



Issue Date October 16, 2008

Audit Report Number 2009-NY-0001

TO: Janet Golrick, Acting Deputy Assistant Secretary, Multifamily Housing, HT

FROM: *Edgar Moore*
Edgar Moore, Regional Inspector General for Audit, 2AGA

SUBJECT: HUD Did Not Adequately Monitor Its Performance-Based Contract Administrator, New York State Housing Trust Fund Corporation

HIGHLIGHTS

What We Audited and Why

We audited the U.S. Department of Housing and Urban Development's (HUD) monitoring of its annual contributions contract with its performance-based contract administrator, the New York State Housing Trust Fund Corporation (contractor). The audit was initiated in accordance with the Office of Inspector General's (OIG) audit plan that includes performing internal audits to evaluate HUD's execution of its fiscal responsibilities. Our audit objective was to determine whether HUD appropriately monitored the contractor with respect to contract performance.

What We Found

HUD did not effectively assess the performance and contractual compliance of the contractor and its subcontractor. Specifically, HUD did not fulfill its monitoring responsibilities regarding appeals of fee determinations, monthly invoice reviews, and the annual compliance review. In addition, HUD headquarters and hub management failed to keep open lines of communication to provide clear and concise guidance. We attribute these conditions to a lack of written policies and procedures for (1) addressing the complexities of contractor

oversight by two hubs, (2) ensuring that consistent performance criteria were used by the hubs, and (3) handling disagreements regarding interpretations of program directives. Consequently, more than \$2.08 million in reduced administrative fees that were reversed were unsupported, and the contractor's substandard performance was not adequately addressed.

What We Recommend

We recommend that the Deputy Assistant Secretary for Multifamily Housing require the Director of Housing Assistance Contract Administration Oversight to establish policies and procedures defining the roles and responsibilities of hub staff. We also recommend that HUD provide training to hub staff in monitoring the contractor's performance. In addition, we recommend that HUD examine the appeals and ensure that the appropriate supporting documentation exists for the more than \$2.08 million in fees reimbursed to the contractor. We also recommend that the Deputy Assistant Secretary for Multifamily Housing require the HUD New York and Buffalo multifamily hubs to develop policies and procedures for monitoring the Section 8 contract administration initiative and reviewing challenges to HUD's fee determination, the monthly invoice review, and the annual compliance review.

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-3. Please furnish us copies of any correspondence or directives issued because of the audit.

Auditee's Response

We discussed the results of our review during the audit, provided a copy of the draft report to auditee officials, and requested their comments on August 25, 2008. We held an exit conference on September 23, 2008, and the auditee provided its written comments on September 25, 2008, at which time it generally agreed with our findings. Appendix B of this report contains HUD's comments, along with our evaluation of the comments.

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BACKGROUND AND OBJECTIVES

In May 2000, the U.S. Department of Housing and Urban Development (HUD) selected the New York State Housing Trust Fund Corporation (contractor) as New York State's contract administrator for the Section 8 project-based program. As of April 1, 2008, the contractor's portfolio consisted of 999 contracts covering 91,969 units. The contractor engaged a private-sector partner to perform the day-to-day responsibilities of contract administration. After a competitive procurement process, CGI-AMS Inc., (CGI) was selected as the private-sector partner beginning December 1, 2005.

The contractor provides program oversight and input on policy development, performs a quality assurance function, and fulfills the reporting requirements to HUD. CGI performs the following duties: (1) conducts management and occupancy reviews; (2) adjusts contract rents; (3) processes housing assistance payments contract renewals, terminations, and/or opt-outs; (4) pays monthly housing assistance payment vouchers submitted by project owners; (5) responds to project health and safety issues; and (6) follows up on results of physical inspections of Section 8 projects.

The responsibilities of HUD's Office of Housing Assistance Contract Administration Oversight in headquarters include administering the outsourcing of project-based Section 8 contract administration and subsidy contracts under multifamily rental subsidy programs. HUD's Monitoring and Oversight Division coordinates activities related to the evaluation of contractor performance, provides technical assistance to contractors, prescribes any remedial actions needed to improve contractor performance, and coordinates efforts between the contractors and the multifamily field office staff.

The primary responsibility for monitoring and oversight of contractors rests with HUD's multifamily hubs and the program centers. The hub and operations directors should have limited direct contact with the contractor. Although hub directors have the ultimate responsibility in the field, the supervisory project manager oversees the day-to-day interaction with the contractor. The oversight monitor is responsible for ensuring the overall contractual compliance on the part of the contractor and initiating corrective compliance actions. The oversight monitor responsibilities include enforcing contract compliance, drafting policies and procedures that impact contractor oversight, oversees the work of the supervisory project manager and the project manager, conducts invoice analyses, and acts as team leader for compliance reviews. The monitoring of New York State's contract is more complex because there are two hubs, New York City and Buffalo, overseeing the operations of the contractor.

The contract for administration services for the Section 8 project-based program consists of 16 standards or tasks for which the contractor is responsible. The contractor is required to maintain an acceptable level of quality for each of the tasks (standards) it performs under the annual contributions contract with HUD. The four components used to measure task performance are quality, timeliness, quantity, and data entry. The annual contributions contract and HUD's Monitoring and Evaluation Policies and Procedures require the contractor to (1) submit 95 percent of the required management and occupancy reports to HUD within 30 calendar days after

its scheduled completion review for standard 1—management and occupancy reviews; (b) correctly process 100 percent of rent adjustments within 30 days or by the housing assistance payments contract anniversary date for annual adjustment factor rent adjustments related to standard 3—rental adjustments; and (c) correctly execute 90 percent of renewal housing assistance payment contracts 60 calendar days before contract expiration for standard 14—contract renewals. These standards are measured each month.

The administrative fee is the monthly fee HUD pays the contractor for each unit covered under the housing assistance payments contract on the first day of the month. The administrative fee is the total of the basic fee plus the incentive fee. The basic fee is paid to the contractor for a covered unit under the contract. The contractor may be assessed a disincentive for performance that fails to meet the acceptable quality level on any of the 16 standards or tasks. HUD may reduce the basic fee earned if it determines that the contractor’s performance of standard tasks was below the minimum acceptable quality level. Likewise, an incentive fee may be earned for performance that exceeds the acceptable quality level on certain standards.

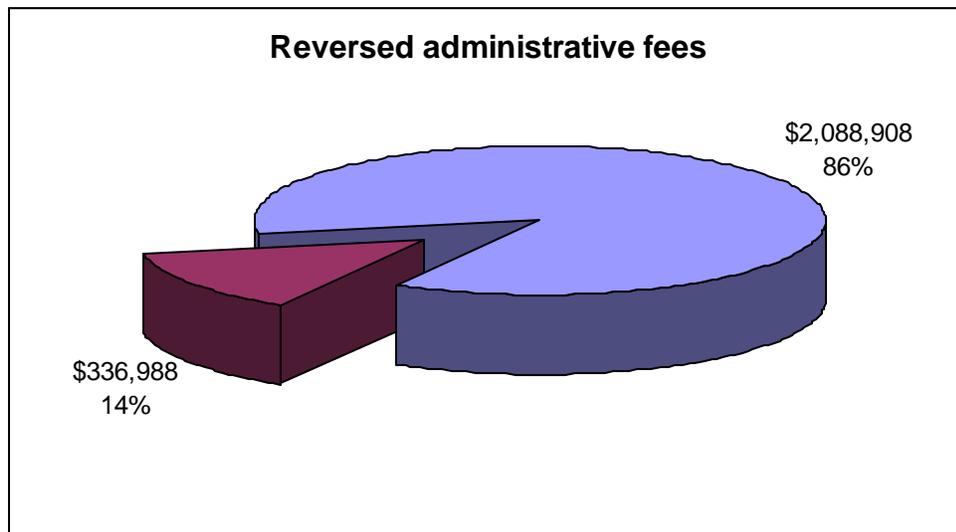
The objective of our audit was to determine whether HUD appropriately monitored the contractor with respect to contract performance.

RESULTS OF AUDIT

Finding 1: HUD Did Not Adequately Monitor the Contractor

HUD did not effectively assess the performance and contractual compliance of the contractor and its subcontractor, CGI. Specifically, HUD did not fulfill its monitoring responsibilities regarding (1) appeals of fee determinations, (2) monthly invoice reviews, (3) the annual compliance review, and (4) keeping lines of communication open to provide clear and concise guidance. We attribute these conditions to a lack of written policies and procedures for (1) addressing the complexities of contractor oversight by two hubs, (2) ensuring that consistent performance criteria were used by the hubs, and (3) handling disagreements regarding interpretations of program directives. Consequently, more than \$2.08 million in reduced administrative fees that were reversed was unsupported, and the contractor's substandard performance was not adequately addressed.

1. HUD's Reversal of \$2.08 Million in Appealed Administrative Fees Was Unsupported



HUD reversed more than \$2.08 million in disincentives and reductions in incentive fees without adequate support. The contractor and subcontractor appealed 91 HUD fee determinations from invoices submitted during the period December 2005 through October 2006. The fee challenges were equivalent to more than \$2.4 million in reduced fee determinations that HUD made during that period. However, we did not find adequate documentation to support the reversal of \$2.08 million in administrative fees. Specifically, the contractor did not provide adequate support justifying the appeals and HUD did not provide

adequate documentation to support reversing the findings. In addition, the reversed amounts were unsupported because

- The contractor and subcontractor did not clearly identify how HUD's fee determinations were errant,
- The oversight monitor failed to include hub management and program managers who were involved in the original assessment in the decision process, and
- HUD failed to resolve inconsistent implementation of program directives.

We attribute the fact that the reversed amounts were unsupported to the lack of written policies and procedures to address the various types of fee challenges the hubs processed.

Contractor Appeals Did Not Provide Support That HUD's Fee Determinations Were Errant

The contractor and subcontractor did not clearly identify how HUD's fee determinations were errant. HUD's Guidebook for Section 8 Contract Administration provides that the contractor must clearly state what determination was errant and the nature of the error. Also, the contractor must provide supporting documentation to substantiate the claim. The contractor did not generally disagree with the facts surrounding the deficiencies but, rather, that the issues did not rise to a level of a finding. The oversight monitor stated that the decisions to overturn the fee determinations were based solely on the narratives of the contractor and subcontractor; however, the documentation provided to us did not support why the findings should have been reversed. The narratives provided the same information that was available during the invoice reviews, and the hub management teams agreed to these findings. For example, the Buffalo hub director disagreed with the oversight monitor's comments on the appeal that future errors could result in a loss of fee. According to the director, a penalty should have been assessed since the oversight monitor acknowledged that the items were errors. This condition occurred in 13 of the 27 appealed items that were reversed.

The Oversight Monitor Did Not Include Buffalo Hub Management in Its Fee Challenge Decisions

Although the Buffalo hub cited findings related to contractor invoices submitted, the oversight monitor did not include hub management or project managers in deciding the fee challenges and was the sole decision maker on some of the fee challenges reviewed. The oversight monitor overturned all 42 cases in which the contractor or subcontractor challenged the fee determination for the April through October 2006 invoices submitted. However, the oversight monitor did not provide Buffalo hub management staff with the fee challenges for review, nor did she consult with the Buffalo hub on HUD's decision to overturn the findings. According to Buffalo hub management, this action was contrary to the procedures in place. However, we were unable to verify this statement because there were no written local procedures. The issue was further complicated by the fact that at the time of these fee challenges, the two hubs were in disagreement over the resolution of the fee challenges for the December 2005 through March 2006 invoices.

HUD Failed to Resolve Inconsistent Implementation of Program Directives

Monitoring of the contractor was complicated because this contractor had responsibilities related to both the New York City and Buffalo hubs. Nevertheless, HUD failed to resolve the inconsistent implementation of program directives at the two hubs. The disagreements between the two hubs over procedures to monitor the contractor's performance were evident in the contractor's appeal of the December 2005 to March 2006 invoices. The Buffalo hub took exception to the New York hub's allowing for Real Estate Management System entries that were incomplete or incorrect and preliminary approval letters that were missing information or contained incorrect information. Thus, it took more than five months and the intervention of the Deputy Assistant Secretary for Multifamily Housing to resolve the fee challenge. Originally, the oversight monitor planned to reverse 41 of 49 fee challenges. However, the hub directors compromised, and 27 of the appealed fee challenges were reversed. Buffalo hub management still believes that the original findings should have been upheld.

For 17 of the 49 fee challenges, the findings were overturned because the contractor updated the Real Estate Management System entries or the contractor-amended documents that were submitted to HUD for review before the submission of the invoice. The amounts were reversed due to a policy change that occurred during the fee challenge. The policy was changed during a

conference call between the oversight monitor and the contractor; however, Buffalo hub management was not included on the conference call or in the decision. According to Buffalo hub management, it is contrary to the annual contributions contract to allow a contractor to make corrections to submitted work products and not be penalized. Buffalo hub management stated that the majority of HUD's reviews of the contractor's work would be completed before the submission of the invoice. Nevertheless, the Annual Contribution Contract allows the contractor reasonable opportunity to cure mistakes. However, the two hubs disagree with the interpretation of this section of the contract. In many cases, corrections were made by the contractor as a result of HUD's communicating the error to the contractor. Accordingly, the Buffalo hub director questioned the oversight monitor's authority to change the policy and New York hub management's acceptance of the change without concurrence with the Buffalo hub.

The Director of HUD's Office of Housing Assistance Contract Oversight, in response to a previous appeal from the contractor, provided that the contractor is responsible for detecting all deficiencies and taking appropriate corrective action before the package is submitted to HUD. In this instance, HUD provided that the processing clock starts once a properly prepared package from the owner is received. The clock stops when the package is properly processed by the contractor and submitted to HUD and all data entry is properly completed. Illegible, poorly documented, and poorly processed requests are not to be submitted to HUD for approval.

HUD headquarters failed to address the disagreements between the two hubs. The hubs requested intervention regarding the appeal; however, HUD headquarters only provided general policy directions. According to HUD headquarters, the issues between the two hubs should be settled by the two hubs rather than headquarters for various reasons, one of which is that the contractor's second level of appeal requires headquarters processing. Thus, headquarters needs to maintain an arms-length involvement. Even after the appeal was conducted, HUD headquarters did not address the policy disagreements between the two hubs.

HUD Lacked Written Policies and Procedures for the Various Types of Fee Challenges

HUD did not have specific written policies and procedures for the various types of fee challenges made by the contractor and subcontractor. The HUD Guidebook for Section 8 Contract Administration provides that at the end of each contract year, the contractor may appeal a HUD fee determination that it feels was in error. In addition, the guidebook provides that HUD will review the contractor's appeal and notify the contractor in writing of its findings. However

contrary to this policy, informal policies and procedures allowed for appeals at any time throughout the year by the contractor or subcontractor and allowed for HUD not to notify the contractor in writing of its findings.

One type of fee challenge was a preappeal. According to the oversight monitor, for a preappeal fee challenge, the contractor cannot request a second-level appeal. However, the contractor can file a formal appeal if not satisfied with HUD's findings. The oversight monitor was unsure whether preappeals were standard procedure within the contract administration initiative, and the Buffalo hub director had never heard of a preappeal fee challenge as part of the initiative. Nevertheless, the subcontractor preappealed the reductions to its administrative fees for the May through October 2006 invoices by submitting fee challenges to the oversight monitor via e-mails throughout the contract year, and the oversight monitor reimbursed the contractor without notifying the contractor in writing of its decisions.

Accordingly, HUD headquarters needs to provide guidance and written policies regarding the requirements to address the hubs discrepancies on interpretations of the contract and procedures. Specifically, the following discrepancies need to be addressed by headquarters

- The determination of whether acknowledged errors should result in a loss of fees,
- The contractor's ability to cure errors based on the circumstances of the case and prior failure or pattern of failure, and
- Challenges to fee determination procedures including preappeals.

2. HUD's Ability to Monitor the Contractor through Its Monthly Invoice Review Process Was Questionable

The outcome of the contractor and subcontractor fee challenges raised questions regarding HUD's ability to monitor the contractor through its monthly invoice review process. The contractor challenged six transactions in which HUD did not assess a finding. Although the project managers cited the contractor for a finding on these six transactions, the oversight monitor reversed the project managers' decision after consulting with the contractor. However, during the appeal, the hub directors decided that four of the six transactions were in fact findings. This situation raised concerns as to how the oversight monitor handled the project managers' findings when processing the monthly invoices. Consequently, the contractor's performance could not be adequately assessed when the hubs could not concur on what constituted substandard performance.

The Contractor Was Not Assessed the Proper Administrative Fee

The contractor was not assessed the proper amount of disincentives and reductions in the incentive fees based upon the project managers’ monthly invoice review findings. HUD had experienced significant issues with the contractor’s performance since the end of 2005 when CGI became its subcontractor. The project managers had findings with more than 23 percent of the transactions on the monthly invoices for performance standards relating to rental adjustments and contract renewals with the new subcontractor. However, HUD’s concerns did not result in a significant loss of fees to the contractor. The oversight monitor did not assess reduced administrative fees on approximately 70 percent of the project managers’ findings. If HUD does not properly issue disincentives or make reductions in incentive fees, the contractor will not be inclined to improve substandard performance. There were project managers’ findings that should have resulted in additional loss of administrative fees. The review of the monthly invoices revealed that project manager-cited findings were similar to past findings and to those that were upheld in previous appeals that resulted in a loss of administrative fees. However, the oversight monitor did not assess a loss of administrative fee after consulting with the contractor. The chart below, detailing the total number of findings compared to the number of transactions according to the project manager and the oversight monitor, shows that approximately 70 percent of the project manager’s findings were reversed and not considered as findings by the oversight monitor.

<i>Performance standard</i>	<i>Monthly invoice transactions</i>	<i>Project manager’s findings</i>	<i>Oversight monitor’s findings</i>	<i>Project manager’s findings reversed</i>	<i>Percentage reversed</i>
3–rental adjustments	967	213	58	155	73%
14–contract renewals	474	129	48	81	63%
Totals	1,441	342	106	236	69%

The Actual Administrative Fee to Be Paid Was Undeterminable

The actual amount of administrative fees to be paid could not be determined due to a lack of adequate documentation. The oversight monitor failed to fully document the resolution of the findings and the reasons that project managers’ findings were overturned. The documentation lacked evidence of how the oversight monitor communicated with the project managers to resolve the

findings. Likewise, the oversight monitor did not always provide or discuss with Buffalo hub management the outcome of the project manager's findings. HUD's Monitoring and Evaluation Policies and Procedures Guidebook requires that the oversight monitor's review and the hub director's final approval be documented in HUD's files; however, they were not. In addition, it was difficult to determine the actual administrative fee to be paid because the project managers did not fully develop their findings by indicating the criteria that were violated (e.g., the annual contributions contract or other regulations).

HUD Did Not Address Inconsistent Reviews

Further, HUD did not ensure a consistent approach to measure contractor performance in the monthly invoice review process. For example, during the Buffalo hub's review of performance standard 1—management and occupancy reviews, it documented in all of its monthly reports that a full review could not be completed because only the summary and corrective action sheet were submitted. However, the New York hub evaluated each of the summary and corrective action sheets and determined whether they were adequate. The oversight monitor, who reviewed both hubs' reports each month, had not implemented policies and procedures to ensure that the offices examined each performance standard in the same manner.

3. The Compliance Review Process Indicated Similar Performance Measurement Problems

The 2007 annual compliance review for year 6 indicated similar problems with HUD's measurement of contractor performance. HUD failed to ensure that a consistent approach was used to conduct the reviews. Moreover, HUD failed to address the concerns of hub management before releasing the report. Lastly, hub management was not included in the decisions to assess disincentives or loss of incentive fees. Thus, the lack of consistency of the hubs did not allow for an effective review of the contractor's performance.

HUD Failed to Ensure That the Compliance Review Procedures Were Consistently Applied

The two hubs had different expectations regarding the procedures when performing the 2007 annual compliance review for year 6. Therefore, HUD's inconsistent approach to performing the compliance reviews undermined its ability to accurately assess the contractor's performance. The hubs differed as to what transactions should be reviewed and when it was necessary to request

additional information from the contractor. The Buffalo hub requested from the oversight monitor and the acting New York hub director information that the contractor did not provide. For example, the Buffalo hub requested four vouchers and the supporting documentation for the vouchers it had previously received. The acting director denied the request because the additional information would have affected the timely completion of the compliance review and should have been obtained at the entrance conference. According to Buffalo hub management, this was the first time a deadline for requesting additional information was imposed; therefore, until the review was performed, there was no way to determine what documents were missing.

In addition, there were questions raised about which transactions could be reviewed during the compliance review. According to the New York hub, only transactions that were included in the sample provided to the contractor could be examined, and that sample should only include transactions in which the contractor invoiced during the review period. However, the Buffalo hub believed that all transactions that occurred during the period could be reviewed, regardless of whether they were in the sample or invoiced.

Concerns of the Hub Director Were Not Addressed

The concerns of the Buffalo hub director were not addressed before the release of the annual compliance review report. In a June 7, 2007, e-mail to the oversight monitor, the Buffalo hub director expressed concerns regarding the compliance review, in that some findings identified by the Buffalo hub were removed from the report and some findings were changed to concerns by the oversight monitor. The Buffalo hub director strongly advised the oversight monitor to issue the compliance report as it was written and not remove any items as requested by the contractor. However, the compliance report that was issued changed three of the findings that the Buffalo hub identified to concerns and removed four of the original findings from the report. On June 22, 2007, the acting New York hub director responded to the Buffalo hub director via e-mail stating that in the past, HUD had afforded the contractor the opportunity to submit documentation, which may have been overlooked by HUD staff. Since the contractor submitted documentation, some of the findings were changed to concerns.

The New York Regional Office's quality management review report provided that draft reports are internal HUD documents and should not be provided to the contractor for negotiation or remediation. Also, the quality management review recommended that the process and timeframes for the next compliance review follow existing procedures referenced in the guidebook for the program.

Hub Management Was Not Included in Loss of Fees Determination

Buffalo hub management was not included in the decision-making process to assess the loss of administrative fees based on the compliance review findings. The Buffalo hub was not consulted on the fee determination, although 39 of the 44 findings in the compliance review report were in the Buffalo portfolio. Further, there was no loss of fees assessed by the New York hub against the contractor for any of the 44 findings. According to the oversight monitor, disincentives or loss of incentive fees would depend on the nature of the finding, the contractor's response, and HUD's acceptance of the response. Further, the oversight monitor stated that the contractor's responses were adequate to support not assessing a loss of administrative fee. However, Buffalo hub management noted many findings, which were eventually resolved by the contractor's admitting to the errors, and could not understand why the New York hub did not assess a loss of fees.

HUD headquarters needs to provide guidance and document the requirements to address the hubs discrepancies on interpretations of the contract and policies. Specifically, the following discrepancies regarding the annual compliance review need to be addressed by headquarters

- Time limits to request information from the contractor,
- The transactions that can be reviewed,
- The procedures for handling hub director's concerns, and
- The determination of whether both hub management teams should be included in the decision-making process to assess the loss of administrative fees based on the compliance review findings.

4. Failure to Keep Open Lines of Communication to Provide Guidance Affected HUD's Measurement of Contractor Performance

HUD could not ensure consistency in measuring the quality of the contractor's performance because of a lack of communication. Monthly meetings were held between the New York hub, the contractor, and the subcontractor, but these meetings did not include the Buffalo hub. In addition, the hubs did not have conference calls to discuss changes in policies and procedures. Thus, the processes by which the two hubs reviewed monthly invoices and conducted annual compliance reviews were accomplished by informal procedures. As a result, conflicting directives were issued to the contractor from both hubs. These

directives were based on each hub's interpretation of the informal procedures. Consequently, without a consistent message, the hubs could not expect the contractor's performance to improve.

The Hubs Did Not Address the Substandard Performance

The hubs did not address issues relating to the change in subcontractors due to its problems with monitoring the contractor's performance. The majority of the project managers' findings and the policy issue changes were attributed to the new subcontractor and its substandard performance. The hubs spent a majority of their resources on bringing the subcontractor up to the level of competence, reviewing appeals to the fee determinations, and working with the subcontractor to resolve the findings so that the subcontractor would not suffer a loss of fees. However, the hubs should have informed the contractor in a timely manner of the subcontractor's substandard performance and enforced the contract provisions for noncompliance. Since the hubs did not address the issue properly (through the contractor), HUD has no assurance that future changes in subcontractors will not result in the same type of substandard performance.

Conclusion

HUD did not effectively assess the performance and contractual compliance of the contractor and its subcontractor. Specifically, HUD did not fulfill its monitoring responsibilities regarding appeals of HUD's fee determinations, monthly invoice reviews, and the annual compliance review. We attribute these conditions to a lack of written policies and procedures for (1) addressing the complexities of contractor oversight by two hubs; (2) ensuring that consistent performance criteria were used by the hubs; and (3) handling disagreements regarding interpretation of program directives. Consequently, more than \$2.08 million in reduced administrative fees that were reversed was unsupported. In addition, the contractor's substandard performance was not adequately addressed. Accordingly, HUD headquarters needs to provide guidance and document the requirements to address the hubs discrepancies on interpretations of the contract and policies.

Recommendations

We recommend that the Deputy Assistant Secretary for Multifamily Housing require the Director of Housing Assistance Contract Administration Oversight to

- 1A. Establish policies and procedures defining the roles and responsibilities of the HUD New York and Buffalo multifamily hubs' Section 8 contract administration initiative staff.
- 1B. Provide training in monitoring the contractor's performance to the HUD oversight monitor, and the New York, and Buffalo multifamily hub staff. The training should include appeals of fee determinations, monthly invoice reviews, and annual compliance reviews. In addition, the training should include a review of past invoices and address outstanding concerns of both offices.
- 1C. Review the procedures that the hubs developed with regard to challenges of fee determinations to ensure that they comply with requirements.
- 1D. Examine the appeals from December 2005 through October 2006 and ensure that appropriate supporting documentation exists for the \$2,088,908 in fees reimbursed to the contractor and assess the disincentives and/or reductions to incentive fees as appropriate.
- 1E. Provide personnel with the institutional knowledge to assist the hubs with appeals and contract compliance issues.

We also recommend that the Deputy Assistant Secretary for Multifamily Housing require the HUD New York and Buffalo multifamily hubs to

- 1F. Develop policies and procedures for the internal monitoring of the Section 8 contract administration initiative that address collaboration between the two hubs in obtaining concurrences, handling disagreements, revising directives, and obtaining assistance from the Office of Housing Assistance Contract Administration Oversight.
- 1G. Develop policies and procedures for reviewing contractor's challenges to fee determinations. The procedures should address the format of the written findings to the contractor, when the contractor may appeal, the format of the appeal, and the recommended timeframes for resolving the appeal.
- 1H. Develop and implement procedures to ensure that reversals of disincentives are based on supporting documentation, which clearly substantiates the claim that the hub's assessment was errant.
- 1I. Appoint objective personnel from both hubs with institutional knowledge to an appeals committee to ensure the consistent interpretation of applicable program rules.
- 1J. Develop policies and procedures for implementing the monthly invoice review that include the process for conducting the reviews, providing the hubs with all

necessary supporting documentation for the monthly invoices, how each incentive-based performance standard will be reviewed, and how consistency will be maintained between the hubs.

- 1K. Implement and/or develop policies and procedures that require project managers to clearly develop their findings by including criteria regarding the contract violations. In addition, the files should include evidence that the contract administration oversight monitor obtained concurrence from the project managers of both hubs when applicable and/or the operations directors on the outcome.
- 1L. Develop and implement policies and procedures for the annual compliance review that include a consistent approach to conducting the review, addressing hub management concerns, and including both hub management teams on fee determinations.
- 1M. Develop and implement procedures to address nonperformance of the contractor. These procedures should include timely correspondence with the contractor, required actions to resolve poor performance, and administrative actions for nonperformance.

SCOPE AND METHODOLOGY

Our review focused on whether HUD appropriately monitored its performance-based contractor with respect to its contract performance. To accomplish our objectives, we reviewed applicable federal regulations, HUD handbooks, and other HUD requirements. In addition, we interviewed HUD officials at the New York and Buffalo hub offices.

We reviewed the contractor and subcontractor appeals of the hubs' fee determinations to determine whether adequate policies and procedures were implemented. Also, we reviewed the communication at the hub and headquarters level to determine its affect on the monitoring of the contractor. In addition, we selected invoices from the months between December 2005 and September 2007 to review the hubs' monitoring policies and whether the hubs provided consistent monitoring of contractor and subcontractor performance. Our focus was on standard 1—management and occupancy reviews, standard 3—rental adjustments, and standard 14—contract renewals, since these were the standards by which the project managers assessed the majority of their findings. Lastly, we reviewed the 2007 compliance review for year 6 to determine the impact of the informal policies and procedures on the monitoring of the contractor's performance.

The review covered the period between October 1, 2005, and September 30, 2007, and was extended as necessary. We performed our audit work from October 2007 through May 2008 at the New York and Buffalo hub offices.

The review was conducted in accordance with generally accepted government auditing standards.

INTERNAL CONTROLS

Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved:

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

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

- Program operations – Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Validity and reliability of data – Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.
- Compliance with laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.
- Safeguarding of resources – Policies and procedures that management has implemented to reasonably ensure that resources are safeguarded against waste, loss, and misuse.

We assessed the relevant controls identified above.

A significant weakness exists if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet the organization's objectives.

Significant Weaknesses

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

- HUD did not have adequate controls over its program operations when it did not implement adequate procedures for addressing appeals to its fee determinations; thus, HUD could not ensure that only incorrectly assessed fees were reversed upon appeal (see finding).
- HUD did not have adequate controls over compliance with laws and regulations, as it did not ensure that the contractor was in compliance with the annual contributions contract; thus, HUD could not adequately address substandard performance (see finding).
- HUD did not have an adequate system to ensure that resources were properly safeguarded when the contractor did not maintain an acceptable level of quality for each of the tasks it performed; thus, HUD could not provide assurance that the fees paid were earned (see finding).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Unsupported 1/
1D	\$2,088,908

- 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 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.

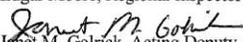
Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 1

 OFFICE OF HOUSING	U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT WASHINGTON, DC 20410-8000
	SEP 22 2008
MEMORANDUM FOR:	Edgar Moore, Regional Inspector General for Audit, 2AGA
FROM:	 Janet M. Golrick, Acting Deputy Assistant Secretary for Multifamily Housing Programs, HT
SUBJECT:	Draft Audit Report – HUD did not adequately monitor its Performance Based Contract Administrator, New York State Housing Trust Fund Corporation (NYSHTFC)
<p>This response is in follow up to your e-mail dated August 25, 2008, transmitting the subject report. This Office has reviewed the draft report and is providing formal written comments for your consideration and discussion during the exit conference scheduled for September 23, 2008.</p> <p>We concur in general with the draft report conclusions specifically regarding the lack of communication between the New York and Buffalo Hubs which has resulted in inconsistent program criteria and directives. Due to this disparity in operations, the Hubs developed monitoring practices that were outside the parameters of the program in an attempt to address the ongoing issues. This departure from monitoring the program resulted in a direct impact on the ability to properly monitor the performance based contract administrator in accordance with existing guidance. Over the term of the NYSHTFC contract, Headquarters' senior level management has devoted considerable resources to train and arbitrate issues impacting the monitoring of the program in order to provide cohesive oversight and policy guidance.</p> <p>Unfortunately, the training and support provided to these two Hubs relative to this program has not achieved the intended results, therefore, this Office will be implementing an alternative oversight structure and workload realignment that is presented in section I. and will be utilized to address the Office of the Inspector General's recommendations where applicable.</p> <p>I. <u>Oversight and Workload Realignment</u></p> <p>The primary objective of the realignment is to centralize program oversight, monitoring and guidance to the HUD staff and the PBCA, addressing the existing issues of inconsistency and lack of communication. The proposed consolidation will consist of centralizing the PBCA program oversight and guidance from the New York Hub. The program responsibilities of the New York and Buffalo Hubs will include but not be limited to the following:</p>	
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Comment 1

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New York:

- Review of the monthly reports from the SPMs, PBCA, and review of the invoice and supporting documentation. Assess performance and process administrative fee payment.
- Conduct the ACR.
- Moderate discrepancies and provide final departmental policy guidance to the PBCA and the Buffalo Hub.
- Review PBCA work products as directed in the monitoring and oversight guide
- IBPS task review based on the AQL of both quality and quantity. Utilization of materiality as a determinate of quality.
- Provide all follow up overlapping contract activity including but not limited to review of budget based rent increases over 5%, input flag in 2530 for below average and unsatisfactory MOR, contract renewal processing etc.
- PBCA will utilize a designated point of contact in the New York Hub for portfolio and program inquiries.

Buffalo

- Review PBCA work products as set forth in the monitoring and oversight guide.
- IBPS task review based on the AQL of both quality and quantity. Utilization of materiality as a determinate of quality.
- Provide monthly SPM report.
- Provide quarterly PBCA assignment recommendations to the CAOM.
- Provide monthly update for PBCA contract withdrawals to the CAOM.
- Provide all follow up overlapping contract activity including but not limited to review of budget based rent increases over 5%, input flag in 2530 for below average and unsatisfactory MOR, contract renewal processing etc.

Comment 2

However, please note that various functions and related roles and responsibilities of the CAOM, project managers, and Hub Directors are not accurately represented from a program monitoring or organizational structure perspective in the draft report which has lead to flawed conclusions. In general, the CAOMS primary function is to enforce contract compliance, analyze and approve monthly invoices and act as the central point of contact for all ACC issues. Monitoring and oversight of the PBCA program has two primary components, remote monitoring and an on-site compliance review. Remote monitoring is the primary oversight tool utilizing Project Manager's information collected as a result of day to day interaction and the CAOM's review of the monthly invoice and supporting documentation. Additionally, there are statements that additional clarification would provide a clearer understanding and thereby provide information that is representative of program monitoring requirements and the appropriate role of staff involved with the various aspects. Statements that are repeated throughout the document are addressed initially and are intended to represent all like statements.

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Comment 3

II. Statement Clarifications

Page 4 and 5 of the draft:

(1) There is an incorrect statement which should be deleted or clarified regarding the monitoring and oversight division developing a monitoring and evaluation plan and coordination of field activities to execute the plan. Monitoring guidance of the program is contained in the monitoring and evaluation policies and procedures guidebook.

Comment 4

(2) The Contract Administration Oversight Monitor (CAOM) responsibility description is incomplete and omits critical activity regarding the CAOMS role in reviewing all documentation of performance assessment provided by the Supervisory Project Manager and Project Managers (SPM/PMs), invoice analysis, providing PBCA program guidance to the SPM and PM, analysis of all supporting documentation, point of contact for HQ, analyzes and approves annual work plan, organizes and leads annual compliance review, provides guidance to the PBCA.

Comment 5

Page 6 and 7 of the draft:

(1) The basis used should be refined regarding the inability to effectively monitor the program and program guidance is available and utilized by HUD field staff who address the unique complexity of each office. Hubs atypically have several program centers managing portfolios which may have varying policy and program interpretations. Hubs and program centers must continually coordinate their efforts for all program areas to provide consistent guidance utilizing existing handbooks, notices, and guidebooks, communication and a collective exchange between the offices is essential. The inability of the Hubs to resolve differences in interpretations of existing guidance and the materiality of performance in question is the crux of the issue rather than the availability of written guidance.

Comment 6

(2) The statement that the oversight monitor failed to include hub management and program managers who were involved in the original assessment in the appeal decision process is not a procedural failure. The CAOM's role in reviewing appeals does not include involvement of management at the review level and would only involve PMs if additional information was needed.

Comment 6

Page 8 of the draft:

(1) The statement that the Oversight Monitor did not include Buffalo Hub Management in the fee challenge decision is the appropriate process. Fee determinations by the CAOM is within the responsibility of the CAOM who serves as the arbiter of the appeal and if sufficient information is provided to make a determination, the CAOM is not required to contact management or field office staff.

Comment 7

Page 9 of the draft:

(1) The statement that HQ failed to address disagreements between the two Hubs is an inaccurate statement. Throughout the term of the contract HUD headquarters has attempted to provided

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Comment 7

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direction, guidance and arbitrate the disagreements between the two hubs. HUD headquarters participated in numerous conference calls, HQ staff traveled to New York on several occasions to provide training and moderate discussions regarding policies and program oversight.

Comment 8

(2) All fee appeals are treated the same. If a disincentive is assessed by HUD, an explanation of how the disincentive is arrived at and calculated is provided to the PBCA. If the PBCA disagrees with the assessment, the PBCA submits supporting documentation presenting the evidence for the HUD office to review and consider. The HUD office will render a decision based on the information submitted and respond to the PBCA

At the onset of the program the procedures allowed for appeals on an annual basis, however this resulted in ineffective and inefficient monitoring of the program and therefore it became more prudent to allow submission of appeals in real time, ensuring that relevant documentation, staff actions and contractor performance could be addressed immediately.

Comment 9

Page 10 of the draft:

(1) The term preapproval fee challenge is unfamiliar; a description of the process will assist in responding to the issue.

Page 12 of the draft

Comment 10

(1) The following statement does not accurately represent the reporting structure "The oversight monitor did not always provide or discuss with Buffalo hub management the outcome of the project manager's findings" The CAOM's function is to review the information submitted by the Buffalo Hub, the PBCA and systemic data. The CAOM can request additional data if information is needed but otherwise reviews the information and determines PBCA performance and calculates the appropriate admin fee.

Comment 11

(2) This is a true statement that HUD did not ensure a consistent approach to measure contractor performance in the monthly invoice review process. The New York Hub was conducting the correct review of IBPS 1. The Buffalo Hub was conducting a review contrary to program guidance and direction from HQ.

III. Recommendations

1A. Establish policies and procedures defining the roles and responsibilities of the HUD New York and Buffalo multifamily hubs' Section 8 contract administration initiative staff.

Comment 12

Response: Delete - The centralization of function in the New York Hub will address the discrepancy issue between the Hubs and the New York Hub will be responsible to make the final policy and procedural interpretations. Headquarters will be delineating the responsibilities between the Hubs and will provide a written protocol.

1B. Provide training in monitoring the contractor's performance to the HUD oversight monitor and the New York and Buffalo multifamily hub staff. The training should include appeals of fee determinations, monthly invoice reviews, and annual compliance reviews. In addition, the

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Comment 13	<p>training should include a review of past invoices and address outstanding concerns of both offices.</p> <p>Response: Delete - Invoice reviews, appeals of fee determinations etc. are a function of the CAOM position and therefore does not require training of Hub staff. HQ will provide the CAOM training as needed.</p>
Comment 14	<p>1C. Review the procedures that the hubs developed with regard to challenges of fee determinations to ensure that they comply with requirements.</p> <p>Response: Headquarters will work with the CAOM and review the procedures utilized to address appeals to ensure compliance with requirements.</p>
Comment 14	<p>1D. Examine the appeals from December 2005 through October 2006 and ensure that appropriate supporting documentation exists for the \$2,088,908 in fees reimbursed to the contractor and assess the disincentives and/or reductions to incentive fees as appropriate.</p> <p>Response: The appeals will be reviewed to assess supporting documentation and justification of fee reductions.</p>
Comment 15	<p>1E. Provide personnel with the institutional knowledge to assist the hubs with appeals and contract compliance issues.</p> <p>Response: Delete - Contract compliance, invoice reviews, appeals of fee determinations etc. are a function of the CAOM position. Headquarters will provide the CAOM training as needed.</p>
Comment 12	<p>1F. Develop policies and procedures for the internal monitoring of the Section 8 contract administration initiative that address collaboration between the two hubs in obtaining concurrences, handling disagreements, revising directives, and obtaining assistance from the Office of Housing Assistance Contract Administration Oversight.</p> <p>Response: Delete - The centralization of function in the New York Hub will address the discrepancy issue between the Hubs and the New York Hub will be responsible to make the final policy and procedural interpretations. Headquarters will be delineating the responsibilities between the Hubs and will provide a written protocol.</p>
Comment 14	<p>1G. Develop policies and procedures for reviewing contractor's challenges to fee determinations. The procedures should address the format of the written findings to the contractor, when the contractor may appeal, the format of the appeal, and the recommended timeframes for resolving the appeal.</p> <p>Response: The New York Hub with Headquarters assistance will develop a written procedure for processing fee appeals.</p> <p>1H. Develop and implement procedures to ensure that reversals of disincentives are based on supporting documentation, which clearly substantiates the claim that the hub's assessment was errant.</p>

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Comment 16

Response: Delete and include as part of finding 1G.

11. Appoint objective personnel from both hubs with institutional knowledge to an appeals committee to ensure the consistent interpretation of applicable program rules.

Comment 17

Response: Delete - Invoice reviews, appeals of fee determinations etc. are a function of the CAOM position and is not a function to be addressed by committee. Centralization of function will address the discrepancy issue between the Hubs. The New York Hub will make the final and procedural interpretations providing for consistent interpretation.

1J. Develop policies and procedures for implementing the monthly invoice review that include the process for conducting the reviews, providing the hubs with all necessary supporting documentation for the monthly invoices, how each incentive-based performance standard will be reviewed, and how consistency will be maintained between the hubs.

Comment 18

Response: Delete - This information is available in the ACC, the PBCA monitoring and oversight guidebook and numerous handbooks, notices regs. Etc.. AQL which is the basis of performance is reviewed from a qualitative and quantitative review. The qualitative review is based on whether the PBCA performed in accordance with HUD requirements already stipulated in various handbooks, notices, regulations and the quantitative framework is provided for in the ACC.

1K. Develop policies and procedures that require project managers to clearly develop their findings by including criteria regarding the contract violations. In addition, the files should include evidence that the contract administration oversight monitor obtained concurrence from the project managers of both hubs when applicable and/or the operations directors on the final outcome.

Comment 19

Response: Delete - Requirements for ACR findings are established and defined in the ACR directions. Centralization of the program in the New York Hub will streamline the conduct of the ACR and the report.

1L. Develop policies and procedures for the annual compliance review that include a consistent approach to conducting the review, addressing hub management concerns, and including both hub management teams on fee determinations.

Comment 18

Response: Delete - Policies and procedures for conducting the review are currently available and program centralization will address the review and any outcome of the review.

1M. Develop and implement procedures to address nonperformance of the contractor. These procedures should include timely correspondence with the contractor, required actions to resolve poor performance, administrative actions for nonperformance, and the role and responsibility of the Office of General Counsel for nonperformance.

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Comment 20

Response: Delete - Procedures for addressing nonperformance are imbedded in the ACC and the monthly and annual review of the PBCA. There is no role or responsibility of OGC in monitoring performance and would only be relevant if default under the contract is under review.

If you have any questions, please contact Deborah Lear, Director, Office of Housing Assistance Contract Administration Oversight at (202) 402-2768.

OIG Evaluation of Auditee Comments

- Comment 1** HUD officials generally concurred with the report conclusions, specifically regarding the lack of communication between the New York and Buffalo hubs, which has resulted in inconsistent program criteria and directives. In response to our recommendations, HUD plans to implement an alternative oversight structure and a realignment of staff workload. We have not examined the plan for sufficiency and it will be reviewed in conjunction with HUD's response to all of the audit recommendations as part of the audit resolution process.
- Comment 2** HUD officials note that various functions and related roles and responsibilities of the oversight monitor, project managers and hub directors are not accurately represented in the report from a program monitoring or organizational structure perspective, which has led to flawed conclusions. In addition, HUD officials contend that there are statements in the report that require additional clarification to provide a clearer understanding of program monitoring requirements and the appropriate role of the staff involved. The functions, roles, and responsibilities of the staff at the two hubs as reported were obtained during interviews with Section 8 contract administration initiative staff at each hub. As such, we maintain that written policies and procedures defining the roles and responsibilities of the HUD New York and Buffalo multifamily hubs' Section 8 contract administration initiative staff needs to be established. Clarification on specific report statements are addressed individually in comments 3 through 11 below.
- Comment 3** HUD officials state that there is an incorrect statement, which should be deleted or clarified regarding the monitoring and oversight division developing a monitoring and evaluation plan, and coordination of field activities to execute the plan. During the exit conference, we explained to HUD officials that the information detailed in our report was obtained from the Housing Assistance Contract Administration Oversight's website. HUD officials contend that the information is inaccurate and will be removed from the site. Thus, we have removed the sentence in question from the report background section.
- Comment 4** HUD officials contend that the description of the oversight monitor's responsibility is incomplete and omits critical activity regarding the oversight monitor's role. The purpose of the monitor's responsibilities as described in the report background section was to provide only a general idea of some of the oversight monitor's responsibilities; however, in response to the officials' contention, we have added additional responsibilities of the oversight monitor.
- Comment 5** HUD officials state that the basis used in the finding regarding HUD's inability to effectively monitor the program should be refined. The officials contend that the inability of the hubs to resolve differences in interpretations of existing guidance and the materiality of performance in question is the crux of the issue rather than the availability of written guidance. However, we maintain that the root cause for the conditions was a lack of local written policies and procedures for (1)

addressing the complexities of contractor oversight by two hubs, (2) ensuring that consistent performance criteria were used by the hubs, and (3) handling disagreements regarding interpretations of program directives. In regards to the term materiality of performance, we caution HUD officials on measuring contractor performance on such a basis, unless materiality is clearly defined in either the annual contributions contract or some other HUD guidance.

- Comment 6** HUD officials contend that the failure of the oversight monitor to include hub management is not a procedural failure, is the appropriate process and is within the monitor's responsibility of serving as the arbiter of the appeal. However, since our audit disclosed control weaknesses within these procedures, our recommendation to appoint objective personnel, with institutional knowledge, from both hubs to an appeals committee would increase controls ensuring the consistent interpretation of applicable program rules, thereby reducing disagreements.
- Comment 7** HUD officials contend that the statement pertaining to headquarters failing to address disagreements between the two Hubs is inaccurate. We acknowledge that in the past HUD has attempted to provide direction, guidance and arbitrate the disagreements between the two hubs. However, for this particular appeal and the underlying issues, headquarters failed to provide adequate direction. As a result, the issues have continued to affect the hubs' monitoring of the contractor's performance.
- Comment 8** HUD officials contend that all fee appeals are treated the same, and that the procedures allowed for appeals on an annual basis. However, this resulted in ineffective and inefficient monitoring of the program and it became more prudent to allow submission of appeals in real time, thus ensuring that relevant documentation, staff actions and contractor performance could be addressed immediately. While we agree that all fee appeals should be treated the same, our audit disclosed that they were in fact not treated the same. Further, the submission of appeals in real time is contrary to available HUD guidance, which provides that at the end of each contract year, the contractor may appeal a HUD fee determination that it feels was in error; thus, if this is no longer required then the procedures should be updated.
- Comment 9** HUD officials note that the term preapproval fee challenge is unfamiliar and that a description of the process would assist in their response to the issue. This term was provided to us by the oversight monitor and the context of its use is self-explanatory in the report.
- Comment 10** HUD officials contend that the oversight monitor's function is to review the information submitted by the Buffalo hub, the contractor, and systemic data. The oversight monitor can request additional data if information is needed, however it is the oversight monitor who determines contractor performance and calculates the appropriate administrative fee. Nevertheless, local procedures and good

internal controls should make it imperative for the oversight monitor to discuss with asset management staff the reasons why the contractor does not believe the project manager's findings should result in a loss of administrative fees on the monthly invoice; this would also reduce the redundancy of findings.

Comment 11 HUD officials concur that they did not ensure a consistent approach to measure contractor performance in the monthly invoice review process. However, determining which hub was conducting the correct review is not the issue, but rather, that the oversight monitor did not provide program guidance on how each incentive based performance standard would be reviewed.

Comment 12 HUD officials suggest that recommendations 1A and 1F be deleted from the report since the planned centralization of functions within the New York hub will address the discrepancy issue between the two hubs. HUD's planned actions appear responsive to our recommendations. As such, the recommendations will remain in the report and be considered for closure during the audit resolution process in conjunction with HUD's response to all of the audit recommendations.

Comment 13 HUD officials suggest that recommendation 1B be deleted from the report since invoice reviews, appeals of fee determinations, etc., are a function of the oversight monitor and therefore does not require training of hub staff. Further, HUD will provide the oversight monitor training as needed. We disagree with removing the recommendation; because there are two hubs involved, hub staff should be considered essential in monitoring the contractor's performance including appeals of fee determinations, monthly invoice reviews, and annual compliance reviews. Thus, training should be provided to the oversight monitor and hub staff to address the outstanding concerns of the two hubs.

Comment 14 HUD's actions are responsive to our recommendations.

Comment 15 HUD officials suggest that recommendation 1E be deleted from the report since contract compliance, invoice reviews, appeals of fee determinations, etc., are a function of the oversight monitor. We disagree with removing the recommendation since it ensures that proper internal controls are maintained. Disagreements between the oversight monitor and the staff of the two hubs regarding interpretations of program directives should be uniformly addressed by HUD headquarters, thereby ensuring a consistent interpretation of the regulations.

Comment 16 HUD officials suggest we delete recommendation 1H and include it as part of recommendation 1G. The recommendations will not be combined since each recommendation addresses a separate condition.

Comment 17 HUD officials suggest that recommendation 1I be deleted from the report since invoice reviews, appeals of fee determinations, etc., are a function of the oversight monitor and therefore should not be addressed by a committee. Our audit disclosed control weaknesses in these procedures; consequently, we disagree with

removing the recommendation. The appointment of objective personnel from both hubs with institutional knowledge to an appeals committee will ensure the consistent interpretation of applicable program rules.

Comment 18 HUD officials suggest that recommendations 1J and 1L be deleted from the report since the information is available in the annual contributions contract, the PBCA monitoring and oversight guidebook and numerous handbooks. However, since the criteria cited does not address the local policies and procedures pertaining to the day- to-day monitoring of the contractor's performance, we disagree with removing the recommendations.

Comment 19 HUD officials suggest that recommendation 1K be deleted from the report since the requirements for annual compliance review findings are established and defined in the annual compliance review directions. Our review disclosed that the project managers were not citing the criteria pertaining to the contract violations during either their monthly invoice or annual compliance reviews. In addition, the oversight monitor did not provide evidence that she corresponded with the project managers and/or operations directors to determine why the findings were overruled. Accordingly, since procedures are already established for the annual compliance review, we have revised the recommendation to state implement and/or develop the policies and procedures in question.

Comment 20 HUD officials suggest that recommendation 1M be deleted from the report since the procedures for addressing nonperformance are imbedded in the annual contributions contract and the monthly and annual review of the PBCA. Further, officials contend that there is no role or responsibility of the Office of General Counsel in monitoring performance and would only be relevant if default under the contract is under review. Our audit disclosed that the oversight monitor did not take the appropriate steps to address the nonperformance of the contractor when a new subcontractor was hired, thus the recommendation stands; however, we will remove the Office of General Counsel from the recommendation since they are only involved during contract default.