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MEMORANDUM NO.
2010-CH-1801

January 12, 2010

MEMORANDUM FOR: Jeanette Harris, Director of Community Planning and Development,
5FD


FROM: Heath Wolfe, Regional Inspector General for Audit, 5AGA

SUBJECT: Wayne County, MI, Needs To Improve Its Capacity to Effectively and Efficiently
Administer Its Neighborhood Stabilization Program

INTRODUCTION

We reviewed Wayne County's (County) Neighborhood Stabilization Program (Program). The review was part of the activities in our fiscal year 2009 annual audit plan. We selected the County based upon a request from the U.S. Department of Housing and Urban Development's (HUD) Detroit Office of Community Planning and Development. Our objective was to determine whether the County had the capacity to effectively and efficiently administer its Neighborhood Stabilization Program.

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 review.

BACKGROUND

The Program. Authorized under Title III of the Housing and Economic Recovery Act (Act), as amended, the Neighborhood Stabilization Program provides grants to every State and certain local communities to purchase foreclosed or abandoned homes and to rehabilitate, resell, or redevelop these homes to stabilize neighborhoods and stem the decline in value of neighboring homes. HUD allocated more than \$3.9 billion in Neighborhood Stabilization Program funds to grantees.

The County. Organized under the laws of the State of Michigan, the County is governed by the county executive, elected to a 4-year term, and a 15-member board of commissioners (board), including a board chair, elected to 2-year terms. The County's Economic Development Growth Engine administers the County's Neighborhood Stabilization Program. The Economic

Development Growth Engine's overall mission is to provide financial, technical, and consultant services to the County's residents, businesses, and neighborhoods so they can thrive in a globally competitive economy and live comfortably in their communities. The County's records are located at 600 Randolph, Detroit, MI.

HUD allocated more than \$25.9 million in Neighborhood Stabilization Program funds to the County based upon the funding formula developed by HUD pursuant to the Act. On March 19, 2009, HUD entered into a grant agreement with the County for the full amount allocated. The County's revised Neighborhood Stabilization Program budget included the following:

- Nearly \$2.6 million to establish financing mechanisms for the purchase and redevelopment of foreclosed-upon homes and residential properties;
- Nearly \$10.4 million for the purchase and rehabilitation of abandoned or foreclosed-upon homes or residential properties to sell, rent, or redevelop the homes or properties;
- Nearly \$5.2 million for establishing land banks for foreclosed-upon homes or residential properties;
- Nearly \$5.2 million for the demolition of blighted structures; and
- Nearly \$2.6 million for planning and administration costs.

The County entered into a subrecipient agreement with the Wayne County Land Bank Corporation (Corporation) on October 1, 2009, for nearly \$6.4 million in Neighborhood Stabilization Program funds to assist the County in administering funds for establishing land banks for foreclosed homes or residential properties and procuring project management services for the County's Neighborhood Stabilization Program. The nearly \$6.4 million included \$1.2 million in planning and administration costs for the project management services.

Congress amended the Neighborhood Stabilization Program and increased its funding as part of the American Recovery and Reinvestment Act of 2009 (Recovery Act). As part of a consortium, the Corporation which is controlled by the County, submitted an application to HUD, dated July 13, 2009, that totaled \$290 million in additional Neighborhood Stabilization Program funds under the Recovery Act. The application is under review by HUD.

HUD's Detroit Office of Community Planning and Development conducted three monitoring reviews of the County's Community Development Block Grant (Block Grant), HOME Investment Partnerships (HOME), and/or Emergency Shelter Grant programs from June 2007 through August 2009. HUD did not identify any findings or concerns during its June 2007 monitoring review. However, it identified the following finding during its May 2008 monitoring review that was still open as of October 26, 2009: the County failed to ensure that the City of Highland Park, a subunit of the County, complied with HUD's regulations for full and open competition regarding the procurement of Block Grant-funded library rehabilitation services.

HUD identified the following findings and concerns during its August 2009 monitoring review and analysis through October 26, 2009:

- The County failed to disburse more than \$43,000 of more than \$243,000 in Emergency Shelter Grant funds before HUD's disbursement deadline as of September 13, 2009;
- HUD's records indicated that the County failed to commit more than \$2.1 million in HOME program funds by HUD's 24-month commitment deadline and disburse more than \$1.3 million in HOME program funds by HUD's 5-year disbursement deadline as of September 30, 2009;
- The County was in jeopardy of having more than \$10.3 million in HOME program funds recaptured;
- The County did not enter completion information into HUD's Integrated Disbursement and Information System within 120 days of the final drawdown for HOME-funded projects; and
- The County had not made draws of HOME program funds for 365 or more days for nine activities.

HUD's October 26, 2009, monitoring review letter also stated that if HUD must recapture any of the HOME program funds, it would reflect that the County lacked capacity to administer its HOME program in a timely manner. Further, the County's lack of capacity to administer its HOME and Emergency Shelter Grant programs would raise concerns regarding the County's capacity to administer its Neighborhood Stabilization Program funds and Neighborhood Stabilization Program, Block Grant, and Homelessness Prevention and Rapid Re-Housing Program funds under the Recovery Act.

On December 9, 2009, HUD's Detroit Office of Community Planning and Development provided a supplemental monitoring review letter, dated November 9, 2009, that revised its October 26, 2009, monitoring review letter regarding the County's commitment and disbursement of HOME program funds. The supplemental monitoring review letter stated that the County met HUD's 24-month commitment deadline and 5-year disbursement deadline as of September 30, 2009. Therefore, the County did not fail to commit more than \$2.1 million in HOME program funds by HUD's 24-month commitment deadline and disburse more than \$1.3 million HOME program funds by HUD's 5-year disbursement deadline as of September 30, 2009. Further, only HOME program funding authorized in the County's program year 2003 was in jeopardy of being recaptured and the County met HUD's commitment and obligation requirements for program year 2003 as of September 30, 2009. Therefore, the County was not in jeopardy of having more than \$10.3 million in HOME program funds recaptured as of September 30, 2009.

METHODOLOGY AND SCOPE

To accomplish our objective, we reviewed

- Applicable laws; the Federal Register, dated October 6, 2008, May 4, 2009, and June 19, 2009; HUD's regulations at 24 CFR (Code of Federal Regulations) Parts 85 and 570; HUD's Neighborhood Stabilization Program grant agreement with the County; and HUD's Detroit Office of Community Planning and Development's monitoring reports for the County's HOME and Block Grant programs from 2007 through 2009.
- The County's 2008 action plan substantial amendment for the Neighborhood Stabilization Program, policies and procedures, staffing plans and allocations, budgets, job descriptions, organizational charts, subrecipient and developer applications, and procurement files.

We also interviewed the County's employees and HUD's staff.

We performed our on-site review work from September through October 2009 at the County's office located at 600 Randolph, Detroit, MI. The review covered the period October 2007 through August 2009 and was expanded as determined necessary.

RESULTS OF REVIEW

1. The County Needs to Improve Its Capacity to Effectively and Efficiently Administer Its Neighborhood Stabilization Program

The Federal Register, dated October 6, 2008, stated that HUD encouraged each local jurisdiction receiving an allocation of Neighborhood Stabilization Program funds to carefully consider its administrative capacity to use those funds within the statutory deadline versus the capacity of a State administrator. Further, HUD expected that after such consideration, some local jurisdictions would choose to apply for less than the full amount of the funds allocated to them.

Procurement

The County did not ensure that the Corporation fully complied with HUD's regulations for full and open competition regarding the procurement of project management services for the County's Neighborhood Stabilization Program. The Federal Register, dated October 6, 2008, stated that HUD's regulations at 24 CFR Part 570 were applicable to the Neighborhood Stabilization Program. HUD's regulations at 24 CFR 570.502(a) state that recipients and subrecipients that are governmental entities shall comply with 24 CFR 85.36. HUD's regulations at 24 CFR 85.36(c)(1) state that all procurement transactions will be conducted in a manner providing full and open competition consistent with HUD's regulations at 24 CFR 85.36. Any arbitrary action in the procurement process is considered to be restrictive of competition. Section 85.36(d)(3)(iv) states that awards through competitive proposals will be made to the responsible firm with the proposal that is most advantageous to the program, with price and other factors considered. Section 85.36(f)(1) states that grantees and subgrantees must perform a cost or price analysis in connection with every procurement action. The method and degree of analysis are dependent on the facts surrounding the particular procurement situation. However, as a starting point, grantees must make independent estimates before receiving bids or proposals.

On February 2, 2009, the Corporation published a request for qualifications to obtain a list of qualified vendors from which to issue requests for proposals to obtain management services for the County's Neighborhood Stabilization Program. The Corporation received responses to the request for qualifications from 24 organizations. On August 3, 2009, the Corporation issued a request for proposals to the 24 organizations to select a qualified respondent to provide management services for the County's Neighborhood Stabilization Program. The request stated that the contract for the services would be for 3 years and would not exceed \$1.2 million. It did not require the organizations to include in their proposals a price for providing the services. The Corporation received proposals from 10 organizations. It reviewed the proposals to determine whether they complied with the instructions and met the minimum qualifications of the request. It determined that only 3 of the 10 proposals were responsive to the request. It provided the three proposals to a committee selected by its executive director to evaluate and score the proposals based upon the criteria contained in the request. The committee rated Community Improvement Group as the most responsible organization with a proposal that was most advantageous to the County's Neighborhood Stabilization Program. On October 16, 2009, the Corporation entered into a written agreement with Community Improvement Group to provide management services for the County's Neighborhood Stabilization Program for \$1.2 million over 3 years.

Contrary to HUD's requirements, the Corporation did not sufficiently consider price when selecting an organization to provide management services for the County's Neighborhood Stabilization Program. The Corporation's senior executive project manager said that the County wanted to focus on procuring the most qualified organization that could provide the best project management services for its Neighborhood Stabilization Program. After estimating the administrative costs necessary to administer its Neighborhood Stabilization Program for 4 years, the County identified \$1.2 million in Neighborhood Stabilization Program funds available to obtain management services for its Neighborhood Stabilization Program. The County's assistant corporation counsel stated that the County also considered the number of developers, subrecipients, and projects the organization would have to manage in addition to the scope of services it would be responsible for in providing management services for the County's Neighborhood Stabilization Program. However, the County could not provide a formal analysis to support that the \$1.2 million was reasonable for the management services to be provided.

Policies, Procedures, and Controls

As of December 16, 2009, the County had not established sufficient policies and procedures for its Neighborhood Stabilization Program. On October 13, 2009, it provided its draft Neighborhood Stabilization Program policies and procedures manual (draft manual). However, the draft manual was incomplete. It lacked a section covering policies and procedures for monitoring, including management's monitoring, to ensure that funds were used appropriately.

In addition, the County did not amend the draft manual to address revisions regarding land banks and appraisals contained in the Federal Register dated June 19, 2009. Section 1 of the draft manual stated that land banks would purchase properties that have been abandoned or foreclosed upon. However, the Federal Register, dated June 19, 2009, stated that land banks can only purchase homes and residential properties that have been foreclosed upon. Section 1 of the draft manual also stated that if the anticipated value of the acquisition of property was less than

\$25,000, the value of the property could be established based on a review of available data by a person the grantee determined was qualified to make the valuation. However, the Federal Register, dated June 19, 2009, stated that if a grantee determines that the anticipated value of the proposed acquisition of property is estimated at \$25,000 or less and the acquisition is voluntary, the current market appraised value of the property may be established by a valuation of the property based on a review of available data by a person qualified to make the valuation. Section 1 of the draft manual did not include that the acquisition must be voluntary.

On September 23, 2009, the Corporation's senior executive project manager said that the County's draft manual had not been completed since the County's first priority was the commitment of Neighborhood Stabilization Program funds for eligible projects due to the reduced amount of time that grantees have to commit the funds. Further, the County initially planned for the management services provider to develop its policies and procedures for the Neighborhood Stabilization Program. However, due to the delay in contracting with the management services provider, the County started developing the draft manual on September 22, 2009. On October 13, 2009, the senior executive project manager stated that the County's draft manual would not be finalized until Community Improvement Group reviewed the draft manual. She expected the draft manual to be finalized by November 1, 2009. However, the County had not provided its final Neighborhood Stabilization Program policies and procedures manual (manual) as of November 9, 2009. Further, on November 13, 2009, the senior executive project manager said that the County's draft manual was not clear regarding whether appraisals for property valued under \$25,000 were for the voluntary acquisition of property and that the County would revise the final Neighborhood Stabilization Program policies and procedures manual to comply with HUD's requirements.

On December 16, 2009, the County provided its manual. The manual included a section covering policies and procedures for monitoring. However, the manual did not contain management's monitoring procedures to ensure that funds were used appropriately. Further, it was not amended to address the revisions regarding land banks and appraisals.

Staffing

Through the Federal Register, dated October 6, 2008, HUD notified the County that it had been allocated more than \$25.9 million in Neighborhood Stabilization Program funds. The County submitted its 2008 action plan substantial amendment to HUD for the Neighborhood Stabilization Program on November 24, 2008. The County's revised Neighborhood Stabilization Program budget included nearly \$2.6 million for planning and administrative costs.

The County's board-approved detailed fiscal year 2010 budget for planning and administrative costs totaled \$1 million in Neighborhood Stabilization Program funds and more than \$9,000 in general funds. The board-approved detailed fiscal year 2010 budget included

- More than \$474,000 in salaries and benefits,
- Nearly \$203,000 for professional services,
- Nearly \$194,000 in miscellaneous operating expenses,
- More than \$103,000 for support services,
- \$13,000 for furniture and equipment,

- \$8,000 for travel,
- \$5,000 for advertising,
- \$3,000 for equipment repair and maintenance,
- \$2,000 for supplies,
- \$2,000 for memberships and subscriptions,
- \$1,300 for postage, and
- \$200 for communication services.

On September 22, 2009, the County provided a revised detailed fiscal year 2010 budget for planning and administrative costs that totaled more than \$905,000. The revised detailed fiscal year 2010 budget included more than \$462,000 in salaries and benefits for nine staff members to administer the operations of the Neighborhood Stabilization Program, \$400,000 for management services, and more than \$43,000 in surplus costs.

On October 9, 2009, the senior executive project manager stated that the County's management and budget staff had not prepared detailed budgets for the fiscal years after fiscal year 2010. The County's Economic Development Growth Engine's staff was developing estimated planning and administrative costs for future fiscal years. The County would not be able to prepare a detailed budget covering the next three fiscal years before the completion of our review.

However, on December 16, 2009, the County provided a detailed fiscal year 2010 through 2013 budget for planning and administrative costs that totaled more than \$2.6 million. The detailed fiscal year 2010 through 2013 budget included more than \$939,000 in salaries and benefits for eight staff members to administer the operations of the Neighborhood Stabilization Program, \$1.2 million for management services, more than \$414,000 for central services, and nearly \$56,000 for travel, supplies, and equipment. Although the board-approved detailed fiscal year 2010 budget included more than \$9,000 in general funds, the detailed fiscal year 2010 through 2013 budget did not contain whether general funds would be used for any of the planning and administrative costs. Further, the detailed fiscal year 2010 through 2013 budget did not contain whether Neighborhood Stabilization Program income would be used for any of the planning and administrative costs. The Federal Register, dated October 6, 2008, stated that up to 10 percent of a Neighborhood Stabilization Program grant may be used for general planning and administration activities. The County's revised Neighborhood Stabilization Program budget for planning and administrative costs was 10 percent of the County's total Neighborhood Stabilization Program grant. Therefore, the detailed fiscal year 2010 through 2013 budget for planning and administrative costs (\$2,609,096) exceeded 10 percent of the County's total Neighborhood Stabilization Program grant and the County's revised Neighborhood Stabilization Program budget for planning and administrative costs (\$2,590,915) by more than \$18,000.

2. HUD's Detroit Office of Community Planning and Development Did Not Include Sufficient Special Conditions in Its Neighborhood Stabilization Program Grant Agreement With the County

HUD's regulations at 24 CFR 85.12 state that a grantee may be considered high risk if it has a history of unsatisfactory performance or has not conformed to the terms and conditions of previous

awards. Special conditions and/or restrictions shall correspond to the high-risk condition and shall be included in the award.

On February 24, 2009, HUD's Director of Field Management provided guidance on Neighborhood Stabilization Program grant agreements to all of the directors of the Office of Community Planning and Development. The guidance addressed when a special condition must be included in the Neighborhood Stabilization Program grant agreement with the grantee. The guidance stated that if a grantee's Neighborhood Stabilization Program funds totaled at least three times its fiscal year 2008 Block Grant fund allocation or had unresolved monitoring findings or other serious actions, a special condition must be included in the Neighborhood Stabilization Program grant agreement with the grantee. The guidance also included the following standard language to be included in grant agreements:

Pursuant to 24 CFR 85.12(a)(3), a special condition applies to the Neighborhood Stabilization Program grant agreement due to the size of the Neighborhood Stabilization Program grant amount relative to the grantee's fiscal year 2008 Block Grant fund allocation. Within 60 days of the date HUD signed the grant agreement, the grantee must submit a management plan that describes how it has determined that it possesses adequate staff and other resources necessary to administer its Neighborhood Stabilization Program. If the grantee fails to submit the management plan within 60 days, HUD may thereafter withhold authority to incur additional obligations of Neighborhood Stabilization Program funds.

Pursuant to 24 CFR 85.12(a)(1), (2), (4), or (5), a special condition applies to the Neighborhood Stabilization Program grant agreement due to past performance in the Block Grant program. The Neighborhood Stabilization Program grantee shall submit documentation describing how past Block Grant program performance issues have been resolved or are now being resolved and explain how they will not impact the administration of the Neighborhood Stabilization Program. If the grantee fails to submit such documentation within 60 days from the date HUD signed the grant agreement, HUD may withhold the grantee's authority to incur additional obligations of Neighborhood Stabilization Program funds or take other actions authorized under 24 CFR 85.12(b).

The Assistant Director of Financial Management in HUD's Office of Block Grant Assistance stated that the special conditions referred to the Block Grant program since Neighborhood Stabilization Program funds were considered a special allocation of Block Grant funds. However, if a grantee had a history of unsatisfactory performance in another community planning and development program, such as the HOME program, and that unsatisfactory performance was applicable to the grantee's Neighborhood Stabilization Program, it would be appropriate to include special conditions in the grant agreement.

The County received more than three times in Neighborhood Stabilization Program funds than its 2008 Block Grant fund allocation. Therefore, HUD's Detroit Office of Community Planning and Development placed a special condition on the County's grant agreement requiring the County to submit a proposed management plan to HUD within 60 days of March 19, 2009, that described how it determined that it possessed adequate staff and other resources necessary to administer its Neighborhood Stabilization Program. The County submitted its management plan to HUD on July

24, 2009, more than 120 days after March 19, 2009. In addition, as of December 9, 2009, HUD was waiting on additional information from the County before it approved the management plan.

As previously stated, HUD identified the following finding during its May 2008 monitoring review that was still open as of October 26, 2009: the County failed to ensure that the City of Highland Park complied with HUD's regulations for full and open competition regarding the procurement of Block Grant-funded library rehabilitation services. The County's Economic Development Growth Engine also administers the Neighborhood Stabilization Program and Block Grant program. However, HUD's Detroit Office of Community Planning and Development did not include special conditions in its Neighborhood Stabilization Program grant agreement with the County regarding procurement. The Director of HUD's Detroit Office of Community Planning and Development said that she had been in contact with staff in HUD's Office of Block Grant Assistance and it was not the intention of HUD's Director of Field Management that multiple special conditions be placed on program grant agreements. Further, as previously stated, the County did not ensure that the Corporation fully complied with HUD's regulations for full and open competition regarding the procurement of project management services for the County's Neighborhood Stabilization Program. HUD's Director said that the County should redo the procurement of or use non-Federal funds to pay for the project management services and should submit its future procurements for services to her office for review and approval.

In addition, HUD identified the following findings and concerns during its August 2009 monitoring review and analysis:

- The County had failed to disburse more than \$43,000 of more than \$243,000 in Emergency Shelter Grant funds before HUD's disbursement deadline as of September 13, 2009;
- HUD's records indicated that the County had failed to commit more than \$2.1 million in HOME program funds by HUD's 24-month commitment deadline and disburse more than \$1.3 million in HOME program funds by HUD's 5-year disbursement deadline as of September 30, 2009;
- The County was in jeopardy of having more than \$10.3 million in HOME program funds recaptured;
- The County did not enter completion information into HUD's Integrated Disbursement and Information System within 120 days of the final drawdown for HOME-funded projects; and
- The County had not made draws of HOME program funds for 365 or more days for nine activities.

HUD's October 26, 2009, monitoring review letter also stated that if HUD must recapture any of the HOME program funds, it would reflect that the County lacked capacity to administer its HOME program in a timely manner. Further, the County's lack of capacity to administer its HOME and Emergency Shelter Grant programs would raise concerns regarding its capacity to administer its Neighborhood Stabilization Program funds and Neighborhood Stabilization Program, Block Grant, and Homelessness Prevention and Rapid Re-Housing Program funds under the Recovery Act.

Further, the County's Economic Development Growth Engine administers the Neighborhood Stabilization Program, Block Grant, and HOME program.

On December 9, 2009, HUD's Detroit Office of Community Planning and Development provided a supplemental monitoring review letter, dated November 9, 2009, that revised its October 26, 2009, monitoring review letter regarding the County's commitment and disbursement of HOME program funds. The supplemental monitoring review letter stated that the County met HUD's 24-month commitment deadline and 5-year disbursement deadline as of September 30, 2009. Therefore, the County did not fail to commit more than \$2.1 million in HOME program funds by HUD's 24-month commitment deadline and disburse more than \$1.3 million HOME program funds by HUD's 5-year disbursement deadline as of September 30, 2009. Further, only HOME program funding authorized in the County's program year 2003 was in jeopardy of being recaptured and the County met HUD's commitment and obligation requirements for program year 2003 as of September 30, 2009. Therefore, the County was not in jeopardy of having more than \$10.3 million in HOME program funds recaptured as of September 30, 2009.

On December 29, 2009, HUD's Director said that although the County met HUD's 24-month commitment deadline and 5-year disbursement deadline as of September 30, 2009, for the HOME program, she was still concerned that the County did not have the capacity to meet its commitment and disbursement requirements for its Neighborhood Stabilization Program. At a minimum, the County's management services provider should assist the County in its commitment and disbursement of Neighborhood Stabilization Program funds. Further, on January 11, 2009, her office will provide technical assistance to aid the County in obligating and disbursing HUD funds timely. Once her office has provided the technical assistance and has a better understanding of where the County is at in improving its procedures and controls over its obligation and disbursement of HUD funds, her office may recommend that the County contract with an outside organization to assist it in increasing its capacity and ensuring that it obligates and disburses HUD funds in a timely manner.

RECOMMENDATIONS

We recommend that the Director of HUD's Detroit Office of Community Planning and Development require the County to

- 1A. Perform a formal cost or price analysis to determine whether the \$1.2 million was reasonable for the project management services to be provided. The County should also submit the analysis to HUD's Detroit Office of Community Planning and Development for review and approval. If the County does not perform a formal cost or price analysis, it should not use HUD funds to pay for the management services. If the County performs a formal analysis and determines that a reasonable cost for the management services was less than \$1.2 million, it should amend its written agreement with Community Improvement Group for the amount determined to be reasonable. If Community Improvement Group will not agree to amend the agreement, the County should void the agreement and reprocure the management services in accordance with HUD's regulations.

- 1B. Implement adequate policies, procedures, and controls to ensure that Neighborhood Stabilization Program funds are used effectively and efficiently and in accordance with applicable requirements.
- 1C. Revise its detailed budget for each year of its Neighborhood Stabilization Program so that it does not exceed 10 percent of the County's total Neighborhood Stabilization Program grant and to ensure that it has sufficient capacity to effectively and efficiently administer its Neighborhood Stabilization Program.
- 1D. Revise its proposed management plan for its Neighborhood Stabilization Program to include that it will submit its future procurements for services to HUD's Detroit Office of Community Planning and Development for review and approval before entering into written agreements. The management plan should also include those actions that HUD plans to require the County to take to assist it in ensuring that it obligates and disburses Neighborhood Stabilization Program funds in a timely manner.

AUDITEE COMMENTS AND OIG's EVALUATION

Ref to OIG Evaluation

Auditee Comments



Robert A. Ficano
County Executive

Turkia Awada Mullin
Chief Development Officer

December 16, 2009

Brent Bowen
Asst. Regional Inspector General for Audit
U.S. Department of Housing and Urban Development
Office of Inspector General
77 W. Jackson Blvd., Ste. 2646
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RE: Wayne County's Response to HUD's Office of Inspector General's Audit Memorandum

Dear Mr. Bowen:

We are in receipt of the Office of Inspector General's (OIG) "Discussion Draft Audit Memorandum on OIG's Review of Wayne County, MI's Neighborhood Stabilization Program-Capacity Review" ("Review") dated December 3, 2009.

Before I respond to your review and findings, I would like to thank you for assisting Wayne County (County) to improve its HUD funded community development programs, in particular Neighborhood Stabilization Program (NSP). Your review and recommendations will allow the County to improve its current operations and continue to provide valuable services to its deserving residents. Even though the County does not entirely agree with your review, some of your recommendations are helpful.

Nevertheless, Wayne County does have some "serious" concerns pertaining to various statements and/or issues raised in your Review. For purposes of simplicity, I will discuss each of the County's concerns under the respective headings which correspond to your Review.

BACKGROUND

A. October 29, 2009 Monitoring Review Letter:

The OIG states in its Review that HUD's Detroit Office of Community Planning and Development (CPD) issued a monitoring review letter to the County on October 26, 2009 identifying problems related to the County's administration of the HOME and Emergency Shelter Grant Program (ESG). Wayne County did not receive the October 26th monitoring review letter. Wayne County was provided a copy of the monitoring review letter for the first time via email from HUD-OIG Auditor, Tom McManigal, on November 30, 2009.

Ref to OIG Evaluation

Auditee Comments

Comment 1

Once the County’s staff became aware of the letter, they contacted the Detroit CPD office to inquire about it. The staff was advised by the Director, Jeanette Harris, that a letter was sent, but CPD will contact OIG since the letter was being updated. *See Attachment A*. Furthermore, during a telephone conversation with Mr. McManigal on December 3, 2009, Wayne County Assistant Corporation Counsel, Muddasar Tawakkul, was informed that the “letter may have been lost in the federal internal postal process” and that there is was no guarantee that the letter was sent out to the County.

Comment 2

Based on the email from HUD and conversations with Mr. McManigal, it’s safe to assume that Wayne County was never “officially” issued a monitoring review letter. Therefore, Wayne County should not be responsible for the October 29 2009 findings since HUD regulations, specifically 24 CFR 570.913 and 92.551, require written notification of corrective actions, which was never provided.

Comments 2 and 3

Nevertheless, CPD did send a letter to the County on November 9, 2009, and an updated “unofficial” letter via email on December 7, 2009. *See Attachment B*. Both documents removed and clarified many of the findings in the “October 29th” letter:

Comment 3

1. The updated letters authored by local CPD office made clear that Wayne County successfully obligated \$2.1 million dollars of HOME funds and disbursed more than \$1.3 million dollars of HOME funds by the September 30, 2009 deadline. On October 9, 2009, Detroit CPD staff (i.e. Steve Spencer, Portia McGoy, and Gerald Henry) visited Wayne County offices to review the HOME obligations and disbursements and determine whether the documentation was in order. After the review, Detroit CPD staff informed the County that the HOME commitments were met and in order.

Comment 3

2. The updated letters also eliminated the finding that \$10.3 million dollars of HOME funds would be recaptured by HUD. In addition, the OIG’s Review found that on November 13, 2009, HUD’s Director, Jeanette Harris, advised OIG that “ it was unlikely that the County would lose Emergency Shelter Grant or HOME program funds.”

Comment 2

The County has taken corrective measures to rectify many of the findings related to ESG, entering of information into IDIS and drawdowns referenced in the “October 29th” letter. *See Attachment B*. Therefore, the updated CPD letters corrected all of the findings contained in the “October 29th” letter.

B. Prior Monitoring Reviews:

Comment 4

Prior to HUD conducting its monitoring review of the County’s Community Development Block Grant (CDBG) in May 2008, Wayne County had proactively conducted a review of Highland Park’s administration of the CDBG program and issued its findings on February 11, 2008, three months before HUD’s review. *See Attachment C*. Similar to HUD’s findings, Wayne County also

Ref to OIG Evaluation

Auditee Comments

Comment 4

determined that Highland Park failed to comply with HUD’s regulations for full and open competition regarding the procurement of CDBG library rehabilitation services.

Comment 4

After receiving Wayne County’s findings, Highland Park addressed those findings and took corrective action in letter dated March 21, 2008. *See Attachment C.* Wayne County responded to the March 21st letter with a correspondence on June 23, 2008 clearing some of the initial findings and reiterating concerns initially raised. In response to the County’s findings, Highland Park hired a third-party manager to assist it with administering the CDBG program and implementing the County’s recommendations. *See Attachment C.* Therefore, Wayne County’s proactive review demonstrates the County’s commitment to ensuring that HUD funded program are administered properly and in accordance with regulations.

Comment 2

In addition, the finding contained in the updated December 7, 2009 letter demonstrate that all *except* one of the findings (i.e. “Finding 1”) have been resolved. *See Attachment B.* However, on August 25, 2009, Highland Park’s third-party manager, Wade Trim, provided a document to a member of CPD staff, Gerald Henry, during his subsequent site visit. The document addressed and resolved “Finding 1.” *See Attachment D.* Thus, all of the findings contained in the “October 26th” and the December 7th letters were resolved prior to October 26, 2009.

RESULTS OF REVIEW

A. Procurement:

The OIG states in its Review:

The County did not ensure that the Corporation fully complied with HUD’s regulations for full and open competition regarding project management services for the County’s Neighborhood Stabilization Program... Contrary to HUD’s Regulations, the Corporation did not sufficiently consider price when selecting an organization to provide management services....”

Wayne County disputes this assertion since the County through the Wayne County Land Bank Corporation (WCLB) substantially complied with the requirements of 24 CFR 85.36 by properly publishing notice of the request for qualification and proposal and competitively selecting the program manager. The only issue is the difference of interpretation regarding 24 CFR 85.36(f)(1) and the use of price as an evaluation criterion.

Comment 5

It is the County’s position that subsection (f)(1) does not require price to be considered in evaluating every proposal. Instead, price can be chosen (but does not have to be chosen) as one of many factors in evaluating proposals. The County’s argument is based on the plain reading of the regulation and the use of the phrase “with price and other factors considered” in the subsection, which implies that price is not a necessary evaluation criterion. The intent of

Ref to OIG Evaluation

Auditee Comments

Comment 5

subsection (f)(1) is to require subgrantees to evaluate and award contracts based on objective criteria.

Comment 5

The Land Bank did not evaluate price since it was interested in the firm’s qualification and the implementation strategy of managing NSP. Furthermore, WCLB wanted to prevent firms from underbidding and then requesting contract modifications to increase the contract amount to properly provide the scope of services. The underbidding would have resulted in unnecessary delays. Thus, the request for proposal had a set-contract amount to put firms on notice that the contract amount would not increase and that they were expected to provide all the services at the set contract amount.

Comment 5

In the alternative, it is a fair reading of the regulations to conclude that price was in fact considered as an evaluation factor. The procurement in this matter did set a price of \$1.2 million. The County’s goal was to acquire the greatest quantity of services possible for the grant funds being provided since the amount of those funds was \$1.2 million, which is the amount included in the request. Thus, the County did not fail to consider cost in reviewing the proposals.

Comment 6

Prior to issuance of the request for proposal, the County conducted an informal cost/price analysis pursuant to subsection 85.36(f)(1) and had established that \$1.2 million dollars was adequate for managing NSP for 3 years. The cost/price analysis took into account the following factors:

- a. The County’s budget for the past two years in administering the CDBG and HOME programs and the number of staff for each program and their salaries and benefits.
- b. The current budget to administer CDBG, HOME, and NSP, which included additional funds from previous years due voluntary resignation of numerous Division of Community Development staff. The current budget was used to take into account staff salaries, benefits and other administrative costs for 3 years.
- c. The extent of the scope of services required to effectively manage NSP and the number of subrecipients and projects that would be managed.

Comment 6

Based upon the aforementioned factors it was determined that \$400,000 was available each year for the program manager to manage NSP on behalf of Wayne County.

Comment 6

It is important to note that the level of services that the program manager is expected to provide is very extensive and that the costs associated to the County to hire additional staff and/or replace staff to provide similar services would be high. *See Attachment E*. The County would have to take into account salaries and fringe benefits in replacing or hiring staff which would exceed the amount budgeted for NSP administrative costs. The sole purpose of the program manager is to enhance service delivery to subrecipients and developers and simultaneously curtail costs and meet the NSP timelines.

Ref to OIG Evaluation

Auditee Comments

Comment 6

The County also takes exception to the OIG’s determination that a “formal” price/cost analysis had to be conducted. Subsection 85.36(f)(1) does not require a formal price analysis:

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

Comment 6

The plain language of subsection (f)(1) only requires that a cost/price analysis should be conducted prior to procurement. The subsection does not specify whether the analysis should be formal or informal or establish the required information to be included in the analysis. Therefore, based on the information presented in this Response and previously provided to OIG, Wayne County has met the requirements of subsection (f)(1) and adequately performed a price/cost analysis prior to procuring a program manager for NSP.

Comment 5

In conclusion, the OIG states “ any arbitrary action in the procurement process is considered to be restrictive of competition.” Even though the OIG is citing subsection 85.36(c)(1) as a basis for its conclusion, the County’s actions are not “arbitrary” since they are based on an examination of relevant data and on a rational basis. *See: FCC v Fox Television Network, 129 S.Ct. 1800 (2009)*. As previously discussed, the County had a rational basis and reason to not utilize “price” as an evaluation criterion. Furthermore, contract amount has been justified. Thus, the County’s actions are not “arbitrary.”

B. Policies, Procedures and Controls:

The County concurs that as of October 14, 2009, there were not sufficient policies and procedures in place for NSP. The County’s first priority was to reorganize the department due to staff losses primarily attributed to attrition, layoffs and voluntary resignations. The second main concern was the commitment of NSP funds to meet the 18-month NSP deadline and the selection of a program manager.

Comment 7

The OIG’s evaluation expedited the drafting of policies and procedures, which were proposed and submitted to review to the OIG as stated in the Review. The OIG was satisfied with majority of the policies and procedures proposed except for the issues raised in the Review. Nevertheless, as of the date of this Response, the County has adopted policies and procedures which incorporated OIG’s recommendations. *See Attachment F.*

C. Staffing:

Comment 8

Wayne County has adopted the OIG’s recommendations and amended its NSP Management Plan and Community Development Task Outline. *See Attachment G.* Both documents demonstrate

Ref to OIG Evaluation

Auditee Comments

Comment 8

that there is sufficient staff to perform each administrative duty as required by NSP. Furthermore, The OIG’s Review does not demonstrate that NSP is being administered incorrectly or that a deficiency warrants the hiring of additional staff for NSP. Therefore, the current staff is sufficient to administer NSP.

Comment 9

Wayne County has issues with the OIG’s assertion that it was required to prepare a detailed budget beyond fiscal year 2010. Current NSP guidelines do not require a detailed budget to be prepared for the life of the NSP program. The guidelines only require that a budget should include the “amount of funds budgeted for the activity” and incorporated within the County’s Substantial Amendment. The County adhered to NSP guidelines by incorporating the budget information into its Substantial Amendment.

Comment 10

In addition, the County adopts yearly fiscal budgets beginning on October 1 and extending through September 30. Pursuant to the Wayne County Charter, a budget is not adopted until it is approved by the legislative body (i.e. Wayne County Commission). A budget beyond fiscal year 2010 would have to take into account various economic factors and administrative costs that may change for year to year. Therefore, it would be very difficult for the County to prepare and propose a detailed budget beyond fiscal year 2010. Moreover, the County is mandated by law to have a balance budget and can ensure that NSP will be properly budgeted beyond 2010.

Comment 11

Nevertheless, the County has submitted a “line-item” budget to OIG that demonstrates the cost associated with administering NSP during the life of NSP and the budget is within the allowable administrative costs under NSP. *See Attachment H.* Therefore, satisfying NSP regulations and Charter requirements.

D. HUD’s Detroit’s Office of Community Planning and Development (CPD) and Special Conditions:

Comment 2

Wayne County challenges OIG’s Review findings that CPD should place special restrictions on it for a “history of unsatisfactory performance or has not conformed to the terms and conditions of previous awards.” As previously discussed, the past findings by CPD in regards to CDBG, HOME or ESG have been timely resolved to HUD’s satisfaction. Moreover, based upon the foregoing analysis and as detailed by the attachments to this Response, Wayne County has demonstrated its commitment to effectively administer HUD funded community development programs. Therefore, the CPD was correct in not placing special conditions in the NSP grant agreement with the County.

In regards to the late submittal of the Management Plan, as previously stated, Wayne County was going through an extensive reorganization of staff for the administration of its various HUD-

funded programs. In the first six months of 2009, Wayne County lost 70% of its Division of Community Development staff due to retirements or voluntary resignations, and as a result, it was difficult to submit an accurate Management Plan. Once the Division was organized, the County submitted its Management Plan.

Ref to OIG Evaluation

Auditee Comments

It is important to note that during the reorganization, the County was in constant contact with CPD providing updates regarding the reorganization and the Management Plan. Furthermore, during the reorganization and prior to the submittal of the Management Plan, the County DID NOT obligate any NSP funds. Funds were not obligated until after the reorganization and submittal of the Plan.

RECOMMENDATIONS

Comment 6

1A. Formal Cost/Price Analysis- 24 CFR 85.36(f)(1) does not require a “formal” price/cost analysis prior to the procurement of HUD funded goods and services. Subsection only requires that an analysis be done prior to procurement. Therefore, Wayne County has satisfied the requirements of subsection (f)(1) as set forth in this Response. Furthermore, the cost/price analysis previously provided justifies the \$1.2 million dollar contract with the NSP program manager.

Comment 7

1B. Policies, Procedures and Controls- Wayne County concurs with this recommendation and has adopted adequate policies, procedures, and controls. *See Attachment F.*

Comments 9 and 11

1C. Develop and Implement a Detailed Budget- The current NSP guidelines do not require a detailed budget beyond fiscal year 2010. However, the County has submitted a line-item budget to OIG that demonstrates the costs associated with administering NSP during the life of NSP program and that those costs are within the allowable administrative costs under NSP. *See Attachment H.*

Comment 12

1D. Revised Proposed Management Plan- Wayne County has amended its Management Plan as recommended by the OIG. *See Attachment G.* In addition, the County will submit all future procurements for NSP services of \$100,000 or more to CPD for review prior to solicitation.

Thank you again for allowing Wayne County the time and opportunity to respond to the OIG’s Review and assisting the County to improve its HUD funded programs.

Sincerely,

Turkia Awada Mullin
Chief Development Officer

Enclosures

OIG's Evaluation of Auditee Comments

Comment 1 During the December 3, 2009, telephone conversation, we did not inform the County's assistant corporation counsel that HUD's October 26, 2009, monitoring review letter may have been lost in the Federal internal postal process and that there was no guarantee that HUD's Detroit Office of Community Planning and Development sent the monitoring review letter. We informed the assistant corporation counsel that on November 30, 2009, a community planning and development representative in HUD's Detroit Office of Community Planning and Development said that the letter was sent to the County on October 26, 2009.

Comment 2 On December 7, 2009, the Director of HUD's Detroit Office of Community Planning and Development resent its October 26, 2009, monitoring review letter to the County. On December 9, 2009, HUD's Detroit Office of Community Planning and Development provided the supplemental monitoring review letter, dated November 9, 2009. The supplemental monitoring review letter revised the issues in the monitoring review letter regarding the County's commitment and disbursement of HOME program funds and stated that the remaining issues in the monitoring review letter were unchanged and should be addressed through the prescribed monitoring response protocols. Therefore, HUD officially issued the monitoring review letter to the County, and it is responsible for the remaining findings and concerns contained in the monitoring review letter.

Comment 3 We revised this memorandum to state the following:

- On December 9, 2009, HUD's Detroit Office of Community Planning and Development provided a supplemental monitoring review letter, dated November 9, 2009, that revised its October 26, 2009, monitoring review letter regarding the County's commitment and disbursement of HOME program funds. The supplemental monitoring review letter stated that the County met HUD's 24-month commitment deadline and 5-year disbursement deadline as of September 30, 2009. Therefore, the County did not fail to commit more than \$2.1 million in HOME program funds by HUD's 24-month commitment deadline and disburse more than \$1.3 million in HOME program funds by HUD's 5-year disbursement deadline as of September 30, 2009. Further, only HOME program funding authorized in the County's program year 2003 was in jeopardy of being recaptured, and the County met HUD's commitment and obligation requirements for program year 2003 as of September 30, 2009. Therefore, the County was not in jeopardy of having more than \$10.3 million in HOME program funds recaptured as of September 30, 2009.

Comment 4 The County's February 11, 2008, monitoring review letter stated that the City of Highland Park lacked sufficient documentation to support the procurement of its contract with ADR Consultants. However, the monitoring review letter did not support that the concern involved the procurement of Block Grant-funded library rehabilitation services. Further, the County's corrective action was that the City

of Highland Park must procure and rebid future Block Grant-funded consulting and professional services contracts every 2 to 3 years according to 24 CFR 85.36.

Comment 5 HUD's regulations at 24 CFR 85.36(c)(1) state that all procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 24 CFR 85.36. Any arbitrary action in the procurement process is considered to be restrictive of competition. HUD's regulations at 24 CFR 85.36(d)(3)(iv) state that awards by competitive proposals will be made to the responsible firm with the proposal that is most advantageous to the program, with price and other factors considered. Section 85.36(d)(3)(v) states that the method in which price is not used as a selection factor can only be used in the procurement of architectural/engineering professional services. The Corporation procured the project management services for the County's Neighborhood Stabilization Program using competitive proposals. On August 3, 2009, the Corporation issued a request for proposals to 24 organizations to select a qualified respondent to provide management services for the County's Neighborhood Stabilization Program. The request stated that the contract for the services would be for 3 years and would not exceed \$1.2 million. It did not require the organizations to include in their proposals a price for providing the services. Further, the request did not state that the Corporation was trying to obtain the greatest quantity of management services for the \$1.2 million. The County did not ensure that the Corporation fully complied with HUD's regulations for full and open competition regarding the procurement of management services for the County's Neighborhood Stabilization Program.

Comment 6 The County could not provide documentation to support that the \$1.2 million was reasonable for the management services to be provided. Therefore, the County could not provide a formal analysis.

Comment 7 We revised this memorandum to state the following:

- As of December 16, 2009, the County had not established sufficient policies and procedures for its Neighborhood Stabilization Program.
- On December 16, 2009, the County provided its manual. The manual included a section covering policies and procedures for monitoring. However, the manual did not contain management's monitoring procedures to ensure that funds were used appropriately. Further, it was not amended to address the revisions regarding land banks and appraisals.

Comment 8 We removed the following from this memorandum:

- On October 8 and October 19, 2009, the County provided job descriptions for nine staff members and duty descriptions for eight staff members, respectively, that would administer its Neighborhood Stabilization Program. However, it did not provide job descriptions or duty descriptions for two staff

members that were included in the revised budget. On October, 23, 2009, the Corporation's senior executive program manager said that the job descriptions accurately reflected the staff members that would be involved in administering the County's Neighborhood Stabilization Program. Therefore, the revised budget and the duty descriptions did not accurately reflect the staff members that would administer the Neighborhood Stabilization Program.

Comment 9 We did not state that the County was required to prepare a detailed budget for its Neighborhood Stabilization Program beyond fiscal year 2010. The County budgeted at least 34.9 percent of its total budget for planning and administrative costs in fiscal year 2010. The County has 4 years in which to disburse its Neighborhood Stabilization Program funds. Since the County could not provide a detailed budget for the nearly \$2.6 million for planning and administrative costs, we had concerns as to whether it would have sufficient Neighborhood Stabilization Program funds for planning and administrative costs. Therefore, we recommended that the Director of HUD's Detroit Office of Community Planning and Development require the County to develop and implement a detailed budget for the each year of its Neighborhood Stabilization Program to ensure that it has sufficient capacity to effectively and efficiently administer its Neighborhood Stabilization Program.

Comment 10 Although the County is mandated by law to have a balanced budget, a balanced budget does not ensure that the County will have sufficient Neighborhood Stabilization Program funds for planning and administrative costs.

Comment 11 We removed the following from this memorandum:

- However, the County could not provide a detailed budget for the nearly \$2.6 million for planning and administrative costs.

We revised this memorandum to state the following:

- However, on December 16, 2009, the County provided a detailed fiscal year 2010 through 2013 budget for planning and administrative costs that totaled more than \$2.6 million. The detailed fiscal year 2010 through 2013 budget included more than \$939,000 in salaries and benefits for eight staff members to administer the operations of the Neighborhood Stabilization Program; \$1.2 million for management services; more than \$414,000 for central services; and nearly \$56,000 for travel, supplies, and equipment. Although the board-approved detailed fiscal year 2010 budget included more than \$9,000 in general funds, the detailed fiscal year 2010 through 2013 budget did not state whether general funds would be used for any of the planning and administrative costs. Further, the detailed fiscal year 2010 through 2013 budget did not state whether Neighborhood Stabilization Program income would be used for any of the planning and administrative costs. The Federal Register, dated October 6, 2008, stated that up to 10 percent of a

Neighborhood Stabilization Program grant may be used for general planning and administration activities. The County's revised Neighborhood Stabilization Program budget for planning and administrative costs was 10 percent of the County's total Neighborhood Stabilization Program grant. Therefore, the detailed fiscal year 2010 through 2013 budget for planning and administrative costs (\$2,609,096) exceeded 10 percent of the County's total Neighborhood Stabilization Program grant and the County's revised Neighborhood Stabilization Program budget for planning and administrative costs (\$2,590,915) by more than \$18,000.

We revised recommendation 1C of this memorandum to state that the Director of HUD's Detroit Office of Community Planning and Development should require the County to revise its detailed budget for each year of its Neighborhood Stabilization Program so that it does not exceed 10 percent of the County's total Neighborhood Stabilization Program grant and to ensure that it has sufficient capacity to effectively and efficiently administer its Neighborhood Stabilization Program.

Comment 12 The revised management plan did not include that the County would submit its future procurements for services to HUD's Detroit Office of Community Planning and Development for review and approval before entering into written agreements or those actions that HUD plans to require the County to take to assist it in ensuring that it obligates and disburses Neighborhood Stabilization Program funds in a timely manner.