



The City of Albany, Albany, NY

Community Development Block Grant – Recovery Act Program

This report was revised on February 5, 2013 to remove a contractor's name and correct the circumstances regarding the termination on pages 6 and 28.



Issue Date: December 6, 2012

Audit Report Number: 2013-NY-1001

TO: William O'Connell, Director, Community Planning and Development, Buffalo, NY, 2CD

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

SUBJECT: The City of Albany, NY, Did Not Always Administer Its CDBG Recovery Act Program Effectively and Efficiently

Enclosed is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our audit of the City of Albany, NY's Community Development Block Grant (CDBG) Recovery Act 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 8L, 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 (212) 264-4174.



December 6, 2012

The City of Albany, NY, Did Not Always Administer Its CDBG Recovery Act Program Effectively and Efficiently

Highlights

Audit Report 2013-NY-1001

What We Audited and Why

We audited the City of Albany, NY's administration of its supplemental Community Development Block Grant program funded under the American Recovery and Reinvestment Act of 2009 (CDBG-R). The objectives were to determine whether the City administered its CDBG-R program effectively, efficiently, and economically in accordance with applicable rules and regulations, including the Recovery Act, and other U.S. Department of Housing and Urban Development (HUD) requirements.

What We Recommend

We recommend that the Director of HUD's Buffalo Office of Community Planning and Development instruct City officials to (1) repay from non-Federal funds the ineligible costs of \$5,291 and (2) submit documentation to justify the unsupported costs of \$740,682 so that HUD can make an eligibility determination. HUD should require the City to repay any costs determined to be ineligible from non-Federal funds and establish controls to ensure compliance with program requirements.

What We Found

City officials did not always administer the CDBG-R program effectively, efficiently, and economically in accordance with applicable rules and regulations, including the Recovery Act, and other HUD requirements. Specifically, contrary to program regulations, City officials did not ensure that contract and procurement regulations were followed; activities met a national objective of the program; job creation was adequately tracked and documented; "buy American" provisions of the Recovery Act were adequately monitored; and costs were necessary, reasonable, and adequately supported. In addition, officials made a double payment for electrical work related to a rehabilitation activity and made a payment for a former City employee's unused vacation time, which was accrued before the award of the CDBG-R grant. These deficiencies occurred because City officials had not established and implemented adequate controls. This was because of staff reductions and the reliance on subrecipients to carry out most of the administration of the activities. Also, there was a lack of adequate emphasis of program requirements by some City officials to ensure that monitoring of CDBG-R activities and subrecipients was conducted effectively, costs incurred were eligible and adequately supported, duties were properly segregated, and assets were properly safeguarded. As a result, unsupported costs of \$740,682 and ineligible costs of \$5,291 were expended for activities funded through the City's CDBG-R program.

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BACKGROUND AND OBJECTIVES

The American Recovery and Reinvestment Act of 2009 became Public Law 111-5 on February 17, 2009. The purpose of the Recovery Act is to (1) preserve and create jobs and promote economic recovery; (2) assist those most impacted by the recession; (3) provide investments needed to increase economic efficiency by spurring technological advances in science and health; (4) invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and (5) stabilize State and local government budgets to minimize and avoid reductions in essential services and counterproductive State and local tax increases.

The City of Albany was awarded a Community Development Block Grant Recovery Act (CDBG-R) grant of \$996,140 on August 14, 2009. The audit reviewed five of the six CDBG-R activities established by the City. As of July 10, 2012, expenditures for the five activities reviewed totaled \$788,612, or about 79 percent of the total grant.

The City operates under a mayor-council form of government, and its CDBG-R activities are administered both in-house, through the City's component unit, the Albany Community Development Agency, and by subrecipient organizations. The City is responsible for overseeing, monitoring, and managing CDBG-R activities. The files and records related to the City's CDBG-R program are maintained at the Agency's offices located at 200 Henry Johnson Boulevard, Albany, NY.

The objectives of the audit were to determine whether the City administered its CDBG-R program effectively, efficiently, and economically in accordance with applicable rules and regulations, including the Recovery Act, and other U.S. Department of Housing and Urban Development (HUD) requirements.

RESULTS OF AUDIT

Finding: Administration of the CDBG-R Program Was Not Always Effective or Efficient

City officials did not always administer the CDBG-R program effectively, efficiently, and economically in accordance with applicable rules and regulations, including the Recovery Act, and other HUD requirements. Specifically, contrary to program regulations, City officials did not ensure that contract and procurement regulations were followed; activities met a national objective of the program; job creation was adequately tracked and documented; “buy American” provisions of the Recovery Act were adequately monitored; and costs were necessary, reasonable, and adequately supported. In addition, officials made a double payment for electrical work related to a rehabilitation activity and made a payment for a former City employee’s unused vacation time, which was accrued before the award of the CDBG-R grant. These deficiencies occurred because City officials had not established and implemented adequate controls. This was because of staff reductions and the reliance on subrecipients to carry out most of the administration of the activities. Also, there was a lack of adequate emphasis of program requirements by some City officials to ensure that monitoring of CDBG-R activities and subrecipients was conducted effectively, costs incurred were eligible and adequately supported, duties were properly segregated, and assets were properly safeguarded. As a result, unsupported costs of \$740,682 and ineligible costs of \$5,291 were expended for activities funded through the City’s CDBG-R program.

Noncompliance With Contract and Procurement Requirements

City officials did not always ensure that contract requirements and procurement regulations were followed, as there was a lack of independent cost and price analyses, work was not completed within the contract scope, and there was a lack of documentation showing that there was full and open competition. As a result, \$523,657 was considered unsupported pending an eligibility determination by HUD, and another \$3,554 double payment was considered an ineligible expenditure.

Regulations at 24 CFR (Code of Federal Regulations) 85.36(b)(9) provide that grantees and subgrantees must maintain records sufficient to detail the significant history of a procurement. These records must include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. Further, 24 CFR 85.36(c)(1) provides that all procurement transactions must be conducted in a manner providing full and open competition.

Regulations at 24 CFR 85.36(f)(1) require that grantees and subgrantees 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 procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals.

In addition, 2 CFR Part 225, appendix A, C.1, requires that costs be necessary and reasonable for proper and efficient performance and administration of Federal awards.

The procurement deficiencies for each activity are described below.

Activity 3557 – Kings Way Building Rehabilitation Activity

The Albany Community Development Agency funded the Kings Way activity through its subrecipient, the Albany Housing Authority, by expending \$300,921 in CDBG-R funds for the rehabilitation of the historic building located at 27-29 North Swan Street, Albany, NY. The activity was originated to rehabilitate the building, which upon completion, would provide two affordable housing units and commercial space to be occupied by the Albany County Historical Association. The national objective identified for this activity was low- to moderate-income housing as defined at 24 CFR 570.208(3).

The issues of concern were the reasonableness of additional costs and the lack of evidence that the required independent cost and price analyses were conducted.

The primary construction contractor was awarded an initial contract for \$198,720. As a result of two change orders, the contract amount was increased to \$277,884. The contractor was paid a total of \$247,166 under this contract but the contract was terminated by the Authority under the termination for the convenience power held by the Authority under government contract law. Further, without obtaining cost estimates for the additional work to be performed, the Authority hired another contractor. The additional costs required to complete the work by another contractor totaled \$48,226, so the costs incurred totaled \$295,392, or \$17,508 more than the amended contract with the original contractor. Since the Authority acknowledged that the additional work items were included in the scope of services in the contract with the original contractor, the additional \$17,508 in costs incurred was questionable because all of the work should have been accomplished under the initial contract with no increase in cost; therefore, these costs were considered not necessary or reasonable.

The Authority also provided \$5,529 in CDBG-R funds to another contractor related to the construction of front stoops. There was no evidence in the Authority or Agency files to indicate that quotes for the work were obtained as required by the Agency's procurement policies in place at the time of our review. Thus, the total \$300,921 expended for this activity was questioned for

noncompliance with procurement and contract requirements and because the overall activity was not completed and, therefore, did not meet a national objective (see next text box).

Activity 3554 – 15-17 Clinton Street Demolition and Site Restoration

The Albany Community Development Agency budgeted \$19,379 in CDBG-R grant funds for a demolition and site restoration project at 15-17 Clinton Street. As of July 10, 2012, CDBG-R funds of \$16,950 had been expended on the project, which was administered by the Union Baptist Church.

The Agency did not ensure that contract and procurement regulations were followed while various activities were conducted. Specifically, church officials obtained three bids for the primary demolition contract. The three bids were for \$7,600, \$12,000, and \$17,255. However, the work was awarded to the bidder with a bid of \$12,000. There was no documentation in the Agency's file indicating why the low bidder was not selected to do the work. The files also did not contain documentation to indicate that the Agency had monitored the procurement and provided justification for not selecting the low bidder. We brought this matter to the attention of the Agency's director, who contacted church officials. The church officials informed her that when they were ready to have the demolition work done, the low bidder was no longer available so they went with the next lowest bid. The director further stated that the church would provide additional documentation. However, at the time of our audit, no additional documentation had been provided. The Agency should have been aware of this issue through adequate monitoring, and its files should have been appropriately documented. In addition, there was no information contained in the files to indicate that a cost and price analysis had been conducted for the demolition procurement action.

Additional costs of \$4,950 were also incurred for this activity. Specifically, \$2,250 was drawn down for tree removal at 17 Clinton Street. A review of the Agency's program and fiscal files showed that only one proposal was documented in support of the claim. Also, there was no documentation in the files to show that an independent cost and price analysis was performed. In addition, the scope of services outlined in the construction and demolition agreement did not provide for the removal of trees from the property. Therefore, the costs were not adequately supported, and the Agency did not demonstrate that the procurement allowed for full and open competition.

Further, \$2,700 was drawn down for removal of tree stumps and rocks at 15 Clinton Street. The Agency's files documented only one proposal in support of the claim. The files also did not document an invoice to support the voucher claim form or that an independent cost and price analysis was performed. In addition, the scope of services outlined in the construction and demolition agreement did not provide for the removal of tree stumps and rocks from the

property. Therefore, the costs were not adequately supported, and the Agency did not demonstrate that the procurement allowed for full and open competition.

For the \$16,950 in CDBG-R costs incurred for this activity, the Agency did not ensure that applicable procurement regulations were followed, such as ensuring full and open competition, and that all procurement actions included the required cost and price analysis to ensure cost reasonableness. These deficiencies indicated weaknesses in controls over contracting and procurement, monitoring of subgrantees, and safeguarding of assets; therefore, the costs of \$16,950 were considered unsupported pending a HUD eligibility determination.

Activity 3556 – South End Phase II Rehabilitation, 34 Morton Avenue

The Albany Community Development Agency funded the 34 Morton Avenue activity through its subrecipient, the Albany Housing Authority, by expending \$209,340 in CDBG-R funds for the rehabilitation of the first floor storefront, stabilization of the building, and “mothballing” of two upper story apartments. The activity began as part of the South End revitalization and initially included Recovery Act funding of only \$109,340. In June 2010, the City and the Authority amended the agreement and increased the Recovery Act-funded budget to \$209,340.

According to Authority officials, Agency officials asked them to use a particular minority-owned business, an architecture and engineering firm that was chosen by the Agency. The project work and payments approval were to be overseen by the Authority. The initial contractor was to complete the rehabilitation and run a job training program through a local nonprofit at the activity site. However, both the contractor and the architecture and engineering firm were selected without the benefit of competitive bidding, violating the requirements of 24 CFR 85.36(f)(1).

Once the rehabilitation work began, the Authority immediately had problems with the contractor. One issue was that not all of the employees under the workforce program were paid by the contractor in a timely manner. Eventually, the Authority had to replace the contractor with another contractor of its choice, again without competitive bidding. The amount of \$165,479 was paid to the new contractor to finish the activity. In total, all of the \$209,340 was expended on the project.

Further, while the initial contractor received payment in 2010 from the Authority for electrical work that was completed by a subcontractor, the contractor failed to pay the subcontractor in full. As a result, the Authority had to disburse another \$3,554 for the 2010 electrical work at the end of 2011. This was an ineligible use of Recovery Act funding since Recovery Act funds were used twice for the same cost.

In addition, an inspection of the property on May 30, 2012, indicated that some of the work items claimed in the billings did not match the actual work. For example, one change order contained the language “add 6 goose neck lights to exterior of façade” for \$2,300 and “add 2 decorative railing to stairs” for \$ 1,495. However, when we inspected the property, the façade contained only four goose neck lights, and there was only one railing installed (see photos below).



This photo shows that only four goose neck lighting fixtures were installed.



This photo shows that only one decorative railing was installed.

As a result, we considered the \$3,554 double payment to be ineligible, and the remaining cost of \$205,786 was considered unsupported pending a HUD eligibility determination.

National Objective Not Accomplished

Activity 3557 – Kings Way Building Rehabilitation Activity

As mentioned earlier, this activity was originated to rehabilitate a building, which upon completion, would provide two affordable housing units and commercial space. However, this activity was not completed; although all the funds had been drawn down, and, therefore, did not meet the national objective of providing low- and moderate-income housing. Regulations at 24 CFR 570.200(a)(2) require that each recipient under the Entitlement or HUD-administered Small Cities programs and each recipient of insular area funds under Section 106 of the Recovery Act ensure and maintain evidence that each of its activities assisted with CDBG funds meets one of the three national objectives as contained in its certification.

An inspection of the property on May 30, 2012, indicated that the rehabilitation work was not complete and no tenants or businesses occupied the building, although all of the CDBG-R funds allocated to this activity had been expended. The last drawdown of CDBG-R funds for this activity was dated January 26, 2012, and funds were disbursed by the Albany Community Development Agency to the Albany Housing Authority for reimbursement of a partial payment to a subcontractor with an invoice, dated November 4, 2011. Therefore, although the final drawdown of CDBG funds was made to pay for work completed as of November 4, 2011, on May 30, 2012, more than 6 months later, the rehabilitation work had not been completed; thus, the national objective had not been achieved.

The photos below, taken on May 30, 2012, show that the rehabilitation work was not complete.



Photo of the front of the building, showing that the building was not occupied



Interior photo of an upper level apartment unit for which the work was not complete



Interior photo of a lower level apartment, which was not complete

Jobs Not Created

Activity 3650 – Neighborhood Strategy Areas Activity

The Albany Community Development Agency funded the Neighborhood Strategy Areas activity through its subrecipient, the City's Department of General Services, by expending \$217,025 in CDBG-R funds for resurfacing, reconstruction, replacement, and installation of various streets and sidewalks and

the Americans with Disabilities Act ramps within the city. According to the Agency's activity project description, this activity was to create 17.13 full-time-equivalent jobs; however, no evidence was provided indicating that these jobs were created.

Activity 3556 – South End Phase II Rehabilitation, 34 Morton Avenue

According to the Albany Community Development Agency's activity project description, the national objective identified for this activity was that the project was to create nine jobs, eight of those for Albany residents. However, the Agency and the Albany Housing Authority failed to maintain evidence of the job creation as required. Regulations at 24 CFR 570.200(a)(2) require that each recipient under the Entitlement or HUD-administered Small Cities programs and each recipient of insular area funds under Section 106 of the Recovery Act ensure and maintain evidence that each of its activities assisted with CDBG funds meets one of the three national objectives as contained in its certification. However, without evidence of the job creation, the national objective for activity 3556 was not met.

As described in HUD Notice of Program Requirements for Community Development Block Grant Program Funding Under the American Recovery and Reinvestment Act of 2009 [Docket No. FR-5309-N-01], Section 1512 of the Recovery Act requires that not later than 10 days after the end of each calendar quarter, each recipient that received Recovery Act funds from a Federal agency submit a report to that agency that contains (1) the total amount of Recovery Act funds received from that agency; (2) the amount of Recovery Act funds received that was expended on or obligated to projects or activities; and (3) a detailed list of all projects or activities for which Recovery Act funds were expended or obligated, including the name of the project or activity, a description of the project or activity, an evaluation of the completion status of the project or activity, and an estimate of the number of jobs created and retained by the project or activity. The Agency did not document an estimate of the number of jobs created and retained by the project or activity.

Buy American Provision of the Recovery Act Not Followed

Activity 3557 – Kings Way Building Rehabilitation Activity

We conducted a subrecipient site visit review at the Albany Housing Authority from May 24 through May 31, 2012. During the review, we asked the Authority's director of planning and development what controls the Authority had in place to ensure that the buy American provision of the CDBG-R regulations was followed. The director said he would check with other Authority staff and the architecture and engineering contractor overseeing the activity and provide us with the requested information. As of the completion of our site visit on May 31, 2012, the director had not provided the requested information. Therefore, it

appeared that the Authority did not ensure that the buy American provision was adequately controlled; therefore, costs could have been incurred that violated this provision of the regulations. Regulations at 2 CFR 176.60 provide that Section 1605 of the Recovery Act prohibits the use of Recovery Act funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

Costs Not Adequately Supported

Activity 3650 – Neighborhood Strategy Areas Streets, Sidewalks, and Ramps Activity

Regarding the Neighborhood Strategy Areas street, sidewalk, and ramp activity 3650 described earlier, the Albany Community Development Agency and the City's Department of General Services also charged costs to the CDBG-R program that were not adequately documented in the project files. Regulations at 2 CFR Part 225, appendix A, C.1.j., require that costs be adequately documented. In addition, section III of the subrecipient agreement between the Agency and the Department of General Services provides that drawdown requests must be accompanied by acceptable supporting documentation that at a minimum includes an invoice itemizing amounts requested and supporting documentation for each item, such as materials list, payroll slips, etc. However, specific costs charged to the CDBG-R program were not detailed in the project files maintained by the Agency and the Department of General Services and were, therefore, unsupported.

Contrary to the above requirements, the amounts budgeted to be charged to the CDBG-R program were claimed as a portion of a larger payment made to the contractor, while the detailed documented support for the payment listed many line item costs that could not be matched directly to the CDBG-R budgeted activities. As a result, the costs incurred for this activity totaling \$217,025 were considered unsupported pending a HUD eligibility determination.

Costs Not Necessary or Reasonable

Activity 3558 – Albany Community Development Agency Rehabilitation Administration

The Albany Community Development Agency budgeted \$89,680 to be used for expenses associated with its administration of the CDBG-R grant. At the time of our review, May 17, 2012, the Agency had expended \$47,145 for administrative expenses. While the Agency generally complied with program requirements

pertaining to its CDBG-R administration activity, deficiencies were identified that resulted in the incurrence of ineligible and unsupported costs, along with inadequate controls and segregation of duties issues.

The CDBG-R grant agreement, approved on August 14, 2009, indicated that June 4, 2009, was the first date on which the Recovery Act funds could be used. As of May 31, 2009, a former Agency employee had accumulated 521 hours of accrued unused vacation. While this employee's time had been partially allocated to the CDBG-R administration activity, upon the employee's retirement, the Agency made a one-time payment to the employee for the balance of unused vacation hours remaining. The payment for unused vacation time on May 7, 2010, amounted to \$19,204, representing 489.5 hours of unused vacation time at an hourly rate of \$39.23. The CDBG-R program was allocated and charged \$1,033 of the vacation time paid to the employee. Since all of the unused vacation time was accrued before the date on which CDBG-R funds could be used, the allocation of \$1,033 to the CDBG-R grant was considered unnecessary and, therefore, ineligible. Regulations at 2 CFR Part 225, appendix A, C.1.a, require that costs be necessary and reasonable for proper and efficient performance and administration of Federal awards.

On April 6, 2011, Agency officials purchased a computer for \$704 to be used by the Agency's compliance officer for various activities administered by the Agency. The computer was charged entirely to the CDBG-R program, although this program represents only a small portion of the activities and funds administered by the Agency. Regulations at 24 CFR 570.207(b)(1) provide that the purchase of equipment with CDBG funds is generally ineligible. Also, 24 CFR 570.207(b)(1)(iii) states that the purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property that is not an integral structural fixture is generally ineligible. Further, 2 CFR Part 225, appendix A, C.1.a, requires that costs be necessary and reasonable for proper and efficient performance and administration of Federal awards. In this instance, it was not reasonable that the entire cost of the computer was charged to the CDBG-R program. Therefore, the \$704 was considered unreasonable and thus ineligible.

Inadequate Controls and Segregation of Duties

The City did not always establish and implement adequate controls over the monitoring of subrecipients and segregation of duties. In particular, officials did not ensure that the monitoring of CDBG-R subrecipients was conducted effectively. For instance, monitoring results were not documented, and monitoring of subrecipient contracting and procurement was generally not conducted. City officials relied on subrecipients to carry out many of the program activities and did not effectively establish and implement monitoring controls for the subrecipients to ensure that the activities were conducted in accordance with all applicable requirements. Other control weaknesses identified included a lack

of fidelity bond coverage, processing unnumbered purchase orders, and following inadequate and inconsistent procedures to document the receipt of goods and services.

In addition, the safeguarding of assets was diminished due to the inadequate segregation of duties. For instance, one person (1) recorded deposited funds, made adjusting entries to the accounting records, and performed bank reconciliations; (2) processed disbursements, drew down funds, deposited funds, and made accounting entries related to accounts receivable; and (3) created and signed checks and reconciled the bank accounts. Generally accepted accounting principles require that there be segregation of the duties for custody, authorization, and recording. However, this did not appear to have been the case in these instances. This lack of segregation of duties for these functions may indicate that assets were not properly safeguarded.

Regulations at 24 CFR 570.501 provide that an entity designated to undertake CDBG grant administration responsibilities is subject to the requirements applicable to subrecipients. These requirements include the regulations at 24 CFR 85.40, which require monitoring of the day-to-day activities of the designated entity. Regulations at 24 CFR 85.20(b)(3) provide that effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and ensure that it is used solely for authorized purposes. The lack of adequate management controls over subrecipient monitoring and segregation of duties increased the risk that program funds may have been disbursed for ineligible or unsupported costs or that assets may have been subject to unnecessary risk and not properly safeguarded.

Conclusion

The City had not established and implemented the necessary controls to ensure that its administration of the CDBG-R program was always effective and efficient. This was due to significant staff reductions over the past several years; which, along with the continued use of subrecipients to carry out most of the administration of various programs and activities, have resulted in decreased emphasis on monitoring CDBG-R activities for compliance with applicable rules and regulations. Moreover, some City officials did not appear to have an adequate knowledge of certain CDBG-R requirements including; an understanding of the "Buy American" requirements; and, the reporting requirements relating to CDBG-R job creations. City officials did not ensure that contracting and procurement regulations were followed; activities met a national objective of the program; job creation was adequately tracked and documented; buy American provisions of the Recovery Act were adequately monitored; and costs were necessary, reasonable, and adequately supported. Therefore, City officials failed to fully comply with applicable rules and regulations, including the Recovery Act, and other HUD requirements. Thus, ineligible costs of \$5,291 and unsupported costs of \$740,682

were expended for activities funded through the City's CDBG-R program. The unsupported costs included \$300,921 charged to the Kings Way building rehabilitation activity; \$16,950 charged to the 15-17 Clinton Street demolition and site restoration project; \$205,786 charged to the 34 Morton Avenue rehabilitation activity; and \$217,025 charged to the Neighborhood Strategy Areas streets, sidewalks, and ramps activity.

Recommendations

We recommend that the Director of HUD's Buffalo Office of Community Planning and Development instruct City officials to

- 1A. Repay from non-Federal funds the ineligible costs of \$5,291. The ineligible costs include a double payment of \$3,554 for electrical work related to the 34 Morton Avenue rehabilitation activity, a payment of \$1,033 for a former City employee's unused vacation time that was accrued before the award of the CDBG-R grant and charged to the Albany Community Development Agency's rehabilitation administration activity, and \$704 charged to the Agency's rehabilitation administration activity.
- 1B. Submit documentation to justify the unsupported costs of \$740,682 so that HUD can make an eligibility determination. For any costs determined to be ineligible, HUD should require the City to reimburse the CDBG program from non-Federal funds.
- 1C. Establish and implement controls to ensure that CDBG-R activities are administered efficiently and effectively, funds have been used only for eligible activities, costs incurred are necessary and reasonable, national objectives have been attained, and performance goals are being achieved.
- 1D. Establish and implement controls to ensure that grant- and subgrant-supported activities are adequately monitored and administered to ensure compliance with program regulations.

SCOPE AND METHODOLOGY

We performed our onsite work at the Albany Community Development Agency between March and July 2012. The audit scope covered the period January 2009 through June 2012 and was extended as necessary.

To accomplish our audit objectives, we

- Reviewed applicable HUD regulations, the Code of Federal Regulations, and other requirements and directives that govern the CDBG and CDBG-R programs.
- Reviewed the City's applicable policies and procedures used to administer CDBG-R activities.
- Reviewed grant agreements and agreements between the City and its subrecipients, including verifying whether national objectives were met.
- Interviewed City and subrecipient officials responsible for administration and monitoring of the City's CDBG-R program.
- Obtained and reviewed program and financial documentation from the City and its subrecipients pertaining to the CDBG-R activities audited.
- Reviewed HUD's monitoring reports and files for the City's community planning and development programs, including verifying any reported corrective actions.
- Reviewed independent public accountant audits and financial reporting.
- Reviewed all costs charged to the CDBG-R program activities tested during the audit, along with the applicable supporting documentation provided.
- Reviewed information systems data from HUD's Integrated Disbursement and Information System for background and informational purposes. We performed a minimum level of testing and found the computer-processed data to be adequate for our purposes.
- Conducted physical inspections of selected work items charged to the CDBG-R activities reviewed.

The City was awarded a CDBG-R grant of \$996,140 on August 14, 2009. All samples were selected in a nonstatistical manner. Specifically, we reviewed five of the six CDBG-R activities established by the City. As of July 10, 2012, expenditures for the five activities reviewed totaled \$788,612, or about 79 percent of the total grant.

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

INTERNAL CONTROLS

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

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

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

Relevant Internal Controls

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

- Effectiveness and efficiency of operations – Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Reliability of financial reporting – Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.
- Compliance with applicable laws and regulations – Policies and procedures that management has implemented to reasonably ensure that 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 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 the effectiveness or efficiency of operations, (2) misstatements in

financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiencies

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

- City officials did not have adequate controls over the efficiency and effectiveness of program operations when they did not establish adequate administrative controls to ensure that costs associated with rehabilitation, street improvement, and administrative activities were adequately supported (see finding).
- City officials did not have adequate controls over compliance with laws and regulations when they did not always comply with HUD regulations while disbursing program funds (see finding).
- City officials did not have an adequate system to ensure that resources were properly safeguarded when they did not adequately segregate duties or maintain adequate supporting documentation for costs charged to rehabilitation and street improvement activities (see finding).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Ineligible 1/	Unsupported 2/
1A	\$5,291	
1B		\$740,682

- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.
- 2/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments



CITY OF ALBANY
DEPARTMENT OF DEVELOPMENT & PLANNING

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November 13, 2012

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**NEIGHBORHOOD &
LONG-RANGE PLANNING**
21 Lodge Street
Albany, NY 12207
518.434.2532
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Dear Mr. Moore,

LAND USE PLANNING
Board of Zoning Appeals, Planning Board,
Historic Resource Commission
200 Henry Johnson Boulevard
Albany, NY 12210
518.434.5251
(f) 518.434.5219
Planning@ci.albany.ny.us

Enclosed please find the City of Albany's Community Development Agency's response to the HUD Office of Inspector General Draft Audit report of ACDA's administration of its CDBG Recover Act Program. It is our belief that this program was administered effectively and efficiently and we will provide to the HUD Buffalo Office evidence of this for all questionable costs outlined in the draft audit report. Should you require any further documentation please feel free to contact me at 518-434-5247.

**ALBANY COMMUNITY
DEVELOPMENT AGENCY**
200 Henry Johnson Boulevard
Albany, NY 12210
518.434.5265
(f) 518.434.5242

Thank you.

Sincerely,

Faye Andrews
Director
Albany Housing and Community Development

www.albanyny.gov

Ref to OIG Evaluation

Auditee Comments

Auditee Comments

City of Albany Housing and Community Development Agency response to HUD OIG's Draft Review of the City of Albany's Administration of its CDBG Recovery and Reinvestment Act Funds.

Item #1: page 5

City officials did not always ensure that contract requirements and procurement regulations were followed, as there was a lack of independent cost and price analyses, work was not completed within the contract scope, and there was a lack of documentation showing that there was full and open competition.

Comment #1

Cost analysis of primary construction contract and change orders to [REDACTED]. The primary contract was competitively bid. ACDA can provide the project architect's letter attesting to the bid review and approval of [REDACTED]'s low bid. In addition, ACDA has in its possession the cost analysis performed by Albany Housing Authority for the two change orders. These documents are available for review and will be offered to the HUD Buffalo Office in order to support the questioned costs associated with this project.

Comment 1

Item #2: page 7

The Agency did not ensure that contract and procurement regulations were followed while various activities were conducted.

Comment #2

ACDA did ensure that procurement regulations were followed for this project. The HUD OIG reviewer did see three bids for the demolition at 15 Clinton St. Although not available at the time of the audit, ACDA has documentation from the property owner explaining the reasons for choosing the next lowest bidder. As for the additional costs associated with this project, ACDA is in compliance because each service amount was under \$5,000 and therefore, according to the City of Albany procurement policy, both could be paid at the discretion of the department head who oversaw the agency at the time the services were rendered.

Comment 2

Item #3: page 8

According to Authority officials, Agency officials asked them to use a particular minority-owned business, an architecture and engineering firm that was chosen by the Agency. The project work and payments approval were to be overseen by the Authority. The initial contractor was to complete the rehabilitation and run a job training program through a local non profit at the

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Auditee Comments

Comment 3

activity site. However, both the contractor and the architecture and engineering firm were selected without the benefit of competitive bidding, violating the requirements of 24 CFR 85.36(f)(1).

Comment #3

The project supported with CDBG-R funds was a shovel ready project, and the Albany Housing Authority had already competitively procured Omni Housing Development as its developer partner. An MOU was entered into by Albany Housing Authority, Omni Housing Development, Capital Region Workforce Development Center (CRWDC), and Concrete Links, which outline the project and the roles of each party. The MOU states that Omni Housing Development would enter into a not to exceed lump sum contract with Concrete Links, which in turn would contract with CRWDC. ACDA did not request that the Authority use a particular minority contractor as this was already planned out by the time CDBG-R funds were introduced.

When Omni terminated Concrete Links for gross negligence, Omni negotiated and entered into contracts with Machnick and Scot Wallant & Associates. AHA and HUD procurement regulations state that as long as the prime contract, that being the one between AHA and Omni Housing Development, is competitively procured, all secondary contracts are not subject to competitive procurement. However, AHA requires that good business practices be used when selecting all secondary consultants and contractors. Good business practices include the selection of competent consultants and contractors and the negotiation of a fair price for the scope of work to be performed. Omni satisfied this requirement for each secondary contract. A copy of the Request for Proposals, the AHA board resolution approving the selection of Omni, and a copy of the award letter to Omni are available for review and will be provided to the HUD Buffalo Office as supporting documents for the questioned costs in this project.

Item #4: page 10

Although the final draw down of CDBG funds was made to pay for work completed as of November 4, 2011, on May 30, 2012, more than 6 months later, the rehabilitation work had not been completed; thus, the national objective had not been achieved.

Comment #4

Comment 4

CDBG-R funds supported a portion of a full gut rehab of a historical building in Albany. The building had been vacant for years and required substantial restoration. The Albany Housing Authority has completed construction on this building and a temporary Certificate of Occupancy has been issued. AHA expects that a final certificate of occupancy will be issued within the week and has provided and executed lease agreement for its commercial tenant and a sample residential lease for the low income housing that has been created. Occupancy will begin immediately upon receipt of the final certificate of occupancy. All documents supporting eligible beneficiaries will be provided to the HUD Buffalo Office in order to support that ACDA did meet its National Objective for this project.

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Auditee Comments

Comment 5

Item #5 page 12

Without evidence of job creation, the national objective for activity 3556 was not met.

Comment #5

ACDA concurs with this finding in part, but wishes to stress that CDBG-R reporting requirements evolved over a relatively long period of time. ACDA will work closely with HUD to correct the information in the reporting system so that goals are met and the many jobs created for the citizens of the Albany by CDBG-R funds are officially recorded. However, at the time of the audit, the Albany Housing Authority stated that they provided the HUD OIG with documentation of payroll sheets for 11 individuals hired to participate in this project. All 11 hires were paid minimum wage and participated in an on the job skills training program. Nine of the 11 hires stayed with the project through its completion. These documents are available for review and will be offered to the HUD Buffalo Office in order to support the questioned costs associated with this project.

Comment 6

Item #6 page 13

It appeared that the Authority did not ensure that the buy American provision was adequately controlled; therefore, costs could have been incurred that violated this provision of the regulations.

Comment #6

Albany Housing Authority has provided ACDA with documentation that all materials purchased with CDBG-R funds were manufactured and purchased in America. These documents are available for review and will be offered to the HUD Buffalo Office in order to support the questioned costs associated with this project.

Comment 7

Item #7 page 13

Specific costs charged to the CDBG-R program were not detailed in the project files maintained by the Agency and the Department of General Services, and were therefore unsupported.

Comment #7

The Department of General Services has provided ACDA with detailed costs related to the CDBG-R grant funds for Activity 3650. These documents are available for review and will be offered to the HUD Buffalo Office in order to support the questioned costs associated with this project.

Item #8: page 15

The safeguarding of assets was diminished due to the inadequate segregation of duties.

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Auditee Comments

Comment 8

Comment #8

The fiscal department consists of two accountants who handle the day to day accounting tasks. As such, there is limited ability to segregate duties. The duties have been assigned to be segregated as much as possible within those constraints whereby the same person is not doing the draws and disbursements and the same person receiving cash is not the same as person recording deposits, etc.

CDBG-R monies are directly deposited, as are the majority of monies received by ACDA. For those draws, one accountant initiates a draw, with the other accountant approving the draw (based on a review of the data supporting the draw). For cash bank deposits, a separate ACDA individual opens mail and creates an intake sheet, which goes to an accountant to prepare the physical deposit. The deposit is then taken to the bank by someone from outside fiscal (and not the person who would've initiated the intake sheets) and the deposit slip is returned to the other accountant who records into the accounting system.

Disbursements are initiated after a series of approvals. One accountant receives the fully approved disbursement documents and enters the accounts payable into the accounting system. The other accountant then obtains those documents to cut checks. Checks are cut only for approved transactions with the supporting paperwork in hand. Checks are provided to an outside of fiscal individual for disbursement or they are mailed. ACDA procedure is that any item received that is unusual, such as showing an old outstanding balance or a payment discrepancy, is provided to the supervisor for follow up. A check signing machine is used by ACDA. As noted in the outline, the accountant who cuts the checks then runs them through the signature machine. Because other controls are in place and there is consistent supervision of the fiscal transactions, this was deemed to be acceptable. However, in order to strengthen the process, the check signing machine can be moved to the Director's office and the Director can then run the checks, subject to their review that the payees match what has been approved.

It should be noted that new vendors are reviewed by the supervisor and the supervisor does not have the ability to initiate a new vendor or a check request.

Bank reconciliations are done by one of the accountants and regardless of duties specifically assigned, there will be a degree of conflict; however a supervisor is reviewing the bank reconciliation. The review includes reading the bank statements and also includes reviewing any items that are uncleared for an extensive period of time. Additionally, on a monthly basis, the supervisor receives and reviews a summarization of bank accounts and banking activity from the bank.

Adjusting entries are written by the accountants and approved by the supervisor. The supervisor regularly reviews the general ledger as well.

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Auditee Comments

Comment 8

On a monthly basis, the general ledger activity is reviewed against the budget and for HUD funding sources, such as for CDBG-R, general ledger activity is reviewed against HUD's IDIS system by the supervisor. Any discrepancies are followed up on.

The accounting system, MIP, is a 'full bodied' double entry general ledger system whereby MIP does not allow transactions to simply be removed or altered once posted.

It should be noted that the internal controls in fiscal are analyzed annually by the external auditors and ACDA's audit reports regarding internal controls have been 'clean'. It has been discussed with the auditors over time that with a small fiscal department, maximum separation of duties has been implemented. Also, during the past, HUD monitoring visits have from time to time consisted of in-depth reviews of the accounting controls with no negative comment.

OIG Evaluation of Auditee Comments

- Comment 1** The City officials indicate that the primary contract was competitively bid and that they will provide documentation supporting the questioned costs associated with this project. These costs were not questioned due to the lack of competitive bidding but due to the lack of an independent cost and price analyses. An architect's letter attesting to the bid review and approval of the initial contractor's low bid does not satisfy the requirements of regulations at 24 CFR 85.36(f)(1), which require that grantees and subgrantees perform a cost or price analysis in connection with every procurement action, including contract modifications. City officials should provide the documentation supporting these costs to HUD as part of the audit resolution process.
- Comment 2** City officials indicate that procurement regulations were followed for this project and that there is documentation from the property owner explaining the reasons for choosing the next lowest bidder. City officials also state that the additional costs were under \$5,000 and that under the City of Albany's procurement policy could be paid at the discretion of the department head. However, the City's procurement policy in place at the time of the audit states that when soliciting quotes for public works projects/contracts, for transactions between \$1,001 through \$9,999 written quotes from at least three separate vendors (if available) will be solicited. Also, the additional \$4,950 of costs incurred for tree removal and removal of tree stumps and rocks are also considered unsupported because the city did not document that an independent cost and price analysis was performed, and because the additional work paid for was not included in the scope of services outlined in the construction and demolition agreement. Therefore, all the costs still remain questioned pending an eligibility determination by HUD.
- Comment 3** City officials state that an MOU was entered with all parties involved in this project and that ACDA did not request that the AHA use a particular minority contractor as this was already planned out by the time CDBG-R funds were introduced. City officials indicate that as long as the prime contract was competitively procured the secondary contracts are not subject to competitive procurement. However, during the audit AHA officials had stated that the ACDA had requested that AHA utilize a specific Minority Owned Business for this ARRA funded project. Documents reviewed indicate that an earlier MOU was executed in which Omni Housing was listed as developer and AOW Construction as the general contractor. C.L Construction (Concrete Links) was listed as the subcontractor. Subsequently, the project was changed to a different address whereby Concrete Links would contract directly with Omni. According to the AHA, Omni was co-developer with AHA on South End development and Concrete Links was not initially a part of the South End effort. Under the ARRA funding, the City was required to ensure that costs were procured under the regulations at 24 CFR Part 85. The fact that AHA may have properly procured Omni Development services is not relevant to the procurement violations regarding the ARRA funding. HUD will have to review the documentation the

City officials indicated will be provided as a part of audit resolution to make an eligibility determination as to the questioned costs.

Comment 4 City officials state that construction on this building has been completed and a temporary certificate of occupancy has been issued. Also, the AHA expects that a final certificate of occupancy will be issued within the week. The City officials also state that all documents supporting eligible beneficiaries will be provided to the HUD Buffalo Office in order to support that ACDA did meet its National Objective for this project.

However, at the exit conference on November 14, 2012, City officials acknowledged that a final certificate of occupancy has still not been issued even though the deadline for the American Recovery and Reinvestment Act of 2009 (CDBG-R) was September 30, 2012. The national objective should have been achieved by the time the CDBG-R funds had been fully expended. Relying on other funding sources to complete an activity funded in part with CDBG-R resources, increases the risk that a national objective may not be attained. HUD will have to review documentation that the City officials indicated will be provided as part of the audit resolution process to make a determination as to the eligibility of the costs.

Comment 5 City officials indicate ACDA will work closely with HUD to correct the information in the reporting system so that goals are met and the many jobs created for the citizens of the Albany by CDBG-R funds are officially recorded. City officials indicated that documentation supporting the jobs created would be provided to HUD. The documents regarding the job creation were not properly documented and accounted for by the ACDA. Therefore, the ACDA should work with the HUD Buffalo Office during the audit resolution to resolve the issues related to documenting the jobs created.

Comment 6 City officials state that Albany Housing Authority has provided ACDA with documentation that all materials purchased with CDBG-R funds were manufactured and purchased in America. These documents are available for review and will be offered to the HUD Buffalo Office in order to support the questioned costs associated with this project. We agree that the City officials should provide the noted documentation to HUD for their consideration as part of the audit resolution process.

Comment 7 City officials state that the Department of General Services has provided ACDA with detailed costs related to the CDBG-R grant funds for Activity 3650 and that the documents are available for review and will be offered to HUD to support the questioned costs associated with this project. We agree that the City officials should provide the noted documentation to HUD for their consideration as part of the audit resolution process.

Comment 8 City officials state that the fiscal department consists of two accountants who handle the day to day accounting tasks. As such, there is limited ability to segregate duties. The duties have been assigned to be segregated as much as possible within those constraints whereby the same person is not doing the draws and disbursements, and the same person receiving cash is not the same as the person recording deposits, etc. Moreover, the comments detail several processes followed relating to fiscal matters and note that the internal controls in fiscal are analyzed annually by the external auditors and ACDA's audit reports regarding internal controls have been 'clean'. It has been discussed with the auditors over time that with a small fiscal department, maximum separation of duties has been implemented. Also, during the past, HUD monitoring visits have from time to time consisted of in-depth reviews of the accounting controls with no negative comment. However, our audit report properly discloses weaknesses noted relating to internal controls including controls over segregation of duties. Therefore, as part of the audit resolution process, City officials should work with HUD to resolve all control deficiencies, including any improvements that may be available to better address segregation of duties issues.