Issue Date
December 13, 2011
Audit Report Number
2012-NY-1004

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

//Signed//

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

SUBJECT: The City of Buffalo, NY, Did Not Administer Its Community Development Block Grant-Recovery Act Program Funds in Accordance With HUD Requirements

HIGHLIGHTS

What We Audited and Why

We audited the City of Buffalo's administration of its supplemental Community Development Block Grant (CDBG) program funded under the American Recovery and Reinvestment Act of 2009. We selected the City based on concerns identified in our completed audit report of the City's CDBG program.[1] The objectives of the audit were to determine whether the City efficiently and effectively administered its CDBG-Recovery Act (CDBG-R) program in compliance with Recovery Act and other applicable requirements. Specifically, we wanted to determine whether City officials had adequate policies and procedures to ensure that (1) program funds drawn from HUD's Line of Credit Control System were supported with adequate documentation and (2) CDBG-R program expenditures were for eligible activities that met a national objective of the program.

[1] Audit Report Number 2011-NY-1010, issued April 15, 2011

What We Found

City officials did not always administer the CDBG-R program in accordance with applicable rules and regulations. Specifically, City officials (1) disbursed CDBG-R program funds for questionable street repaving and curb and sidewalk replacement expenditures and (2) failed to administer the City's housing rehabilitation loan program in accordance with its own procedures and subcontractor agreement. As a result, program funds were used for unsupported capital improvements and emergency rehabilitation loan expenditures. Consequently, City officials could not assure HUD that all CDBG-R disbursements complied with HUD rules and regulations and that the program's objectives were met.

What We Recommend

We recommend that the Director of HUD's Buffalo Office of Community Planning and Development instruct City officials to (1) provide documentation to justify the more than $1.5 million in unsupported costs for questionable CDBG-R and fiscal year 2010 CDBG street repaving and curb and sidewalk replacement expenditures; (2) reprogram the remaining $159,388 in obligated and unobligated street repaving and curb and sidewalk replacement project funds if there is a lack of capacity, to ensure that these funds are put to better use for other eligible program activities; (3) provide documentation to justify the $249,312 in unsupported costs for housing rehabilitation repairs, and (4) suspend incurring costs for CDBG-R capital improvement activities until HUD determines whether City officials have the capacity to complete these activities in compliance with HUD regulations.

For each recommendation in the body of the report without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-4. Please furnish us copies of any correspondence or directives issued because of the audit.

Auditee's Response

We discussed the results of the review during the audit, provided a copy of the draft report to City officials, and requested their comments on November 2, 2011. We held an exit conference on November 9, 2011, and City officials provided their written comments on November 15, 2011, at which time they generally disagreed with the findings. The complete text of the auditee's response, along with our evaluation of that response, can be found in appendix B of this report.

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BACKGROUND AND OBJECTIVES

The Community Development Block Grant (CDBG) program was established by Title I of the Housing and Community Development Act of 1974, Public Law 93-383 as amended, 42 U.S.C. (United States Code) 5301. The program provides grants to State and local governments to aid in the development of viable urban communities. Governments are to use grant funds to provide decent housing and suitable living environments and expand economic opportunities, principally for persons of low and moderate income. To be eligible for funding, every CDBG-funded activity must meet one of the program's three national objectives. Specifically, every activity, except for program administration and planning, must

- Benefit low- and moderate-income persons,
- Aid in preventing or eliminating slums or blight, or
- Address a need with a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community.

The City of Buffalo, NY, is a CDBG entitlement grantee. The U.S. Department of Housing and Urban Development (HUD) awarded the City more than $15.8 million in CDBG funding in fiscal year 2008, more than $16 million in 2009, and more than $17 million in 2010.[2] These funds are available to support a variety of activities directed at improving the physical condition of neighborhoods by providing housing rehabilitation, providing public improvements, fostering economic development by providing technical and financial assistance to local businesses, creating employment, or improving services for low- and moderate-income households. The City operates under a mayor-council form of government, and its CDBG activities are administered through the Buffalo Urban Renewal Agency and the City's Office of Strategic Planning.

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009. The purpose of the Recovery Act was to stimulate the Nation's ailing economy, with a primary focus on creating and saving jobs in the near term and investing in infrastructure that will provide long-term economic benefits. This legislation included a $1 billion appropriation of community development funds to carry out CDBG programs.

On August 14, 2009, the City received more than $4.3 million in supplemental CDBG funds under the Recovery Act (CDBG-R). City officials planned to use the CDBG-R funds on the following seven activities:

[2] The City's Community Development Block Grant Program fiscal year is May 1 through April 30.

Activity	Amount obligated
Street and sidewalk improvements - citywide	$1,000,000
Street and sidewalk improvements - neighborhood revitalization strategy area	500,000
Emergency rehabilitation repairs - single family	677,672
Emergency rehabilitation repairs - multifamily	677,673
Jobs training program	531,149
Demolitions - citywide	525,000
General administration	400,000
Total	**$4,311,494**

The objectives of the audit were to determine whether the City efficiently and effectively administered its CDBG-R program in compliance with the Recovery Act and other applicable requirements. Specifically, we wanted to determine whether City officials had adequate policies and procedures to ensure that (1) program funds drawn from HUD's Line of Credit Control System were supported with adequate documentation and (2) CDBG-R program expenditures were for eligible activities that met a national objective of the program.

RESULTS OF AUDIT

Finding 1: City Officials Charged Questionable Expenditures to the City's Supplemental CDBG-R Program

City officials charged questionable street repaving and curb and sidewalk replacement costs to its supplemental CDBG-R program. Specifically, they did not perform independent cost estimates for sealed bid contracts and did not prepare cost or price analyses for modifications to the street repaving contract. Further, the City's administrator, the Buffalo Urban Renewal Agency, did not oversee the day-to-day operations of the contractors selected to perform these two capital improvement projects. Consequently, there was no assurance that only necessary and reasonable costs were charged to the CDBG-R program. We attribute this deficiency to the lack of knowledge of HUD regulations by City Department of Public Works staff responsible for the procurement of CDBG-R-funded capital improvement projects, and the Agency's procedures, which did not require its personnel to perform contract oversight for CDBG-R-funded capital improvement projects. As a result, $964,110 in unsupported street repaving costs, and $364,544 in unsupported curb and sidewalk replacement costs were charged to the CDBG-R program. In addition $213,331 in unsupported street repaving costs were charged to the fiscal year 2010 CDBG program.

Inadequate Procurement of Capital Improvement Contracts

Upon notification from HUD of the availability of supplemental CDBG-R funds, City officials prepared a substantial amendment to their 2008-2009 annual action plan. This document indicated to HUD the activities on which the City intended to expend its CDBG-R funds. City officials identified seven activities, and HUD approved the substantial amendment on August 14, 2009. Two activities pertaining to capital improvement projects, which comprised approximately 35 percent of the City's CDBG-R funding, were examined during the audit. One of the activities was for citywide street repaving for an initial contract amount of $878,268, and the other was for a curb and sidewalk replacement project for a contract amount of $431,117 in the City's neighborhood revitalization strategy area.

Based on correspondence and interviews with City personnel, the City's Department of Public Works was given procurement responsibility for the CDBG- and CDBG-R-funded capital improvement projects to achieve better economies of scale and avoid duplication of work between the Buffalo Urban Renewal Agency and the Department. However, neither the Agency nor the Department prepared independent cost estimates for the street repaving contract or the curb and sidewalk replacement contract. As a result, there was no assurance that these contracts were procured in an efficient and economical manner that was beneficial to the City. Regulations at 24 CFR (Code of Federal

Regulations) 85.36 provide that grantees must make independent estimates before receiving bids and perform a cost or price analysis in connection with every procurement action, including contract modifications; however, this was not done.

In addition, regarding the initial $878,268 contract executed for the street repaving work, an additional $510,062 (consisting of $213,331 in fiscal year 2010 CDBG funds and $296,731 in City operating funds) was paid for contract modifications not procured in accordance with regulations at 24 CFR 85.36, which provide that grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The two change orders, which increased the original contract by 58 percent, were not supported by cost or price analyses to justify cost reasonableness of the contract modifications.

Further, the contract terms for the street repaving work noted that the project would be completed within 180 days of the notice to proceed date of June 16, 2010; however, as of July 31, 2011, the contract remained open, and City officials had paid more than $1.5 million (consisting of $964,110 in unsupported CDBG-R funds, $213,331 in unsupported fiscal year 2010 CDBG funds, and $403,638 in City operating funds) to the contractor, with an additional $92,815 owed through contract completion. The amounts paid were well above the contracted amount, which indicated that City officials did not have controls in place to prevent making payments over and above those contracted. As a result, the $964,110 in CDBG-R and $213,331 in fiscal year 2010 CDBG funds was questioned because City officials did not prepare independent cost or price estimates to ensure that the price paid for the repaving services was reasonable or maintain controls to ensure that only contracted amounts were paid. If HUD determines that the contract was not reasonable, the $92,815 in additional funds allocated for this activity should be reprogrammed to other eligible activities.

Regarding the curb and sidewalk replacement contract of $431,117, expenditures totaled $364,544 and were considered unsupported for the same reasons. Therefore, the remaining $66,573 in contingency, retention, and unobligated contract funds should be reprogrammed for other eligible purposes and put to better use.

Inadequate Contract Oversight

The Buffalo Urban Renewal Agency did not oversee the day-to-day operations of the contractors selected to perform the two capital improvement projects. Regulations at 24 CFR 570.501 provide that an entity designated to undertake CDBG grant administration responsibilities is subject to the requirements applicable to subrecipients. These requirements include the regulations at 24 CFR 85.40, which require monitoring of the day-to-day activities of the designated entity. Thus, while HUD regulations allow City officials to hand over the procurement function for CDBG-R-funded capital improvement projects to the City's Department of Public Works, Agency and City officials are subject to the

same requirements as a subrecipient. Agency personnel did not monitor or perform inspections, verify materials and quantities used, or track the progress of the work being performed onsite by the contractors. Although Agency and City officials relied on the Department of Public Works for this oversight, there was no assurance that Department officials had adequate knowledge of HUD regulations to protect the CDBG-R funds. As a result, Agency and City officials could not assure HUD that only necessary, eligible costs were charged to the CDBG-R program.

Conclusion

City officials charged questionable street repaving and curb and sidewalk replacement contract expenditures to the City's supplemental CDBG-R program. Further, the City's administrator, the Buffalo Urban Renewal Agency, did not oversee the day-to-day operations of the contractors selected to perform the capital improvement projects. Deficiencies identified included the lack of independent cost estimates for sealed bid contracts, no cost or price analyses for modifications to the street repaving contract, and no controls to ensure that only contracted amounts were paid. Consequently, there was no assurance that only necessary and reasonable costs were charged to the CDBG-R program.

We attribute these deficiencies to the lack of knowledge of HUD regulations by Department of Public Works staff responsible for the procurement of CDBG-R-funded capital improvement projects and the Buffalo Urban Renewal Agency's procedures, which did not require its personnel to perform contract oversight for CDBG-R-funded capital improvement projects. As a result, more than $1.3 million, consisting of $964,110 in unsupported street repaving costs and $364,544 in unsupported curb and sidewalk replacement costs, was charged to the CDBG-R program. An additional $213,331 in unsupported street repaving costs was also charged to the fiscal year 2010 CDBG program. The remaining $159,388, consisting of $92,815 in obligated funds pertaining to the street repaving contract and $66,573 in contingency and unobligated funds pertaining to the curb and sidewalk replacement contract, should be reprogrammed for other eligible purposes and put to better use.

Recommendations

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

1A. Suspend incurring costs for CDBG-R capital improvement projects until HUD determines whether City officials have the capacity to carry out these activities in compliance with HUD regulations. If it is determined that City officials lack that capacity, the remaining $159,388 ($92,815 and $66,573) in obligated and unobligated street repavement and curb and

sidewalk replacement project funds should be reprogrammed so that City officials can assure HUD that these funds will be put to better use.

1B. Provide documentation to justify the reasonableness of $1,328,654 in unsupported street improvement costs ($964,110 in street repaving costs and $364,544 in curb and sidewalk replacement costs) charged to the CDBG-R program so that HUD can make an eligibility determination. Any unsupported costs determined to be ineligible should be reimbursed from non-Federal funds.

1C. Provide documentation to justify $213,331 in unsupported street repaving costs charged to the fiscal year 2010 CDBG program so that HUD can make an eligibility determination. Any unsupported costs determined to be ineligible should be reimbursed from non-Federal funds.

1D. Establish and implement policies and procedures to ensure that the procurement responsibilities of CDBG- and CDBG-R-funded projects are adequately defined.

1E. Establish and implement policies and procedures to ensure proper monitoring of CDBG- and CDBG-R-funded projects, including the day-to-day oversight, reconciliation, and certification of contractor material use, cost sheets, and contract registers, to ensure that only contracted amounts are expended.

Finding 2: City Officials Failed To Administer Their Emergency Housing Rehabilitation Loan Program in Accordance With Their Own Procedures and Subcontractor Agreement

City officials failed to administer their emergency housing rehabilitation loan program in accordance with their own procedures and subcontractor agreement. Specifically, they made payments to contractors without monitoring and inspecting repair work, made payments for repairs that lacked the appropriate documentation to support adequate classification as an emergency, and failed to ensure that their subcontractor maintained a clear separation of duties in the administration of the program. These deficiencies can be attributed to City officials' inadequate implementation of controls and lack of oversight of program expenditures. As a result, it is questionable whether $249,312 in completed repair work, as part of the emergency rehabilitation loan program, was for eligible CDBG-R program expenditures.

Background

The primary purpose of the City's emergency housing rehabilitation loan program is to provide low- and moderate- income homeowners partially forgivable, no interest loans for emergency repairs on single or multiunit residences. Eligible emergency repairs include those to specific house systems that are in poor or dangerous condition.

City officials subcontracted with Belmont Shelter Corp., through the Buffalo Urban Renewal Agency, for the administration of the program. Belmont received applications for assistance from local community-based organizations and was responsible for the repair process through the submission of a request for payment to City officials. This process included the verification of income eligibility, preparation of work specifications, requests for bids and review of those bids, and inspection of all work performed by the contractors. Regulations at 24 CFR 570.501 provide that the recipient of CDBG funds is responsible for ensuring that funds are used in accordance with all program requirements and that the use of subrecipients or contractors does not relieve the recipient of this responsibility. Thus, City officials were responsible for ensuring that the program was administered efficiently and effectively. As of July 31, 2011, City officials had awarded 83 CDBG-R-funded emergency housing rehabilitation loans with disbursements totaling $677,777.

City Officials' Own Procedures Not Always Followed

City officials did not always follow their own procedures in the administration of the emergency housing rehabilitation loan program. For example, they failed to inspect completed repairs, verify emergency conditions, and ensure a sufficient

number of bids. Consequently, there was no assurance that the objective of the program was met.

According to the City's procedures, all grant-funded construction projects must be inspected by a construction monitor upon completion. Monitors verify that completed work complies with all contractual obligations, including the approved specifications, before the issuance of payments to the contractor. Inspections were required at the time of periodic payment requests or at the time of completion. Also, all work items for which payment was requested must have been completed and in place.

However, a review of 20 emergency rehabilitation loan files found that payments were made to contractors without the prior inspection and approval of City officials. Specifically, four of the loans reviewed had final payments disbursed without the proper approval. Two of these loans also had prior partial payments for a total of $51,010 disbursed in six payments without approval. Further, although there were four additional emergency housing rehabilitation loans that each had one partial payment disbursed without the proper approval, the final payment requests for these four loans, which were significantly less than the partial payment requests, were signed and approved by the City's monitor. Nevertheless, funds were expended before City officials approved the repairs performed. Although the four properties relating to the partial payments were inspected later, the majority of the total payment was disbursed before the inspection. Thus, City officials could not provide HUD assurance that $51,010 in repairs completed without adequate monitoring fully complied with the City's procedures.

According to the City's procedures, the intent of the emergency housing rehabilitation program was to address emergencies such as utility service interruption and the repair of specific house systems that were in poor or dangerous condition. The emergency verification form that must accompany the application for emergency assistance indicated the nature of the emergency. The procedures further added that conditions noted with each request for emergency assistance would be verified by a representative of the City's Office of Strategic Planning.

However, a review of 20 emergency housing rehabilitation loan files found that neither Belmont nor City officials verified the emergency nature of $249,312 in completed repairs. Of the 20 files reviewed, 5 did not contain an emergency verification form, and the remaining 15 contained the emergency verification form signed only by the homeowner and were missing the verification signature of the construction analyst. Therefore, no one attested to the emergency nature of the repairs requested for 5 properties, and only the homeowner attested to the emergency nature of the repairs requested for the other 15 properties. Thus, City officials could not provide HUD assurance that an additional $198,302 in completed repairs, which lacked evidence of proper certification, complied with

the City's procedures. In addition, there were roofing system repairs performed on 19 of the 20 properties reviewed, yet none of the loan files contained evidence that both significant deterioration and water infiltration, indicating an emergency, were verified as required by the City's procedures.

According to the City's procedures for its emergency housing rehabilitation loan program, all projects expected to exceed $1,999 must have a minimum of three bids from qualified sources. If an adequate number of bids is not received, efforts taken to ensure an open competition must be documented. However, of the 20 emergency housing rehabilitation loan files reviewed, 9 files documented that only 2 bids were received for the work performed. The loan files contained handwritten documentation listing the contractors that were sent bid requests but did not contain adequate justification as to why the required three bids were not received. Therefore, City officials could not provide adequate assurance that the bidding on the repairs for nine properties was open and competitive.

Provisions of Subcontractor Agreements Not Always Followed

City officials did not always follow the provisions of their subcontractor agreement with Belmont regarding the administration of the emergency housing rehabilitation loan program. Specifically, City officials failed to ensure an adequate separation of duties and that bid review reports were completed as required by the subcontractor agreement. The agreement executed with Belmont provided that to maintain a clear separation of duties, bids were not to be reviewed by the same construction analyst who prepared the specifications. The agreement further required that to ensure the impartial review of contractor work, the construction analyst who conducted the job inspections for any single property would not be the same individual who prepared the specifications or reviewed the contractor bids for that property.

However, of the 20 loan files reviewed, 19 documented that the individual who prepared the work specifications performed the job inspections of the properties. Further, 8 of the 20 loan files reviewed contained a bid review report identifying the individual who performed the bid review as the individual who prepared the work specifications and performed the job inspections. The remaining 12 loan files did not contain a bid review report as required. Thus, there was not an adequate separation of duties at Belmont concerning the administration of this program. This lack of separation of duties further diminished City officials' ability to assure HUD that Belmont performed the subcontracted tasks impartially and with integrity.

Conclusion

City officials did not follow their own procedures and subcontractor agreement with Belmont for the administration of the emergency housing rehabilitation loan program. The deficiencies identified during the review of the rehabilitation loan files are summarized in appendix C. These deficiencies make it questionable whether program objectives were met. Consequently, City officials expended $249,312 ($51,010 in repairs completed without adequate monitoring and $198,302 in repairs that lacked proper certifying documentation) for unsupported repair costs, thus diminishing the City's ability to ensure that its emergency housing rehabilitation loan program was administered in an effective and efficient manner. We attribute these deficiencies to City officials' inadequate implementation of controls and lack of oversight of program expenditures.

Recommendations

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

2A. Provide documentation to justify $249,312 in unsupported repair costs so that HUD can make an eligibility determination. Any unsupported costs determined to be ineligible should be reimbursed from non-Federal funds.

2B. Revise and strengthen existing housing procedures to include that emergency housing rehabilitation repairs must be inspected by the City's monitor before all payments, partial and final.

SCOPE AND METHODOLOGY

We performed onsite audit work at the City's offices in Buffalo City Hall, located in Buffalo, NY, between April and August 2011. The audit scope covered the period August 1, 2009, through March 31, 2011, and was extended as necessary. We relied in part on computer-processed data primarily for obtaining background information on the City's expenditure of CDBG-R 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 Office of Community Planning and Development officials to obtain an understanding of and identify HUD's concerns with the City's operations.
- Reviewed the City's policies, procedures, and practices pertaining to its CDBG-R program.
- Interviewed key personnel responsible for the administration of the City's CDBG-R program.

We selected a nonstatistical sample of transactions pertaining to public improvements and housing rehabilitation program activities. The City was awarded more than $4.3 million in CDBG-R funding in 2009. HUD's Integrated Disbursement and Information System reports reflect that more than $2.78 million in CDBG-R funds had been disbursed for 88 different activities as of July 31, 2011. These activities all fall under the seven broader activities defined in the substantial amendment to the 2008-09 annual action plan. The two program activities selected for testing represent more than 66 percent of the City's CDBG-R funds budgeted. Therefore,

1. For the public improvements program area, we reviewed all expenditures occurring during the audit period.
2. For the housing rehabilitation program area, we reviewed 20 emergency housing rehabilitation loans that were expended during the audit period. These loans were selected to ensure that the sample consisted of loans awarded in the beginning, middle, and end of the audit period. The City had awarded 83 CDBG-R-funded emergency housing rehabilitation loans with disbursements totaling $677,777 as of July 31, 2011.

The results of the testing apply only to the transactions reviewed and cannot be projected to the total population of CDBG-R transactions.

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:

- City officials did not have adequate controls over the efficiency and effectiveness of program operations when they did not establish adequate administrative controls to ensure that costs associated with public improvement and housing rehabilitation activities were supported (see findings 1 and 2).
- City officials did not have adequate controls over compliance with laws and regulations when they did not always comply with HUD regulations while disbursing program funds (see findings 1 and 2).
- City officials did not have an adequate system to ensure that resources were properly safeguarded when they did not maintain adequate supporting documentation for costs charged to their public improvement and housing rehabilitation activities (see findings 1 and 2).

FOLLOW-UP ON PRIOR AUDITS

Audit Report Number
2011-NY-1010

HUD OIG issued an audit report on April 15, 2011, relating to the City of Buffalo, NY's CDBG program (2011-NY-1010). The audit found that the City did not always follow applicable HUD regulations in its administration of the CDBG program. In addition, the City did not ensure that CDBG funds were expended for eligible activities that met a national objective of the program. The report contained 3 findings and 12 recommendations. The findings involved the public facilities and improvements, economic development, and clearance program areas. As of December 2, 2011, 10 of the recommendations remained open and unresolved. Similar deficiencies were found during this audit, as discussed throughout the report. The 10 recommendations are listed below.

HUD OIG recommended that the Director of HUD's Buffalo Office of Community Planning and Development

- Require the City to suspend incurring costs or reimbursing itself for costs paid from the City's municipal general expense account for economic development activities until HUD determines whether the City has the capacity to carry out its CDBG economic development activities in compliance with HUD regulations. If it is determined that the City lacks the capacity, the $4,739,829 in economic development project funds remaining for fiscal years 2008, 2009, and 2010 should be reprogrammed so the City can assure HUD that these funds will be put to better use.

- Require the City to suspend incurring costs or reimbursing itself for costs paid from the City's municipal general expense account for clean and seal activities until HUD determines whether the City has the capacity to carry out its CDBG clean and seal activities in compliance with HUD regulations. If it is determined that the City lacks the capacity, $744,479 in fiscal year 2010 clean and seal program funds should be reprogrammed so the City can assure HUD that these funds will be put to better use.

HUD OIG further recommended that the Director of HUD's Buffalo Office of Community Planning and Development instruct the City to

- Reimburse from non-Federal funds $162,923 ($134,711 + $28,212) expended on ineligible costs pertaining to street improvement projects not done and a duplicate reimbursement.

- Provide documentation to justify the $1,982,988 in unsupported costs associated with street improvement expenditures incurred between June 2007 and October

2009. Any unsupported costs determined to be ineligible should be reimbursed from non-Federal funds.

- Provide documentation to justify the $20,143,219 ($4,902,754 + $15,240,465) in unsupported transactions recorded in the CDBG program income account. Any receipts determined to be unrecorded program income should be returned to the CDBG program, and any expenditures determined to be ineligible should be reimbursed from non-Federal funds.

- Certify and provide support that the proper amount of CDBG assets pertaining to Buffalo Economic Renaissance Corporation program income was returned to the City from the subrecipient by performing an audit of the accounts that the Corporation maintained.

- Establish and implement controls that will ensure adequate monitoring of subrecipient-administered activities, that CDBG funds are properly safeguarded, the achievement of performance goals in subrecipient supported activities, and that corrective actions are taken for nonperforming subrecipients.

- Reimburse from non-Federal funds the $304,506 related to ineligible clean and seal code enforcement costs.

- Provide documentation to justify the $716,622 ($545,607 + $24,069 + $146,946) in unsupported clean and seal costs incurred so that HUD can make an eligibility determination. Any costs determined to be ineligible should be reimbursed from non-Federal funds.

- Develop administrative control procedures that will ensure compliance with CDBG program requirements, including ensuring that costs are eligible and necessary before being charged to the program.

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS AND FUNDS TO BE PUT TO BETTER USE

Recommendation number	Unsupported 1/	Funds to be put to better use 2/
1A		$159,388
1B	$1,328,654	
1C	$213,331	
2A	$249,312	
Total	$1,791,297	$159,388

1/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of 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.

2/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. In this instance, if City officials implement our recommendations to reprogram the remaining $159,388 in obligated and unobligated street improvement project funds, they can assure HUD that these funds will be properly put to better use.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation **Auditee Comments**

Buffalo Urban Renewal Agency
920 City Hall, 65 Niagara Square
Buffalo, New York 14202-3376
716-851-5035

November 15, 2011

Mr. Edgar Moore
Regional Inspector General for Audits
U.S. Department of Housing and Urban Development
Office of Inspector General
26 Federal Plaza
Room 3430
New York, NY 10278-0068

RE: Written Comments to Draft Audit Report 2012-NY-10XX

Dear Mr. Moore:

We appreciate the opportunity to review the Draft Audit Report with your staff during our exit conference on November 9, 2011. We recognize that the Office of Inspector General ("OIG") has reviewed a number of administrative matters and we have certain concurrences and corrections. As we understand the Draft Audit, there are essentially two Findings.

Finding 1 states that the Buffalo Urban Renewal Agency ("BURA") did not oversee day-to-day operations of selected contractors and believes there were unsupported street paving and curb and sidewalk replacement costs. We look forward to working with the program office to clear these findings.

COMMENT 1 We respectfully disagree with OIG. We can provide or provide again evidence of public procurement. We must note that in our exit conference we offered this and your office declined our offer. At the exit interview, OIG noted that these matters were addressed at the pre-exit conference, but we noted there was no pre-exit conference here. Instead, we received a short memorandum that, which did not address much of what was contained in the Draft Audit. We also would like to note that we requested a more organized communication between auditors and auditees, which we informally requested in a prior audit, and OIG again declined. As we noted, BURA members believe they provided the information the OIG staff requested. However, we appreciate the oral representations made at the exit conference that the Findings were only based on the information OIG reviewed, that it does not mean the required information does not exist, and that we will have an opportunity to review that in clearance with the program office.

Ref to OIG Evaluation **Auditee Comments**

COMMENT 2 Construction was monitored by BURA's consultant Marquis Engineering, P.C. The report appears to characterize "day-to-day" oversight as in the nature of construction supervision, which we do not believe is correct. Regardless, 85.40 was complied with as day-to-day grant oversight was provided. The Marquis Company was hired as an agent of the city to monitor, perform inspections, verify materials and quantities used, and track the progress of the work being performed on site by the contractors. We further do not agree that 24 CFR 85.36 requires procurement of contract modifications. We understand that cost or price analysis was provided regarding change orders and contract modifications.

COMMENT 3 Finding 2 alleges questionable costs regarding completed repair work subcontracted through Belmont Shelter Corporation ("Belmont"). The Belmont contract is renewed and revised over 18 month periods and includes provisions to ensure proper completion of eligible work. We believe BURA monitored completed repairs pursuant to its policies and procedures. We are still

COMMENT 4 reviewing the Appendix C, which our office has only recently received. Thus far, our reviews show that the listed loans were inspected, through in one case (7460) the inspector signed on the wrong line. We believe in other occasions there may have been confusion with your office as the

COMMENT 5 format changed at the last contract renewal with regard to the bid review reports. These forms were changed by the HUD Field Office as a result of their monitoring review. We also believe there may have been a difference of understanding as to the importance of some forms. For example the "emergency verification form" was not required because the construction analyst reviewed the emergency nature of the work in person prior to the preparation of the work specification. The follow-up on the April 15, 2011 audit is your office's summary of that audit. We have timely responded to each program office request following the audit and are working with the program office on their stated time line for resolution of that audit.

On behalf of the Mayor of the City of buffalo, thank you for this opportunity and request that you consider these written comments in any final report.

City of Buffalo

By:
//Signed//
Scott C. Billman, Esq.
General Counsel

Enclosure

cc: The Honorable Byron W. Brown, Mayor, City of Buffalo
Brendan R. Mehaffy, Vice Chairman, City of Buffalo, Urban Renewal Agency
Richard Price, Esq., Nixon Peabody, LLP

OIG Evaluation of Auditee Comments

Comment 1 Officials for the City disagree with finding 1, stating that they can provide evidence of public procurement. Further, City officials contend that (1) a preexit conference was not held to address the issues identified in the draft report, (2) their request for more organized communication between the auditors was declined, and (3) the requested information was provided. Throughout the course of the audit, OIG requested all documentation pertaining to the procurement and monitoring of the capital improvement contracts under review. The conclusions reached are fully supported by documentation requested and reviewed during the audit. Regarding the preexit conference, City officials opted to receive our written finding outlines in lieu of a face-to-face meeting, which we submitted to City officials on August 8, 2011. Since that time, City officials have not provided feedback or voiced their concerns. In addition, we accommodated the request for organized communication with the officials in the same manner as for the previous two audits to the extent feasible. The audit process allows us to formally request documentation through a point of contact unless it becomes tedious, time consuming, and an impediment to the audit. Requests for documentation were made through email correspondence and discussions with the appropriate City officials. City officials were given ample opportunity to provide the supporting documentation during the audit. Supporting documentation provided after the audit will be reviewed as part of the audit resolution process with the local HUD office. Accordingly, the contention of the officials is unwarranted.

Comment 2 Officials for the City contend that the construction was monitored by the Buffalo Urban Renewal Agency's consultant, an engineering firm hired by the City to monitor, perform inspections, verify materials and quantities used, and track the progress of the work being performed on site. Further, the officials disagree that regulations at 24 CFR 85.36 require the procurement of contract modifications. Nevertheless, in accordance with regulations at 24 CFR 85.40, it is the ultimate responsibility of the grantee (the Agency) to monitor the day-to-day operations of the contractor to ensure compliance with applicable Federal requirements and that performance goals are achieved. However, we were not provided adequate assurance that City officials complied with these regulations. Further, regulations at 24 CFR 85.36 clearly provide that a cost or price analysis is required in connection with every procurement action, including contract modifications. Yet at the time of our review, City officials could not provide the supporting documentation pertaining to the procurement and monitoring of the capital improvement contracts under review. Thus, the contention of the officials is unwarranted.

Comment 3 Officials for the City state that the Belmont contract is renewed and revised over 18-month periods and includes provisions to ensure proper completion of eligible work and that the Buffalo Urban Renewal Agency monitored and inspected the completed repairs pursuant to its policies and procedures. However, audit work found that the contract with Belmont was revised only once, in late 2010, and

since the contract was originally executed in 2004, this is far greater than an 18-month period. In addition, the provisions to the contract to ensure proper completion of eligible work were not always followed. The City's policies and procedures state that all work performed must be inspected by the monitor before final payment to the contractor. However the inspections that were to be performed by the Agency's supervisor of building construction before final payment did not always occur.

Comment 4 City officials state that appendix C was recently received and still under review; however, for loan number 7460, the inspector signed on the wrong line. The draft report, which included appendix C, was provided to the officials on November 2, 2011; thus, the officials had ample opportunity to complete their review. Further, loan number 7460 had the signature of the lead hazard inspector on the wrong line, not Buffalo Urban Renewal Agency's supervisor of building construction, who was in charge of inspecting the work performed upon completion. Nonetheless, the payment was processed by Agency officials, although the monitor's approval signature line was blank.

Comment 5 Officials for the City commented that the bid review report forms were changed, which may have led to confusion, and that there may have been a difference of understanding as to the importance of some of the forms because the emergency verification form was not required. Regardless of its format, the lack of bid review reports further supported the lack of a separation of duties deficiency at Belmont. According to the contract, the Belmont official responsible for reviewing the bids should not be the individual who prepared the work specifications or performed the job inspection. The bid review report was the only document that identified the individual who reviewed the bids. Thus, for the loan files that were missing the form, the City did not ensure a separation of duties. In addition, according to the City's procedures, the emergency verification form was required with all applications for assistance, and the conditions identified on them would be verified. Nevertheless, without the written attestation of an Agency or Belmont official, the City had no assurance as to the validity of the homeowners' claims of emergency conditions. Therefore, the officials have no assurance that the emergency objective of the program was met.

Appendix C

SCHEDULE OF EMERGENCY REHABILITATION LOAN ADMINISTRATION DEFICIENCIES

IDIS* activity number	Rehab loan amount	Emergency rehabilitation loan administration deficiencies						
		Lack of monitor approval – final pmt	Lack of monitor approval – partial pmt	Lack of emergency verification form	Lack of emergency verification form signature	Insufficient number of bids	Inadequate separation of duties	Lack of bid review report
7446	$5,550			X			X	X
7447	$18,221				X	X		X
7458	$7,650				X		X	X
7459	$9,650				X		X	X
7460	$5,050	X			X		X	X
7467	$11,550				X	X	X	X
7475	$3,930				X	X	X	X
7476	$14,730		X	X			X	X
7477	$15,000				X		X	X
7519	$12,975				X		X	X
7531	$13,350		X	X		X	X	X
7555	$13,400				X	X	X	X
7574	$16,800	X	X		X		X	
7576	$18,660	X	X	X			X	
7583	$15,225		X		X	X	X	
7612	$10,500	X			X	X	X	
7618	$14,188				X	X	X	
7766	$14,458		X		X		X	
7767	$14,500			X		X	X	
7837	$13,925				X		X	
Total	**$249,312**	**4**	**6**	**5**	**15**	**9**	**19**	**12**

* IDIS = HUD's Integrated Disbursement and Information System