



Issue Date	September 30, 2011
Audit Report Number	2011-CH-1015

TO: Shawn Sweet, Director of Public Housing Hub, 5DPH

//signed//

FROM: Kelly Anderson, Regional Inspector General for Audit, 5AGA

SUBJECT: The Springfield Metropolitan Housing Authority, Springfield, OH, Did Not Administer Its Grant in Accordance With Recovery Act and HUD Requirements

## **HIGHLIGHTS**

### **What We Audited and Why**

We audited the Springfield Metropolitan Housing Authority's American Recovery and Reinvestment Act of 2009 Public Housing Capital Fund Stimulus (formula) Recovery Act Funded grant. The audit was part of the activities in our fiscal year 2011 annual audit plan. We selected the Authority for audit based on the Office of Inspector General's (OIG) commitment to ensure the proper use of Recovery Act grant funds. Our objective was to determine whether the Authority administered its capital grant in accordance with Recovery Act and U.S. Department of Housing and Urban Development (HUD) requirements.

### **What We Found**

The Authority did not administer its Capital Fund grant in accordance with Recovery Act and HUD requirements. Specifically, it did not (1) properly obligate \$152,000 in Recovery Act grant funds for eligible management improvement costs, and (2) adequately monitor its contractors for the enforcement of labor standards. The problems occurred because the Authority lacked adequate procedures and controls regarding the administration of its grant funds to ensure that obligations and expenditures met HUD and the Recovery Act requirements.

Additionally, it lacked adequate procedures and controls to ensure that it complied with HUD's and its own requirements for the administration of contracts. As a result, it improperly obligated \$152,000 in formula grant funds contrary to HUD's requirements and its reporting of Recovery Act funded activities on FederalReporting.gov was inaccurate.

### **What We Recommend**

We recommend that the Director of HUD's Cleveland Office of Public Housing require the Authority to (1) implement adequate procedures and controls regarding the administration of its Recovery Act grant funds, (2) provide supporting documentation or reimburse HUD \$110,580 for wages paid to its contractors, (3) review all payments to its contractors' employees to determine whether wage restitution is owed and provide the review results to HUD for review and approval. If wage restitution is required, the Authority should make the restitution from non-Federal funds, and (4) implement adequate procedures and controls regarding its contracting process to ensure that its contractors' employees are paid the appropriate Federal prevailing wage rates. These procedures and controls would include but not be limited to reviewing contractors' weekly certified payrolls, maintaining full documentation such as weekly payrolls and copies of wage determinations, and making any applicable changes or modifications needed to comply with Davis-Bacon Act.

We also recommend that the Director of HUD's Cleveland Office of Public Housing recapture \$152,000 in Recovery Act capital funds that was improperly obligated for ineligible management improvement expenses for transmission to the U.S. Treasury. As of September 27, 2011, HUD is in the process of recapturing the funds. Therefore, a management decision has been reached regarding this recommendation.

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

### **Auditee's Response**

We provided our review results and supporting schedules to the Director of HUD's Cleveland Office of Public Housing and the Authority's two acting executive directors during the audit. We also provided our discussion draft audit report to the Authority's acting executive directors, its board vice-chairperson, and HUD's staff during the audit. We held an exit conference with the Authority's acting executive directors on September 22, 2011. We asked the Authority's acting executive directors to provide comments on our discussion

draft audit report by September 26, 2011. The Authority's acting executive directors provided written comments, dated September 23, 2011. The complete text of the auditee's response, along with our evaluation of that response, can be found in appendix B of this report. A complete copy of the Authority's comments was provided to the Director of HUD's Cleveland Office of Public Housing.

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## BACKGROUND AND OBJECTIVE

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The Springfield Metropolitan Housing Authority is an Ohio public housing agency created by the City of Springfield in 1965 under the laws of the State of Ohio. The Authority's five-member board of commissioners, with four current members, is appointed by the Springfield City Commission, Clark County Commissioners, and Springfield Court of Common Pleas to serve a 5-year term. The board's responsibilities include overseeing the operations of the Authority and reviewing and approving its policies. The board appoints the executive director; the position was vacant as of July 31, 2011. The board has assigned two acting executive directors until the position is filled. The executive director is responsible for general supervision over the administration of the Authority's business and is charged with the management of its housing projects.

The Public Housing Capital Fund Stimulus (formula) Recovery Act Funded grant is administered by the U.S. Department of Housing and Urban Development's (HUD) Office of Public Housing. The grant funds are available for capital and management activities, including the development, financing, and modernization of public housing projects.

On February 17, 2009, the President signed the American Recovery and Reinvestment Act. The Recovery Act provided an additional \$4 billion to public housing agencies to carry out capital and management activities, including the modernization and development of public housing. The Recovery Act required that \$3 billion of these funds be distributed as formula grants and the remaining \$1 billion be distributed through a competitive process. The Recovery Act required public housing agencies to (1) obligate 100 percent of the funds within 1 year of the date on which funds became available to the agency for obligation, (2) expend 60 percent of the funds within 2 years, and (3) expend 100 percent of the funds within 3 years of the date on which funds became available to the agency.

In March 2009, the Authority received a \$1.5 million formula grant for its Capital Fund activities. It had obligated 100 percent of its grant funds and expended 88 percent as of August 31, 2011. The Authority awarded four contracts using its Recovery Act funds. The contracts were to perform reroofing on two of its developments, modernize one building, and modernize equipment.

Our objective was to determine whether the Authority administered its capital grant in accordance with Recovery Act and U.S. Department of Housing and Urban Development (HUD) requirements.

## RESULTS OF AUDIT

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### Finding 1: The Authority Did Not Properly Obligate \$152,000 in Recovery Act Grant Funds for Eligible Management Improvement Costs

The Authority did not properly obligate Recovery Act grant funds. Specifically, it improperly obligated \$152,000 in grant funds for management improvement costs such as a renewal contract for police services, computer equipment for the Authority's operations, and computer and server contracts. This condition occurred because the Authority lacked adequate procedures and controls to ensure that it complied with requirements under the Recovery Act. As a result, it improperly obligated \$152,000 in formula grant funds contrary to HUD's requirements and its reporting of Recovery Act funded activities on FederalReporting.gov was inaccurate.

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#### **The Authority Inappropriately Obligated \$152,000 for Management Improvement Costs**

HUD approved the Authority's plan to use \$152,000 of its Recovery Act capital grant funds for management improvement costs. According to the Authority's plan, it would use the funds for training, security, communication, and data improvements. In March 2010, the Authority submitted its first voucher to draw funds from the management improvement line item to HUD for review and approval. HUD requested that the Authority provide supporting documentation for the requested funds. In reviewing the Authority's documentation, HUD determined that it wanted to use the grant funds to obtain computer supplies, renew its computer systems support contract, and purchase a new laptop computer and computer supplies and parts for its server. However, these expenses were not eligible under HUD's and Recovery Act guidelines.

In April 2010, the Authority submitted another voucher to HUD for approval, seeking reimbursement for a renewal contract for police services. However when the Authority entered the voucher request into HUD's Line of Credit Control System, the voucher was flagged for a review by HUD. As a result, the Authority cancelled the voucher. Notice PIH 2009-12 prohibits the use of management improvement funds for operations or rental assistance. Further, on the Recovery Act's Web site under Frequently Asked Questions, it states that (1) funds not obligated within the 1-year obligation deadline will be recaptured, (2) funds cannot be used to cover operational expenses, and (3) a public housing authority's ongoing operation expenses are ineligible management improvement costs.

## Conclusion

The Authority did not properly obligate Recovery Act grant funds. Specifically, it improperly obligated \$152,000 in grant funds for management improvement costs such as a renewal contract for police services, computer equipment for the Authority's operations, and computer and server contracts. This condition occurred because the Authority lacked adequate procedures and controls to ensure that it complied with requirements under Recovery Act. The Authority did not thoroughly review the Recovery Act guidance to determine eligible management improvement activities. As a result, it improperly obligated \$152,000 in formula grant funds contrary to HUD's requirements and its reporting of Recovery Act funded activities on FederalReporting.gov was inaccurate. As of September 27, 2011, HUD determined that the Authority's funds obligated for management improvement costs should be recaptured.

## Recommendations

We recommend that the Director of HUD's Cleveland Office of Public Housing require the Authority to

- 1A. Implement adequate procedures and controls regarding the administration of its Recovery Act grant funds.

We also recommend that the Director of HUD's Cleveland Office of Public Housing

- 1B. Recapture \$152,000 in Recovery Act capital funds that was improperly obligated for ineligible management improvement expenses for transmission to the U.S. Treasury.

## RESULTS OF AUDIT

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### Finding 2: The Authority Did Not Properly Monitor Its Contractors for the Enforcement of Labor Standards

The Authority was unable to provide sufficient documentation to support (1) its monitoring of contractors to ensure that they performed in accordance with their contracts and (2) that its contractors' employees were paid the appropriate Federal prevailing wage rates. This condition occurred because the Authority lacked adequate procedures and controls to ensure that its modernization contractor had proper oversight of its contractors. Additionally, the Authority lacked an adequate contract administration system. As a result, the Authority and HUD lacked assurance that \$110,580 in Recovery Act funds was used for eligible expenses and contractors paid employees the appropriate Federal prevailing wage rates.

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#### **The Authority Did Not Ensure That Its Contractors Complied With the Davis-Bacon Act**

The Authority allowed contractors to submit inaccurate and incomplete certified payroll reports for its two reroofing projects. For instance, one contractor's reports lacked employees' addresses and Social Security numbers. Additionally, based on the Authority's modernization contractor's record of interviews with 16 employees on site for the two contractors, we determined that

- Five employees were not included on the contractors' submitted payroll reports.
- One contractor's name was illegible, thus preventing verification of its validity.
- Seven of the employee interviews were conducted on a day on which the contractors' payroll reports did not show any hours worked for these seven employees.
- Eight employees' wage rates were identified as "contracted rate"; however, the contractors and the Authority did not maintain complete or supporting payroll records for the wage rates.

Additionally for one of the two contractors, the contractor's employee payroll records did not include all employees as required. For instance, according to an internal email, the Authority's modernization contractor suggested that there were approximately 25 subcontractors on the crew. However, the Authority's weekly payroll report did not contain more than eight subcontractors.



HUD's Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Construction Projects, section 2, requires an employee's payroll records to contain the employee's name, address, and Social Security number. Further, for a project to comply with the Davis-Bacon Act, every contractor (including every subcontractor) must keep a complete set of its own payroll and other basic records, such as time cards, tax records, and evidence of fringe benefit payments, for at least 3 years after the project is completed. The guide also states that the contract administrator must compare the information on the interview forms to the corresponding payrolls to ensure that workers are properly listed on the payrolls regarding days worked, work classification, and rate of pay.

### **The Authority Lacked Adequate Procedures and Controls for Enforcement of Labor Standards**

The Authority lacked adequate procedures and controls for the enforcement of labor standards. It used a contractor to oversee the activities under its Recovery Act funds; however, the contractor failed to properly monitor its contractors for the enforcement of labor standards. Additionally, the Authority did not maintain an effective contract management system to ensure that contractors performed in accordance with their contracts. HUD Handbook 1344.1, REV-1, Labor Standards Enforcement Handbook, requires public housing agencies to monitor enforcement of labor standards for the payment of prevailing wage rates in all construction contracts over \$2,000 involving Federal funds.

### **Conclusion**

The Authority did not properly monitor its contractors for the enforcement of labor standards. This condition occurred because the Authority lacked adequate procedures and controls to ensure that its modernization contractor properly monitored contractors for the enforcement of labor standards. Additionally, it did not maintain an adequate contract administration system. Based on our analysis, the Authority and HUD lacked assurance that \$110,580 in Recovery Act funds was used for eligible expenses and contractors paid their employees the appropriate Federal prevailing wage rates.

### **Recommendations**

We recommend that the Director of HUD's Cleveland Office of Public Housing require the Authority to

- 2A. Provide supporting documentation or reimburse HUD \$110,580 from non-Federal funds for wages paid to its contractors.
- 2B. Review all payments to its contractors' employees to determine whether wage restitution is owed and provide the review results to HUD for review and approval. If wage restitution is required, the Authority should make the restitution from non-Federal funds.
- 2C. Implement adequate procedures and controls regarding its contracting process to ensure that its contractors' employees are paid the appropriate Federal prevailing wage rates. These procedures and controls would include but not be limited to reviewing contractors' weekly certified payrolls, maintaining full documentation such as weekly payrolls and copies of wage determinations, and making any applicable changes or modifications needed to comply with Davis-Bacon Act.

## SCOPE AND METHODOLOGY

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We performed onsite audit work between April and July 2011 at the Authority's office located at 101 West High Street, Springfield, OH. The audit covered the period March 18, 2009, through February 28, 2011, but was expanded as determined necessary.

To accomplish our objectives, we reviewed

- Applicable laws and regulations; HUD's program requirements at 24 CFR (Code of Federal Regulations) Parts 5, 85, 135, 905, and 982 and 29 CFR 3.4; HUD Notice PIH 2009-12; HUD Handbook 1344.1, REV-1; HUD Handbook 7460.8, REV-2; Recovery Act Web site's Frequently Asked Questions, and HUD guidebook, Making Davis-Bacon Work, A Practical Guide for States, Indian Tribes, and Local Agencies, June 2006.
- The Authority's accounting records, bank statements, cancelled checks, contract files, policies and procedures, board meeting minutes for April 2009 through March 2011, organization chart, program annual contributions contract with HUD, and 5-year and annual plans.
- Contractors' accounting records, payroll bank statements, invoices, payroll calculations, contracts, contract change orders, and material and supply receipts.
- HUD's files for the Authority.
- Manufactured product Web sites and representatives for "buy American" compliance and energy efficiency requirements.

We also interviewed the Authority's employees and contractors, along with HUD staff.

We reviewed the Authority's four Recovery Act grant contract files. The four contract file documentation reviews included two reroofing contracts, one building modernization contract, and one equipment modernization replacement contract. We reviewed the respective contracts, materials, invoices, payroll invoices, and payroll reports for the four contracts reviewed.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

# INTERNAL CONTROLS

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

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

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

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## Relevant Internal Controls

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

- Effectiveness and efficiency of operations – Policies and procedures that the audited entity has implemented to provide reasonable assurance that a program meets its objectives, while considering cost effectiveness and efficiency.
- Reliability of financial reporting – Policies and procedures that management has implemented to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with generally accepted accounting principles.
- 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.

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:

- The Authority did not properly obligate \$152,000 in Recovery Act grant funds for eligible management improvement costs (see finding 1).
- The Authority did not properly monitor its contractors for enforcement of labor standards (see finding 2).

## APPENDIXES

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### Appendix A

#### SCHEDULE OF QUESTIONED COSTS

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Recommendation number	Ineligible 1/	Unsupported 2/
1B	<u>\$152,000</u>	
2A		<u>\$110,580</u>
Total	<u>\$152,000</u>	<u>\$110,580</u>

- 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

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#### Ref to OIG Evaluation

#### Auditee Comments



**SMHA**

101 West High Street

Phone: (937) 325-7331

Springfield, Ohio 45502

FAX: (937) 325-3657

Email: [spgfldhousing@smhaohio.org](mailto:spgfldhousing@smhaohio.org)

September 23, 2011

Ms. Kelly Anderson  
Regional Inspector General for Audit-Region V  
Ralph H. Metcalf Federal Building  
77 West Jackson Blvd., Suite 2646  
Chicago, IL 60604

RE: Springfield Metropolitan Housing Authority OH021 – Draft Report  
Response

Dear Ms. Anderson:

This letter is in response to the Draft Audit dated September 16, 2011 relating to your Department's review of Springfield Metropolitan Housing Authority's (SMHA) American Recovery and Reinvestment Act, Public and Indian Housing Capital Fund Stimulus (formula) grant.

On behalf of SMHA's Board of Commissioners and staff, we would like to thank you and your team, for the time and effort dedicated to this review. We appreciate the collaborative approach with which the report was prepared.

We have reviewed the draft report in detail and agree that \$152,000 in Recovery Act capital funds were improperly obligated for ineligible management improvement expenses.

Ref to OIG Evaluation

Auditee Comments

**ARRA Grant Administration and Labor Monitoring, Finding #2**

The following is the response for Finding #2, Davis-Bacon Act. We respectfully disagree with the auditors findings in part or in whole. Our responses are included herein.

**Comment 1**

**Summary Comments:** IN 2009 SMHA received an ARRA or Stimulus Grant in the approximate amount of \$1,500,000. The funds were used primarily to fund the modernization or improvements to existing buildings. The PHA entered into four larger construction projects requiring labor monitoring. Three of the contracts totaled approximately \$880,000 with the contract in question to Nesser Roofing in the amount of approximately \$200,000. The only contract with labor issues was the Nesser Roofing contract. During the OIG review it was discovered that Nesser Roofing was out of business, in receivership. According to SMHA contact with Nesser Roofing, all the records were destroyed in a fire. Access to Nesser payroll records would have afforded the OIG Auditor possibly the answer to his questions regarding the workers on the roofing project which were 100% subcontractors. No employees were employed on this project. At this time we are unable to secure any further documentation from the contractor. It should be noted that in the attached Pre-Construction Meeting outline and notes, the contractors were informed of the requirement to keep labor reports maintained for a period of three years. (In addition, Contractors were issued the HUD labor guidebook, “Contractor’s Guide to Davis-Bacon” at the Pre-Construction Meetings).

**Comment 2**

**PHA Labor Guidance changes in 2006:**  
PHAs were informed in 2006 that less stringent oversight and paper recordings were to be required in the future. The PHA labor monitoring guidance, the 2006 HUD issued “Streamlining of Davis-Bacon” reduced the required number of onsite interviews and checking of the payrolls submitted. Please see the attached HUD guidance, “Making Davis-Bacon Work, A Practical Guide for States and Indian Tribes and Local Agencies”, pages 10 and 11, items #6 and #7.  
This includes Workers Compensation Certificate, as well as all subcontractors being covered under Nesser Roofing Certificate of Liability Insurance.



Ref to OIG Evaluation

Auditee Comments

**The following is our current and brief responses to the items listed in finding #2:**

**Comment 3**

Page 8, paragraph #1 last sentence: *As a result,.....*

Response: **Nesser Roofing did not have any employees.** Rather, Nesser Roofing did subcontract the roofing labor work with subcontractors. Each person working on the project was a subcontractor. SMHA required the usual insurance requirements of all contractors working on our projects. This includes Workers Compensation Certificate, as well as all subcontractors being covered under Nesser Roofing Certificate of Liability Insurance.

**Comment 4**

Page 8, last paragraph:

The internal memo or email noted by the OIG Auditor was our way to advise the contractor of additional workers on the job and that the PHA needed labor documentation of other subcontractors observed on the project. The number noted was a general number.

**Comment 5**

Page 10, 2B.: As there were no indications of employees on the job, then employee restitution is a non-issue. It is our understanding that PHAs are not required to receive copies of subcontractors' contracts, contract adjustments, and or change orders. The payrolls examined indicated the subcontractors were paid more than the minimum per the issued wage decision. Listing the subcontractor's name and the hours worked is all that is required on the weekly payrolls for subcontractors. This was at the direction and instruction at labor training conferences and calls to HUD for clarification.

**Comment 6**

**PHA Action Plan for improving Labor Monitoring:**

During the next several months staff will be trained both internally and by attending contract monitoring and Davis-Bacon labor seminars for better compliance and oversight of the projects. The labor monitoring duties have been or will be reassigned to PHA staff. Staff will include Director of Modernization, the Construction Manager and the Procurement Officer.

**Ref to OIG Evaluation**

**Auditee Comments**

**Comment 7**

In closing it is unreasonable that SMHA would be required to repay HUD for any employee restitution:

1. The contractor is no longer in business and the contractor's records are unavailable.
2. Stating that \$110,580 of a contract that totaled approximately \$200,000 was mismanaged would indicate that 95% of the labor was fraudulent which is not correct. Materials in most contracts usually equal 60% of the total contract. If this finding stands SMHA will need more documentation of how the \$110,580 was arrived.
3. The owner received a product that conformed to the specifications and was approved by the architect and the owner.

We hope the FO and the OIG find that our comments and interpretations have merit and this finding can be removed from the OIG audit report. If you require additional information from us, please call (937) 325-7331, extension 202 or 212.

Sincerely,

//signed//  
Anita M. Perrin  
Interim Executive Director

CC: Johnetta Jaudon, SMHA Vice-Chair

## OIG's Evaluation of Auditee Comments

- Comment 1** HUD Handbook 1344.1 states that each agency is responsible to HUD for ensuring compliance with Federal labor standards requirements as follows: maintaining full documentation attesting to all administrative and enforcement activities with respect to Federal labor standards, such documentation to be made freely available for HUD review. Such documentation shall include all weekly payrolls, copies of wage determinations, on-site inspection reports and employee interviews, and any other records utilized in enforcement administration. In addition, the HUD guidebook requires local contracting agencies that administer HUD program to agree to administer and enforce Davis-Bacon requirements as a condition for receiving program assistance.
- Comment 2** We agree that the HUD guidance streamlined procedures, policies, and paperwork in regards to Davis-Bacon. However, as mentioned in the guidance, the key labor objectives are to apply Davis-Bacon requirements properly, support contractor compliance with labor standards, monitor contractor performance, investigate probable violations and complaints of underpayments, and pursue debarment and other available sanctions against repeat labor standards violators.
- Comment 3** Section 1606 of the Recovery Act requires the payment of Davis-Bacon Act (40 U.S.C. (United States Code) 31) wage rates to “laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or part by and through the Federal Government” pursuant to the Recovery Act.
- Comment 4** We concede that the Authority identified additional workers observed on the work site. Its internal documentation specifically requested additional documentation from the contractor to support and ensure compliance with applicable requirements. However, the Authority was unable to provide documentation at the time of our review of the resolution. As previously mentioned, according to HUD’s requirements, the Authority should investigate all probable violations, and maintain full documentation of Federal labor standards administration and enforcement activities.
- Comment 5** The Authority was unable to provide complete and accurate documentation to support its assertion that the payrolls it examined indicated the subcontractors were paid more than the minimum per the issued wage decision. HUD’s Contractor’s Guide to Prevailing Wage Requirements for Federally Assisted Construction Projects, section 2, requires an employee’s payroll records to contain the employee’s name, address, and Social Security number. Additionally, see comment 3.
- Comment 6** We commend the Authority for taking necessary actions to ensure its staff receives training on Davis-Bacon.

## OIG's Evaluation of Auditee Comments

**Comment 7** HUD requirements established that authorities are responsible for the administration and the enforcement of labor standards in Federally-funded or assisted projects. Since the Authority did not adequately monitor its contractors for compliance with Davis-Bacon, it is the Authority's responsibility to make employees whole. Therefore, the Authority should determine whether contractors are owed wage restitutions. At the time of our review, the Authority was unable to provide complete and accurate documentation to support its payment of wages to its contractors.

## Appendix C

### FEDERAL REQUIREMENTS

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Notice PIH 2009-12, issued March 18, 2009, states that management improvements cannot be used for operations or rental assistance activities such as staff training, resident assistance, and maintenance staff salaries unless they are applied to force account work on a capital project.

Frequently Asked Questions # 2, as of March 15, 2009. Eligible Use of Funds: Answer 14: Recovery Act funds cannot be used to cover operational expenses.

Answer 17: A public housing authority's ongoing operation expenses are ineligible management improvements costs.

The Authority's consolidated annual contributions contract, effective March 18, 2009, states that this grant (Recovery Act) is conditioned on the acceptance of the Authority to comply with the reporting requirements of the Recovery Act and the following requirements: The Authority must obligate 100 percent of the grant within 1 year of the effective date. At the 1-year date, any unobligated funds will be recaptured.

Section 1606 of the Recovery Act requires the payment of Davis-Bacon Act (40 U.S.C. (United States Code) 31) wage rates to "laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or part by and through the Federal Government" pursuant to the Recovery Act.

29 CFR 3.4(a) and (b); Submission of weekly statements and the preservation and inspection of weekly payroll records.

- (a) Each weekly statement required under section 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, with such examination and check as may be made, such statement, or a copy thereof, shall be available, or shall be transmitted together with a report of any violations, in accordance with applicable procedures prescribed by the United States Department of Labor.
- (b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representatives of the Department of Labor.

HUD Handbook 1344.1, REV-1, chapter 9, section 2, states that detailed reports of each labor standards compliance review will be prepared covering labor standards enforcement staffing,

project inspection activities, weekly payroll review, complaint responsiveness, preconstruction conferences, violations resolution, and records maintenance. Such reports will be made available to the headquarters Office of Labor Relations upon request. All findings resulting from compliance reviews must be closed, and documentation to that effect must be maintained in compliance review files.

Chapter 3, paragraph 3-3, of the handbook states that payrolls must be retained for 3 years by the public housing agency, Indian housing authority, local or State housing and community development agency, coinsuring lender, or HUD, whichever is applicable, following completion of the project and then may be destroyed unless an investigation, disputed compliance action, or appeal remains outstanding. Clearance shall be obtained from HUD field office labor relations staff before such destruction. Contractors and subcontractors must retain their basic payroll records (payroll register, individual earning cards, etc.) for the same 3-year period.

24 CFR 85.36 requires grantees and subgrantees to meet the following standards:

- (1) Reflect State and local laws and regulations provided the procurements conform to applicable Federal law.
- (2) Maintain a contract administration system to ensure that contractors perform in accordance with the terms, conditions, and specifications in their contracts or purchase orders.
- (3) Maintain a written code of standards of conduct for its employees engaged in the award and administration of contracts including a conflict of interest, real or apparent.
- (4) Provide for a review of proposed procurements to avoid the purchase of duplicate or unnecessary items.

HUD guidebook, Making Davis-Bacon Work, A Practical Guide for States, Indian Tribes, and Local Agencies, June 2006, states Key Labor Standards Objectives:

1. Apply Davis-Bacon requirements properly. Make certain that labor standards, including Davis-Bacon prevailing wage rates, are applied where required. Ensure that any exceptions or exemptions are identified.
2. Through education and advice, support contractor compliance with labor standards. Provide basic training and technical support to contractors to ensure they understand their obligations under prevailing wage reporting requirements.
3. Monitor contractor performance. Perform reviews of certified payroll submissions and other information to help ensure contractor compliance with labor standards provisions and the payment of prevailing wages to workers.
4. Investigate probable violations and complaints of underpayment. Thoroughly explore any evidence of violations, especially allegations of underpayment.
5. Pursue debarment and other available sanctions against repeat labor standards violators. Carry-out a no-tolerance policy toward contractors who violate prevailing wage laws.