



Housing Authority of the City of Los Angeles, Los Angeles, CA

Housing Choice Voucher Program Legal Services

**Office of Audit, Region 9
Los Angeles, CA**

**Audit Report Number: 2018-LA-1008
September 27, 2018**



To: Marcie Chavez, Director, Office of Public Housing, Los Angeles, CA, 9DPH
//SIGNED//

From: Tanya E. Schulze, Regional Inspector General for Audit, 9DGA

Subject: The Housing Authority of the City of Los Angeles, Los Angeles, CA, Did Not Always Manage Its Legal Services in Compliance With HUD Requirements

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of the Housing Authority of City of Los Angeles' legal services.

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

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

If you have any questions or comments about this report, please do not hesitate to call me at 213-534-2471.



Audit Report Number: 2018-LA-1008
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The Housing Authority of City of Los Angeles, Los Angeles, CA, Did Not Always Manage Its Legal Services in Compliance With HUD Requirements

Highlights

What We Audited and Why

We audited the Housing Authority of City of Los Angeles' legal services due to a hotline complaint alleging that the Authority did not properly procure its legal services and alleging questionable legal expenses that violated U.S. Department of Housing and Urban Development (HUD) requirements. Our audit objective was to determine whether the Authority procured, contracted, and managed its legal services in compliance with HUD requirements.

What We Found

The allegations about procurement had some merit. While we did not find issues with the Authority's competitive procurements, the Authority did not always follow HUD requirements and its intergovernmental agreement when it managed its legal services with the City of Los Angeles. From July 1993 to June 2018, the Authority did not obtain the required board-approved annual amendments, which would have allowed increased attorney rates for legal services as required by its intergovernmental agreement. In addition, it did not perform the required annual cost analyses for its intergovernmental legal services agreement with the City. We attributed these conditions to the Authority's lack of oversight to ensure compliance with HUD requirements and its intergovernmental agreement. Of the \$983,670 in reviewed legal expenses, the Authority did not ensure that \$793,101 in legal services was cost beneficial.

What We Recommend

We recommend that the Director of HUD's Los Angeles Office of Public Housing require the Authority to (1) provide documentation to show a cost savings benefit for \$793,101 in legal services billed by the City and (2) follow intergovernmental agreements to ensure it's in compliance with the requirements.

Table of Contents

Background and Objective.....	3
Results of Audit	4
Finding: The Authority Did Not Always Follow HUD Requirements and Its Intergovernmental Agreement To Manage Legal Services	4
Scope and Methodology.....	7
Internal Controls.....	9
Appendices.....	10
A. Schedule of Questioned Costs	10
B. Auditee Comments and OIG's Evaluation	11
C. Criteria	20

Background and Objective

In 1938, the City of Los Angeles established the Housing Authority of the City of Los Angeles. The Authority has grown to become one of the Nation's largest and leading public housing agencies, providing the largest supply of quality affordable housing to the residents of Los Angeles. The Authority's annual budget is more than \$1 billion. Its funds come from five main sources: the U.S. Department of Housing and Urban Development's (HUD) annual operating subsidy, HUD's annual Public Housing Capital Fund, HUD's Housing Choice Voucher Program (commonly known as Section 8), administrative fees, and rent from public housing residents, plus other program and capital grants from various sources. The Authority owns and manages a citywide portfolio of 9,375 housing units and administers monthly housing assistance payments to more than 56,000 families throughout the City. The Authority is governed by a seven-member board of commissioners, which is responsible for policy, fiscal management, and the appointment of the president and chief executive officer.

The Authority's Department of General Services oversees its procurement activities. The Authority procures millions of dollars in supplies, equipment, construction, and other professional services each year in compliance with applicable Federal and State laws and its own procurement policy. All contracting above \$150,000 is conducted formally by sealed bids or competitive proposals. The Authority advertises these procurements for the public to view. The Authority's board approves contracts above \$150,000.

The Authority used an intergovernmental agreement to contract with the City for legal services. Public housing agencies enter into intergovernmental agreements with governmental agencies for common supplies and services, such as accounting, legal, and security services. These agreements also provide for greater economy and efficiency, which results in cost savings to the Authority. The Authority's board of commissioners and a senior official from the government agency approve these agreements. Since February 1985, the Authority has contracted with the City to serve as its general counsel to provide legal services, such as providing legal advice and written opinions; recommending changes in policies and procedures; reviewing and approving contracts, leases, and regulations; and providing other legal services (appendix C). The City assigned six of its employees, including four attorneys and two legal secretaries, to work solely for the Authority. The Authority entered into this agreement without a formal end date. However, it was required to obtain annual board approval for all amendments that affected the agreement. These amendments included changes to the City's legal rates charged to the Authority. In addition, the Authority was required to conduct an annual cost analysis, which compared rates charged by the City with those through competitive proposals. These cost analyses helped the Authority determine whether the City's rates for legal services were cheaper than those of private legal firms.

Our objective was to determine whether the Authority procured, contracted, and managed its legal services in compliance with HUD requirements.

Results of Audit

Finding: The Authority Did Not Always Follow HUD Requirements and Its Own Intergovernmental Agreement To Manage Legal Services

The Authority did not always follow HUD requirements and its own intergovernmental agreement when it managed its legal services. The Authority generally procured, contracted, and managed its competitive proposals in legal services as required by HUD and its procurement policy. However, it did not manage its intergovernmental agreement for legal services in compliance with HUD requirements and the terms of its agreement. Specifically, the Authority did not obtain board approval to execute annual written amendments, and it did not perform the annual cost analyses as required by HUD and its intergovernmental agreement. We attributed these conditions to the Authority's lack of oversight to obtain board approval for increased attorney rates and to document annual cost analyses as required by HUD and its intergovernmental agreement. As a result, the Authority did not ensure that it obtained \$793,101 in intergovernmental legal services as a cost benefit.

The Authority Generally Followed HUD Requirements for Its Competitive Proposals To Obtain Legal Services

The Authority generally procured, contracted, and managed its legal services for its competitive proposals in compliance with HUD requirements. For this procurement, the Authority sought general legal services, including labor and employment, governmental regulations, and HUD-related expertise. We identified a minor administrative issue in that the Authority did not notify vendors of the results of the procurement for legal services as required by HUD regulations at 2 CFR (Code of Federal Regulations) 200.318(h)¹ and HUD Handbook 7460.8, REV-2, paragraph 7(S)(2) (appendix C). The Authority acknowledged the issue and took corrective action to ensure that vendors would be notified of all bidding results.

The Authority Did Not Obtain Board Approval To Pay Higher Attorney Rates for Legal Services

The Authority did not obtain board approval to pay increased attorney rates for legal services as required by section 14 of its intergovernmental agreement. Section 14 of the agreement between the City and the Authority states that all amendments must be in writing and approved by the board. Before July 1993, the Authority had executed six amendments, which included increased attorney rates for payment of legal services and expenses. The board had approved each of these amendments. However, the Authority did not obtain the board's approval through annual

¹ In December 2014, HUD regulations at 2 CFR 200.318(h) replaced 24 CFR 85.36(8). However, HUD regulations at 24 CFR 85.36(8) were relevant for our audit period, October 1 to December 25, 2014. HUD regulations at 2 CFR 200.318(h) were relevant for our audit period, December 26, 2014 to the present.

amendments to support rate increases for City attorneys from July 1993 to June 2018. We attributed this condition to the Authority's lack of oversight to ensure that it paid increased attorney rates as required by board-approved amendments. Without the annual board-approved amendments, the Authority had been unable to justify paying increased attorney rates since July 1993. From October 1, 2014, to December 31, 2017, the Authority paid the City \$793,101 in program funds for legal services without the required board-approved annual amendments.

The Authority Did Not Perform the Required Annual Cost Analyses

The Authority did not perform annual cost analyses of its intergovernmental agreement for legal services as required by HUD. Specifically, the Authority did not have documented annual cost analyses for program years 2015, 2016, and 2017. HUD Handbook 7460.8, REV-2, paragraph 14.2(A)(4), states that the Authority is to provide documents to support that the cost and availability of government services have been evaluated before an agreement is executed.

Further, the Authority should review and compare these factors at least annually with those in the agreement (appendix C). HUD encourages grantees and subgrantees of program funds to enter into State and local intergovernmental agreements for the procurement or use of common goods and services to foster greater economy and efficiency in compliance with HUD regulations at 2 CFR 200.318(e)² (appendix C). In other words, HUD encourages the Authority to obtain services that are cheaper to allow it to maximize program funds and its operation. Instead of performing the required cost analyses, the Authority provided a spreadsheet that projected a cost comparison of the City's legal fees from 2015 to 2017, using its 2014 independent cost comparison. However, the use of a projection does not consider various factors that may affect the annual cost of goods and services. The Authority could have shown annually that obtaining legal services with the City was cheaper than through competitive procurement. For example, at a minimum, its cost analysis could have included the following information for use in its cost comparison of intergovernmental legal services to other similar services:

- names of vendors,
- type of service,
- rates,
- potential cost savings, and
- dates of when the analysis was performed.

Without this information, the Authority did not ensure that its use of City attorneys was more cost beneficial than that of private-sector attorneys. We attributed this condition to the Authority's lack of oversight to ensure that it documented annual cost analyses as required by HUD. Because the Authority used a 5-year cost projection, it was unable to document changes that would have affected potential cost savings annually. As a result, its projection did not justify using City attorneys as a cost-saving measure for the period October 2014 to December 2017.

² On December 26, 2014, HUD regulations at 2 CFR 200.318(e) replaced 24 CFR 85.36(5). However, HUD regulations at 24 CFR 85.36(5) were relevant for our audit period, October 1 to December 26, 2014. HUD regulations at 2 CFR 200.318(e) were relevant for our audit period, December 26, 2014, to the present.

On June 30, 2018, the City terminated its agreement with the Authority for legal services. The City's termination letter was submitted after we met with the Authority about this issue. According to the Authority, the City terminated the agreement due to the Authority's plan to hire in-house legal staff to replace the City attorneys.

Conclusion

The Authority did not always follow HUD requirements and its intergovernmental agreement to manage its legal services. While the Authority managed its competitive proposals in compliance with HUD requirements, it did not do so for its intergovernmental agreement with the City for legal services. We attributed these conditions to the Authority's lack of oversight to obtain board approval for increased attorney rates and to document annual cost analyses as required by HUD and its intergovernmental agreement. As a result, the Authority did not ensure that \$793,101 in program funds paid to the City for intergovernmental legal services was cost beneficial to its operations.

Recommendations

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

- 1A. Provide documentation to show that \$793,101 paid to the City for legal services was cost beneficial. Based on the documentation, it should reimburse its Housing Choice Voucher Program from non-Federal funds for any amount that exceeded the cost savings.
- 1B. Follow the terms of the agreement, HUD requirements, and its own policies and procedures to ensure that any intergovernmental agreements for goods and services are in compliance.

Scope and Methodology

We performed our audit work at the Authority's office in Los Angeles, CA, from January 24 to May 31, 2018. Our review covered the period October 1, 2014, to December 31, 2017.

To accomplish our objective, we

- Reviewed relevant background information, including the Authority's administrative plan and agency plan.
- Reviewed applicable HUD guidance and requirements.
- Reviewed Authority procurement files and program expenses related to sampled legal services.
- Obtained an understanding of the Authority's internal controls.
- Interviewed Authority officials to obtain an understanding of its program processes; specifically, its procurement for legal services.
- Interviewed HUD officials to obtain an understanding of the use of intergovernmental agreements.
- Reviewed HUD funding and monitoring reports.
- Reviewed the Authority's audited financial statements for fiscal years 2015 and 2016.
- Reviewed the Authority's general ledgers.
- Reviewed the Authority's board minutes.

We selected a nonstatistical³ sample of two contractors from an audit universe that consisted of four legal services contractors totaling more than \$1 million between October 1, 2014, and December 31, 2017. Using the Authority's disbursement journals, we identified payments to legal services contractors that were paid more than \$150,000 during the period of review. For our audit, we selected two contractors – Joseph Stark & Associates and the City of Los Angeles – which received a total of \$983,670 from the Authority. Overall, our audit sample represented 98 percent (\$983,670/\$1,005,019) of the total expenses that the Authority incurred for legal services using program funds.

³ A nonstatistical sample is appropriate when the auditor knows enough about the population to identify a relatively small number of items of interest.

The sampled expenses from the two legal services contractors included 313 disbursements made between October 1, 2014, and November 30, 2017. Of the 313 disbursements, 301 were from Stark, and 12 were from the City. From each contractor, we selected the two largest disbursements from each year, which totaled \$537,418 in legal expenses. Overall, our review sample represented 55 percent (\$537,418/\$983,670) of the total expenses that the Authority incurred for legal services. The sampling method did not allow us to project to the universe, but it was sufficient to meet the audit objective.

We relied in part on computer-processed data from the Authority, such as its vendor list, contract register, and disbursement journals. We used the data to determine the audit universe, contracts for review, and selection of disbursements. We, therefore, assessed the computer data to be sufficiently reliable to meet the audit objective.

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

Internal Controls

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

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

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

Relevant Internal Controls

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

- Effectiveness and efficiency of operations – Implementation of policies and procedures to reasonably ensure that program funds are used for eligible purposes.
- Reliability of financial information – Implementation of policies and procedures to reasonably ensure that relevant and reliable information is obtained to support eligible program expenditures.
- Compliance with laws and regulations – Implementation of policies and procedures to reasonably ensure that the monitoring of and expenditures for program activities comply with applicable HUD requirements.

We assessed the relevant controls identified above.

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

Significant Deficiency

Based on our review, we believe that the following item is a significant deficiency:

- The Authority did not follow HUD requirements and the terms of its agreement to ensure that it executed its intergovernmental agreement for legal services with the City (finding).

Appendices

Appendix A

Schedule of Questioned Costs

Recommendation number	Unsupported 1/
1A	\$793,101
Total	793,101

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

Comment 1

 HOUSING AUTHORITY OF THE CITY OF LOS ANGELES
AN EQUAL OPPORTUNITY - AFFIRMATIVE ACTION EMPLOYER
2600 Wilshire Boulevard • Los Angeles, California 90057 • (213) 252-2500
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PRESIDENT AND CEO
DOUGLAS GUTHRIE

September 20, 2018

Tanya E. Schulze, Regional Inspector General for Audit
Fredrick W. Lee, Assistant Regional Inspector General for Audit
Office of the Inspector General – HUD
300 N. Los Angeles Street, Suite 4070
Los Angeles, CA 90012

RE: Draft Report of HACLA Legal Services Procurement

Dear Ms. Schulze and Mr. Lee,

We appreciate the opportunity to provide additional responses to the draft audit report. First, we want to thank you and the audit staff, Richard Vital and Angelica Dominguez, for the team's professionalism during the audit process and willingness to hear our perspective on these issues.

We also want to note that we are very pleased that despite a very broad audit scope, including an extended audit period and detailed review, the OIG has not identified activities involving fraud or the clear misuse of federal funds, or issued findings that cannot be resolved.

The first finding is fundamentally a question of documentation, and we are very confident that the requested support can be easily provided. Although the second finding represents a comparatively very small dollar amount, the Housing Authority continues to object to this finding in its entirety. We hope to reach a resolution on this issue in our follow up work with the local office.

FINDING 1 – ANNUAL CONTRACT AMENDMENTS AND COST ANALYSES

While we acknowledge that the Housing Authority did not execute contract amendments or conduct formal costs savings analyses each year, HACLA nevertheless exercised ongoing oversight of all aspects of the services agreement, including annual cost management and periodic staffing adjustments with Board of Commissioners approval.

ANNUAL SERVICES AGREEMENT AND BOARD APPROVAL

Current staff cannot determine why annual contract amendments did not continue after the last amendment in 1993, but as demonstrated by Housing Authority Board Resolution 8261 from 2005 (see previously provided materials, Council File 05-0157 page 5), the Housing Authority recognized the need for annual amendments.

It is our understanding that a draft amendment had been initiated in early 2017 by the City Attorney's Office and negotiation of that amendment occurred in early 2018. When agreement could not be reached on the coordination of services between in-house staff and the City Attorney's Office, the parties mutually agreed to terminate the agreement in May of this year.

Comment 2

Comment 3

In any case, on an annual basis, the Housing Authority worked closely with the City Attorney's Office to establish the roster for assigned personnel and the associated costs, which were incorporated into the annual budget. These annual budget discussions included adjustments to the assigned staff roster and their associated costs, demonstrating ongoing and annual oversight and management of the services agreement.

For example, for the 2015 budget, the Housing Authority worked with the City Attorney's Office to eliminate the allocated cost for the Managing City Attorney, from 50%, and to replace the position with a much lower cost legal secretary. It should be emphasized that the Managing City Attorney continued to provide oversight for services provided, but was not charged to the Housing Authority. In general, annual increases to the services agreement were tied to standard cost of living and step increases for assigned staff as well as increases or reductions to the federally-approved CAP rates.

The total cost for assigned staff was included in the Housing Authority's annual operating budget, which was presented to and discussed with the Board of Commissioners annually.

As such, annual increases to the services agreement were reviewed, discussed, and overseen by executive and finance staff and determined to be reasonable and justified. The Board of Commissioners approved the cost as part of the annual operating budget.

COST ANALYSIS AND SAVINGS

While we acknowledge that the Housing Authority did not conduct formal annual cost comparisons during the periods reviewed, we believe the recommendation to provide further support for the federal funds expended is unwarranted. The documentation previously provided during field work to support significant cost benefit clearly demonstrates the cost reasonableness. Nonetheless, we will work the HUD Field Office to ensure their satisfaction with whatever additional documentation they may require.

It has been clearly understood between the parties that the services agreement provided significant cost savings for the Housing Authority. In fact, a cost analysis performed by the City Attorney's Office in 2004 indicated cost savings of \$1.1 million (\$521,933 for City Attorney staff compared to \$1.6 million for outside counsel). (See previously provided materials, Council File 05-0157 page 17.) Independent of these efforts, the Housing Authority reached the same conclusion and continued to ensure cost savings through periodic review and approval of staffing and CAP rate adjustments as we have discussed and as detailed below.

Early in its field work, the Housing Authority provided the auditors a cost comparison which clearly demonstrated significant cost savings. Relying on the average hourly billing rate for outside counsel¹ performing substantially similar work as compared to city attorneys, the Housing Authority realized savings of \$1.1 million to \$1.6 million each year, over \$5 million during the period reviewed.

¹ Based upon the legal services contracts procured under RFP 7526 in 2010 and RFP 7601 in 2015.

Comment 4

	2014	2015	2016	2017
City Attorney				
Number of City Attorneys	4.5	4	4	4
Total Annual Cost - Actual	\$ 1,068,002	\$ 1,193,636	\$ 1,190,433	\$ 1,307,608
Hourly Rate	\$ 114.10	\$ 143.47	\$ 143.08	\$ 157.16
Average Outside Counsel Rate	\$ 283.53	\$ 285.79	\$ 285.79	\$ 285.79
source	2010 contracts	2015 contracts		
Savings per hour	\$ 169.43	\$ 142.32	\$ 142.71	\$ 128.63
Annualized Savings	\$ 1,585,833	\$ 1,184,132	\$ 1,187,335	\$ 1,070,160

In the draft report, the OIG states that we provided cost comparison projections that did not consider factors that could affect the annual cost of goods and services, and that "The Authority could have shown annually that obtaining legal services with the City was cheaper than through competitive procurement." Since it is not possible to retroactively obtain procured bids for comprehensive legal services, the comparative chart is a very suitable substitute. It is based on actual costs incurred for legal services compared to average actual rates paid for outside firms. The rates paid to outside firms are detailed in contracts which include all the information cited by the OIG, including names of vendors, type of services, rates, and effective dates. Moreover, if we had included escalator rate increases to factor in increases to the cost of services, the outside counsel rates would only increase, resulting in greater savings.

At the time this was first presented to audit staff in May, they concurred that savings were clearly demonstrated.

Moreover, with the termination of services by the City Attorney, the Housing Authority provided auditors with its own staffing plan for comprehensive legal services in May. As demonstrated below in Table 1, the fully burdened cost for in-house staff is very comparable to the cost for the City Attorney's Office.

Notably, the City Attorney's roster of staff includes 4 attorneys and 2 para-professionals. The Housing Authority's staffing plan includes 3 attorneys and 3 para-professionals. If the Housing Authority's staffing roster were aligned in terms of classification types, see Table 2, the cost would *increase*.

Table 1 - HACLA Legal Services - Cost Comparison 2018

Position	FTEs	Total
CITY ATTORNEY'S OFFICE STAFFING		
Deputy City Atty IV	1	309,021
Deputy City Atty III	3	774,063
Legal Secretary I	2	209,897
Total	6	\$ 1,292,981
HACLA NEW STAFF		
General Counsel	1	350,700
Sr Staff Attorney	2	526,050
Paralegal II	2	283,900
Legal Secretary	1	116,900
Total	6	\$ 1,277,550
Difference		\$ (15,431)

Table 2 - Comparable Positions Scenario

Position	FTEs	Total
CITY ATTORNEY'S OFFICE STAFFING		
Deputy City Atty IV	1	309,021
Deputy City Atty III	3	774,063
Legal Secretary I	2	209,897
Total	6	\$ 1,292,981
HACLA NEW STAFF		
General Counsel	1	350,700
Sr Staff Attorney	3	876,750
Legal Secretary	2	233,800
Total	6	\$ 1,461,250
Difference		\$ 168,269

For these reasons, we believe we have already more than adequately demonstrated cost reasonableness and savings, making the recommendation repetitive of field work already conducted. Nevertheless, we are

Comment 5

prepared to provide this detailed information and the supporting details to the HUD Field Office to resolve this finding.

FINDING 2 – PROTECTED LEAVES, HOLIDAY, AND VACATION PAY ARE INELIGIBLE EXPENSES

We continue to fundamentally disagree with the underlying premise of this finding. First, there is no federal citation provided to indicate what federal requirement has been violated, and in fact, the finding contradicts established federal grant reimbursement standards. Second, the finding relies on an interpretation of the contract language that runs completely counter to the clear understanding and agreement between the parties.

LACK OF REGULATORY BASIS

Ordinarily, the OIG relies on very specific citations of federal regulations to support its findings. However, the OIG has offered not one federal citation in this finding. On the contrary, there are extensive federal citations to support the opposite conclusion.

The Housing Authority's interagency agreement with the City Attorney's Office provided for staff augmentation, and explicitly contemplated reimbursement for "all actual costs" (discussed in more detail below). *Holiday and vacation pay are explicitly allowable costs under 2 CFR 200.430 and 200.431.*

- a) 200.430 Compensation – personal services
General. Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in 200.431. (emphasis added)
- b) 200.431 Compensation – fringe benefits
Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity. (emphasis added)

Further, OMB Circular A-87 - Revised (5/10/04) provides in relevant part under "Fringe Benefits":

"The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave, and other similar benefits, are allowable if: (a) they are provided under established written leave policies; (b) the costs are equitably allocated to all related activities, including Federal awards; and, (c) the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit."

The above is also codified in 2 CFR 200.431 and its predecessor, Part 85.

These citations establish the principles for determining the allowable costs incurred by the Housing Authority under federal grants. Also importantly, these citations accommodate maternity leave and other leaves necessitated to comply with both state and federal fair employment law and practices. As such, the exclusion

of the selected benefits from eligible reimbursement is clearly inconsistent with standard billing for federal grants and compliance with state and federal employment leave law.

OIG appears to base its conclusion in part on the fact that assigned City Attorneys were not Housing Authority employees and for that reason, these standards do not apply.

However, even if the City Attorney's Office is considered a vendor, comparable to an outside legal firm or other services provider, it is the clear practice for all vendors to set their billing rates so as to capture all costs required for the provision of services, including fringe benefits. The Housing Authority's boilerplate contracts for all services providers related to Fees, Payments and Invoices states in part, "...The Contract Fees are acknowledged to be fully burdened to include all direct costs, indirect costs and profit...."

A very clear and comparable example is property management. In the Housing Authority's third-party property management contracts, the agreements contemplate fully-burdened salaries of assigned staff, including the on-site manager, maintenance staff, and others. These costs include all fringe benefits, including sick leave, holidays, extended leaves pursuant to FMLA, and all others required under state and federal law. In the event assigned staff are absent for an extended time, such as for maternity leave, it is standard practice in property management to continue to compensate the assigned staff as well as retain additional temporary staff if needed.

In other words, all vendors bill the Housing Authority for fringe benefits, including holiday and vacation pay for the employees, even though those specific costs are not specifically enumerated. Legal Service providers in particular set hourly rates so as to capture all operating costs that cannot be specifically billed on 6 minute increments. In the case of the City Attorney's Office, the annual cost was set, to include the cost of *all fringe benefits*, for the scope of services to be provided, which was for comprehensive legal services provided by assigned fully-burdened staff, not billed in hourly or daily increments.

RELIES ON OIG MISINTERPRETATION OF THE AGREEMENT

As noted by the OIG in Appendix C, the contract between the Housing Authority and the City Attorney's Office provided: Section VI.B. Payment for Services and Expenses: "HACLA shall reimburse the CITY for the services performed and *all expenses reasonably incurred* hereunder." Not noted by the OIG, this section of the contract further states, "*All expenses shall be reimbursed at their actual cost.*" (emphasis added)

From the inception of the agreement, it has been the clear intent and practice of both parties that all costs associated with the assigned staff would be fully reimbursed by the Housing Authority. The contract explicitly says so. Moreover, as documented in the March 21, 1984 Report of the City Administrative Officer (previously provide to OIG), these are the only terms under with the City was willing to provide legal services support to the Housing Authority. Notwithstanding, the OIG has concluded that because paid leaves, including holidays and vacations, were not specifically enumerated in the contract, they were somehow *intended* to be excluded in the contract and are therefore ineligible. But this is simply unsupportable by the facts.

Section XIV.C of the Contract provides that the agreement shall be enforced and interpreted under the laws of the State of California and the City. The California Civil Code, Code of Civil Procedure and case law provide an abundance of guidance on contract interpretation. For example, Civil Code Section 1636 provides that "*a contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful*". In the instant case, we have an administrative record of both entities which clearly manifests such intent.

The March 21, 1984 Report from the City Administrative Officer (previously provided to OIG) clearly sets forth the terms under which the City of Los Angeles was willing to provide the Housing Authority with legal support in substitution of receiving support from a private law firm. The Report contemplates that four attorneys and four support positions would be required to support the legal needs of the Housing Authority with a total annual cost estimate which included both direct and indirect costs including fringe benefits. Applicable excerpts from this memo include:

Page 3: Understanding that costs would include fringe benefits
private law firm. No additional space will be required. The total annual cost of the requested positions, including fringe benefits and indirect costs, would be \$538,000. Cost data available to us

Examination of the Housing Authority's budget in the Report also revealed that the Housing Authority had budgeted an insufficient amount to cover the annual costs of legal services and that it would be necessary for the Housing Authority to adjust its annual budget accordingly. In fact, the Report further provides that reimbursements to the City should be carefully monitored to ensure that all City Attorney costs for assigned personnel are recovered to the General Fund and that should reimbursements not fully recover the costs of legal services, the level of services provided by the City Attorney should be reduced. It is clear that no City funds were to be used in support of providing legal services under the Contract. The intentions of the City including the terms under which it was willing to provide the Housing Authority with legal support could not have been more clear.

Page 4: Understanding that positions would be fully reimbursed
perform all the necessary level of services. For that reason, in order to perform adequate legal services, the eight positions requested will be required. The eight positions are recommended, provided all costs are fully reimbursed by the Housing Authority through HUD or other revenue sources. In order to help achieve this, the HACLA budget should be modified to reflect the estimated annual cost of City Attorney staff. After the City Attorney staff has attained experience with Housing Authority matters, the...

Page 8: Understanding that all costs would be fully covered or legal support would be reduced
costs are recovered by the General Fund. If the reimbursements do not fully cover the costs of all legal services, the level of services provided by the City Attorney should be reduced.

In 2005 among other occasions, the City and the Housing Authority revisited the Housing Authority's legal staffing levels. As memorialized in a Report of the City Administrative Officer dated May 6, 2005 (previously provided to OIG), both parties desired to adjust the staffing levels by four positions with the Housing Authority again agreeing to pay all actual costs of these staff comprised of both direct and indirect costs.

City Administrative Officer Report to City Council page 3 - Billing for actual costs will include both direct and indirect costs, which include standard benefits such as vacation and holiday pay.

FISCAL IMPACT STATEMENT

The total cost of the positions for 2004-05 is \$85,762 (\$32,884 in direct costs and \$32,878 in indirect costs). The Housing Authority of the City of Los Angeles will pay the actual costs of the four positions for the current and subsequent fiscal years on a reimbursement basis.

Civil Code Section 1647 provides that "*a contract may be explained by reference to the circumstances under which it was made ...*". The administrative record clearly demonstrates the desire and intent of the parties that the City was to provide full staffing to meet the Housing Authority's legal support needs and in turn the Housing Authority would be responsible for paying the entire actual expense of such staffing. To the extent OIG believes there is any ambiguity in the contracting terms, the administrative record and California law compel a different conclusion.

In California, the Parole Evidence rule (codified in Code of Civil Procedure 1856) generally precludes parties from introducing extrinsic evidence to contest the validity of an integrated written contract. The circumstances under which the rule is invoked generally involve disagreements among the contracting parties which are noticeably absent here. There is no dispute or disagreement as to the contracting terms between the City and the Housing Authority. Nonetheless, a very brief discussion of the Parole Evidence Rule is being provided in recognition OIG may assume the integration clause in the Contract somehow precludes consideration of the administrative record. Such an argument would however, be wholly without merit.

Code of Civil Procedure 1856 (c) provides in relevant part: "*[t]he terms set forth in a writing ... may be explained or supplemented by course of dealing ...*" The course of dealing among the City and the Housing Authority clearly manifest the mutual understanding and intent that the Housing Authority was required to and did reimburse the City for all expenses associated with furnishing the Housing Authority with legal support.

The Contract, including each and every one of its amendments, provides that "*(a) all expenses shall be reimbursed at their actual cost.*" Administration of the Contract over the course of the last thirty (30) plus years manifest this mutual understanding and intent of the parties. Subject to occasional discussions and adjustments to staffing and the CAP rates (further evidence of contract management and parties' intent), the Housing Authority has received fully-burdened invoices from the City and these invoices have been paid in their entirety during the entirety of the agreement. The intentions of the parties are simply irrefutable based upon their course of dealing.

The attorneys assigned to the Housing Authority had been assigned for many years, and would naturally be expected to have a need for protected leaves, such as FMLA for maternity leave, which was the case here. By considering these costs ineligible, the OIG appears to be concluding that the federal government should not pay its fair share of maternity leave for staff who work to benefit federal programs. Such a conclusion is troubling and inconsistent with state and federal protective leave law as previously noted.

Again, the Housing Authority's agreement with the City Attorney's Office contemplated *all costs* associated with dedicated personnel, including approved absences.

Finally, it is also not clear whether the finding would set a precedent potentially affecting many other interagency agreements for staff augmentation. While of course we cannot speak to the universe of agreements this finding would affect, they would certainly include not only legal services agreements, but those for human resources, law enforcement, and others where agencies are pursuing cost effective service delivery means. It would clearly be of dramatic consequence to many public housing authorities and other public agencies if the terms of their agreements were subject to third-party interpretations that clearly run counter to their established contract language, intent, and practice.

For all these reasons, we respectfully continue to disagree with the underlying premise of this finding.

Again, we appreciate the opportunity to provide this response.

Sincerely,

AV DOUGLAS GUTHRIE
President & Chief Executive Officer

Electronic copy: Marcie Chavez, Director, Los Angeles Office of Public Housing, Region IX
Rosanne Chavez, Deputy Director, Los Angeles Office of Public Housing, Region IX
Dan Wilkerson, Portfolio Management Specialist, Los Angeles Office of Public
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Richard Vital, Auditor, Office of the Inspector General
Angelica Dominguez, Senior Auditor, Office of the Inspector General
Marlene Garza, Chief Administrative Officer, HACLA
Howard Baum, Interim General Counsel, HACLA
Patricia Kataura, Director of Finance, HACLA

OIG Evaluation of Auditee Comments

Comment 1 We appreciate the Authority's courtesy to our audit team during the review. We recognize the Authority's efforts to work with HUD in resolving the finding mentioned in the report.

Comment 2 We appreciate that the Authority acknowledged not executing its contract amendments or conducting formal annual costs analyses. While it believed there was oversight of its agreement, we identified weaknesses related to obtaining the required amendments and documenting the cost analyses as required by HUD.

Comment 3 We disagree with the Authority that it received annual board approval for City attorney rates. As stated in the report, the Authority did not provide any documentation to show that it obtained the annual board approvals as required by section 14 of the agreement with the City (appendix C). Specifically, the Authority did not perform this required task for increased attorney rates from July 1993 to June 2018. In addition, the Authority claimed its board approved the City attorney rates through its annual operating budget. However, the annual operating budget did not indicate that program funds were allocated for the City's legal services. Specifically, the budget showed the total amount of legal services, but it did not show the allocation of program funds to pay for the City's legal services. The Authority states that it provided oversight of its agreement. However, there was no documentation to show the board's approval for the years in question. This lack of documentation raises concerns about the oversight of the City's legal services.

Comment 4 We appreciate that the Authority acknowledged not conducting formal annual cost analyses during program years 2015 to 2017. We acknowledge that the legal services through the City may be cheaper than through private law firms. However, the Authority did not document the required annual cost analyses for program years 2015 to 2017 as required by HUD Handbook 7460.8, REV-2, paragraph 14.2(A)(4) (appendix C). We also noted that the cost comparison chart in the Authority's response was not the version provided to us during the fieldwork. On January 31 and July 23, 2018, we received cost comparison charts that showed different costs and rates for city attorneys and outside counsel. In addition, these charts provided to us did not reference the source of the costs and rates for the legal services. During the audit resolution, the Authority will have the opportunity to work with HUD in addressing this issue.

Comment 5 We acknowledge the Authority's concerns about questioned costs for non-related legal expenses such as paid leave incurred by the City. Based on further evaluation of the relevant HUD requirements and the agreement itself, we agree that there were no explicit HUD requirements that prohibited the Authority from paying for such paid leave. As a result, we have removed the finding and recommendations from this report.

Appendix C

Criteria

The following sections of the Procurement Handbook for Public Housing Agencies 7460.8, REV-2; 24 CFR Part 85; 2 CFR Part 200; and the Intergovernmental Agreement Between the City of Los Angeles and the Housing Authority of the City of Los Angeles for General Legal Counsel Services, signed February 22, 1985, were relevant to our audit of the Authority's legal services.

Procurement Handbook for Public Housing Agencies 7460.8, REV-2

Chapter 7, Competitive Proposals, Section 7.2, Competitive Proposal Process

(S) Contract Award:

(2) Notice to Unsuccessful Offerors. The Contracting Officer should notify each unsuccessful offeror and the awardee price in writing. In accordance with any applicable State or local law, the notice should identify the successful offeror and the contract price, and the basis for the offeror not being selected for contract award. The basis should clearly describe the offer's salient weaknesses and deficiencies that resulted in it not being considered for award (e.g., not simply state that the offeror's proposal did not receive a high enough score).

Chapter 14, Cooperative Business Relationships, Section 14.2, Intergovernmental Agreements for Procurement Activity

(A) Requirements. A PHA [public housing agency] may enter into intergovernmental or interagency purchasing agreements without competitive procurement provided the following conditions are met:

(4) A PHA's procurement files should contain a copy of the Intergovernmental Agreement and documentation showing that cost and availability were evaluated before the agreement was executed, and these factors are reviewed and compared at least annually with those contained in the agreement.

24 CFR Part 85, Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments, Section 85.36, Procurement

(b) Procurement Standards

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(8) Grantees and sub grantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Section 200.318, General Procurement Standards

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Agreement Between the City of Los Angeles and the Housing Authority of the City of Los Angeles for General Legal Counsel Services, Signed February 22, 1985

Section 1

The City Attorney shall serve as General Counsel for HACLA [the Authority]. The duties of General Counsel, shall include the following:

1. Attendance at meetings of the Board, and the review and approval as to form those proposed actions of the Board requiring such approval.
2. Providing general legal consultation with HACLA officers and staff upon reasonable notice.
3. Attendance at meetings of the Housing Commission of the City of Los Angeles (hereinafter “Housing Commission”), and the review and approval as to form those proposed Housing Commission agenda items requiring such approval.
4. Recommending changes in HACLA policies and procedures as the City Attorney finds necessary or appropriate.
5. Recommending and reviewing qualifications of consultants or experts as may from time to time be necessary.
6. Reporting upon the progress of HACLA legal matters as directed to, or as may become necessary from time to time.

7. Advising HACLA on, and if the City Attorney determines it is necessary then, representing HACLA at hearings or grievances, pre-disciplinary actions, civil service disputes, unemployment disputes and labor disputes.
8. Representing HACLA with respect to litigation affecting HACLA, except unlawful detainer actions or as otherwise provided in accordance with Section II of the Agreement.
9. Reviewing and approving as to form all contracts, leases, conveyances, applications, rules, guidelines, regulations, procedures or amendments thereto before the same are submitted to the Board, Housing Commission, HACLA officer or any governmental agency for approval.
10. Giving advice or written opinions to any officer, the Housing Commission, or the Board upon a written request therefor.
11. Except as otherwise provided herein, performing any and all other legal duties requested by the Board or the Housing Commission.

Section 6

- B. Payment for Services and Expenses. HACLA shall reimburse the City for the services performed and all expenses reasonably incurred hereunder. The fees for such services shall be based upon the time expanded to provide the required services... Said rates shall be subject to renegotiation on July 1, 1984 and on each July 1, thereafter.

Section 14

- E. Amendments. All amendments hereto shall be in writing and signed by the persons authorized to bind the parties thereto.