



Buffalo Municipal Housing Authority Buffalo, NY

Public Housing Operating Fund Program



To: Lisa Pugliese, Acting Director, Office of Public Housing, Buffalo, NY, 2CPH
Craig T. Clemmensen, Director, Departmental Enforcement Center, CACB

From: //SIGNED//
Kimberly S. Dahl, Regional Inspector General for Audit, 2AGA

Subject: The Buffalo Municipal Housing Authority, Buffalo, NY, Did Not Administer Its Operating Funds in Accordance With Requirements

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of the Buffalo Municipal Housing Authority's administration of its operating funds.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG website. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at (212) 264-4174.



Audit Report Number: 2018-NY-1006

Date: September 26, 2018

The Buffalo Municipal Housing Authority, Buffalo, NY, Did Not Administer Its Operating Funds in Accordance With Requirements

Highlights

What We Audited and Why

We audited the Buffalo Municipal Housing Authority based on our risk analysis of public housing agencies that fall under the jurisdiction of the U.S. Department of Housing and Urban Development's (HUD) Buffalo, NY, field office. The objective of our audit was to determine whether the Authority administered its operating funds in accordance with applicable HUD, Federal, and Authority requirements.

What We Found

The Authority did not administer its operating funds in accordance with applicable HUD, Federal, and Authority requirements. Specifically, it (1) did not properly procure goods and services with related operating fund disbursements and (2) improperly requested, received, and used operating funds. These issues occurred because the Authority did not fully understand applicable requirements and did not have adequate controls to ensure compliance with HUD, Federal, and Authority requirements. As a result, HUD did not have assurance that (1) the Authority conducted procurements in a manner that provided full and open competition, (2) more than \$1.4 million in operating funds paid under five contracts and to two vendors for purchase orders was for prices that were fair and reasonable, and (3) \$464,166 in operating funds was available and used for its intended purpose.

What We Recommend

We recommend that HUD require the Authority to (1) provide documentation to show that more than \$1.4 million in operating funds paid under five contracts and to two vendors for purchase orders was for prices that were reasonable; (2) evaluate apparent conflict-of-interest situations and pursue administrative sanctions if warranted; (3) provide documentation to justify \$372,695 in unsupported Operating Fund subsidies received and \$8,564 in excessive property management fees charged; (4) reimburse its Operating Fund account from non-Federal funds \$82,907 for document management services contract payments that should have been paid with non-Federal funds; (5) strengthen its controls to ensure compliance with HUD, Federal, and Authority requirements; and (6) provide training to employees involved in the procurement, funding, and expenditure processes to ensure compliance with HUD, Federal, and Authority requirements.

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Background and Objective

The U.S. Department of Housing and Urban Development's (HUD) public housing was established to provide decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities. There are approximately 1.2 million households living in public housing units, managed by some 3,300 public housing agencies. The units come in various sizes and types, from scattered single-family houses to highrise apartments. HUD's Public Housing Operating Fund provides operating subsidies to public housing agencies to assist in funding the operating and maintenance expenses of their own dwellings. The subsidies are required to help maintain services and provide minimum operating reserves.

The Buffalo Municipal Housing Authority was established on April 3, 1934, under a resolution of the Common Council of the City of Buffalo. The Authority's creation and establishment was later confirmed by an act of the New York State Legislature. The Authority is under the supervision of HUD's Buffalo Office of Public and Indian Housing and is governed by a seven-member board, five of whom are appointed by the mayor and two of whom are elected at large from the tenant population. A chairman and vice-chairman are elected from the board members each year. The board appoints an executive director¹ to manage the Authority's day-to-day operations.

The Authority has 26 housing developments with 4,520 low-rent units. It received more than \$17.4 million in Operating Fund subsidies for fiscal year 2016 and more than \$16.1 million for fiscal year 2017 to fund the operating and maintenance expenses of these units.

Our objective was to determine whether the Authority administered its operating funds in accordance with applicable HUD, Federal, and Authority requirements.

¹ The executive director resigned on March 15, 2018. The Authority is currently under the leadership of an interim executive director while a national search is conducted to fill the vacated position.

Results of Audit

Finding 1: The Authority Did Not Properly Procure Goods and Services

The Authority did not properly procure goods and services. Specifically, it (1) improperly used the micropurchase method of procurement for unit turnaround and other repair work; (2) did not show that other goods and services were purchased in accordance with HUD, Federal, and Authority procurement requirements; and (3) allowed apparent conflict-of-interest situations to exist when it awarded contracts. These deficiencies occurred because the Authority did not fully understand applicable requirements and did not have adequate controls to ensure that its staff followed HUD, Federal, and Authority procurement requirements. As a result, HUD did not have assurance that the Authority conducted procurements in a manner that provided full and open competition and that more than \$1.4 million in operating funds paid under five contracts and to two vendors for purchase orders was for prices that were fair and reasonable.

Unit Turnaround and Repair Work Was Not Properly Procured

The Authority improperly used the micropurchase method of procurement for unit turnaround and other repair work. According to regulations at 2 CFR (Code of Federal Regulations) 200.320(a), supplies and services may be acquired using the micropurchase method if the combined dollar amount does not exceed \$3,000. HUD Handbook 7460.8 and the Authority's procurement policy set the micropurchase threshold at \$2,000. According to HUD Handbook 7460.8, section 5.3, the Authority should not have split or unbundled purchases to avoid requirements that apply to purchases that exceed the threshold. However, based on a review of five consecutive purchase orders for each of the two vendors, we determined that the Authority had improperly split the purchases. In one case, the Authority executed five purchase orders over a 10-day period for unit turnaround and repair work performed at two properties. In the other case, the Authority executed five purchase orders over a 20-day period for unit turnaround work at one property. Therefore, the Authority should not have used the micropurchase method of procurement for the work performed under the 10 purchase orders.

This condition occurred because the Authority did not have adequate controls to ensure that its staff followed HUD, Federal, and Authority procurement requirements. For example, the Authority's primary contracting officer was not involved in the process. Instead, the assistant superintendents of maintenance were responsible for identifying vendors for the services, and the housing managers, who the Authority designated as contracting officers for this type of work, would sign off on the work that was requested. The Authority acknowledged that the process it used for selecting contractors for this type of work needed to be changed and stated that it would increase procurement training for its staff.

Based on the concerns identified with the 10 purchase orders reviewed, and the process used by the Authority for this type of work, the condition identified likely existed over the universe of purchases made with the two vendors reviewed, and it may have been more widespread.

According to the Authority's accounting records, it executed a total of 415 purchase orders for the two vendors reviewed in 2016 and 2017. Each of the 415 purchase orders, including the 10 reviewed, was for less than \$2,000 and the total over the 2-year period was \$583,920. Further, the Authority had nearly 4,300 purchase orders totaling more than \$2.8 million that fell below its micropurchase threshold during the 2-year period reviewed.

As a result of the condition described above, HUD did not have assurance that the Authority conducted procurements for unit turnaround and other repair work in a manner that provided full and open competition and that \$583,920 paid for 415 purchase orders related to the two vendors reviewed was for prices that were fair and reasonable.

Other Goods and Services Were Not Properly Procured

The Authority did not show that other goods and services were purchased in accordance with HUD, Federal, and Authority procurement requirements. For example, the Authority did not always maintain records sufficient to detail the significant history of procurements, such as the rationale for the method of procurement, contractor selection, and the basis for the contract price as required by 24 CFR 85.36(b)(9),² 2 CFR 200.318(i), and HUD Handbook 7460.8, section 3.3. Further, it did not always obtain independent cost estimates before receiving bids or proposals and conduct a cost or price analysis as required by 24 CFR 85.36(f)(1), 2 CFR 200.323, and HUD Handbook 7460.8, sections 3.2 and 10.3. The following bullets detail the deficiencies identified in five of the seven contracts sampled.³

- The Authority awarded contracts for self-sufficiency services without obtaining an independent cost estimate, preparing a cost or price analysis, and documenting its rationale for using the noncompetitive proposal method of procurement. According to the Authority, it exercised the noncompetitive method of procurement for these contracts because the selected contractor was the only source able to provide self-sufficiency services and because of its preexisting relationship with the contractor. Further, the Authority stated that this funding was provided in connection with a limited guaranty it entered into to provide financing to the contractor in times of need, and it believed that these procurement documents were not required. When other methods of procurement are not feasible and an item is available from only one source, requirements at 24 CFR 85.36(d)(4), 2 CFR 200.320(f), and HUD Handbook 7460.8, paragraph 7.4(C)(4) allowed for noncompetitive procurements. However, in this case, the Authority did not document that its use of this method was necessary, provide written justification for its selection, or provide a cost estimate and a cost or price analysis to show that the price was reasonable. As a result, the \$533,750 paid under the contracts was considered unsupported.
- The Authority awarded an energy performance services contract to a sole bidder and was unable to show that it obtained an independent cost estimate, performed a cost or price analysis, and prepared a sole-source justification. The Authority initially awarded a

² Grantees were previously required to follow the procurement rules at 24 CFR 85.36, which have now been incorporated into 2 CFR 200.318 to 200.326.

³ We did not identify procurement deficiencies in the remaining two contracts reviewed.

12-year contract to this bidder, but after 2 years, it wanted to revise the term of the contract. At the request of HUD, a new request for proposals was advertised with the different term. In the case of the second solicitation, the Authority received only one bid in response to its advertisements. When competition is inadequate after solicitation from a number of sources, requirements at 24 CFR 85.36(d)(4)⁴ and HUD Handbook 7460.8, paragraph 7.4(C)(4) allowed for noncompetitive procurements. However, the Authority did not provide written justification for its selection or provide a cost estimate and a cost or price analysis to show that the price was fair and reasonable. While it provided some documentation to support the overall cost reasonableness of the initial 12-year contract, 24 CFR 85.36(f)(1) required it to perform a cost or price analysis for every procurement action, including the new solicitation and contract. The Authority was unable to provide adequate cost reasonableness documentation to support the award of the second contract. As a result, the \$274,759 paid under the contract was considered unsupported.

- The Authority awarded a contract for extermination services without obtaining price quotes from three sources and documenting its evaluation of the quotations received and contractor selection. Regulations at 2 CFR 200.320(b) and HUD Handbook 7460.8, paragraph 5.3(A), required the Authority to solicit price quotes from an adequate number of qualified sources when using the small purchase method of procurement, and the Authority's procurement policy required it to obtain a minimum of three quotes. Further, HUD Handbook 7460.8, paragraph 5.5(A)(2) required the Authority to document its analysis of the quotations received, such as comparing them to each other and to other sources of pricing information, such as past prices paid and catalog prices. However, the Authority obtained only two quotes and did not document how it evaluated the quotations and made its selection. As a result, \$24,739 paid under the contract was considered unsupported.
- The Authority awarded a contract for investigative services without obtaining an independent cost estimate; performing a cost or price analysis; and documenting the bids received, its evaluation of the bids, and the contractor selection. The Authority stated that it had received five responses to its advertised request for proposals. However, it could not provide the corresponding responses or documentation showing its evaluation of the bids and its selection. Also, the Authority did not obtain a cost estimate and perform a cost or price analysis to show that the price was reasonable. As a result, \$9,683 paid under the contract was considered unsupported.

These deficiencies occurred because the Authority's staff did not fully understand procurement requirements related to documenting actions taken and using the noncompetitive proposal method. Further, the Authority did not have adequate controls to ensure that its staff followed HUD, Federal, and Authority procurement requirements. As a result, HUD did not have assurance that the Authority conducted procurements in a manner that provided full and open competition and that \$842,931 paid under the five contracts was for prices that were reasonable.

⁴ At the time of this procurement, 24 CFR 85.36 was in effect. Regulations at 2 CFR 200.320(f) contain a similar requirement.

Apparent Conflict-of-Interest Situations Existed

The Authority allowed apparent conflict-of-interest situations to exist when it awarded and administered contracts with an organization in which the executive director was the spouse of the Authority's contracting officer. Also, the Authority and the organization shared common board members. The following paragraphs provide details.

- The Authority's assistant executive director, who was also its primary contracting officer, was married to the executive director of the organization. Although the employee provided a recusal memorandum reflecting recusal from any future discussions regarding contracts with the organization due to the relationship, it was an internal document and did not go far enough to restrict the Authority's contracting officer's activities. Federal regulations at 24 CFR 85.36(b)(3) and 2 CFR 200.318(c)(1) state that no employee, officer, or agent of the grantee or subgrantee may participate in the selection or award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Further, the regulations state that a conflict would arise when an employee, immediate family member, or organization which employs the employee or immediate family member has a financial or other interest in the firm selected for award. In addition, section 19 of the Authority's annual contributions contract prohibited it from entering into any contract in which an employee who formulates policy or influences decisions, a member of their immediate family, or their partner had an interest, direct or indirect. Contrary to these requirements, the Authority allowed the contracting officer to participate in some aspects of the administration of its contracts with the organization by serving on its board of directors, appearing to participate in contract extensions by being present at Authority board meetings during which the extensions were discussed, and preparing a cost estimate related to one of its contracts with the organization, while an immediate family member was executive director at the contracted entity. Further, this relationship was not disclosed to HUD for approval as required by HUD Handbook 7460.8, section 14.4.
- The board of the Authority and the board of the organization shared common members. HUD Handbook 7460.8, REV-2, paragraph 14.4(C), states that a person who is a member of both the Authority's board and another entity's board may not participate in actions by the Authority's board that are incidental to agreements with the entity and may present a conflict of interest, real or apparent. In addition, section 19 of the Authority's annual contributions contract prohibited it from entering into any contract in which a present or former member or officer of the governing body had an interest, direct or indirect. The Authority's executive director, assistant executive director-contracting officer, and board chairman were on the board of the organization and participated in the selection, award, or administration of the self-sufficiency contracts. The Authority stated that it created the organization as an affiliated entity and that the organization's board members had no personal interest in its operations. However, the Authority's assistant executive director-contracting officer served as one of the board members and had a personal interest as discussed in the first bullet. HUD should evaluate the circumstances for each representative to determine whether conflicts of interest existed.

These conditions occurred because the Authority did not fully understand requirements related to potential conflicts of interest and because it did not have adequate controls to ensure compliance with the requirements. As discussed in the previous section, the Authority also could not show that the contracts for self-sufficiency services were procured properly. As a result of these issues and the apparent conflict-of-interest situations, HUD did not have assurance that the Authority conducted procurements in a manner providing full and open competition and that the prices paid were reasonable.

Conclusion

Because the Authority did not fully understand HUD, Federal, and Authority requirements and did not have adequate controls to ensure that its staff followed applicable procurement requirements, it could not show that it properly procured purchases and contracts for goods and services and allowed apparent conflict-of-interest situations to exist. As a result, HUD did not have assurance that more than \$1.4 million disbursed for goods and services was for prices that were fair and reasonable. If the Authority strengthens its controls over purchases and procurement and provides training to staff involved in these processes, it will help ensure that prices paid are fair and reasonable.

Recommendations

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

- 1A. Provide documentation to show that the \$583,920 paid to two vendors for purchase orders below the Authority's micropurchase limit was for prices that were reasonable or reimburse its Operating Fund from non-Federal funds for any amount that it cannot support or is not considered reasonable.
- 1B. Provide documentation to show that \$842,931 paid under five contracts was for prices that were reasonable or reimburse its Operating Fund for any amount that it cannot support or is not considered reasonable.
- 1C. Strengthen its controls over purchases to ensure compliance with HUD, Federal, and Authority procurement requirements. This includes, but is not limited to, controls to ensure that it (1) maintains records sufficient to detail the significant history of procurements, (2) complies with requirements for each type of procurement, (3) obtains independent cost estimates and performs cost or price analyses when required, and (4) prevents and detects conflict-of-interest situations.
- 1D. Provide training to its staff to ensure compliance with HUD and Federal procurement requirements.

We also recommend that the Director of HUD's Departmental Enforcement Center

- 1E. Evaluate the apparent conflict-of-interest situations in this report and pursue administrative sanctions if warranted.

Finding 2: The Authority Improperly Requested, Received, and Used Operating Funds

The Authority improperly requested, received, and used operating funds. Specifically, it (1) improperly requested and received Operating Fund subsidies for units claimed as vacant due to changing market conditions and (2) improperly used operating funds for excessive management fees and contract costs that should have been paid with non-Federal funds. These deficiencies occurred because the Authority did not fully understand HUD requirements and did not have adequate controls to ensure compliance with applicable requirements. As a result, HUD did not have assurance that \$464,166 in operating funds was available and used for its intended purpose.

Operating Funds Were Improperly Requested and Received

The Authority requested and received \$372,695 in Operating Fund subsidies for 2,741 unit months claimed as vacant due to changing market conditions from 2014 through 2016 without adequate documentation. Office of Public and Indian Housing (PIH) Notice PIH-2011-07 allowed agencies to receive operating funds for units that were classified as vacant due to changing market conditions. However, the guidance required agencies to submit an appeal request each year and regulations at 24 CFR 990.245(d) stated that agencies could appeal for this status only after taking aggressive marketing and outreach measures to rent the units. While the Authority received HUD approval, it could not provide documentation showing that it had submitted an appeal letter or taken appropriate steps before claiming that the units were vacant due to changing market conditions. Without sufficient documentation supporting its claim, the Authority should not have requested and received the funds. This condition occurred because the Authority did not fully understand HUD requirements and did not have adequate controls to ensure compliance with the requirements. As a result, \$372,695 was considered unsupported.

Operating Funds Were Used for Excessive Management Fees

The Authority charged its Operating Fund \$12,759 for excessive management fees through its central office cost center (COCC). The Authority's COCC is responsible for the management of its properties and charges fees for the management and oversight costs of each property. In 2016, it overcharged its Operating Fund \$4,195 for 72 unit months in management fees related to units that it had improperly claimed as vacant due to changing market conditions at one of its properties (see section above). Due to this status and a lack of documentation showing HUD's approval, the Authority should not have charged management fees for these vacant units. Further, that same year, the Authority overcharged its Operating Fund \$8,564 for normal management fees related to 28 units eligible for asset repositioning fees, when they should have been funded at 25 percent in accordance with the Supplement to HUD Handbook 7475.1, section 7.4. These deficiencies occurred because the Authority did not fully understand HUD requirements and did not have adequate controls to ensure compliance with applicable requirements. As a result, the \$12,759 used for excessive management fees was considered unsupported.

Operating Funds Were Used for COCC Costs

The Authority improperly used \$82,907 in operating funds to pay the costs of its COCC when it made 16 payments on a non-Federal contract in error. Regulations at 2 CFR 200.405 require

costs to be allocable to the Federal award. However, the contract in question was for document management services benefiting the Authority's COCC, and the Authority's low-income rent properties did not benefit from the services. According to the Authority, the contract costs should have been paid with COCC funds but were mistakenly charged to its Operating Fund. This condition occurred because the Authority did not have adequate controls to ensure compliance with applicable requirements. As a result, the \$82,907 used for COCC costs was considered ineligible.

Conclusion

Because the Authority did not fully understand HUD requirements and did not have adequate controls to ensure compliance with applicable requirements, it improperly requested, received, and used operating funds. As a result, HUD did not have assurance that \$464,166 in operating funds was available and used for its intended purpose. If the Authority strengthens its controls over the request, receipt, and use of operating funds and provides training to staff involved in these processes, it will help ensure that its operating funds are available and used for their intended purpose.

Recommendations

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

- 2A. Provide documentation to justify the \$372,695 in unsupported Operating Fund subsidies received or reimburse its Operating Fund from non-Federal funds for any amount it cannot support.
- 2B. Provide documentation to justify \$8,564⁵ in excessive property management fees charged by the COCC or reimburse its Operating Fund from non-Federal funds for any amount it cannot support.
- 2C. Reimburse its Operating Fund from non-Federal funds \$82,907 for 16 document management services contract payments that should have been paid with COCC funds.
- 2D. Strengthen its controls to ensure that operating funds are requested, received, and used in accordance with HUD, Federal, and Authority requirements.
- 2E. Provide training to employees involved in the funding and expenditure processes to ensure compliance with HUD, Federal, and Authority requirements.

⁵ To avoid double counting, we reduced the unsupported costs for recommendation 2B by the \$4,195 that was included in recommendation 2A. The \$8,564 is the \$12,759 less the \$4,195 cited in 2A.

Scope and Methodology

We conducted the audit from January through August 2018 at the Authority's administrative offices at 300 Perry Street in Buffalo, NY. The audit covered the period January 2016 through December 2017, and was expanded to include earlier procurement documents for contracts that had disbursements during our audit period, obtain updated disbursement totals for the contracts in question, and review operating funds received for vacant units from 2011 through 2016.

To accomplish our audit objective, we interviewed applicable HUD and Authority officials. We also reviewed

- Relevant background information.
- Applicable laws, regulations, HUD guidance, and Authority policies and procedures.
- Annual contributions contracts and amendments.
- Audited financial statements and other financial reports provided by the Authority.
- Contracts, contract files, check registers, invoices, receipts, voucher disbursements, and other records related to the Authority's operating funds.

To determine whether the Authority adequately administered its operating funds in accordance with applicable HUD, Federal, and Authority requirements, we selected four samples of Operating Fund contracts, purchase orders, and expenditures as follows:

- General procurement sample: We selected a nonstatistical sample of contracts to review for compliance with Federal procurement requirements. Our universe consisted of 69 contracts identified on the Authority's contract register for our audit period with a total value of more than \$14.5 million. We selected the largest sealed bid contract, two largest competitive proposals contracts, and two largest small purchase contracts. We selected two additional contracts from one vendor after identifying a potential conflict of interest. The seven contracts selected had a total contract value of more than \$2.1 million.
- Small purchase sample: We selected a nonstatistical sample of contracts within the Authority's small purchase threshold of \$2,001 and \$25,000 to identify whether work was split to avoid procurement thresholds. Our universe consisted of 33 small purchase contracts with 14 different vendors during our audit period with a total value of \$457,085. We identified three vendors with three or more small purchase contracts related to Operating Fund expenses in our population and selected each for review. The sample consisted of 15 contracts awarded to 3 vendors with a total contract value of \$187,438.
- Micropurchase sample: We selected a nonstatistical sample of micropurchases to identify whether work was split to avoid procurement thresholds. Our universe included 4,286 purchases of less than \$2,000 made with operating funds during our audit period from 240 vendors totaling more than \$2.8 million. For each calendar year, we identified a group of consecutive purchase order numbers from the vendors with the largest total

dollar amount of purchases. We selected 10 purchase orders totaling \$16,725 for review. These purchase orders included five from 2016 totaling \$9,350 and five from 2017 totaling \$7,375.

- Expenditures sample: We selected a nonstatistical sample of Operating Fund expenditures to review from the Authority's financial data schedule contained in HUD's Financial Assessment Submission – Public Housing System (FASS-PH) for fiscal years 2016 and 2017. Our universe included 40 categories of Operating Fund expenses totaling approximately \$61.4 million during our audit period. We identified the four largest categories from this population for review. We selected the largest expense from three of the categories, with expenditures totaling \$160,873. For the fourth category, we selected each monthly management fee expense, which totaled more than \$6.1 million. In total, we reviewed more than \$6.2 million, or more than 10 percent of the amount disbursed during our audit period.

Although our sampling methods did not allow us to make projections to the universes from which our samples were drawn, they were sufficient to meet our objective to evaluate the Authority's administration of its operating funds.

We also performed a 100 percent review of operating funds received as asset repositioning fees in our audit period and operating funds received for units that were classified as vacant due to changing market conditions from 2011 through 2016. These selections were based on indicators identified during the planning phase of this audit. The asset repositioning fee sample consisted of 28 units approved for demolition receiving \$78,640, and the sample of units vacant due to changing market conditions consisted of 11,517 unit months representing more than \$1.2 million in operating subsidies. Last, we performed a 100 percent review of staff and commissioner travel paid during the period May 2016 through June 2017 and found that these costs were paid for with the Authority's non-Federal funds.

To achieve our objective, we relied in part on computer-processed data from HUD's FASS-PH and Inventory Management System-Public and Indian Housing Information Center and the Authority's accounting system, such as expenditure and contract analysis reports. We used the data as background information and to select contracts and expenditures for review. Although we did not perform a detailed assessment of the reliability of the data, we performed a minimal level of testing and found the data to be adequate for our purposes. The testing included comparing information from these systems for the sampled items to the Authority's records. We based our conclusions on source documentation obtained from the Authority.

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(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions 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:

- Program operations - Policies and procedures that management has implemented to reasonably ensure that the Operating Fund program meets its objectives.
- Reliability of data - Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.
- Laws and regulations - Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.
- Safeguarding of assets - 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:

- The Authority did not implement adequate controls to ensure its staff followed HUD, Federal, and Authority procurement requirements (finding 1).
- The Authority did not implement adequate controls to ensure that it properly requested, received, and used operating funds (finding 2).

Appendixes

Appendix A

Schedule of Questioned Costs

Recommendation number	Ineligible 1/	Unsupported 2/
1A		\$583,920
1B		842,931
2A		372,695
2B		8,564
2C	\$82,907	
Totals	82,907	1,808,110





- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.
- 2/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

Appendix B

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments

	Buffalo Municipal Housing Authority 300 Perry Street • Buffalo • New York • 14204-2299 Office: 716.855.6711 • Fax: 716.855.6761 • TDD: 716.855.6725
Gillian D. Brown, Esq. Interim Executive Director	
Modesto Candelario Assistant Executive Director	
September 11, 2018	
 U.S. Department of Housing and Urban Development Office of Inspector General 26 Federal Plaza, Room 3430 New York, NY 10278	
Attention: Kimberly S. Dahl, Regional Inspector General for Audit	
RE: Comments Regarding Discussion Draft Audit Report	
Dear Ms. Dahl,	
<p>Please accept this letter as the written comments of the Buffalo Municipal Housing Authority to the "Discussion Draft Audit Report" which was released to us several days ago. It is my hope that in light of our meeting yesterday with you and your staff, as well as staff of HUD, several important changes will already have been made to the draft report. My intention is to confine our comments only to those findings and/or recommendations with which we take issue, and present them in the same order as they appear in the report.</p>	
<u>Finding 1: The Authority Did Not Properly Procure Goods and Services</u>	
<u>BMHA Response: We believe that your conclusions are unsupported by any evidence, and we maintain that we adhered to proper procurement practices.</u>	
  	

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments

Comment 1

Comment 2

Comment 3

BMHA Response to HUD OIG
September 11, 2018

HUD OIG - "Unit turnaround and Repair Work Was Not Properly Procured"

BMHA Response: The conclusion that all purchase orders for two vendors in question, is unsupported by any evidence, and should be remove form report.

We believe that even the caption of this finding is misleading and inflammatory. The first concern, titled, "Unit Turnaround and Repair Work Was Not Properly Procured," is based on methodology and sampling that does not in any way support the conclusion reached. Specifically, your office examined five purchase orders from two different vendors (for a total of **ten purchase orders**). These ten purchase orders totaled **\$16,725**. Your office determined that these purchase orders, all of which were prepared under the micro purchase method of procurement, constituted improper bid splitting. From this sample of ten purchase orders, your staff extrapolated – without any support from the thousands of pages of documents available to them – that all 415 purchase orders executed with these two vendors over the course of two years were improper, and should not have been prepared as micro purchases. From this unsupported conclusion, your report then finds that the total amount of \$583,920 was improperly procured, apparently because it is over the \$2000 micro purchase threshold.

The absurdity of this line of reasoning is obvious. We believe that the conclusion that each and every one of the 415 purchase orders for the two vendors in question was improperly procured is unsupported by any evidence, and should be removed from your report.

Further, the draft report contains a factual error, inasmuch as it states that "the Authority's contracting officer was not involved in the process." You now know that the previous Executive Director had issued a memorandum establishing that for the purposes of micro purchase procurement, the Authority's property managers were contracting officers. This factual error should be removed from your report.

HUD OIG – "Other Goods and Services Were Not Properly Procured"

BMHA Response: Not supported by a review of the facts and circumstances of this contract

Regarding the concern captioned, "Other Goods and Services Were Not Properly Procured," your first example concerns the contract between the BMHA and its HOPE VI family self-sufficiency provider. It is our position that BMHA already had a contractual obligation to provide funding to the Family Self-Sufficiency (FSS) provider. The BMHA, with HUD's approval, entered into an operating guarantee agreement in order to secure private investment for renovations at the FSS facility. Therefore, upon learning of the loss of funding for the operations of the FSS facility, the BMHA, per the guarantee, had an obligation to provide funding for the

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operations of the FSS program. I would also note that despite your having written that the scope of your review was to be 1/1/16 – 12/31/17, the relationship between the self-sufficiency provider and the BMHA began concurrent with our Lakeview HOPE VI project, in or about December 2002. Moreover, the self-sufficiency services were provided as outlined in our HOPE VI proposal, every aspect of which was carefully reviewed by HUD staff. At no point were we ever advised that there were any deficiencies in our self-sufficiency plans for HOPE VI, and, as the original agreement was entered into in 2002, a finding or concern based on this agreement accomplishes nothing, and does not reflect a genuine concern which we have the ability to correct.

HUD OIG: "\$274,759 paid under the contract was considered unsupported."

BMHA Response: The HUD OIG conclusion is simply not supported by a review of the facts and circumstances of this contract

Similarly, your second example concerns an energy performance services contract, which was awarded to a sole bidder. I note that this contract, too, is outside your stated scope of review by more than a decade. Further, this finding remains, notwithstanding our having provided your office with documentary proof, that it is not appropriate. Specifically, the original energy performance contract was awarded in 2005 after a lengthy RFP process, and a thorough review – collaboratively with HUD staff – of the responders. According to regulations in place at the time, the contract could only be for a period of twelve (12) years. Quite soon after the initial award, the applicable regulations changed to allow the contract to be for a period of twenty (20) years. BMHA was advised by HUD staff that we could re-procure the service to take advantage of the newly-allowed longer period. BMHA did so, and predictably, only the successful responder from the first RFP process responded on the work. An independent cost estimate and a cost analysis had been performed for the first RFP. We performed an independent cost estimate and a cost analysis for each subsequent phase, which was provided to the HUD OIG staff. Notwithstanding the fact that this entire project was closely supervised by HUD staff, we were never advised of any deficiencies in our processes. We have provided all the documentation in our possession concerning this. Your conclusion that "\$274,759 paid under the contract was considered unsupported," is simply not supported by a review of the facts and circumstances of this contract.

HUD OIG: "Apparent Conflict of Interest Situations Existed"

BMHA Response: it is our position that the conclusion that the FSS agency is unsupported due to these conflict situations is simply not borne out by the information available.

Regarding your concern captioned, "Apparent Conflict-of-Interest Situations Existed," you provide two examples. As a preliminary matter, we have already explained to you, and provided whatever documentary evidence you requested, that the entity with which we

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contracted for self-sufficiency services is not a "development company." This corporation – a 501(c)(3) corporation which was formed by the BMHA nearly 20 years ago, is a not-for-profit social services provider for the community, with its offices in a community center owned by the BMHA. You acknowledge that our Assistant Executive Director provided you with a recusal memo, reflecting his recusal from any future discussions regarding contracts with the agency. Notwithstanding the fact that the minutes of the agency's board meetings are available and its meetings open to the public, you can provide no evidence of any kind that an actual conflict ever existed which went un-remedied. We acknowledge that BMHA did not disclose the situation to our local HUD office, and we are not convinced that we had any obligation to do so, as we had already addressed the situation internally, in accordance with our policies. But we maintain that the Assistant Executive Director did everything else necessary to avoid the conflict situation, by not deliberating on contracts or agreements with the agency, not process payments or contracts awards, and never being in a position where he could have personally benefited in any way from the BMHA's contractual relationship with the agency.

As to your second example of a "conflict of interest situation," it is our position that this represents a lack of understanding of what a conflict of interest actually is. Specifically, it appears to be your contention that the board of the Housing Authority and the board of the agency which you refer to as a "development company" are in a conflict situation simply because there are several individuals who serve on both boards. In support of this, you refer to Section 19 of the Annual Contributions Contract. However, that prohibition refers to situations where an **individual** has an interest, direct or indirect. The situation at hand is one where the BMHA formed the social services agency, wrote its by-laws, and established it. The by-laws provide for certain staff and members of the BMHA to occupy seats on the social service agency's Board of Directors in an *ex officio* capacity. Thus, for example, the Executive Director of the BMHA will always have a seat on the social services agency's board. Not only does this not present a conflict, but to hold otherwise would mean that virtually every housing authority in the country which has an affiliated not-for-profit entity would be in violation. We believe this entire section should be removed from your report.

Finally, it is our position that your conclusion that \$533,750 paid to the social services agency is unsupported due to these conflict situations is simply not borne out by the information available. You have provided no evidence that any of the expenditures was not appropriate or justified, and no evidence that any funds were misspent.

Finding 2: The Authority Improperly Requested, Received, and Used Operating Funds

BMHA response: We do not agree with this conclusion, and this entire finding should be removed from the report.

HUD OIG: "Operating Funds Were Improperly Requested and Received."

BMHA Response: The operating fund subsidy for the units at Commodore Perry which were vacant due to changing market

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conditions was properly requested, properly received, and properly used

The first concern noted under this finding is, "Operating Funds Were Improperly Requested and Received." As a preliminary matter, we believe that the caption of this concern and its related finding is inaccurate, inflammatory and factually incorrect, and we believe that it cannot stand as written. The first example cited under this concern is regarding \$372,695 in Operating Fund subsidies for 2741 unit months claimed as vacant due to changing market conditions from 2014 – 2016. Again, I note that your written notice of this audit specifically stated that your period of review was from 1/1/15 – 12/31/17. However, more importantly, even if everything you write in this first example is accurate – and it is not – then there is still no evidence or data to support the conclusion that BMHA "improperly requested" the operating subsidy. For at least three years, the BMHA included with its request for operating subsidy for these vacant units an appeal request. That request was granted each time it was submitted. It appears that for the years in question, the BMHA concluded that the market conditions units were approved by HUD with the previous appeal request and omitted the appeal request letter from its operating subsidy request. The Department of HUD, which knew or should have known that a separate appeal was not attached to the subsidy submission, never advised the BMHA to submit it, nor was the request for operating subsidy denied, or even delayed. The most that can be established by your own example is that the BMHA provided insufficient documentation for a subsidy request that HUD granted anyway. This concern is unfounded and frankly, is not the fault of the BMHA. If our request for subsidy was lacking the single sheet of paper in question, we submit that it was incumbent on the funding source to reject the request until it was received. To instead accuse the BMHA of improperly requesting subsidy is at best, inaccurate.

It is our position that the \$372,695 in operating fund subsidy for the units at Commodore Perry which were vacant due to changing market conditions was properly requested, properly received, and properly used. This concern should be removed from your report.

We appreciate the opportunity to present our comments in writing, and we look forward to resolving these two findings as expeditiously as possible.

Very truly yours,



Gillian D. Brown
Interim Executive Director and
General Counsel

OIG Evaluation of Auditee Comments

Comment 1 The Authority contended that unit turnaround and repair work was properly procured and stated that the caption of this section of the finding was misleading and inflammatory. It noted that the methodology and sampling used did not support the conclusions reached because we classified the full \$583,920 paid to two vendors under 415 purchase orders as unsupported based on a review of ten purchase orders. However, our conclusion related to the 415 purchase orders was supported by both the specific concerns identified with the 10 purchases orders reviewed and documentation and discussion related to the process used by the Authority for this type of work. Specifically, we based our conclusion on the following:

- Review of 10 purchase orders – Our review showed that unit turnaround and repair work performed at 1 or 2 properties within a short period of time was improperly split into 10 purchase orders that each fell below the micropurchase threshold.
- Purchase order data provided by the Authority – The purchase order data showed that the Authority had executed 415 purchase orders in 2016 and 2017 for the 2 vendors in question. It also showed that each purchase order was for less than \$2,000.
- Memorandum provided by the Authority – This document showed that beginning in 2014, the Authority’s assistant superintendents of maintenance were responsible for identifying vendors for these services, and that its housing managers were designated as contracting officers for the purchases.
- Discussions with Authority officials – In discussions with the Authority, the interim executive director stated that it appeared the Authority should have been bidding out work under other methods of procurement rather than dividing purchase orders into smaller \$2,000 projects that were exempt from bidding. During discussions, Authority officials also acknowledged that (1) assistant maintenance superintendents chose the vendors used for unit turnaround and repair work, (2) staffing vacancies may have affected the process used by the Authority for these purchases, (3) there may have been a lack of staff training and oversight regarding micropurchases, and (4) it planned to increase overall supervision at the Authority and increase training in procurement rules for its employees. Further, the Authority’s interim executive director and primary contracting officer discussed some of these same points in a July 2018 local news article and an August 2018 editorial.

As explained in appendix A, when we cannot determine eligibility of costs at the time of the audit, those costs are classified as unsupported. Due to results of our

review of purchase orders, documentation, and data provided by the Authority, as well as discussions with Authority officials, we believe that the Authority's incorrect use of its micropurchase program extended to the 415 purchase orders. Therefore, we cannot determine whether the \$583,920 paid to two vendors was for eligible costs and classified these funds as unsupported costs. As part of the audit resolution process, the Authority will need to provide documentation to show that the amount paid to the two vendors was for prices that were reasonable or reimburse its Operating Fund from non-Federal funds for any amount that it cannot support or is not considered reasonable.

- Comment 2 The Authority contended that the report incorrectly states that its contracting officer was not involved in the process and stated that a memorandum was provided to show that the Authority's property managers were considered contracting officers for the purposes of micropurchase procurement. We reviewed the referenced document and revised the report to reflect that the Authority's primary contracting officer was not involved in the micropurchase procurement process and to acknowledge that the Authority had designated its housing managers as contracting officers for these purchases.
- Comment 3 The Authority contended that it had an obligation to provide funding to the self-sufficiency services provider due to an operating guaranty agreement. It also noted that the self-sufficiency services were outlined in its proposal for a HOPE VI project and stated that HUD reviewed every aspect of that proposal. However, the Authority was not able to show that its agreement removed its responsibility to follow procurement requirements when awarding the contracts for self-sufficiency services, and we do not believe the Authority was exempt from following these requirements. It also did not provide documentation related to its HOPE VI proposal or show that HUD had reviewed the Authority's procurement of the provider. Further, we noted that the amount the Authority paid the provider exceeded the amount it committed to in the agreement, and that the agreement expired during our audit period. The agreement stated that the Authority would provide a minimum amount of funding, not to exceed \$100,000 in a 12-month period. However, the contracts reviewed were for \$150,000 and \$187,000 per year. Further, the agreement was designed to end no later than 15 years after a related lease started in early December 2002, which means it ended no later than early December 2017. The Authority has disbursed at least \$124,000 to the provider since the agreement ended and its current contract extension runs through March 2019.
- Comment 4 The Authority noted that the scope of our review was January 2016 through December 2017, but that the relationship between the self-sufficiency provider and the Authority began in or about December 2002. As discussed in the scope and methodology section, these contracts were selected for review from the contract register provided by the Authority because they had related disbursements during our audit period. Specifically, \$324,666 was disbursed on the contracts between January 2016 and December 2017. Further, the contracts

were procured in the past few years and had terms that included our audit period. The term of the first contract started in 2015 and was extended through March 2017, and the term of the second contract began in April 2017.

- Comment 5 The Authority contended that the energy performance contract reviewed was outside the stated scope of our review by more than a decade. However, this contract was selected for review from the contract register provided by the Authority because it had related disbursements during our audit period. Specifically, \$117,124 was disbursed on this contract between January 2016 and December 2017. Further, because requirements at 2 CFR 200.318(i) and HUD Handbook 7460.8, section 3.3 required the Authority to retain procurement records for 3 years after final payment and all matters pertaining to the contract are closed, the Authority should have all documentation related to the history of this contract.
- Comment 6 The Authority stated that the original energy performance services contract was awarded in 2005 after a lengthy process and noted that it procured the services a second time soon after this award so that it could award a longer term contract. It contended that independent cost estimates and cost analyses were performed for the original contract in 2005 and each subsequent phase. Further, the Authority stated that this documentation was provided to OIG and that the entire project was closely supervised by HUD staff with no deficiencies identified in the processes. However, the documentation provided was not related to the procurement of the \$1,080,026 contract selected for review. Regulations at 24 CFR 85.36(f)(1) required the Authority to perform a cost or price analysis in connection with every procurement action, so the Authority should not have relied on analyses performed for its original contract when procuring services the second time. The initial procurement and the procurement selected for review took place nearly two years apart, so it is possible that the prices for such services had changed. Also, while the Authority provided some documentation related to HUD's review of compliance with requirements related to energy efficiency cost savings and regulations at 24 CFR 990, it did not show that HUD reviewed the contract to determine compliance with procurement requirements.
- Comment 7 The Authority stated that the entity with which it contracted for self-sufficiency services is not a development company, but rather a not-for-profit social services provider for the community. While the contracts and other documents provided during the audit identified this contractor as a development company, we revised the language in the report to identify the contractor as an organization.
- Comment 8 The Authority contended that we provided no evidence that an actual conflict ever existed or was not remedied. As discussed in finding 1, we identified an apparent conflict-of-interest situation related to the Authority's assistant executive director, who was also its primary contracting officer, and explained that the Authority allowed this individual to participate in some aspects of the administration of the contracts in question. In accordance with our recommendation, HUD will need to

evaluate the apparent conflict-of-interest situation and make a determination during the audit resolution process.

- Comment 9 The Authority agreed that it did not disclose the apparent conflict-of-interest situation to the local HUD office, but stated that it was not convinced that it was obligated to do so since it addressed the situation internally. However, HUD Handbook 7460.8, section 14.4 clearly required the disclosure of apparent conflicts of interest to HUD. Also, the internal recusal memorandum did not go far enough to restrict the Authority's contracting officer's activities, as the Authority allowed the contracting officer to participate in some aspects of the administration of its contracts with the organization by serving on its board of directors, appearing to participate in contract extensions by being present at Authority board meetings during which the extensions were discussed, and preparing a cost estimate related to one of its contracts with the organization.
- Comment 10 The Authority stated that it did not agree with our determination that an apparent conflict-of-interest situation exists due to common board members. The Authority stated that Section 19 of the Annual Contributions Contract refers to individual conflicts and that it created the social service agency. However, HUD Handbook 7460.8, REV-2, paragraph 14.4(C) states that a person who is a member of both the Authority's board and another entity's board may not participate in actions by the Authority's board that are incidental to agreements with the entity and may present a conflict of interest, real or apparent. Further, while HUD Handbook 7460.8, REV-2, section 14.6 allowed the Authority to contract with affiliated entities, it required the Authority to comply with Federal procurement requirements, which include requirements related to conflicts of interest. As part of the normal audit resolution process, HUD will need to evaluate the apparent conflict-of-interest situation.
- Comment 11 The Authority contended that we concluded that the \$533,750 paid was unsupported due to the apparent conflict-of-interest situations. Further, it states that we have not provided evidence that any of the expenditures were not appropriate or justified or that funds were misspent. As detailed in the report, we determined that the Authority awarded the contracts for self-sufficiency services without obtaining an independent cost estimate, preparing a cost or price analysis, and documenting its rationale for using the noncompetitive proposal method of procurement. Therefore, HUD did not have assurance that the \$533,750 paid under the contracts was for prices that were reasonable. This portion of the finding is related to recommendation 1B. As a result of the apparent conflict-of-interest situations identified, we included recommendation 1E to request that HUD evaluate the situations and pursue administrative sanctions if warranted.
- Comment 12 The Authority stated that it disagreed with finding 2 and contended that operating fund subsidies for units that were vacant due to changing market conditions were properly requested, received, and used. It further noted that even if the statements made are true, there is no evidence or data to show that the Authority improperly

requested the operating subsidy. The Authority acknowledged that it previously submitted an appeal request for at least three years and HUD approved the request each time. It further stated that for the years in question, it appears that the Authority concluded that the market conditions were approved by HUD with the previous appeal request. The Authority contended that the most that can be established is that the Authority provided insufficient documentation in its request for each year in question and HUD approved it anyways, which would not be the Authority's fault. However, if the Authority submitted its request without the required appeal, its request was improper. Further, whether HUD approved the request does not remove the Authority's responsibility to show that it had submitted an appeal letter or taken appropriate steps before claiming that the units were vacant due to changing market conditions in accordance with regulations at 24 CFR 990.245(d). Without sufficient documentation supporting its claim, the Authority should not have requested or received the funds. Because we did not perform a review of the Authority's use of the \$372,695 that was improperly requested and received, we cannot address the portion of the Authority's comments related to whether it properly used these funds.

Comment 13 The Authority contended that the scope of our review was January 2015 through December 2017 and that we questioned costs related to units claimed as vacant due to changing market conditions from outside of our audit period. As discussed in the scope and methodology section of this report, our audit covered the period of January 2016 through December 2017 and was expanded. In this case, during our initial review of operating funds received in 2016, we found that the Authority had not submitted an appeal letter or taken appropriate steps before claiming that the units were vacant due to changing market conditions. As a result, we expanded our review scope to review operating funds received for these units from 2011 through 2016. We found that while the Authority properly requested the status for 2011, 2012, and 2013, it did not follow applicable requirements for 2014, 2015, and 2016.