determine whether the Authority's procurement practices complied with Federal and its own requirements. The Authority has an opportunity to provide documentation to HUD during the audit resolution process showing that the

amounts paid for goods and services were reasonable. We appreciate the Authority's willingness to coordinate with HUD to ensure compliance with procurement guidelines in the future.

APPENDIX C - FEDERAL AND THE AUTHORITY'S REQUIREMENTS

Federal regulations at 2 CFR 200.318(a) state that a non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in 2 CFR 200.317 through 200.327. Section 200.318(b) states that the non-Federal entity must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Section 200.318(i) states that the non-Federal entity must maintain records sufficient to detail the history of the procurement. These records will include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and basis for the contract price.

Federal regulations at 2 CFR 200.319(a) state that all procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of 2 CFR 200.319 and 2 CFR 200.320.¹⁹ Section 200.319(c)²⁰ states that a non-Federal entity must have written procedures for procurement transactions that incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured and identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Federal regulations at 2 CFR 200.323(a)²¹ state that a non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold, including contract modifications. The method and degree of analysis are dependent on the facts surrounding the procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

Federal regulations at 2 CFR 200.324(b)²² state that a non-Federal entity must make available upon request, for the Federal awarding agency's preprocurement review, procurement documents, such as requests for proposals, invitations for bids, or independent cost estimates, when (1) the non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in 2 CFR part 200 or (2) the procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation. Section 200.324(c)²³ states that the non-Federal entity is exempt from the preprocurement review in this section if the Federal awarding agency determines that its procurement systems comply with the standards of 2 CFR part 200. Section 200.324(c)(1)²⁴ states that the non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur when

¹⁹ This regulation was updated to include 2 CFR 200.320.

²⁰ This regulation was updated to 2 CFR 200.319(d)(1) and (2).

²¹ This regulation was updated to 2 CFR 200.324(a).

²² This regulation was updated to 2 CFR 200.325(b).

²³ This regulation was updated to 2 CFR 200.325(c).

²⁴ This regulation was updated to 200.325(c)(1).

there is continuous high-dollar funding and third-party contracts are awarded on a regular basis. Section 200.324(c)(2)²⁵ states that the non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

HUD's Procurement Handbook 7460.8, REV-2, section 1.9, defines responsive bid as a bid that conforms exactly to the requirements in the invitation for bids.

HUD's Procurement Handbook 7460.8, REV-2, section 6.12.B.1, states that to be considered responsive, a bid must conform to the material requirements of the invitation for bids. The contracting officer must examine the low bid to be sure that the bidder did not alter the specifications or other terms and conditions (for example, delivery schedules, payment terms, etc.) or attempt to impose different terms and conditions. If the bid does not conform to the solicitation, it must be rejected, and the next lowest bid examined for responsiveness. Allowing a bidder to alter the material requirements of a solicitation gives the bidder an unfair advantage over the other bidders and destroys the integrity of the sealed bidding process. It also limits the public housing agency's rights in the contract. The contracting officer must document his or her findings regarding the low bidder's responsiveness in the procurement file. Minor informalities are not grounds for determining a bid to be nonresponsive. Section 6.12.F states that after the contracting officer evaluates each bid, the responsive and responsible bidder that submits the bid with the lowest overall dollar value that meets all specified requirements will be awarded the contract. Unsuccessful bidders also should be notified in writing of the contract award.

HUD's Procurement Handbook 7460.8, REV-2, section 8.2, states that a noncompetitive proposal means a procurement through either a "sole source," when the public housing agency solicits an offer from one source, or a "single source," when the agency solicits offers from multiple sources but receives only one or the competition is determined inadequate. Section 8.3.A states that all noncompetitive proposal awards must comply with 24 CFR 85.36(d)(4).²⁶ Section 8.4.A states that the award of contracts from noncompetitive proposals follows a process similar to that used for competitive proposals (see chapter 7). The proposal must be evaluated. Technical and cost aspects of the proposal may be negotiated. The offeror must be determined to be responsible at the time of award. Section 8.4.B states that because there is no price competition, cost analysis (see chapter 10) is required. Cost or price must be determined to be reasonable. Section 8.4.C states that public housing agencies are required to submit proposed noncompetitive contracts to HUD for preaward review and approval in accordance with 24 CFR 85.36(g)²⁷ unless exempted under 24 CFR 85.36(g)(3).²⁸ (See chapter 12 for more discussion.) Section 8.5.A states that procurement by noncompetitive proposals should be conducted only if a written justification is made as to the necessity of using this method in accordance with the procedures described in the public housing agency's procurement policy. Approval to award a contract resulting from a

²⁵ This regulation was updated to 200.324(c)(2).

²⁶ HUD's regulations at 24 CFR 85.36 were relocated to 2 CFR 200.317 through 200.326. This has been updated to 2 CFR 200.318 through 200.327.

²⁷ *Ibid.*

²⁸ *Ibid.*

noncompetitive proposal does not eliminate or alter any other requirements of 24 CFR 85.36²⁹ governing the contract.

HUD's Procurement Handbook 7460.8, REV-2, section 10.1.C.3.a.iii, states that indefinite-quantity contracts provide for delivery of an indefinite quantity, within stated limits (a minimum and maximum quantity), of supplies or services during a fixed period. Quantity limits may be stated in the contract as number of units or as dollar values. Public housing agencies may use an indefinite-quantity contract when they cannot predetermine, above a specified minimum, the precise quantities of supplies or services that they will require during the contract period. Section 10.1.C.3.a.iii(A) states that the indefinite-quantity contract must require the public housing agency to order and the contractor to furnish at least a stated minimum quantity of supplies and services. In addition, if ordered, the contractor must furnish any additional quantities not to exceed the stated maximum.

HUD's Procurement Handbook 7460.8, REV-2, section 10.3.C.1, states that a cost analysis must be conducted for all sole-source and noncompetitive proposals. In noncompetitive situations, no incentive exists for an offeror to submit a low price, and no price competition exists for determining the reasonableness of the price. Section 10.3.E states that documentation is required to demonstrate price reasonableness, including any cost analyses, whenever (1) adequate competition did not exist, (2) adequate competition existed but the public housing agency received only one bid or proposal, or (3) the price obtained varied significantly from the independent cost estimate, in which case the contracting officer should notate and explain the reasons for the difference; for example, poor estimate, etc.

HUD's Procurement Handbook 7460.8, REV-2, section 12.2.A, states that except as exempted under section 12.5, noncompetitive procurements expected to exceed the Federal small purchase threshold³⁰ must have prior HUD approval. Section 12.5.A states that a public housing agency will be exempt from the preaward review required in section 12.2.A if the agency requests and HUD then certifies that the agency's procurement system will be reviewed by the field office to determine whether the agency's system meets the standards under 24 CFR 85.36³¹ and the essential requirements of this handbook and HUD Handbook 7485.1 or the agency self-certifies that its procurement system meets the standard under 24 CFR 85.36³² and the essential requirements of this handbook and HUD Handbook 7485.1. Section 12.5.B states that exemptions are granted for a 1-year period and may be automatically renewed each year unless the agency is found not to be in compliance with 24 CFR 85.36³³ or the agency requests that the exemption be rescinded.

HUD's Handbook No. 7460.8 REV 2, section 3.2(E), states that the independent cost estimate serves as the primary in-house gauge of cost and price reasonableness, but it should not be relied upon to the exclusion of other sources of pricing information. Market conditions may fluctuate between the time the independent cost estimate is prepared and the receipt of offers. For example, materials or labor costs may have increased or decreased. If a significant period of time has elapsed or the Authority knows that

²⁹ Ibid.

³⁰ The small purchase threshold is now referred to as the simplified acquisition threshold.

³¹ Ibid.

³² Ibid.

³³ Ibid.

certain market conditions have changed, the contracting officer should request that an updated independent cost estimate be prepared to use in evaluating offers.

The Authority's Procurement Policy, effective October 28, 2021, states that for any amounts above the micropurchase threshold but not exceeding \$50,000, the Authority may use small purchase procedures.

The Authority Procurement Policy states that sealed bidding is the preferred method for procuring construction, supply, and noncomplex service contracts that are expected to exceed \$50,000 for the life of the contract.

The Authority Procurement Policy states that when sufficient bids are not received, the bid received is substantially more than the independent cost estimate, and the Authority cannot reasonably determine price reasonableness, the Authority must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

Occasionally, it is necessary to modify a contract or purchase order to reflect changes in the required effort, period of performance, or price. Contract and purchase order modifications must be issued in writing in one of the following forms:

- a. Unilateral modification (a modification that is signed only by the executive director, such as a change order under the "changes" clause on form HUD-5370, or administrative modification, such as a change in the address of the payment office) or
- b. Bilateral modification (such as a supplemental agreement in which both parties mutually agree on contract changes) that is signed by both the executive director and the contractor. Bilateral modifications are the preferred method of modifying contracts and purchase orders.

A cost analysis, consistent with Federal guidelines, must be conducted for all contract modifications for projects that were procured through sealed bids, competitive proposals, or noncompetitive proposals or for projects originally procured through small purchase procedures, and the amount of the contract modification will result in a total contract price in excess of \$100,000.

The Authority Procurement Policy states that the Authority must maintain records sufficient to detail the significant history of each procurement action. These records must include but not necessarily be limited to the following:

1. Rationale for method of procurement (if not self-evident).
2. Rationale of contract pricing arrangement (also if not self-evident).
3. Reason for accepting or rejecting the bids or offers.
4. Basis for contract prices (as described in the HUD Handbook).
5. A copy of the contract documents awarded or issued and signed by the contracting officer.
6. Basis for contract modifications.
7. Related contract administration actions.

The Authority Procurement Policy states that an independent cost estimate is an estimate prepared by the public housing agency before obtaining offers. For all purchases above the micropurchase threshold, the Authority must prepare an independent estimate before solicitation. The degree of analysis will depend on the size and complexity of the purchase.