



# The City of Minot, ND

## Community Development Block Grant Disaster Recovery Program



**To:** Edward Atecno, Acting Director, Denver Office of Community Planning and Development, 8AD

*//signed//*

**From:** Ronald J. Hosking, Regional Inspector General for Audit, 7AGA

**Subject:** The City of Minot, ND, Did Not Fully Comply With Federal and Local Procurement 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 City of Minot, ND's Community Development Block Grant Disaster Recovery 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, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG Web site. 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 913-551-5870.



**Audit Report Number: 2015-KC-1002**

**Date: March 13, 2015**

**The City of Minot, ND, Did Not Fully Comply With Federal and Local Procurement Requirements**

## Highlights

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### What We Audited and Why

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We audited the City of Minot, ND's Community Development Block Grant (CDBG) Disaster Recovery program because the City was awarded more than \$67 million in CDBG Disaster Recovery funds in April 2012 and an additional \$35 million in May 2013. Before our audit, the City had spent more than \$26 million and \$1.3 million, respectively. In addition, we had not audited the City's activities in more than 10 years. Our audit objective was to determine whether the City complied with Federal and local procurement requirements.

### What We Found

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The City did not fully comply with Federal and local procurement requirements. It did not prepare independent cost estimates before receiving bids or proposals for two grant administration and project delivery services contracts and the five amendments to those contracts or for the change orders for four construction projects. In addition, the City did not perform debarment checks before awarding three contracts. The City's mayor signed two amendments for the 2012 grant administration and project delivery contract before the city council authorized the mayor to sign the documents on the City's behalf. Finally, one construction contract was not dated and did not have an effective date of services.

### What We Recommend

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We recommend that HUD (1) require the City to provide documentation demonstrating that the overall contract price for the two grant administration and project delivery services and the five amendments to those contracts totaling more than \$11.5 million was fair and reasonable and if not, require the City to repay HUD from non-Federal funds any amount that it cannot support; (2) require the City to provide documentation demonstrating that the overall price for the change orders for the four construction projects totaling \$121,771 was fair and reasonable and if not, require the City to repay HUD from non-Federal funds any amount that it cannot support; and (3) monitor the City to ensure that it follows its revised Federal grant procurement policy and newly adopted procurement checklist.

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# Background and Objective

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Minot, ND, is located in north central North Dakota and is the fourth largest city in the State. It is the county seat of Ward County and a trading center for a large portion of northern North Dakota, southwestern Manitoba, and southeastern Saskatchewan. The Souris River divides Minot approximately in half, north and south. In 2010, Minot had a population of 40,888, and Ward County had a population of 61,675.

According to the United States Army Corps of Engineers, in 2011, high soil content, above-average snow pack, persistent moderate spring rainfall, and moderate to large summer rainfall combined to produce multiple flood peaks and record flooding throughout the Souris River Basin. Flood waters inundated Minot on June 20, 2011. The damage included 4,100 homes flooded, with 3,100 lost or extensively damaged. There were 11,000 individuals displaced. The water severely damaged six of Minot's public schools and destroyed two schools. Water inundated 12 of the 27 sanitary lift stations and all of the City's water wells, damaging 8 river storm pump stations, 277 street lights, and many other vital components of Minot's infrastructure. According to the Corps's assessment, the flood resulted in an estimated \$600 million in property and infrastructure damage.

The U.S. Department of Housing and Urban Development (HUD) initially awarded the City of Minot more than \$67.5 million for its jurisdiction through Section 239 of the Department of Housing and Urban Development Appropriations Act, 2012 (Public Law 112-55). Nationwide, the Act made up to \$400 million in Community Development Block Grant (CDBG) funds available until spent for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster.

HUD awarded the City an additional \$35 million for its jurisdiction through the Disaster Relief Appropriations Act of 2013 (Public Law 113-2), which provided \$16 billion nationwide in CDBG funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013.

HUD signed the \$67.5 million funding approval (form HUD-7082) for the City on August 8, 2012, and the City signed it on October 24, 2012. For the \$35 million CDBG Disaster Recovery grant, at the time of our audit, HUD and the City had signed two separate partial grant agreements totaling \$29.2 million. HUD signed the funding approvals on January 6, 2014, for \$20.4 million and September 14, 2014, for \$8.8 million. The City signed the agreements on January 13, 2014, and September 15, 2014, respectively. The City anticipated executing the grant agreement for the remainder of the funds in 2015. It did not sign an agreement for the full grant amount initially due to concerns about the requirement to spend the funds within 2 years of HUD's grant agreement date.

Our audit objective was to determine whether the City complied with Federal and local procurement requirements.

# Results of Audit

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## **Finding: The City Did Not Fully Comply With Federal and Local Procurement Requirements**

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The City did not fully comply with Federal and local procurement requirements. This deficiency occurred because the City lacked detailed operational procedures and checklists for implementing applicable procurement regulations. As a result, HUD was not assured that the City received the best value and greatest overall benefit from more than \$11.6 million in various CDBG Disaster Recovery procurement contracts, amendments, and change orders.

### **City Did Not Fully Comply With Federal and Local Procurement Requirements**

It did not always prepare independent cost estimates, did not perform debarment checks before awarding three contracts, and signed two contract amendments before the city council approved them.

#### The City Did Not Always Prepare Independent Cost Estimates

The City did not prepare independent cost estimates before receiving bids or proposals for two grant administration and project delivery services contracts and the five amendments to those contracts or for the change orders for four construction projects. Regulations at 77 CFR (Code of Federal Regulations) 22595 (April 16, 2012) states local governments are subject to 24 CFR 85.36(b) through (i), and the City certified that it adopted the specific procurement standards identified in 24 CFR 85.36. Regulations at 24 CFR 85.36(f) and the City's Federal grant program procurement policy required a cost or price analysis in connection with every procurement action including contract modifications.

For the 2012 CDBG grant administration and project delivery services contract, the City did not prepare an independent cost estimate for the initial contract totaling more than \$5.1 million and the four amendments, which totaled more than \$1.9 million. The City also did not prepare an independent cost estimate for the 2013 CDBG grant administration and project delivery services contract and its one amendment. This contract totaled more than \$3.6 million, and the amendment totaled more than \$847,000.

On November 10, 2014, the City provided us with a cost reasonableness analysis of the four amendments for the 2012 CDBG grant administration and project delivery services contract. In its analysis, the City determined that each amendment's cost was reasonable. We reviewed the cost reasonableness for the four amendments to help determine the unsupported costs. Overall, we could not determine the cost reasonableness for amendments 1, 2, and 3, based on the documentation that the City provided. However, the documentation for amendment 4 showed that the costs were reasonable. See the table below.

2012 CDBG grant administration and project delivery services contract and amendments	Contract and amendment amounts	Contract and amendment amounts determined as unsupported costs
Original contract	\$5,124,416	\$5,124,416
Amendment 1	610,000	610,000
Amendment 2	487,620	487,620
Amendment 3	823,025	823,025
Amendment 4	24,000	0
<b>Totals</b>	<b>\$7,069,061</b>	<b>\$7,045,061</b>

In addition, the City provided us with cost reasonableness data for the 2013 grant administration and project delivery services contract. However, we could not determine, with the documentation provided, whether this grant administration and project services delivery contract cost was fair and reasonable. See the table below.

2013 CDBG grant administration and project delivery services contract and amendment	Contract and amendment amounts	Contract and amendment amounts determined as unsupported costs
Original contract	\$3,656,825	\$3,656,825
Amendment 1	847,380	847,380
<b>Totals</b>	<b>\$4,504,205</b>	<b>\$4,504,205</b>

The City also did not prepare independent cost estimates for change orders for the Central parking structure, Master lift station, landfill expansion, and Roosevelt lift station projects. See the table below.

Project	Change order amount
Central parking structure	\$50,912
Master lift station	56,524
Landfill expansion	390
Roosevelt lift station	13,945
<b>Totals</b>	<b>\$121,771</b>

The City Did Not Perform Debarment Checks Before Awarding Three Contracts

The City did not perform debarment checks before awarding three contracts. The City performed system for award management checks on these three contracts; however, they were performed after the contracts between the City and the contractor were signed. The system for award management replaced the excluded parties list system which identified parties excluded from receiving Federal contracts. Regulations at 24 CFR 85.35 prohibit grantees and subgrantees from awarding any contract to any party who is debarred or suspended. Both 2 CFR 180.300 and 2 CFR 2424.300 require some type of debarment check, certification, or a contractual clause or condition to help determine whether the person one intends to do business with is an excluded or suspended party.

The City Signed Two Contract Amendments Before City Council Approval

The City’s mayor signed two amendments for the 2012 grant administration and project delivery contract before the city council authorized the mayor to sign the documents on the City’s behalf. The two amendments had a date listed in the amendment language and below the mayor’s signature block, and the dates listed occurred before the city council officially approved the amendment. These actions could have caused the City liability issues. Also, one construction contract was not dated and did not have an effective date of services.

**The City Lacked Detailed Operational Procedures and Checklists**

The City lacked detailed operational procedures and checklists for implementing applicable procurement regulations. The City’s procedures did not ensure that the City (1) performed a cost or price analysis for every contract, including amendments or change orders; (2) performed debarment checks before a contract was signed; and (3) received approval from the city council before executing contracts. In addition, the City did not have a formal change order policy.

For the parking structure change order, the City stated that it did not see a need to complete its own independent cost estimate before receiving bids because it was going to cap the amount of CDBG funds contributed to the project.

As a result of our review, the City revised its Federal grant program procurement policy and created a procurement checklist to strengthen its controls in complying with Federal and local procurement requirements. We provided recommendations for the City to incorporate into its

local procurement requirements, and the City added the recommendations to its Federal grant procurement policy and procurement checklist. On January 12, 2015, the city council approved the City's revised Federal grant program procurement policy and procurement checklist.

### **The City Did Not Ensure the Best Value for Procurement Activities**

HUD was not assured that the City received the best value and greatest overall benefit from more than \$11.6 million in various CDBG Disaster Recovery procurement contracts, amendments, and change orders. Further, the City put its Disaster Recovery funds at risk by signing the two contract amendments before obtaining city council approval.

### **Conclusion**

The deficiencies discussed above occurred because the City lacked detailed operational procedures and checklists for implementing applicable procurement regulations. As a result, HUD was not assured that the City received the best value and greatest overall benefit from more than \$11.6 million in various CDBG Disaster Recovery procurement contracts, amendments, and change orders. Although the City had revised its Federal grant program procurement policy and created a procurement checklist to strengthen its controls, HUD requires assurance that the City has implemented these new procurement policies. If these policies are not implemented, HUD cannot be assured that the City will receive the best value in its future Disaster Recovery procurement transactions.

### **Recommendations**

We recommend that the Director of the HUD Denver Office of Community Planning and Development

- 1A. Require the City to provide documentation demonstrating that the overall contract price for the two grant administration and project delivery services contracts and the five amendments to those contracts totaling \$11,549,266 was fair and reasonable and if not, require the City to repay HUD from non-Federal funds any amount that it cannot support.
- 1B. Require the City to provide documentation demonstrating that the overall price for the change orders for the four construction projects totaling \$121,771 was fair and reasonable and if not, require the City to repay HUD from non-Federal funds any amount that it cannot support.
- 1C. Monitor the City to ensure that it follows its revised Federal grant procurement policy and newly adopted procurement checklist.

# Scope and Methodology

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Our audit objective was to determine whether the City complied with Federal and local procurement requirements.

To accomplish our objective, we

- Interviewed pertinent HUD Disaster Recovery and Special Grants Division, Denver Office of Community Planning and Development, and City staff;
- Reviewed Public Laws 112-55 and 113-2, the Stafford Act, applicable portions of the Code of Federal Regulations, Federal Register notices, and waiver requests;
- Reviewed the applicable HUD guidebook and Community Planning and Development notices, the City's action plans and CDBG Disaster Recovery policies, and the City's procurement policies and procedures;
- Reviewed the grant agreements between HUD and the City;
- Analyzed and reviewed contracts executed between the City and contractors;
- Obtained HUD's monitoring review and technical assistance visit report on the City's CDBG Disaster Recovery program;
- Reviewed the City's audited financial statements and applicable internal audit reports;
- Reviewed Minot City Council meeting minutes; and
- Analyzed the City's procurement checklist and various CDBG Disaster Recovery bid proposals.

We reviewed the procurement process for the grant administrator and delivery services contracts and amendments for the 2012 and 2013 CDBG Disaster Recovery grants. Also, we nonstatistically selected five projects from the City's project listing to review. From the 2012 CDBG Disaster Recovery grant, we reviewed 4 of the 21 projects. The Federal dollars for these four projects totaled more than \$14.4 million, or 42.15 percent of the total Federal dollars budgeted for the 21 projects. From the 2013 CDBG Disaster Recovery grant, we selected one of the six projects, totaling \$9.1 million, or 28.86 percent of the total Federal dollars budgeted for the six projects. Later, we reviewed two additional 2012 CDBG Disaster Recovery grant projects. The total Federal dollars for these 2 projects totaled more than \$4 million, or 11.82 percent of the total Federal dollars budgeted for the 21 projects previously mentioned. We selected these projects because they were the projects with the highest Federal dollar amounts. We cannot project the results of our sample testing to the entire project population.

We primarily used data from the City's files to meet our audit objective. In addition, we used HUD's Disaster Recovery Grant Reporting (DRGR) system data and the City's accounting records as support, which we confirmed with other evidence. We determined that the DRGR data and the City's accounting records were sufficiently reliable to meet our objective. Also, we found that the City had a series of controls in place to verify the accuracy of the data it recorded.

We performed onsite work between September and November 2014 at City Hall located at 515 2<sup>nd</sup> Avenue, SW, Minot, ND, and the Minot Municipal Auditorium located at 420 3<sup>rd</sup> Avenue, SW, Minot, ND. Our audit period generally covered April 1, 2012, through September 15, 2014; however, we expanded the scope as necessary because various documents relevant to the City's CDBG Disaster Recovery program were not finalized until November 2014. This is the first in a series of audits that we plan to conduct on the City's CDBG Disaster Recovery program.

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

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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:

- Controls over the City's CDBG Disaster Recovery program procurement process.

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 City lacked detailed operational procedures and checklists for implementing applicable procurement regulations.

# Appendixes

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## Appendix A

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**Schedule of Questioned Costs**

<b>Recommendation number</b>	<b>Unsupported 1/</b>
1A	\$11,549,266
1B	121,771
<b>Totals</b>	<b>\$11,671,037</b>

- 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



Finance Department

February 25, 2015

Mr. Ronald Hosking  
Regional Inspector General for Audit  
Office of Audit Region 7  
400 State Avenue, Suite 501  
Kansas City, KS 66101

Dear Mr. Hosking:

Thank you for the opportunity to respond to the findings in the audit report. The City of Minot strongly disagrees with the findings. I have outlined each finding and the city's response.

**City did not fully comply with federal and local procurement requirements**

**The City did not always prepare independent cost estimates**

1. HUD CDBG Allocation #1

From HUD guidelines:  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/cpo/grantees/cstprice](http://portal.hud.gov/hudportal/HUD?src=/program_offices/cpo/grantees/cstprice)

**Competitive Proposals.** This method is most often used to contract for professional, consulting, and architect/engineering (A/E) services. (See 24 CFR 85.36(d)(3) for a definition.) To determine the reasonableness of proposed costs, you must obtain cost breakdowns from the offerors showing all the elements of their proposed total costs and perform a cost analysis of each proposal using the appropriate set of cost principles (discussed below).

*NOTE! When awarding a contract using the competitive proposal method, the type of contract (e.g., firm fixed-price or cost-reimbursement) you propose to award does not affect the requirement for a cost analysis. For example, if you intend to award a firm fixed-price contract via the competitive proposal method, you still must analyze all of the proposed costs contained in each offeror's price. However, you are not required to negotiate each individual cost element in arriving at an agreement on total price. The final price you negotiate with the contractor on a fixed-price contract normally reflects agreement only on the total price. Therefore, the overall objective should be to negotiate total prices that are fair and reasonable.*

*NOTE! In certain cases, the contract may specify separately priced items. This is*

★ The Magic City ★

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# Appendix B

## Auditee Comments and OIG's Evaluation

### Ref to OIG Evaluation

### Auditee Comments

*commonly done in indefinite- delivery (e.g., indefinite-quantity, sometimes called job order, or "open ended") contracts. Under these contracts, the HA orders pre-priced items on an as-needed basis, up to a stated maximum quantity. For these contracts, agreement must be reached on each item's price before award and the prices included in the final contract document.*

**Architect/Engineer Contracts.** Cost analysis is required in determining if the cost portion of an A/E contract is fair and reasonable.

In accordance with these guidelines, the City issued a request for proposal (RFP) for the 2012 CDBG-DR grant administration and project delivery services using cost as a key selection factor. The City received competitive priced proposals from six firms, as follows:

Firm	Total Cost	Blended Hourly Rate
KLJ/Providence	\$3,952,000	\$95.00
CDM Smith	\$5,124,416	\$135.00
Prosource Technologies	\$8,374,830	\$115.35
SAIC*	\$1,347,984	\$148.00
Customer Value Partners*	\$10,141,832	\$119.00
URS	\$5,558,280	\$136.63

\*Note SAIC 's proposal only includes the advisory administrative services. No hours were proposed for project delivery.

\*\*Note Customer Value Partners includes \$5,539,154 from third party providers.

A full evaluation, including cost analysis, of each proposal was completed, CDM Smith was selected based on overall proposal quality, program approach and program costs. The CDM Smith costs were deemed to be reasonable based on the fact that the blended hourly costs were in the middle of all proposers and the total costs were representative of the effort required to successfully complete the program for the City.

Also from HUD guidelines relating to change orders:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/cpo/grantees/cstprice](http://portal.hud.gov/hudportal/HUD?src=/program_offices/cpo/grantees/cstprice)

**What other contract actions or types require cost analysis?**

- **Contract Modifications.** If you are negotiating a modification (including change orders) 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, you must use cost analysis to arrive at a reasonable cost. The only exception to this rule is a contract modification based on pricing terms already established in the contract

Comment 2

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## Auditee Comments and OIG's Evaluation

### Ref to OIG Evaluation

### Auditee Comments

Comment 3

Comment 4

Comment 1

document. Keep in mind that changes in scope do not always result in increased costs. Elimination or reduction of contract work may result in a decrease in the contract price. Regardless of the direction of the price change, these modifications require cost analysis using the cost principles to determine that the price change is fair and reasonable.

All the change orders negotiated on both Allocation #1 and Allocation #2 CDBG-DR programs were completed in accordance with above HUD guidelines, in that the amendments were each based on competitively procured and accepted pricing terms already deemed to be reasonable.

It is noted in the OIG Audit report the City of Minot provided the OIG with a cost reasonable analysis of the four amendments to the 2012 CDBG-DR grant. The OIG could only determine, based on the additional information, that on amendment four (4) the costs were reasonable. This is interesting as the costs for all four amendments are based on the original blended rate.

#### 2. Allocation #2

Likewise for the second CDBG-DR allocation, the City issued an RFP for the 2013 CDBG-DR grant administration and project delivery services using cost as a key selection factor. The City received competitive price proposals from two firms, as follows, and completed a cost analysis as part of the selection process:

Firm	Total Cost	Blended Hourly Rate
CDM Smith	\$3,656,825	\$125.00
ProSource Technologies	\$4,376,242	\$104.84

Again, CDM Smith was selected based on overall proposal quality, program approach and on evaluation of proposed program costs. The CDM Smith costs were deemed to be reasonable based on the fact the blended hourly costs plus third party costs were lower than the other proposer and the total costs were representative of the effort required to successfully complete the program for the City.

From HUD guidelines:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/cpo/grantees/cstprice](http://portal.hud.gov/hudportal/HUD?src=/program_offices/cpo/grantees/cstprice)

Identified below, from the HUD Guidelines, are the criteria for completing a price and cost analysis and determining if costs are reasonable. The city has met the HUD guidelines for cost analysis and cost reasonableness determinations with their RFP submittal response requirements.

- **Price analysis.** Use as many of the following techniques as applicable and appropriate:

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### Auditee Comments and OIG's Evaluation

#### Ref to OIG Evaluation

#### Auditee Comments

- Compare competitive prices received in response to the solicitation to one another. This assumes you receive a large enough number of competitively priced offers from the current marketplace.
- **Cost Analysis and Reasonableness.**
  - Verify the accuracy of the cost and pricing information submitted, and evaluate:
    - The reasonableness of the proposed costs, including allowances for contingencies. To be considered reasonable, proposed costs must meet three critical tests. The costs must be:
      - *Allowable*. The applicable cost principles (see section below) will usually state whether a type of cost is allowable or not.
      - *Allocable*. This means that the costs are logically related to, or required in the performance of the contract. Many costs may be allowable but not related to the work required under the contract.
      - *Reasonable*. This term is generally defined as what a prudent business would pay in a competitive marketplace. A cost can be allowable and allocable, and still not be what a prudent businessperson would pay (e.g., first class airfare for a proposed subcontractor).
    - The necessity for proposed cost items. Technical personnel (e.g., engineer, architect, information systems specialist, etc.) should review the proposed direct cost elements to determine their necessity to perform the contract and reasonableness (e.g., in comparison to market rates). A cost may be allowable under the cost principles and even allocable to the type of work to be performed, *but* still not be necessary for the specific

# Appendix B

## Auditee Comments and OIG's Evaluation

### Ref to OIG Evaluation

### Auditee Comments

Comment 5

contract.

#### 3. Downtown City Parking Structures

Please find attached a preliminary engineering report completed on August 17, 2012 for the downtown parking ramps. Included in the report is a detailed cost estimate completed for both of the parking ramps. The cost estimates contain the level of detail required of a construction project of this size and complexity and support the cost reasonableness of the project. We do apologize for not providing this earlier as it was misfiled.

Comment 6

#### 4. Project Change Orders( Landfill, Master Lift Station, Roosevelt Lift Station)

As detailed above, all project change orders met HUD requirement guidelines in that they were based on unit pricing established competitively by multiple bidders. Also, **the scope or unit quantities** were verified by the inspection engineers for each change order prior to approving to make sure the work was necessary and met contract requirements. This is the process which engineers and inspectors follow all over the country. A change order is not approved if the work is outside the scope of work procured and is not necessary. The City was not negotiating new prices for each change order. All the pricing was based on the competitive bid price.

Comment 7

#### **The City did not Perform Debarment Checks before Awarding Three Contracts**

CDM Smith has completed debarment checks on 50 contractors and sub-contractors for each and every project for which the City has utilized HUD CDBG funds. The three debarment checks identified in the OIG Audit as not having occurred prior to contract award were completed shortly after bid award and the contractor and sub-contractors were found to have no issues.

Comment 8

#### **The City signed Two Amendments prior to City Council Approval**

Staff explained to the OIG auditors the amendments were not signed prior to Council approval. The amendments as written included the date they were finalized. This by no means signifies the date the amendments were signed. Documentation exists that all amendments were approved by the Council. In addition, in our opinion this would not put the city at risk but would put the contractor at risk.

Comment 9

#### **The City Lacked Detailed Operational Procedures and Checklists**

1. The City has performed a cost or price analysis that meets HUD's guidelines ([http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/cpo/grantees/cstprice](http://portal.hud.gov/hudportal/HUD?src=/program_offices/cpo/grantees/cstprice)) on each and every contract that has used CDBG-DR funds. The city has enhanced our procurement policy and developed a detailed check list to ensure all regulations are followed.

# Appendix B

## Auditee Comments and OIG's Evaluation

### Ref to OIG Evaluation

### Auditee Comments

Comment 7

2. The City or its consultants completed debarment checks on 47 out of 50 contractors and sub-contractors prior to execution of each of the contracts. The three debarment checks that were not completed prior to execution were each completed within days of contract execution and each were each found to be fully compliant and before contract award.

Comment 10

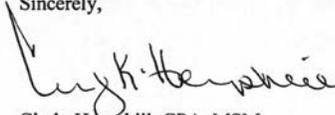
3. The City received approval prior to signing all contracts amendments that modified the contract price. Amendment #5 was executed as a zero dollar amendment that only extended the contract schedule to May 2015 from December 2014. The City executed this amendment prior to the contract lapsing on December 31, 2014.

Comment 11

#### **The City did not ensure the Best Value for Procurement Activities**

As summarized above, the City did assure HUD that it received the best value and greatest overall benefit for both the 2012 and 2013 CDBG-DR contracts, amendments and change orders. The City has followed HUD's Guidelines for Cost and Price Analysis for HUD Grantees and Funding Recipients, as documented in this response letter. The City of Minot takes great pride in the policies and procedures that have been both developed and implemented on both the 2012 and 2013 HUD CDBG-DR grant programs. The City rejects the notion that it lacked detailed operational procedures and checklists for implementing applicable procurement regulations and looks forward to discussing our response in greater detail with the OIG.

Sincerely,



Cindy Hemphill, CPA, MSM  
Finance Director

Enclosure

cc: CDM Smith

## OIG Evaluation of Auditee Comments

- Comment 1 The City referenced a HUD website entitled *Quick Guide to Cost and Price Analysis for HUD Grantees and Funding Recipients*; however, this is not the regulatory guidance that the City is required to follow. According to 77 CFR 22595 (April 16, 2012), any unit of local government receiving a direct appropriation under the notice is subject to 24 CFR 85.36(b) through (i). The City also certified that it adopted the specific procurement standards identified in 24 CFR 85.36. Regulations at 24 CFR 85.36(f) require grantees and subgrantees to perform a cost or price analysis in connection with every procurement action, including contract modifications. It further states the method and degree of analysis is dependent on the facts surrounding the particular situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. In the *Quick Guide to Cost and Price Analysis for HUD Grantees and Funding Recipients*, it also states that a cost or price analysis is required. It further states that 24 CFR 85 requires grantees to perform a cost or price analysis for every procurement action including contract modifications (e.g., change orders), using HUD grant funds.
- Comment 2 During the audit, we asked the City if they performed any independent estimates before receiving bids for the two grant administration and project delivery services contracts. The City replied that they did not perform an independent analysis prior to issuing the request for proposals.
- Comment 3 The City acquired their contractor services for \$135 per hour. However, the City did not perform an estimate on the amount of labor hours required for each amendment and their specific tasks.
- Comment 4 We could not determine if the costs were reasonable for Amendments #1, #2, and #3. For Amendment #1, the City did not provide documentation that they attempted to contact any other legal firms to see if a cheaper cost was available. For Amendment #2, the City stated they only talked with local housing officials on estimated costs but they did not contact other entities to obtain cost estimates for this housing study. On Amendment #3, we could not verify the City's cost estimates with the provided documentation that stated the costs appeared reasonable for an amendment amount that was different than the actual amendment total.
- Comment 5 We reviewed the City's preliminary engineering report completed on August 17, 2012 for the downtown parking structures. We agree this cost estimate was completed before the two contracts for the parking structures were executed and the analysis was thorough. As a result, we removed the portion of the finding regarding the City not preparing cost estimates for the procurement of two

parking structure projects. However, the City did not provide a cost analysis for the Central parking structure's change order so this remained in the audit report.

- Comment 6 We disagree that the project change orders met HUD requirements. Regulations at 24 CFR 85.36(f) require grantees and subgrantees to perform a cost or price analysis in connection with every procurement action, including contract modifications.
- Comment 7 The debarment checks were not completed before the contracts were awarded as required by 2 CFR 180.300 and 2 CFR 2424.300.
- Comment 8 We agree the two amendments were ultimately approved by the city council; however, the City's mayor signed the two amendments for the 2012 grant administration and project delivery contract before the city council authorized the mayor to sign the documents on the City's behalf. The two amendments had a date listed in the amendment language and below the mayor's signature block which occurred before city council approval.
- Comment 9 We disagree with the City's assertion that the City performed a cost or price analysis that met HUD's requirements. As a result of our review, the City revised its Federal grant program procurement policy and created a procurement checklist. HUD needs to monitor the City to ensure that it follows its revised Federal grant procurement policy and newly adopted procurement checklist.
- Comment 10 We disagree with the City's assertion that they received approval prior to signing all contract amendments that modified the contract price. The only dates on the amendments, including the date below the mayor's signature block, occurred before city council approval; therefore, we found the mayor signed amendments #1 and #3 for the 2012 grant administration and project delivery services contract before the city council authorized the mayor to do so. The audit team did not review amendment #5.
- Comment 11 We disagree that the City received the best value and greatest overall benefit for its CDBG disaster recovery procurements, amendments, and change orders. Although the City believed it followed HUD's Guidelines for Cost and Price Analysis for HUD Grantees and Funding Recipients, it did not properly follow the appropriate regulatory guidance found in 24 CFR 85.36(f). Although the City rejected the notion that it lacked detailed operational procedures and checklists, they still revised their Federal grant program procurement policy and developed a procurement checklist as a result of our review. HUD needs to monitor the City to ensure that it follows its revised Federal grant procurement policy and newly adopted procurement checklist.

## Appendix C

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### Criteria

#### **77 CFR 22595 (April 16, 2012)**

Any unit of local government receiving a direct appropriation under today's notice is subject to 24 CFR 85.36(b) through (i).

#### **24 CFR 85.36(f)**

Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals.

#### **24 CFR 85.35**

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs subject to 2 CFR Part 2424.

#### **2 CFR 180.300**

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You may do so by checking the Excluded Parties List System (the System for Award Management replaced this database), collecting a certification from that person, or adding a clause or condition to the covered transaction with that person.

#### **2 CFR 2424.300**

As a participant, you are responsible for determining whether you are entering into a covered transaction with an excluded or disqualified person. You may decide the method by which you do so. You may but are not required to check the Excluded Parties List System or collect a certification from that person.

#### **City of Minot, ND, Federal Grant Program Procurement Policy** (June 2012 and June 2013 editions)

The City shall perform cost or pricing analysis in connection with every procurement action, including contract modifications, in accordance with the requirements of "Cost and Price Analysis for HUD Grantees and Funding Recipients."