



Issue Date September 26, 2011

Audit Report Number 2011-LA-1019

TO: K.J. Brockington, Director, Los Angeles Office of Public Housing , 9DPH

//Signed//

FROM: Tanya E. Schulze, Regional Inspector General for Audit, Region IX, 9DGA

SUBJECT: The Housing Authority of the County of San Bernardino, CA, Did Not Adequately Complete All Procurements for Its Recovery Act Capital Fund Grants in Accordance With HUD Requirements

HIGHLIGHTS

What We Audited and Why

We audited the Housing Authority of the County of San Bernardino's American Recovery and Reinvestment Act of 2009 Public Housing Capital Fund formula and competitive grants. We performed the audit because Recovery Act reviews are part of the Office of Inspector General's (OIG) annual plan and the Los Angeles Office Public Housing's 2011 risk assessment rated the Authority as high risk based on data from the Authority's most recent Real Estate Assessment Center physical inspections and Financial Data Schedule submission.

Our audit objective was to determine whether the Authority completed procurements for Recovery Act capital funds in accordance with 24 CFR (Code of Federal Regulations) Part 85 and U.S. Department of Housing and Urban Development (HUD) Recovery Act requirements.

What We Found

The Authority did not complete all procurements for its Recovery Act capital funds in accordance with 24 CFR Part 85 and HUD Recovery Act requirements. Specifically, it procured one vendor through noncompetitive procurement without adequate justification, and the related contracts were missing 5 of 13 required provisions. In addition, we identified an expired assurance of completion for ongoing work, a lack of backup documentation for the independent cost estimates in two of the files reviewed, and a control weakness in the Authority's process for approving change orders. Therefore, the Authority may have spent more Recovery Act money toward its projects than it would have had it completed proper procurement procedures.

What We Recommend

We recommend that the Director of HUD's Los Angeles Office of Public Housing require the Authority to (1) support the reasonableness of the \$247,834 contracted through noncompetitive procurement or repay the Recovery Act funding expended thus far and ensure that no additional Recovery Act funding is disbursed under the contracts, (2) amend the ongoing noncompetitive procurement contracts to include the missing contract provisions, (3) implement a policy to ensure that its procurement and contracts manager reviews all contracts before they are executed, (4) implement controls to ensure that assurance of completion documents are obtained and valid for the duration of an ongoing contract, (5) implement controls to ensure that all contractor backup documentation is retained and accessible, and (6) implement controls to ensure that all documents requiring signature are approved by multiple parties as intended and that one person does not sign on multiple lines.

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 the Authority the discussion draft report on August 29, 2011, and held an exit conference with the Authority's officials on September 7, 2011. The Authority provided written comments on September 8, 2011, and generally disagreed with our 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. The auditee also included additional attachments with its response; however, we did not include these in the report and they are available upon request.

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BACKGROUND AND OBJECTIVE

The Housing Authority of the County of San Bernardino was organized in 1941 and is the largest provider of affordable housing in the County, owning or managing more than 10,000 housing units and serving nearly 30,000 individuals and families throughout the County. As a public agency, the Authority is tasked to address the local housing needs throughout the County; therefore, the Authority works with various community partners and local government officials to acquire, build, and manage more high quality housing. In March 2008, the Authority became one of only 1 percent of housing authorities nationwide to be designated as a Moving to Work demonstration site by the U.S. Department of Housing and Urban Development (HUD).

On February 17, 2009, the President enacted the American Recovery and Reinvestment Act of 2009. This legislation includes a \$4 billion appropriation of capital funds for public housing agencies to carry out capital and management activities, as authorized under Section 9 of the United States Housing Act of 1937. The Recovery Act requires that \$3 billion of these funds be distributed as formula funds and the remaining \$1 billion be distributed through a competitive process.

Under both programs, housing agencies are required to obligate 100 percent of the grant within 1 year, expend at least 60 percent of the grant within 2 years, and expend 100 percent of the grant within 3 years from the date that funds are made available. Failure to comply with the 1-, 2-, or 3-year obligation and expenditure requirements will result in the recapture of unobligated and unexpended funds. The formula and competitive Recovery Act funds were made available to the Authority on March 18 and September 24, 2009, respectively. The Authority was awarded stimulus funds of more than \$5 million under the formula grant and more than \$3 million under the Capital Fund Green Communities Option 2 Recovery competitive grant. As of July 31, 2011, the Authority had expended 100 percent of its formula grant funds and 93 percent of its competitive grant funds.

The Authority expended the funds among 25 vendors, in addition to paying administrative costs and force account¹ program labor. The funds enabled the Authority to complete exterior improvements at four of its public housing sites, including but not limited to lead-based paint abatement and selective demolition, window replacement, swamp cooler replacement, exterior paint, and Americans With Disabilities Act upgrades. In addition, the Authority expended funds for roofing and electrical preparations for solar panel installation, to be paid under a different program, at its Maplewood Homes public housing site.

Our audit objective was to determine whether the Authority completed procurements for Recovery Act capital funds in accordance with 24 CFR (Code of Federal Regulations) Part 85 and HUD Recovery Act requirements.

¹ Force account is defined in the Capital Fund program as labor employed directly by the public housing authority either on a permanent or a temporary basis.

RESULTS OF AUDIT

Finding: The Authority Did Not Complete All Procurements for Its Recovery Act Capital Funds in Accordance With 24 CFR Part 85 and HUD Recovery Act Requirements

The Authority did not complete all procurements for its Recovery Act capital funds in accordance with HUD rules and regulations. Specifically, the Authority procured one vendor through noncompetitive procurement without adequate justification, and the related contracts were missing 5 of 13 required provisions. In addition, we identified an expired assurance of completion for ongoing work, a lack of backup documentation for the independent cost estimates in two of the files reviewed, and a control weakness in the Authority's process for approving change orders. These conditions occurred because the Authority did not have adequate controls over procurement and Authority staff misinterpreted HUD regulations. As a result, the Authority may have spent more Recovery Act money toward its projects than necessary.

Improper Procurement Method Used

The Authority procured HelioPower, Inc., through noncompetitive procurement without adequate justification, which violated the requirements of full and open competition set forth at 24 CFR 85.36(c)(1) (see appendix C). Helio previously completed an application on behalf of the Authority for the local electrical supply company to partially fund solar panel installation at the Authority's Maplewood Homes public housing site under the Multifamily Affordable Solar Housing program. When Helio completed that application, it was acting as a subconsultant under the Heschong Mahone Group, Inc., contract. However, when the Authority was awarded funding through the Multifamily Affordable Solar Housing program, it contracted with Helio directly to complete the resulting work using Recovery Act funds.

The Authority divided Helio's work into two contracts for \$91,222 and \$156,612 in Recovery Act Public Housing Capital Fund competitive grant funding. These contracts were for solar roof stanchion installation and solar service entry electrical upgrades, respectively. Both contracts were executed on the same day but for different aspects of the same overall project. Because of the nature of the work involved in each contract, it was acceptable to separate the work into two contracts; however, the Authority should have procured the contracts using small purchase and sealed bid procedures, respectively. The Authority did not obtain an independent cost estimate for the work as required by 24 CFR 85.36(f)(1),

publicly solicit bids as required by 24 CFR 85.36(d)(2), or obtain price or rate quotations from an adequate number of qualified sources as required by 24 CFR 85.36(d)(1), each of which was also required by the Authority's own procurement policies (see appendix C).

Further, the Authority did not proceed with the noncompetitive procurement in accordance with HUD regulations or its own procurement policy. HUD Handbook 7460.8 states, "Procurement by noncompetitive proposals shall be conducted only if a written justification is made as to the necessity of using this method in accordance with the procedures described in the PHA's [public housing agency] procurement policy." Moreover, the Authority's procurement policy and 24 CFR 85.36(d)(4)(i) provide for noncompetitive procurement only when the award of the contract is infeasible using small purchase procedures, sealed bids, or competitive proposals *and* if the item is only available from a single source, an emergency exists, HUD authorizes the use of noncompetitive proposals, or competition is determined inadequate after soliciting a number of sources. However, none of these conditions was in effect at the time the Authority awarded its Recovery Act contracts with Helio.

The Authority's procurement policy requires each procurement based on noncompetitive proposal to be supported by a written justification for the selection of that procurement method. The policy requires the justification to be approved in writing by the contracting officer, be maintained in the procurement file, and include the following information:

1. Description of the requirement;
2. History of prior purchases and their nature (competitive vs. noncompetitive);
3. Specific exception above which applies;
4. Statement as to the unique circumstances that require award by noncompetitive proposals;
5. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
6. Statement as to efforts that will be taken in the future to promote competition for the requirement;
7. Cost analysis in compliance with 24 CFR 85.36 and a declaration from the contracting officer stating that the cost is reasonable;
8. Signature by the contracting officer's supervisor (or someone above the level of the contracting officer); and
9. Price reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals must be determined by performing an analysis.

24 CFR 85.36(d)(4)(ii) also requires cost analysis, including verifying the proposed cost data, projections of the data, and evaluation of the specific elements

of costs and profits. Further, 24 CFR 85.36(f)(2) requires grantees to negotiate profit as a separate element of the price of each contract in which there is no price competition. However, the justification the Authority presented to its board of commissioners lacked six of the nine key required elements identified above, including (1) the history of prior purchases and their nature, (2) the statement as to the unique circumstances that required award by noncompetitive proposal, (3) the description of the efforts made to find competitive sources, (4) the statement as to efforts that would be taken in the future to promote competition for the requirement, (5) a cost analysis in compliance with 24 CFR 85.36, and (6) a declaration from the contracting officer stating that the cost was reasonable as well as a price reasonableness analysis. In addition, the “scope of work detail” section in exhibit A of each of the Helio contracts did not indicate that the Authority had negotiated profit as a separate element of the price of each contract.

The Authority’s June 30, 2010, justification to its board of commissioners for using noncompetitive procurement misinterpreted an allowed exception in the Authority’s procurement policy. Although its policy stated the exception as “HUD authorizes the use of noncompetitive proposals,” the justification presented to the board used the wording from 24 CFR 85.36(d)(4)(i)(C), which states the exception as “the awarding agency authorizes noncompetitive proposals.” Although both statements say the same thing since HUD *is* the awarding agency for the Authority’s Recovery Act Capital Fund grants, the justification to the board inferred that the board was the awarding agency. Therefore, Authority staff misinterpreted 24 CFR 85.36 when completing the Helio procurement.

Contracts Missing Required Provisions

Each of the Helio contracts was missing 5 of the 13 provisions required under 24 CFR 85.36(i) (see appendix C). Specifically, the contracts were missing the following provisions:

- #4 – Compliance with the Copeland “Anti-Kickback” Act as supplemented in U.S. Department of Labor regulations.
- #8 – Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- #9 – Awarding agency requirements and regulations pertaining to copyrights and rights in data.
- #11 – Retention of all required records for 3 years after grantees or subgrantees make final payments and all other pending matters are closed.
- #13 – Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

The Authority executed the contracts without the review or approval of its procurement and contracts manager. According to the Authority's deputy executive director for its Office of Real Estate Development, the Authority completed the Helio contracts based on California Public Contract Code, and the contracts were geared to follow State requirements of the California Solar Initiative; however, as such, the contracts did not include all of the required Federal provisions. Authority staff relied on Helio to guide the process due to Helio's experience in the solar initiative arena, and the Authority's legal counsel reviewed contract negotiations along the way in lieu of the procurement and contracts manager's involvement. The Authority should implement a policy to ensure that the procurement and contracts manager reviews all contracts before they are executed to ensure compliance with all applicable laws and regulations.

Expired Assurance of Completion

The Authority's solar service entry upgrade contract with Helio was over the \$100,000 small purchase threshold and was, therefore, subject to the bonding requirements set forth at 24 CFR 85.36(h) (see appendix C). In addition, section 3.13.1 of the contract required the contractor to execute and provide the Authority with a payment bond in the amount of 100 percent of the total contract price. However, the Authority did not obtain a payment bond for this contract. In lieu of a payment bond, the Authority opted to obtain a 25 percent irrevocable letter of credit as allowed by 24 CFR 968.135(b).

The 25 percent irrevocable letter of credit was initially due to expire on February 28, 2011, but it was amended to expire on April 30, 2011. However, there were no further extensions, despite the contract's being only 40 percent complete with more than \$71,000 remaining on the purchase order as of July 6, 2011. If the contractor had stopped working at that time, the Authority would not have had a current assurance of completion to protect itself.

We brought the expired letter of credit to the Authority's attention on July 12, 2011, and Authority staff confirmed that there were no additional amendments or extensions. By July 19, 2011, Authority staff had obtained another extension through August 31, 2011. Although the matter was corrected, the oversight represents a control weakness which the Authority needs to address to ensure that assurance of completion documents are obtained and valid for the duration of an ongoing contract.

Other Issues

In addition to the Helio contract, we reviewed the procurement and contracting for two vendors that the Authority procured through sealed bid procedures for its Recovery Act grants, including Queen City Glass and D. Webb, Inc. Services were properly procured, monitored, and completed for the two contracts reviewed for these two vendors. However, we did note items that the Authority could improve upon in future procurements.

- For both of the sealed bid procurements reviewed, the Authority was unable to provide backup documentation from its construction manager for its independent cost estimate required by 24 CFR 85.36(f)(1) (see appendix C); however, the procurement file did contain a summary sheet for the independent cost estimate in both cases. Although services were properly procured, in the future, the Authority needs to ensure that the construction manager's backup documentation is retained and accessible according to the access and retention contract provisions set forth in 24 CFR 85.36(i)(10) and (11).
- Additionally, in the D. Webb, Inc., file, we identified a control weakness that the Authority needs to address to ensure that all documents requiring signature are approved by multiple parties as intended and that one person does not sign on multiple lines. The Authority's deputy executive director of its Office of Real Estate Development approved two change orders as both the "supervisor" and the "executive director" when the executive director was out of the office and unable to sign for herself.

Conclusion

The Authority violated Federal procurement requirements and its own policies by entering into two contracts with Helio without undergoing proper procurement procedures because Authority staff misinterpreted HUD regulations and did not obtain approval from its procurement and contracts manager before executing the related contracts. In addition, there was a lack of backup documentation for the independent cost estimates in two of the files reviewed and a control weakness in the Authority's process for approving change orders because it did not have adequate controls over procurement. Consequently, the Authority limited competition and may have spent more Recovery Act money toward its projects than it would have had it completed proper procurement procedures. It contracted \$247,834 in Recovery Act funds that may not have been obtained at a fair and equitable price, and it could not ensure that its contractors complied with all mandatory Federal requirements because the requirements were not included in the contracts.

Recommendations

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

- 1A. Support the reasonableness of the \$247,834 contracted through noncompetitive procurement or repay the Recovery Act funding expended thus far and ensure that no additional Recovery Act funding is disbursed under the contracts.
- 1B. Amend the ongoing noncompetitive procurement contracts to include the missing contract provisions.
- 1C. Implement a policy to ensure that its procurement and contracts manager reviews all contracts before execution.
- 1D. Implement controls to ensure that assurance of completion documents are obtained and valid for the duration of an ongoing contract.
- 1E. Implement controls to ensure that all contractor backup documentation is retained and accessible.
- 1F. Implement controls to ensure that all documents requiring signature are approved by multiple parties as intended and that one person does not sign on multiple lines.

SCOPE AND METHODOLOGY

We performed our onsite work at the Authority's administrative office at 715 East Brier Drive, San Bernardino, CA, between April and July 2011. Our audit generally covered the period March 2009 to July 2011. We expanded our scope as necessary.

To accomplish our audit objective, we

- Obtained an understanding of the Recovery Act, the Authority's grant agreements with HUD, and the Authority's planned activities for its Recovery Act capital funds.
- Reviewed applicable HUD regulations, including but not limited to 24 CFR Part 85, Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments; 24 CFR Part 905, The Public Housing Capital Fund Program; HUD Handbook 7460.8, The Procurement Handbook for Public Housing Agencies; applicable Office of Public and Indian Housing notices; and Public Law 111-5, American Recovery and Reinvestment Act of 2009.
- Reviewed the Authority's annual plans for 2009, 2010, and 2011; audited financial statements for 2009; chart of accounts; employee listing and organizational chart; and relevant internal policies and procedures.
- Interviewed appropriate HUD officials from the Office of Public Housing, Los Angeles field office.
- Reviewed 2010 and 2011 HUD monitoring reports.
- Interviewed the Authority's supervisors and staff.
- Reviewed the Authority's financial records and procurement files.
- Reviewed Authority data from HUD's Line of Credit Control System.
- Conducted site visits at the Authority's Maplewood Homes and Colton Public Housing sites to observe the progress of work and ensure that purchases were received.
- Selected a sample to test whether the Authority conducted its procurement activities in accordance with HUD rules and regulations.

We selected a nonstatistical sample of 2 of the 39 contracts (5 percent) awarded via sealed bid and funded with Recovery Act capital funds. Of the two contracts, D. Webb, Inc., was funded with the Authority's Capital Fund Recovery formula grant, while Queen City Glass was funded with the Authority's Capital Fund Recovery competitive grant. We selected the D. Webb, Inc., contract because it was the single largest contract (\$148,776) for the vendor, which received the most Recovery Act Capital Fund awards from the Authority—seven contracts totaling \$545,203. We selected the Queen City Glass contract because it was the single largest contract (\$2.194 million) the Authority awarded using Recovery Act capital funds.

In addition, we reviewed one of four vendors the Authority procured through methods other than sealed bid and paid using Recovery Act funds (HelioPower, Inc.). The Authority contracted with Helio for \$247,834 in competitive funds, divided between two contracts. The remaining three vendors that were not procured via sealed bid fell under the \$2,000 micro purchase limit or the

Authority's direct pay list, and we did not note any reason for additional review of those three vendors.

The four contracts we reviewed (one each for D. Webb, Inc., and Queen City Glass plus two contracts for Helio) comprise almost 31 percent of the total Capital Fund Recovery Act grant funds the Authority received. We chose this approach since testing 100 percent of the population was not feasible. Therefore, the sampling results apply only to the items tested and cannot be projected to the universe or population.

To achieve our objective, we relied in part on spreadsheets maintained by the auditee. We performed a moderate level of testing to assess the integrity of the data with respect to the Authority's bid log and Recovery Act expense detail and found the data to be generally accurate for our purposes.

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 finding and conclusion based on our audit objective.

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 objective:

- Policies, procedures, and controls to ensure that all procurements for the Authority's Recovery Act capital funds are in accordance with HUD requirements.

We assessed the relevant controls identified above.

A deficiency in internal controls 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 operation, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiency

Based on our review, we believe the following item is a significant deficiency:

- The Authority did not implement sufficient policies, procedures, and controls to ensure that all procurements for its Recovery Act capital funds were in accordance with HUD requirements (see finding).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Unsupported <u>1/</u>
1A	\$247,834
Total	\$247,834

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.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

September 8, 2011

U.S. Department of Housing and Urban Development
Office of Inspector General, Region IX
611 West Sixth Street, Suite 1160
Los Angeles, CA 90017-3101

RE: Housing Authority of the County of San Bernardino's Response to the Office of Inspector General's American Recovery and Reinvestment Act Capital Fund Grants Audit Results

Ms. Schulze:

The Housing Authority of the County of San Bernardino (HACSB) is responsible and accountable for all procurement and expenditure of public funds, including funds received from the American Recovery and Reinvestment Act. HACSB takes every possible step to ensure that all procurement actions are made in compliance with the U.S. Department of Housing and Urban Development's (HUD) procurement policies and HACSB's policy and procedures and represent the best overall value to the HACSB. We have approached this audit as a learning experience and as a result, have enhanced our internal controls to ensure full compliance with applicable federal procurement regulations and HACSB's policies and procedures. We appreciate the department's input and respectfully submit our response to the results/recommendations of the audit.

Recommendation 1A: Requests HACSB to support the reasonableness of the \$247,834 contracted through noncompetitive procurement or repay the Recovery Act funding expended thus far and ensure that no additional ARRA funding is disbursed under the contracts.

Comment 1

HACSB's Response: HACSB contends that HelioPower, Inc. was, in fact procured through a competitive process. On October 9, 2009, the HACSB Board of Commissioners approved the selection of the Heschong Mahone Group (HMG) for Comprehensive Energy Consultant Services. HMG had responded to HACSB's Request for Proposals (RFP) PC 452, issued on August 21, 2009 (copy attached). HACSB received and evaluated a total of five (5) proposals in response to the RFP. Explicit in the RFP was HACSB's intent to request that a single organization manage a "team" to implement multiple proposed strategies (see scope of services of the RFP). Utilizing selection criteria outlined in the RFP that clearly identified factors related to the proposed "team" (see paragraph X. Selection Criteria) as a basis for evaluation of the proposals. HACSB selected HMG's proposal as the most responsive to HACSB's request. HelioPower, aka Helio Micro Utility (Helio mU), was specifically named by HMG in the proposal as the team member responsible for solar installations (HMG proposal attached). Moreover, HMG's proposal described Helio's role under the contract as

such: “Helio mU will lead the alternative energy technologies and Power Purchase Agreement portions of the project. They will develop mechanisms for incorporating alternative energy efficiency technologies and integrate PPAs for HACSB owned facilities and land. They will also manage the development of a renewable energy micro-utility on the parcels” (see page 7 of HMG proposal).

In March of 2010, HACSB submitted a Multifamily Affordable Solar Housing (MASH) Track 2 grant proposal (copy attached) to Southern California Edison Company for the installation of Solar Photovoltaic panels at the Medical Center (now Maplewood Homes) public housing development in San Bernardino. Because identifying and pursuing financing for energy improvements was one of the purposes of the RFP PC 452, HACSB utilized HMG, and more specifically, solar specialist Helio mU to prepare the grant application. Consistent with the requirements of the MASH program, Helio was the solar contractor selected via a competitive process (see attached MASH program fact sheet) whose expertise and track record were required in order to submit the application. While the OIG audit finding states that Helio was not competitively procured, HACSB respectfully disagrees for reasons described above, and herein provides the documentation (RFP and chosen proposal of HMG) that substantiates their inclusion in the selected competitively procured proposal.

The MASH grant application was subsequently successful in being awarded funding in the amount of \$1.8 million from Southern California Edison. Again, award of the grant was substantially based on the strength of the named solar contractor, Helio mU. Because the grant funding is contingent on the use of Helio as the solar contractor, it meets the requirements of HACSB’s procurement policy and 24 CFR 85.36(d)(4)(i) as only being available from a single source, as well as possessing “unique circumstances” that require award by noncompetitive proposals. Admittedly, HACSB was mistaken in its’ interpretation of regulations governing the use of noncompetitive proposals when it sought approval by HACSB’s board (as opposed to HUD) as the “awarding agency” to enter into contract with Helio for solar work at the Medical Center (Maplewood Homes) site. We nevertheless are confident that the process as described above did not violate our procurement policy or 24 CFR 85.36.

Cost “Reasonableness” Analysis

HACSB designed the solar installation project to minimize costs wherever possible. Because other modernization work was already underway at the Medical Center (Maplewood Homes) public housing development, the solar related work was carefully integrated with ongoing construction to maximize efficiencies. For example, the roof stanchion supports were timed to be installed in coordination with removal of the old roofing materials, so that they could be installed directly on the roof underlayment prior to the installation of the new roof. This eliminated the cost of flashing over the stanchions, as the roofing installer roofed over and sealed the connections in the normal course of installing the new roofing materials, this process also ensured that the full warranty was maintained on the new roof. Similarly,

Comment 2

Comment 3

Comment 4

portions of the electrical service upgrades were able to be completed prior to new roof being installed, such as the installation of new weatherheads above the meter locations. Both time and cost savings were realized when installers did not have to worry about sealing roof penetrations as the roofing contractor sealed everything in the normal course of installing the new roof.

As noted in the Audit report, the roof stanchion installation utilized \$91,222, and the electrical service upgrades utilized \$156,612 of Recovery Act Capital Fund competitive grant funding. The solar installation occurred at 98 separate buildings scattered throughout the Medical Center (Maplewood Homes) site. With an average of approximately 90 stanchions installed at each roof location, the cost of installation of each stanchion equates to just over \$10. This includes cost of the material, precise layout, and actual installation (see Fast Jack Flashable Roof Stanchion brochure for material sample). Electrical service upgrades averaged approximately \$1,600 for each of the 98 building locations, and included supply line taps, 30 AMP disconnects, pipe, wire and connections, weatherheads, grounding and associated labor to install. Due to the careful planning that went into the solar project, both the stanchion and electrical service upgrades were substantially below actual cost of installation. Because these activities were part of the solar installation under the Helio contract, they both were eligible to be subsidized by Business Energy Investment Tax Credits secured by Helio to fund 30% of actual costs. The Federal funds therefore paid only 83% of the actual costs of construction for both the stanchions and the electrical service upgrades. Actual cost of the stanchion installation and electrical service upgrades was \$123,092 and \$174,291 respectively.

It is important to mention that this solar project is valued at over \$3 million, yet less than 10% of the total costs of the project (\$247,834 as mentioned in the OIG audit finding) were federal funds. The work covered by the federal funds was integral to the solar project, and included installation of roof stanchions which hold up the solar panels, and installation of the electrical upgrades necessary to integrate electricity generated by the panels into the existing building's electrical system. It was necessary that this work be performed by Helio to insure integrity of the overall solar system. Because of the private funding secured by Helio (\$1.84 million in MASH funds, and later \$774,000 in investment tax credits), HACSB was able to successfully incorporate substantial leverage to couple with the federal funding, which was derived from it's award of ARRA Capital Fund Recovery Competitive (CFRC) funds. The leverage requirement was an important criteria in HUD's competition for those funds. HACSB undertook a careful and extensive process, first to select the energy consultant "team" of which Helio is the prime solar consultant, and later to put together the successful grant application to bring solar power to our largest public housing site. As a result, many low income public housing residents will realize the benefit of reduced energy costs.

We understand our responsibility to obtain prior approval for use of the ARRA funding on a non-competitive procurement, and have taken proactive steps to ensure that the HUD requirements for non-competitive procurement have been met and sufficiently documented.

As an example, HACSB presented an amendment to its procurement policy to the Board of Commissioners at the July 13, 2011 board meeting, to clarify Section 6.02 (F) “Authorized Method of Solicitation and Limitations- Noncompetitive Procurement”, to concur with the corresponding section in the procurement regulations (24 CFR 85.36 (d) 4.C), the section now reads as follows:

“The awarding agency of the funding source authorizes the use of noncompetitive proposals (i.e.: if state funds are used, the state is the awarding agency).”

Recommendation 1B: Requests that HACSB amend the HelioPower contract to include the missing contract provisions stated in the report.

HACSB’s Response: On August 8, 2011; HACSB issued an amendment to the contract with HelioPower which incorporated the missing contract provisions by incorporation of terms and conditions contained in HUD Form 5370 General Conditions for Construction.

To correct this issue, HACSB has amended their procurement procedures to include language into Section 2.2 “Procurement Actions Subject to Review” of the Procurement Policy through the addition of Item E; of the HACSB Procurement Procedures which states that “all contracts shall utilize the HACSB contract boilerplate document and appropriate HUD contract forms only.” Any contractor prepared documents may be incorporated into the Contract, with the HACSB and HUD provisions as primary and controlling.

We recognize our responsibility to ensure that all required HUD contract clauses are included in each and every contract that HACSB issues, and we will take every proactive step to ensure that the HUD contract clauses are incorporated into all contracts.

Recommendation 1C: Requests that HACSB implement a policy to ensure that contract documents are reviewed before execution by the Procurement and Contracts Manager.

HACSB Response: HACSB’s Procurement Policy Section 2.02 Internal HACSB Review of Contracts; will be amended to add item 7, which states:

“Contract Review by Procurement: Procurement Procedures to be adopted by President/CEO or his/her designee shall ensure that all agreements are reviewed by the Procurement and Contracts Manager prior to execution. This process shall specify which actions require review and approval by Procurement.”

The amended policy will be presented to the Board of Commissioners for approval at the October 12, 2011 board meeting.

Additionally, the Procurement Procedures will be amended further in Section 2.2 “Procurement Actions Subject to Review” through the addition of Item E which states:

Comment 5

Comment 5

“Contract Review by Procurement: All contracts shall be reviewed by the Procurement and Contracts Manager prior to execution. All contracts should utilize standard HACSB approved contract forms. Contractor drafted forms may be incorporated into the contract by reference, with the HACSB and HUD provisions as primary.”

Further, HACSB will amend its Procurement Policy Section 4.6.4 “Form of Contract” to state the following:

“When required by these procedures, the Procurement and Contracting Manager shall prepare the contract using standard contract forms. Contractor supplied agreement forms shall not be utilized as the sole contract document. All contractor supplied agreement forms shall be incorporated into the standard contract form by reference, with the standard contract terms taking precedence in the event of any conflicting terms. Applicable provisions of these procedures will be included in the form of contract as well as required HUD provisions. All contract documents, including any contractor supplied agreements shall be reviewed by the Procurement and Contracts Manager prior to execution. All purchase orders and contracts shall be executed by the President/CEO.”

Lastly, HACSB will amend the Procurement Policy Section 19.3 Forms for A/E Contracts to state the following:

“The Form HUD-51915, “Model Form of Agreement Between Owner and Design Professional”, is recommended for A/E contracts. However you may use another form of contract if approved by the HACSB attorney and reviewed by the Procurement and Contracts Manager prior to execution. In preparing the solicitation, it shall be noted that a price shall not be solicited for the initial competition, but shall be requested from the best-qualified A/E firm after the evaluation of qualifications and ranking the firms.”

We recognize our responsibility to ensure that all contract documents meet the requirements established in 24 CFR 85.36, and HACSB’s procurement policy and procedures, and will take every proactive step to ensure that contracts are reviewed by the Procurement and Contracts Manager prior to execution.

Recommendation 1D: Requests that HACSB implement controls to ensure that assurance of completion documents are obtained and valid for the duration of an ongoing contract.

Comment 5

HACSB’s Response: HACSB Procurement Procedures Section 16.3.7 “HUD Bonding Requirements” have been amended to add the following language:

“The Procurement and Contracting Manager shall review ongoing contracts to ensure that all bid bonds and alternate contract guaranties are valid for the duration of the contract period. The form of bid guarantee shall be noted on the Bid Checklist form along with the

Comment 5

expiration dates (if any). All assurance of completion guarantees shall be in effect for the duration of the contract. If a contract extension is approved then an extension to the bid assurance of completion guaranty will be required.”

We recognize our responsibility to ensure that all assurance of completion documents meet the requirements established in 24 CFR 85.36, and HACSB’s procurement policy and procedures, so that they are valid for the duration of the contract period. HACSB will take every proactive step to ensure that all procurement assurance of completion documents are valid for the duration of the contract.

Recommendation 1E: Requests that HACSB retain contractor backup documentation and have it readily accessible.

HACSB’s Response: HACSB takes every step to ensure that all procurement and contract files contain the proper backup documentation to support the procurement actions taken and the resulting contract actions. The audited file documentation included a summary cost estimated; however, the independent cost estimate did not include the background information as to how the cost estimate was computed. This information was retained by the contractor.

HACSB has amended its Procurement Procedures to clarify Section 5.16 Independent Cost Estimates as follows:

“For all purchases, the purchase initiator shall prepare an ICE prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased and will dictate the method of procurement to be used. The detailed cost estimate shall be retained by Procurement for file documentation.”

Additionally, the Procurement Procedures Section 8-“Independent Cost Estimates (ICE)” has been amended to add item 8.5-File Documentation of Independent Cost Estimates, as follows:

“A completed independent cost estimate in sufficient detail commensurate with the cost and complexity of the item to be purchased shall be included in the procurement bid and contract files to justify the procurement action. The Procurement and Contracts Manager shall ensure that any ICE prepared by outside parties (e.g., consultants, architects) are provided to HACSB and retained with the bid and contract files.”

We recognize our responsibility to ensure that all contract backup documents meet the requirements established in 24 CFR 85.36, and HACSB’s procurement policy and procedures, and will take every proactive step to ensure that the procurement and contract files contain sufficiently detailed independent cost estimate data.

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Recommendation 1F: Requests that HACSB establish controls that ensure that documents are approved by multiple parties and that one person does not sign on multiple lines.

HACSB's Response: HACSB has amended its Procurement Procedures Section 2.12- Invoice Approvals to include the following:

“Note—Invoices or contract change order request forms may not be signed by the same person on multiple lines.”

We recognize our responsibility to ensure that all invoice and change order document approvals meet the requirements established in 24 CFR 85.36, and HACSB's procurement policy and procedures, and will take every proactive step to ensure that invoice and contract change order documents are not signed twice by the same person on multiple lines.

In summary, we have made the suggested recommendations for items 1B through 1F and have included our justification for item 1A. We have responsibly enhanced our policies, procedures, and internal controls as a result of this process and have appreciated the opportunity to learn from this process.

Sincerely,

Susan L. Benner
President/CEO

Attachments:

- HACSB Request for Proposals: Comprehensive Energy Consultant (PC452)
- Comprehensive Energy Consultant Proposal: Heschong Mahone Group, Inc.
- Board of Commissioners Memorandum
- Multifamily Affordable Solar Housing (MASH) Track 2 Grant Proposal
- Multifamily Affordable Solar Housing (MASH) Program Fact Sheet
- Fast Jack Flashable Roof Stanchion Brochure

OIG Evaluation of Auditee Comments

Comment 1 The OIG disagrees that HelioPower, Inc. was in fact procured through a competitive process. We reviewed Heschong Mahone Group's (HMG) response to the Authority's Request for Proposals (RFP) PC 452, and we acknowledged in the report that Helio was initially acting as a subconsultant under the HMG contract. However, while HMG's proposal included a "Program and Strategy Development Phase" (Phase 1) and a "Program Implementation/Support Phase" (Phase 2), Phase 2 was optional. The Authority previously confirmed during audit field work that the Strategic Energy Plan, prepared by HMG under Phase 1, did not include any specific reference to the Helio projects at the Maplewood Homes public housing site. HMG's proposal for Phase 2 detailed that Helio would "assist [the Authority] with the development of RFPs to support the implementation of the strategic plan" and "assist in selecting service providers and contractors." The proposal did not indicate that Helio would do the implementation directly.

Furthermore, HMG's proposed project budget did not include any labor hours or costs for Helio under the optional Phase 2. Although HUD Handbook 7460.8 paragraph 10.8(B) does allow the PHA to order additional supplies or services through an option clause in the contract, paragraph 10.8(C)(1) clarifies the option "may only be exercised if the contract contained an options clause and if a price for the additional supplies or services was included." In this case, the Authority has not provided support showing its contract with HMG included an options clause with prices for the additional Helio supplies and labor. HUD Handbook 7460.8 paragraph 10.8(C)(1) states, "An unpriced option is considered a new procurement and, therefore, may not be used."

24 CFR 85.36(c)(1) states "All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of [section] 85.36." It also clarifies that situations considered to be restrictive of competition include noncompetitive pricing and awards, and arbitrary actions in the procurement process. Since the two Helio contracts were not part of the original HMG proposal, they were not competitively awarded or priced, and therefore violated HUD's requirements.

Comment 2 The OIG disagrees that the selection of Helio met the requirements of the Authority's procurement policy and 24 CFR 85.36(d)(4)(i) as only being available from a single source. Step 2 of the Multifamily Solar Affordable Housing (MASH) program fact sheet instructs the applicant to "choose a reputable solar contractor by obtaining bids from at least three licensed contractors before making your selection." This indicates the award of the grant money was not initially contingent on the use of Helio as the solar contractor, and the Authority should have obtained bids from at least three licensed solar contractors before selecting one to submit for its proposal to Southern California Edison. The

Authority has not provided any support showing it would not have been awarded funding if it had selected an alternate reputable solar contractor.

Comment 3 The OIG acknowledges the Authority’s efforts to “minimize costs wherever possible.” However, costs may have been further reduced through the use of competitive procurement for the solar roof stanchion installation and solar service entry electrical upgrade projects.

Comment 4 The OIG acknowledges the Recovery Act federal funds were a very small portion of the total cost of the Authority’s solar project; however, the amount of federal funds in question in comparison to the anticipated benefit does not justify deviating from the applicable federal requirements. Both Helio contracts were scheduled to be fully expended using Recovery Act Capital Fund competitive grant funding, and as such, federal provisions applied. Section VI(B)(3)(a)(2) of the procurement requirements in the Notice of Funding Availability (NOFA) for HUD’s Recovery Act Capital Fund Recovery Competition (CFRC) Grants (Docket No. FR-5311-N-01) stated “Any requirements relating to the procurement of goods and services arising under state and local laws and regulations shall not apply to Capital Fund Stimulus (including CFRC) Grants. PHAs shall instead follow the Part 85 requirements.”

Comment 5 The OIG acknowledges the Authority’s proactive approach to implementing our recommendations; however, the Authority did not provide the revised Helio contract or amended procurement procedures for our review. HUD will evaluate the Authority’s amendments as part of audit resolution.

Appendix C

CRITERIA

The following sections of the Code of Federal Regulations and HUD handbook, as noted below, apply to our audit objective.

Competition

24 CFR 85.36(c)(1) states, “All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of [section] 85.36.”

Methods of Procurement

24 CFR 85.36(d)(1) states, “Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. [United States Code] 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.”

24 CFR 85.36(d)(2) states, “Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in [section] 85.36(d)(2)(i) apply.” Section (d)(2)(i) goes on to state, “In order for sealed bidding to be feasible, the following conditions should be present:

- A. A complete, adequate, and realistic specification or purchase description is available;
- B. Two or more responsible bidders are willing and able to compete effectively and for the business; and
- C. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.”

HUD Handbook 7460.8 paragraph 8.5(A) states, “Procurement by noncompetitive proposals shall be conducted only if a written justification is made as to the necessity of using this method in accordance with the procedures described in the PHA’s procurement policy.”

24 CFR 85.36(d)(4) states, “Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.”

24 CFR 85.36(d)(4)(i) states, “Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed

- bids or competitive proposals and one of the following circumstances applies, [including]
- A. The item is available only from a single source;
 - B. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - C. The awarding agency authorizes noncompetitive proposals; or
 - D. After solicitation of a number of sources, competition is determined inadequate.”

24 CFR 85.36(d)(4)(ii) states, “Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.”

Contract Cost and Price

24 CFR 85.36(f)(1) states, “Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.”

24 CFR 85.36(f)(2) states, “Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor’s investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.”

Bonding Requirements

24 CFR 85.36(h) states, “For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency’s interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

1. A bid guarantee from each bidder equivalent to five percent of the bid price. The ‘bid guarantee’ shall consist of a firm commitment such as a bid bond, certified

check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

2. A performance bond on the part of the contractor for 100 percent of the contract price. A 'performance bond' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
3. A payment bond on the part of the contractor for 100 percent of the contract price. A 'payment bond' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract."

24 CFR 968.135(b) states, "For [the Comprehensive Grant Program] and notwithstanding 24 CFR 85.36(h), for each construction contract over \$100,000, the contractor shall furnish a bid guarantee from each bidder equivalent to 5% of the bid price; and one of the following:

1. A performance and payment bond for 100 percent of the contract price; or
2. Separate performance and payment bonds, each for 50% or more of the contract price; or
3. A 20% cash escrow; or
4. A 25% irrevocable letter of credit."

Contract Provisions

24 CFR 85.36(i) states, "A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)
2. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)
3. Compliance with Executive Order 11246 of September 24, 1965, entitled 'Equal Employment Opportunity,' as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)
4. Compliance with the Copeland 'Anti-Kickback' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)
5. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

6. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)
7. Notice of awarding agency requirements and regulations pertaining to reporting.
8. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
9. Awarding agency requirements and regulations pertaining to copyrights and rights in data.
10. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
11. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
12. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).
13. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).”

Authority Internal Criteria:

The following sections of the Authority’s internal procurement policy apply to our audit objective.

Small Purchases

Section 6.02(C) states, “This Policy establishes a separate Small Purchase threshold of up to \$100,000 per purchase.” The corresponding “Authorized usage” reads, “A comparison with the ICE [Independent Cost Estimate] and other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes are not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer’s personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis. At least 3 quotes shall be solicited orally, through fax, or by any other reasonable method. If less than 3 offers are made, the Contracting Officer must obtain documentation from those not submitting quotes stating why they elected not to respond.”

Sealed Bids

Section 6.02(D) states, “Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts in excess of the \$100,000 [threshold]. Sealed bidding should be used whenever the following can be met:

- A compete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business; and
- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.”

Noncompetitive Proposals

Section 6.02(F) states, “Procurement by noncompetitive proposals (sole-source) shall be used *only* when the award of the contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, AND if one of the following applies:

- The item is available only from a single source, based on a good faith review of available sources;
- An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency;
- HUD authorizes the use of noncompetitive proposals; or
- After solicitation of a number of sources, competition is determined inadequate.”

Section 6.02(F) also states, “Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method.” It goes on to state that the justification should be approved in writing by the contracting officer, maintained in the procurement file, and include the following information:

- Description of the requirement;
- History of prior purchases and their nature (competitive vs. noncompetitive);
- Specific exception above which applies;
- Statement as to the unique circumstances that require award by noncompetitive proposals;
- Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
- Statement as to efforts that will be taken in the future to promote competition for the requirement;

- Cost analysis in compliance with 24 CFR 85.36 and a declaration from the contracting officer stating that the cost is reasonable;
- Signature by the contracting officer's supervisor (or someone above the level of the contracting officer); and
- Price reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals must be determined by performing an analysis.