



**The Buffalo, NY, Municipal Housing Authority
Public Housing Capital Fund Stimulus (Formula)
Recovery Act Program**



Issue Date: September 12, 2012

Audit Report Number: 2012-NY-1012

TO: Lisa Pugliese, Director, Office of Public Housing, Buffalo Field Office, 2PH

Edgar Moore

FROM: Edgar Moore, Regional Inspector General for Audit, New York, New Jersey Region,
2AGA

SUBJECT: The Buffalo Municipal Housing Authority Did Not Always Administer Its
Recovery Act Capital Fund Program in Accordance With HUD Requirements

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 Buffalo, NY, Municipal Housing Authority's Public Housing Capital Fund Stimulus (Formula) Recovery Act Funded 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.



Date of Issuance: September 12, 2012

The Buffalo, NY, Municipal Housing Authority Did Not Always Administer Its Recovery Act Capital Fund Program in Accordance With HUD Requirements

Highlights

Audit Report 2012-NY-1012

What We Audited and Why

We audited the Buffalo Municipal Housing Authority's Public Housing Capital Fund Stimulus (Formula) program funded under the Recovery and Reinvestment Act of 2009 based on an Office of Inspector General risk analysis and the amount of funding the Authority received. The objectives of the audit were to determine whether Authority officials (1) procured contracts in accordance with U.S. Department of Housing and Urban Development (HUD) regulations, and (2) obligated and expended capital funds in accordance with the Recovery Act and submitted mandated reports in a timely manner and with accurate information.

What We Recommend

We recommend that the Director of HUD's Buffalo Office of Public Housing instruct Authority officials to (1) provide documentation and/or justifications for more than \$9.7 million expended on costs that did not meet the procurement and obligation requirements of the Recovery Act, and reimburse the U.S. Treasury the amounts determined to be ineligible from non-Federal or other eligible funds, (2) reimburse the U.S. Treasury from non-Federal funds \$110,814 expended on ineligible costs pertaining to nondwelling equipment purchases for their central office cost center, and (3) provide documentation to justify the \$30,311 in unsupported costs requisitioned in excess of the Authority's needs.

What We Found

Authority officials did not always comply with the procurement requirements of the Recovery Act program and, therefore, did not properly obligate Recovery Act funds. Specifically, Authority officials did not ensure that the procurement of Recovery Act contracts was conducted in a manner that provided full and open competition. In addition, payments were made on other obligations that were executed after the Recovery Act obligation deadline.

Authority officials charged questionable expenditures to the Recovery Act Capital Fund grant. Specifically, they (1) expended Recovery Act funds on nondwelling equipment purchases that benefited their central office cost center, (2) requisitioned funding from HUD's Line of Credit Control System in excess of the amounts needed, (3) failed to expend funds in accordance with their Recovery Act Capital Fund annual statement, and (4) did not accurately report Recovery Act expenditure and job creation or retention information.

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BACKGROUND AND OBJECTIVES

The Buffalo Municipal Housing Authority was established on April 3, 1934, pursuant to a resolution of the Common Council of the City of Buffalo. The Authority's creation and establishment was later confirmed by an act of the New York State Legislature. The first board of commissioners consisted of five members who were appointed by the mayor of Buffalo, NY, on October 19, 1934. Since its establishment, the Authority has been recognized as a public corporation with its own independent status. It is governed by a board of seven members, five of whom are appointed by the mayor and two of whom are elected at large from the tenant population. A chairman and vice-chairman are elected from among the members each year. The day-to-day operations of the Authority are overseen by its executive director.

On February 17, 2009, the President signed the American Recovery and Reinvestment Act of 2009 into law.¹ The Recovery Act provided \$4 billion for public housing agencies to carry out capital and management activities, including the modernization and development of public housing. It allocated \$3 billion for formula grants and \$1 billion for competitive grants. The Recovery Act required public housing agencies to obligate 100 percent of the funds within 1 year of the date on which funds became available to the agency for obligation and expend 60 percent of the funds within 2 years and 100 percent within 3 years of such date. As of February 28, 2012, the Authority had drawn down its entire Recovery Act Public Housing Capital Fund award.

The Authority received more than \$14.5 million in Recovery Act capital funds in addition to \$9.8 million and more than \$8.2 million in formula capital funds in 2010 and 2011, respectively. According to the Public and Indian Housing Information Center system, the Authority has 4,246 low-rent units and administers 400 Section 8 vouchers. The objectives of the audit were to determine whether Authority officials (1) procured contracts in accordance with HUD regulations, and (2) obligated and expended capital funds in accordance with the Recovery Act and submitted mandated reports in a timely manner and with accurate information.

¹ Public Law 111-5

RESULTS OF AUDIT

Finding 1: Authority Officials Did Not Always Comply With the Procurement and Obligation Requirements of the Recovery Act Program

Authority officials did not always comply with the procurement requirements for the Recovery Act program and, therefore, did not properly obligate funds by the required March 18, 2010, obligation deadline. Specifically, they did not ensure that the procurement of Recovery Act contracts was conducted in a manner that provided full and open competition, the procurements were conducted in accordance with program requirements, and funds were properly obligated. Authority officials also violated procurement processing procedures by not conducting cost or price analyses for sealed bid and competitive proposal contracts. Further, payments were made on other obligations that were executed after the Recovery Act obligation deadline. We attribute these deficiencies to a lack of oversight due to unfamiliarity with the applicable procurement requirements and to Authority officials not communicating and coordinating their efforts to ensure that contract payments were properly processed. As a result, more than \$9.3 million in costs related to general construction, business software, and flooring was charged to the Recovery Act Capital Fund program, which did not meet the procurement and obligation requirements of the Recovery Act. An additional \$396,265 in construction contract change orders; architectural and engineering costs; and heating, cooling, and ventilation costs was expended on obligations executed after the Recovery Act obligation deadline.

Lack of Competition on Sealed Bid, Competitive Proposal, and Small Purchase Contracts

In February 2010, Authority officials entered into two contracts for work to be performed at Authority projects. One contract was for general construction, to include street and sidewalk repaving and other grounds improvements, with a contract award amount of more than \$4.5 million. The other contract was for renovations including siding, windows, and storage sheds at another project with a contract award amount of more than \$4 million. Authority officials indicated that these contracts were awarded using the sealed bid method of procurement. However, they did not ensure full and open competition in the award of these contracts and did not receive bids from sufficient responsive bidders because the siding and windows contract was awarded to the sole bidder and the general construction contract was awarded to one of two bidders. Additionally, Authority officials could not provide documentation to support the awarded bidder's bid amount for either of the contracts or the bidder's envelope for the windows and siding contract.

Regulations at 24 CFR (Code of Federal Regulations) 85.36 require that to ensure full and open competition, bids must be publicly opened on the scheduled date

and time shown in the solicitation, and should be date and time stamped upon receipt by authority officials. Further, the regulations require that an invitation for bids package be submitted for sealed bid procurements and that the package include the bid form to be returned with the submission, indicating the bidder's bid amount. Lastly, despite advertising period concerns voiced by members of the Authority's board of commissioners, Authority officials awarded a contract to a sole bidder. Authority officials provided documentation to support advertisement in three different publications. However, only one of the advertisements ran before the prebid conference.

Regulations at 24 CFR 85.36 require the invitation for bids to be publicly advertised and solicited from an adequate number of known suppliers, providing sufficient time before the date for opening the bids. According to Authority officials, the contractor that was awarded the contract was the only one that submitted a bid package. Since only one bid was received having only one advertisement before the prebid conference was not sufficient, given the size and complexity of the contract.

Authority officials also restricted competition in the award of a competitive proposal contract for \$600,000 for business suite software and professional services. Specifically, the evaluation factors that appeared in the request for proposal did not match those used in scoring the proposals. According to HUD Handbook 7460.8, REV-2, the evaluation should be based on the evaluation factors set forth in the request for proposal. Two of the evaluation factors' relative values differed between those in the request and those used by members of the selection committee. In addition, the price was identified as one of the evaluation factors but was reviewed only by the project manager after the selection committee's evaluations. The contractor that was awarded the contract submitted pricing information that was much higher than that proposed on other requests for proposals, some of which received similar technical scores from the selection committee. Authority officials were unable to provide documentation that detailed the decision to select the awarding contractor over the other contractor's proposals.

Lastly, Authority officials restricted competition in the award of a small purchase contract after obtaining only one price quotation. This price quotation for \$99,315 was submitted by the vendor that was awarded the contract. Authority officials stated that the awarded vendor was the only one that they knew of that could provide the materials and services they were looking for; thus, no other vendors were solicited for this job. Regulations at 24 CFR 85.36 require solicitation of price quotations from at least three sources under the small purchase method. Therefore, this contract was not procured in accordance with HUD regulations, and there was no assurance that the procurement was fair and reasonable with open competition.

Because these procurements were not conducted in accordance with the applicable procurement requirement, the related costs may not be eligible. In addition, by not properly procuring these transactions, Authority officials, in a sense, did not properly obligate these funds by the March 18, 2010, obligation deadline for Recovery Act capital funds.

Violations of Procurement Processing Procedures

Authority officials violated procurement processing procedures by not conducting cost or price analyses for sealed bid and competitive proposal contracts. Regulations at 24 CFR 85.36 require grantees to perform a cost or price analysis in connection with every procurement action, including contract modifications. HUD Handbook 7460.8, REV-2, states that a cost analysis is of particular importance in instances in which adequate price competition is lacking. The sealed bid contract for siding and windows was awarded to a sole bidder, while the general construction contract had two bidders. In addition, neither a cost analysis nor an independent cost estimate was obtained for the competitive proposal contract reviewed. HUD Handbook 7460.8, REV-2, requires cost analyses be performed for competitive proposal contracts in instances in which authority officials request that bidders provide separate elements of their costs, which was the case with the competitive proposal contract reviewed.

Lastly, the general construction contract was awarded to the bidder that bid 18 percent over the independent cost estimate amount. Authority officials did not provide documentation justifying the award of the contract to the bidder in excess of the independent cost estimate, which raised additional concerns about the reasonableness of the costs and whether the project should have been rebid.

Payments Made on Invalid Obligations

Authority officials expended Recovery Act funds for payments on obligations that were not executed in accordance with HUD regulations and were thus invalid. Regulations at 24 CFR 85.3 provide that obligations are defined as the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period. Specifically, Authority officials made payments on obligations executed after the HUD-mandated obligation deadline, in excess of a fixed contract amount, and on an unapproved purchase order.

Authority officials expended Recovery Act funding for payments on obligations that were executed after the obligation deadline mandated by HUD. Regulations in HUD, Office of Public and Indian Housing, Notice PIH-2011-4 provide that

public housing agencies must obligate 100 percent of their grant within one year of the annual contributions contract amendment effective date, March 18, 2009. Thus, by March 18, 2010, all of the Authority's awarded Recovery Act capital funds needed to have been obligated to specific activities. However, on three separate occasions, Authority officials expended a total of \$54,602 in Recovery Act funding for payments on obligations that were executed after the obligation deadline and may be ineligible. In addition, Authority officials made payments on change orders to the two sealed bid contracts reviewed in the amount of \$338,685. The change orders were also executed after March 18, 2010, and may not have been eligible.

Authority officials made payments on one contract that exceeded the agreed-upon contract amount. According to the Authority's contract for professional architect and engineering services, Authority officials were to pay the firm, a fixed price, which would not vary from the actual costs incurred. However, Authority officials did not execute any change orders and expended Recovery Act funds for total contract payments that were \$1,128 above the fixed contract amount stated. These excess costs may not be eligible under the Authority's Recovery Act Capital Fund grant, as they were not obligated.

Authority officials expended Recovery Act funds for interior flooring design costs associated with work to be performed at various properties. They used a purchase order to obligate these costs. However, there was no documentation to support that the Authority's contracting officer approved this purchase order. Regulations in HUD Handbook 7460.8, REV-2, state that the signature of the contracting officer on the purchase order or contract signifies the contracting officer's determination that the price is reasonable and that the contractor is responsible. Therefore, this \$1,850 expenditure may not be eligible.

Conclusion

Authority officials did not properly obligate several contracts because they did not follow the required procurement procedures before entering into contracts and obligating the funds. Specifically, Authority officials did not ensure that the procurement of Recovery Act contracts was conducted in a manner that provided full and open competition. As a result, more than \$9.3 million in contract costs was charged to the Recovery Act program for general construction, business software, and flooring costs in non-compliance with the procurement and obligation requirements. Further, payments were made on obligations executed after to the Recovery Act obligation deadline. An additional \$396,265 in construction contract change orders; architectural and engineering costs; and heating, cooling, and ventilation payments was expended on obligations executed after the Recovery Act obligation deadline. We attribute this deficiency to the lack of oversight by the procurement officer responsible for approving Recovery Act contract awards and to Authority officials' unfamiliarity with the applicable

procurement requirements. In addition, this condition occurred because Authority officials performing budgeting, procurement, and accounting functions didn't communicate and coordinate their efforts to ensure that contract payments were properly processed.

Recommendations

We recommend that the Director of HUD's Buffalo Office of Public Housing instruct Authority officials to

- 1A. Provide documentation and/or justifications as to the eligibility for the \$9,731,280 expended for costs that did not meet the procurement and obligation requirements of the Recovery Act and reimburse the U.S. Treasury for those costs determined to be ineligible from non-Federal or other allowable funds.
- 1B. Provide training for Authority officials involved in the procurement process to ensure compliance with laws and regulations, thus strengthening controls to ensure that only eligible costs are charged to HUD-financed programs.
- 1C. Revise and strengthen existing procedures to ensure that Authority officials performing budgeting, procurement, and accounting functions properly communicate and coordinate their efforts to ensure that contract payments are properly processed.

Finding 2: Authority Officials Charged Questionable Expenditures to the Recovery Act Capital Fund Grant

Authority officials charged questionable expenditures to the Recovery Act Capital Fund grant. Specifically, they (1) expended Recovery Act funds on nondwelling equipment purchases that benefited their central office cost center, (2) requisitioned funding from HUD's Line of Credit Control System (LOCCS) in excess of the amounts needed, (3) failed to expend funds in accordance with their Recovery Act Capital Fund annual statement, and (4) did not accurately report Recovery Act expenditure and job creation or retention information. These deficiencies can be attributed to the Authority's financial management system's inability to ensure that expenditures of Recovery Act capital funds were for eligible activities that met the program requirements. Thus, Authority officials failed to implement adequate controls over Recovery Act Capital Fund expenditures. As a result, \$141,126 in Recovery Act funding was expended for questionable and ineligible activities.

Ineligible Nondwelling Equipment Expenditures

Authority officials expended Recovery Act funds on multiple purchases of nondwelling equipment that benefited their central office cost center. Regulations at 24 CFR 990.280(c) provide that public housing agencies may establish central office cost centers to account for non-project-specific costs, but that these costs must be funded from the management fees received from each property. Further, regulations in the supplement to HUD Handbook 7475.1, REV, CHG-1, Financial Management Handbook, provide that nondwelling equipment may be used only to support asset management projects and that the Capital Fund program grant may not be used to support front-line service needs that continue to be centralized.

Authority officials made four purchases of nondwelling equipment with Recovery Act funding that benefited their central office cost center. These purchases were for office equipment and furnishings to be used at the Authority's administrative offices. They included furniture and equipment for the Authority's boardroom, conference room, and the office of capital improvements. These expenditures represented \$110,814 in ineligible costs charged to the Authority's Recovery Act Capital Fund program and were charged to budget line item 1475, non-dwelling equipment.

Shown below are pictures including items purchased for the Authority's boardroom, which accounted for \$51,377, or about 46 percent, of the questioned nondwelling equipment costs.



Authority officials used Recovery Act funds to purchase furniture and equipment for use in their boardroom located at the administrative office. The picture above shows items purchased with the funding, including an interactive whiteboard, wall-mounted projector, and furniture.



Above is another picture of the furniture purchased for the Authority's boardroom using Recovery Act funds.



Above is a picture of the Web-based scheduling system outside the Authority's boardroom, which was purchased using Recovery Act funds.

Funding Drawn Down in Excess of Need

Authority officials drew down Recovery Act funding in amounts that exceeded their current needs on multiple occasions. The excess funds were then held by the Authority until the need arose. Regulations at 24 CFR 85.21 provide that methods and procedures for payment should minimize the time elapsing between the transfer of funds and disbursement by the grantee. Further, regulations in Notice PIH-2011-4 provide that public housing agencies should requisition funds only when payment is due and after inspection and acceptance of the work and must distribute the funds within 3 working days of receipt of the funds.

Eight separate instances were identified in which Authority officials drew down Recovery Act funds from LOCCS and held them for longer than 3 working days contrary to regulations. In six of these instances, the funds were drawn in advance but later expended on eligible activities. The other two instances showed no evidence of expenditure of the excess funds as of the end of the grant period. The excess funds drawn down from LOCCS on these eight occasions resulted in \$30,311 in unsupported drawdowns of funds from the Authority's Recovery Act Capital Fund grant.

Expenditures Contrary to the Authority's Annual Statement

Authority officials failed to expend funds in accordance with their Recovery Act Capital Fund annual statement budget and obligations on multiple occasions. Regulations at 24 CFR 968.305 define the “annual statement” as the work statement covering the first year of the 5-year action plan and setting forth the major work categories and costs for the current fiscal year grant, as well as a summary of costs by development account and implementation schedules for obligation and expenditure of the funds. Authority officials used the annual statement to track the budgeting, obligating, and expending of their Recovery Act funds with several distinct budget line items, each associated with a specific use of the funds.

There were 27 different instances throughout the grant period when Authority officials expended Recovery Act funds from line items that did not match those for which funds had been budgeted and obligated according to the annual statement. For example, the Authority's contract for wall construction work was entirely budgeted and obligated under line item 1460, dwelling structures. However, the eighth payment on this contract was partially made with funds expended from line items 1430, fees and costs; 1450, site improvements; and 1470, nondwelling structures. As a result, Authority officials were unable to adequately track whether their Recovery Act funding was expended in accordance with their budget and obligations. Thus, later performance and evaluation reports submitted to HUD did not accurately represent how the Authority had requisitioned and expended its Recovery Act funds, undermining HUD's monitoring efforts. Regulations at 24 CFR 968.330 provide that for any fiscal year in which a public housing agency has received assistance, the agency must submit a performance and evaluation report describing its use of assistance in accordance with the approved annual statement.

Inaccurate Reporting of Recovery Act Data

Contrary to Office of Management and Budget guidance, Authority officials did not accurately report Recovery Act expenditure and job creation or retention information on the Recovery.gov Web site. As a result, the general public did not have access to accurate information related to the Authority's Recovery Act grant, which impeded the Recovery Act's goal of transparency in government spending.

Conclusion

Authority officials expended their Recovery Act Capital Fund grant for questionable costs. Specifically, they (1) expended Recovery Act funds on nondwelling equipment purchases that benefited their central office cost center, (2) requisitioned funding from LOCCS in excess of the amounts necessary, and (3) failed to expend funds in accordance with their Recovery Act Capital Fund annual statement. These deficiencies can be attributed to the Authority's financial management system's inability to ensure that expenditures of Recovery Act capital funds were for eligible activities that met the program requirements. Thus, Authority officials failed to implement adequate controls over Recovery Act Capital Fund expenditures. As a result, it is questionable whether \$141,125 in Recovery Act funding was expended for eligible activities. This amount includes \$110,814 in ineligible costs and \$30,311 in unsupported funds drawn down for the Recovery Act Capital Fund program.

Recommendations

We recommend that the Director of HUD's Buffalo Office of Public Housing instruct Authority officials to

- 2A. Reimburse the U.S. Treasury from non-Federal or other allowable funds for \$110,814 expended on ineligible costs pertaining to nondwelling equipment purchases for their central office cost center.
- 2B. Provide documentation to justify the \$30,311 in unsupported drawdowns associated with Recovery Act funding requisitioned in excess of the Authority's need. Any unsupported funds that were drawn down and determined to be ineligible should be reimbursed from non-Federal or other allowable funds.
- 2C. Revise and strengthen existing accounting procedures to incorporate information specific to the HUD programs administered by the Authority and specific instructions for drawing down or requisitioning funds from LOCCS.
- 2D. Adequately implement controls to ensure that Federal funds are used in accordance with regulations. Specifically, Authority officials should require regular documented reconciliation of LOCCS voucher details with contractor payment details, as well as supervisory review and approval of all accounting transactions.

SCOPE AND METHODOLOGY

We performed onsite audit work at the Authority's administrative offices at 300 Perry Street in Buffalo, NY, between December 2011 and June 2012. The audit scope covered the Recovery Act Capital Fund grant expenditure period of March 18, 2009, through March 18, 2012. We relied in part on computer-processed data primarily for obtaining background information on the Authority's expenditure of Recovery Act capital funds. We performed a minimal level of testing and found the data to be adequate for our purposes. To accomplish the objectives, we

- Reviewed relevant HUD regulations, guidebooks, and files.
- Interviewed HUD officials to obtain an understanding of and identify HUD's concerns with the Authority's operations.
- Reviewed HUD's monitoring reports and an external quality assurance report.
- Reviewed the Authority's policies, procedures, and practices.
- Interviewed key personnel responsible for the administration of the Authority's Capital Fund program.
- Tested 100 percent of the Authority's Recovery Act Capital Fund LOCCS drawdowns. We also reviewed the Authority's two largest sealed bid contracts, largest competitive proposal contract, and largest small purchase contract, which represented a total commitment of more than \$9.3 million, or about 65 percent of the Authority's \$14.5 million award.

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 data – Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.
- Compliance with 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 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:

- Authority officials did not have adequate controls over the effectiveness and efficiency of program operations when they did not establish adequate administrative controls to ensure that costs associated with Recovery Act Capital Fund expenditures were eligible and supported (see findings 1 and 2).
- Authority officials did not have adequate controls over the reliability of financial data (see finding 2).
- Authority officials did not have adequate controls over compliance with laws and regulations, as they did not always comply with HUD regulations while expending Recovery Act capital funds (see findings 1 and 2).
- Authority officials did not have adequate controls over the safeguarding of resources regarding the expenditure of Recovery Act capital funds on ineligible and unsupported items (see findings 1 and 2).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Ineligible 1/	Unsupported 2/
1A		\$9,731,280
2A	\$110,814	
2B		\$30,311
Total	\$110,814	\$9,761,591

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



Buffalo Municipal Housing Authority

August 17, 2012

Executive Staff

Dawn E. Sanders
Executive Director

Modesto Candelario
Assistant Executive Director

U.S. Department of Housing and Urban Development
Office of Inspector General
26 Federal Plaza, Room 3430
New York, NY 10278

Attention: Edgar Moore, Regional Inspector General for Audit

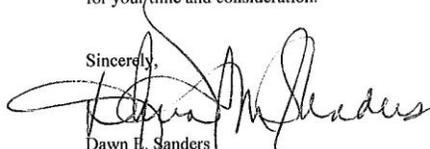
Buffalo Municipal Housing Authority response to HUD OIG Draft

**Review of the Buffalo Municipal Housing Authority's Administration of its
American Recovery and Reinvestment Act Funds**

Dear Mr. Moore:

Enclosed, please find the Buffalo Municipal Housing Authority's response to the HUD OIG Draft Review of the Buffalo Municipal Housing Authority's administration of its American Recovery and Reinvestment Act funds. Should you require any additional information or documentation, please contact me at (716) 855-6711 X202. Thank you for your time and consideration.

Sincerely,



Dawn E. Sanders
Executive Director

Enclosure

cc: Lisa Pugliese, Director, Office of Public Housing
Joseph Vizer, Assistant Regional Inspector General for Audit
Paul Zausen, Senior Auditor

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Ref to OIG Evaluation

Auditee Comments

**Buffalo Municipal Housing Authority response to HUD OIG Draft
Review of the Buffalo Municipal Housing Authority's Administration of its American Recovery
and Reinvestment Act Funds**

Item #1: Cover page of report

"The Buffalo, NY, Municipal Housing Authority Did Not Always Administer Its Recovery Act Capital Fund Program in Accordance With HUD Requirements"

BMHA Response:

The Authority disagrees with the HUD OIG's title and tone of its draft report. It is substantially conclusory and inflammatory. It should accurately state its objective which was the review of the Buffalo Municipal Housing Authority's administration of its American Recovery and Reinvestment Act funds.

Item #2: Page 5 Heading

"Authority Officials Did Not Always Comply With the Procurement and Obligation Requirements of the Recovery Act Program"

BMHA Response:

The Authority disagrees with the HUD OIG's comment. Although the Authority was operating in a public exigency situation as defined in PIH Notice 2009-12, that even though the Authority could have justified the use of the non-competitive method of procurement, the Authority instead found it in its best interests to utilize the sealed bid method of procurement. Section VI, subsection 5 of PIH Notice 2009-12 states:

"...One such circumstance is public exigency that will not permit a delay resulting from competitive solicitation (85.36.(d)(4)(i)(B). If the PHA finds that other competitive methods of procurement are infeasible, HUD will support the PHA's use of the public exigency circumstance based on the purpose and requirements of the Recovery Act."

After consultation with and receiving the full support of HUD's Buffalo Field Office and the Office of General Counsel in HUD Headquarters in Washington, DC, as outlined in an email from HUD official Joan K. Spilman, Director of Public Housing on Monday, February 1, 2010 (*which was provided in an email to the HUD OIG on August 17, 2012*), it was determined that it would be in the Authority's best interests to utilize a shortened advertising window. Therefore, the Authority amended its process to publicly advertise the ARRA bid announcements for 10 days. In order to comply with the solicitation requirements and provide fair and open competition, arrangements were made with the Construction Exchange of Buffalo & WNY, Inc. to solicit their members and provide access to the Authority's bid announcements (*the list of Construction Exchange members who viewed the bid solicitations has been provided to the HUD OIG via email on August 17, 2012*). Additionally, the bid announcements were posted on the BMHA website and Section 3 contractors were contacted and made aware of the opportunities. There have been many occasions under regular procurement by the Authority advertising for more than 10 days where only one bidder responded. Therefore, it was not considered unusual to receive only one response to the bid.

Comment 1

Comment 2

Comment 3

Ref to OIG Evaluation

Auditee Comments

Comment 4

Item #3: Page 5, 2nd Paragraph, Last Sentence

“...Authority officials could not provide documentation to support the awarded bidder’s bid amount for either of the contracts or the bidder’s envelope for the windows and siding contract.”

BMHA Response:

The Authority disagrees with the HUD OIG’s comment. A scanned color copy of the date and time stamped bidder’s envelope was provided to the auditor via email on June 19, 2012 and the hard copy was provided to the auditor for their review during the exit conference on August 15, 2012. In addition, the “Legal Review of Formal Bid Documents” checklist, documenting that all necessary procurement forms were present and legally acceptable at the time of bid, was also provided for both contracts.

Comment 5

Item #4: Page 6, 3rd Paragraph, 5th Sentence

“...the price was identified as one of the evaluation factors but was reviewed only by the project manager after the selection committee’s evaluations.”

BMHA Response:

The Authority disagrees with the HUD OIG’s comment. Considering that the price proposals varied widely in the features that each respondent was providing in their business suite software, in order to adequately evaluate the pricing proposals, the project manager was instructed to “normalize” the pricing of each proposal based on the individual features that each vendor was offering. This normalization, which was provided to the HUD OIG in an email dated June 19, 2012, was then utilized to award the pricing points. Under the competitive method of procurement (Request for Proposal), price is not the only determining factor.

Comment 6

Item #5: Page 6, 4th Paragraph, 1st Sentence

“...Authority officials restricted competition in the award of a small purchase contract after obtaining only one price quotation.”

BMHA Response:

The Authority disagrees with the HUD OIG’s comment. The Authority utilized the New York State Office of General Services procurement contract, which is an authorized method of procurement for municipal entities, for the materials it selected to have installed. The Authority was aware of only one vendor that could provide the materials under the state contract and perform the installation.

Comment 7

Item #6: Page 7, 2nd Paragraph, 1st Sentence

“Authority officials violated procurement processing procedures by not conducting cost or price analyses for sealed bid and competitive proposal contracts.”

BMHA Response:

The Authority disagrees with the HUD OIG’s comment. The Authority retained the services of third party architect and engineering firms to perform independent cost analyses for the contracts. After conducting their cost analyses, the A/E firms recommended the award of contract to the lowest responsible bidders, thereby establishing cost reasonableness. For the competitive proposal contract, due to the complexities of the various software programs available in the industry, the Authority relied on the professional expertise of its Management and Information Systems department staff and the professional service project manager to advise on the cost reasonableness of the price proposals. This included a price comparison of the proposals received from the market.

Ref to OIG Evaluation

Auditee Comments

Comment 8

Item #7: Page 7, 3rd Paragraph, 1st Sentence

HUD OIG Comment: "Authority officials expended Recovery Act funds for payments on obligations that were not executed in accordance with HUD regulations and were thus invalid."

BMHA Response:

The Authority disagrees with the HUD OIG's comment. The Authority properly executed contracts totaling 100% of the ARRA grants, including the 10% for administrative fees, by March 17, 2010. Change orders that were processed after March 17, 2010 increased the contract amount over their original obligation amounts. Multiple funding sources were then used to fund the revised contract amounts. HUD has previously indicated that Capital Fund and ARRA could be mixed to fund change orders.

Item #8: Page 8, 4th Paragraph, 1st Sentence

"Authority officials did not properly obligate several contracts because they did not follow the required procurement procedures before entering into contracts and obligating the funds."

BMHA Response:

The Authority disagrees with the HUD OIG's comment. The Authority followed its procurement procedures and the ARRA procurement policy. After several reviews, including reviews performed by the local HUD office and a third party contractor hired by HUD to review the Authority's ARRA files, no ineligible activities were brought to the attention of the Authority. The Authority was diligent in its efforts to comply with the intent of the ARRA funding, which was to immediately stimulate the local economy. Given the unusually short period of time provided to the Authority to comply with the obligation and expenditure requirements of the ARRA grant, the Authority availed itself of all allowable regulations to expend the grant funds as quickly as possible.

Comment 9

Item #9: Page 10, 2nd Paragraph, 1st Sentence

"Authority officials expended Recovery Act funds on multiple purchases of non-dwelling equipment that benefited their central office cost center."

BMHA Response:

The Authority disagrees with the HUD OIG's comment. Consistent with question 16 of an FAQ released by HUD on May 15, 2009 and quoted by Mark J. Courtney, from HUD Buffalo, in an email sent to the Authority on June 4, 2009 (*and provided to the HUD OIG via email on August 17, 2012*),

"A PHA-wide management improvement may be funded where the PHA can demonstrate that by correcting the management deficiency(ies) at the development(s) being modernized other developments will benefit as well."

Comment 10

The non-dwelling equipment was purchased to address two management deficiencies: low occupancy rate as defined by HUD (below 95%) and high unit turnaround time (over 30 days). The equipment was purchased to allow the Authority to provide continuous training to the asset management staff that work at the various developments in an effort to address and correct the management deficiencies. Although the improvements were located in the Authority's board room, the improvements were made for the benefit of the asset management staff and the Authority's developments thus furthering the PHA's mission of increasing the number of affordable housing units available.

Ref to OIG Evaluation

Auditee Comments

Comment 11

Item #10: Page 12, 2nd Paragraph, 3rd and 4th Sentences

"The other two instances showed no evidence of expenditure of the excess funds as of the end of the grant period. The excess funds drawn down from LOCCS on these eight occasions resulted in \$30,311 in unsupported drawdowns of funds from the Authority's Recovery Act Capital Fund grant."

BMHA Response:

The Authority disagrees with the HUD OIG's comment. The report does not clearly identify the two instances of unexpended funds. However, the Authority has always maintained and has available, supporting documentation for all funds drawn out of LOCCS, including the \$30,311 identified in the HUD OIG report (*this documentation has been provided to the HUD OIG via email on August 17, 2012*).

Comment 12

Item #11: Page 13, 2nd Paragraph, 3rd and 4th Sentences

"...Authority officials were unable to adequately track whether their Recovery Act funding was expended in accordance with their budget and obligations. Thus, later performance and evaluation reports submitted to HUD did not accurately represent how the Authority had requisitioned and expended its Recovery Act funds, undermining HUD's monitoring efforts."

BMHA Response:

The Authority disagrees with the HUD OIG's comment. The Authority's internal controls allowed identification and tracking of the budget line items. The Authority's final annual statement adequately reflected that the funds were expended according to the plan. The adjusted expenditures did not materially affect the Authority's ability to track program expenditures. Therefore, at no time, were HUD's monitoring efforts undermined.

Comment 13

Item #12: Page 13, 3rd Paragraph, 2nd Sentence

"...the information reported was not submitted in a timely manner within 10 days following the end of the quarter, as required, for 5 of the 11 reporting periods."

BMHA Response:

The Authority disagrees with the HUD OIG's comment. The Authority was being constantly reminded by the local and Washington DC HUD office of the reporting deadlines for the ARRA grants and was never made aware of any missed deadlines. In situations where the Authority submitted reporting beyond the 10th of the month, Federalreporting.gov had an "Extended Submission deadline" of the 15th of the month. We disagree with the assertion that the "...general public did not have access to accurate and timely information..." because agency review of the reporting did not begin until the 19th of each reporting month and the reporting itself was not being posted to recovery.org until the 30th of the month.

OIG Evaluation of Auditee Comments

- Comment 1** Authority officials disagree with the title and tone on the cover of the report and state that the title should indicate the objective of the review. The report was reviewed and adjustments were made regarding the description of the eligibility of certain costs. Nevertheless, in accordance with new OIG policy the report cover page was changed to reflect the program reviewed; however, the subject title remained the same to accurately reflect the issues identified in the report.
- Comment 2** Authority officials contend that they had justification for using a shortened advertising window of 10 days in the advertisement of the sealed bid contracts. However, as stated in the report, it is questionable whether one advertisement prior to the prebid conference was sufficient, given the size and complexity of the contract being advertised. In addition, the lack of bid forms and sufficient responsive bidders further indicate that the Authority did not ensure full open competition. Therefore, the costs remain questioned subject to a determination as to their eligibility by HUD officials as part of the audit resolution process.
- Comment 3** Authority officials state that fair and open competition was provided because they advertised in the Construction Exchange of Buffalo and WNY, Inc. However, numerous documented instances requesting documentation supporting advertisement are included in the workpapers, yet the Construction Exchange of Buffalo and WNY, Inc. documentation wasn't provided until after the exit conference. A final determination will have to be made as to the adequacy of this documentation, in conjunction with input from HUD officials, during the audit resolution.
- Comment 4** Authority officials disagree that the bidder's envelope for the windows and siding contract were not provided. Authority officials provided a scanned color copy of the date stamped bidder's envelope subsequent to the completion of the field work phase of the review. A final determination as to the adequacy of this documentation, will be made by HUD officials, during audit resolution.
- Comment 5** Authority officials disagree that price was reviewed as an evaluation factor only by the project manager after the selection committee's evaluations. Authority officials state that a price normalization analysis was used to normalize the pricing of each proposal based on the features each vendor was offering. However, the issue remains that the evaluation factors from the original proposal changed and price was included as a factor only after some of the bidders were removed from the bidding process. Therefore, the costs remain questioned subject to a determination as to their eligibility by HUD officials as part of the audit resolution process.
- Comment 6** Authority officials disagree that they restricted competition in the award of a small purchase contract after obtaining only one price quotation. They state that they used the New York State Office of General Services procurement contract

and that the vendor selected was the only one from the contract that could perform the installation of the materials selected. However, the materials and services provided were not specialized and could have been performed by a number of vendors. Therefore, the costs remain questioned subject to a determination as to their eligibility by HUD officials as part of the audit resolution process.

Comment 7 Authority officials disagree that cost or price analyses for the sealed bid and competitive proposal contracts were not conducted. However, a letter of recommendation from the architectural and engineering firms contracted to oversee the sealed bid contract work is not an adequate cost or price analysis. In addition, the recommendation of Authority staff on the selection committee for the competitive proposal contract is not an adequate cost or price analysis. Therefore, the costs remain questioned subject to a determination as to their eligibility by HUD officials as part of the audit resolution process.

Comment 8 Authority officials state that 100 percent of their ARRA grant, including ten percent for administrative fees, was executed by the obligation deadline of March 17, 2010. However, Authority officials entered into new contracts, including contracts for heating, ventilation, and air conditioning work, architectural and engineering services, and change orders to contracts funded with ARRA, subsequent to the March 17, 2010 obligation deadline. These contracts were paid with ARRA funds. Therefore, the costs remain questioned subject to a determination as to their eligibility by HUD officials as part of the audit resolution process.

Comment 9 Officials for the Authority disagree that they did not follow the required procurement procedures and that reviews performed by the local HUD office and a third party contractor hired by HUD found no ineligible activities. However, the reviews conducted by HUD were conducted when the ARRA grant had just been awarded and while little or no obligations and expenditures from the grant had occurred. The third party contractor review identified a deficiency with an incorrect chart of accounts for ARRA Capital Fund expenditures that was not in compliance with the HUD prescribed chart of accounts. In addition, none of the reviews covered a similar scope as our review. Therefore, the costs remain questioned subject to a determination as to their eligibility by HUD officials as part of the audit resolution process.

Comment 10 Authority officials state that the improvements made to the benefit of the central office cost center address two management deficiencies and that this is an eligible use as defined in correspondence with HUD representatives. However, the issue remains that Authority officials used ARRA funding, specifically BLI 1475-Nondwelling Equipment, to pay for improvements to the board room at the central office cost center. Nevertheless, since there is a lack of evidence that these conference room improvements will improve occupancy rates or reduce turnover; this funding source should not have been used to pay for these

improvements and therefore these expenditures should be reimbursed to the U.S. Treasury.

- Comment 11** Authority officials disagree that excess funds were drawn down from LOCCS. However, we identified eight separate instances in which funds were drawn and held longer than three working days contrary to regulations. For six of the instances, funds were drawn in advance, but later expended on eligible activities. For two of the instances, funds were drawn in advance, but showed no evidence of expenditure. A final determination will be made as to the adequacy of the documentation used to support these draws, in conjunction with input from HUD officials, during audit resolution.
- Comment 12** Authority officials state that their internal controls allowed for identification and tracking of the budget line items. However, our audit identified 27 different instances of breakdowns in those controls. As a result, the Authority's ability to accurately track program expenditures in accordance with their budgets and obligations was diminished and therefore controls need to be improved.
- Comment 13** Authority officials disagreed that reporting information was not submitted in a timely manner within 10 days following the end of the quarter and indicated that the federal reporting website allows for reporting up to 15 days following the end of the quarter. Verification of the directions at Federalreporting.gov revealed that it provided for an extended reporting period and we have removed the comments relating to the timeliness of the reporting. However, Authority officials did not accurately report Recovery Act expenditure and job creation or retention information on the Recovery.gov Web site. As a result, the general public did not have access to accurate information related to the Authority's Recovery Act grant, which impeded the Recovery Act's goal of transparency in government spending.