OFFICE OF AUDIT
REGION 5
CHICAGO, IL

Hamtramck Housing Commission
Hamtramck, MI

American Recovery and Reinvestment Act Public Housing Capital Fund Formula Grant

2013-CH-1012 **SEPTEMBER 30, 2013**

Issue Date: September 30, 2013

Audit Report Number: 2013-CH-1012

TO: Willie C. Garrett, Director of Public Housing, 5FPH

//signed//

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

SUBJECT: The Hamtramck Housing Commission, Hamtramck, MI, Did Not Administer Its Grant in Accordance With Recovery Act, HUD's, and Its Own Requirements

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final report on our audit of the Hamtramck Housing Commission's American Recovery and Reinvestment Act Public Housing Capital Fund formula grant.

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 Web site. Accordingly, this report will be posted at http://www.hudoig.gov.

If you have any questions or comments about this report, please do not hesitate to call me at (312) 353-7832.

September 30, 2013

The Hamtramck Housing Commission, Hamtramck, MI, Did Not Administer Its Grant in Accordance With Recovery Act, HUD's, and Its Own Requirements

Highlights

Audit Report 2013-CH-1012

What We Audited and Why

We audited the Hamtramck Housing Commission's American Recovery and Reinvestment Act of 2009 Public Housing Capital Fund Stimulus formula grant. We selected the Commission based upon our analysis of risk factors related to the public housing agencies in Region 5's[1] jurisdiction. Our objective was to determine whether the Commission administered its grant in accordance with Recovery Act, the U.S. Department of Housing and Urban Development's (HUD), and its own requirements.

What We Recommend

We recommend that the Director of HUD's Detroit Office of Public Housing require the Commission to (1) provide documentation or reimburse more than $230,000 from non-Federal funds to HUD, (2) provide support for 11 apprentices or pursue collections from applicable contractors to reimburse the appropriate employees more than $14,000 from non-Federal funds, and (3) implement adequate procedures and controls to address the findings cited in this audit report.

What We Found

The Commission did not administer its grant in accordance with Recovery Act, HUD's, and its own requirements. While the Commission generally obligated and expended its Recovery Act funds in accordance with Recovery Act rules and regulations, it did not maintain adequate procurement documentation or ensure that it paid reasonable prices for Recovery Act-funded construction projects. It also failed to perform adequate independent cost estimates or prepare cost analyses of contract modifications. As a result, HUD and the Commission lacked assurance that Recovery Act grant funds were used appropriately.

The Commission also did not ensure that (1) its contractors paid their employees the appropriate Federal labor standard wage rates as required by the Davis-Bacon Act, (2) eligible Section 3 participants were provided opportunities to become employed or receive employment training, and (3) it accurately reported in FederalReporting.gov the number of jobs created and retained. As a result, HUD and the Commission lacked assurance that (1) contractors' employees were paid the appropriate labor wage rate in accordance with the Davis-Bacon Act, (2) opportunities to become employed or receive employment training were provided to eligible Section 3 participants, and (3) the public had access to accurate information regarding the number of jobs created and retained with formula grant funds, and the Commission's use of formula grant funds was not transparent.

[1] Region 5 includes the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

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BACKGROUND AND OBJECTIVE

The Hamtramck Housing Commission was established in 1936 under the regulation of the State of Michigan's Act 18 of 1933, MCL 125.651-709e, to provide decent, safe, sanitary, and affordable housing for low- and moderate-income residents of Hamtramck. The Commission consists of two housing developments: Colonel Hamtramck Homes and Hamtramck Senior Plaza. Colonel Hamtramck Homes, completed in 1943, consists of 300 housing units within 36 two-story buildings. Hamtramck Senior Plaza, completed in 1986, consists of 150 housing units in an eight-story building. A five-member board of commissioners, appointed by the mayor, governs the Commission. The Commission's executive director is appointed by the board of commissioners and is responsible for coordinating established policy and carrying out the Commission's day-to-day operations.

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

On February 17, 2009, the President signed the American Recovery and Reinvestment Act. The Recovery Act provided an additional $4 billion to public housing agencies to carry out capital and management activities, including modernization and development of public housing. The Recovery Act required that $3 billion of these funds be distributed as formula grants and the remaining $1 billion be distributed through a competitive process. In March 2009, the Commission received a formula grant of more than $1.3 million.

According to the Recovery Act, the Commission was required to obligate 100 percent of its grant funds within 1 year, expend 60 percent of the funds within 2 years, and fully expend the funds within 3 years. The Commission had obligated 100 percent of its formula grant funds by March 17, 2010, and had spent 100 percent of its formula grant funds by March 17, 2012.

Our objective was to determine whether the Commission followed Recovery Act and HUD requirements regarding the administration of its Recovery Act grant. Specifically, we wanted to determine whether the Commission (1) properly procured contracts, (2) ensured that Davis-Bacon Act requirements were met, (3) complied with Section 3 requirements, and (4) accurately reported Recovery Act grant activities in FederalReporting.gov.

RESULTS OF AUDIT

Finding 1: The Commission Did Not Comply With HUD's or Its Own Procurement Requirements

The Commission did not maintain adequate procurement documentation or ensure that it paid reasonable prices for Recovery Act-funded construction projects. It failed to perform adequate independent cost estimates or prepare cost analyses of contract modifications. The weaknesses occurred because the Commission did not monitor its architects to ensure compliance with Federal and its own procurement requirements. As a result, HUD and the Commission lacked assurance that more than $230,000 in Recovery Act grant funds was used appropriately.

The Commission Did Not Maintain Adequate Documentation

The Commission received more than $1.3 million in Recovery Act formula grant funds to perform capital and management activities. In addition to its administrative and architectural and engineering fees, the Commission used its funds to perform seven projects. The seven projects included (1) community building roof replacement; (2) signage at Colonel Hamtramck Homes; (3) closed-circuit television security surveillance; (4) kitchen cabinet replacement; (5) parking lot renovation; (6) canopy and lobby renovations; and (7) heating, ventilation, and air conditioning (HVAC) replacement. We reviewed 100 percent of the Commission's procurement documentation for the seven projects to determine whether the procurements were conducted in accordance with HUD's and the Commission's requirements during the period March 18, 2009, through September 30, 2011. Neither the Commission nor its architect maintained complete documentation for three of the seven projects, including the kitchen cabinet replacement, canopy and lobby renovation, and the parking lot resurfacing projects.

The Commission Did Not Ensure That Contract Modifications for Its Kitchen Cabinet Replacement Project Were Reasonably Priced

In April 2009, the Commission solicited bids for a Recovery Act grant-funded project to replace the kitchen cabinets, countertops, and sinks for 285 units at the Colonel Hamtramck Homes location. The original contract was awarded in August 2009 to National Maintenance Services, LLC, for $485,000.

On October 8, 2009, the Commission executed a change order with its contractor to include items such as cabinets and handles and services such as electricity and plumbing, cleanup, installation, and supervision at the remaining 15 units. The change order totaled $33,347. On February 25, 2010, the Commission executed another change order with its contractor for additional carpentry, electrical, and plumbing items. This change order totaled $159,954.

The Commission did not ensure that the contract modifications for its kitchen cabinet replacement project were reasonably priced in accordance with HUD's requirements. Collectively, the two change orders increased the original contract price by more than $193,000 (40 percent). However, the Commission did not perform an adequate cost analysis to properly evaluate the contractor's change proposals for both of the modifications before entering into agreements on price. Further, since the Commission's independent cost estimate was more than 10 percent greater than the winning bid, the Commission should have reassessed its estimate when evaluating the cost reasonableness of the modifications. For the first contract modification, neither the Commission nor the architect was able to provide a record of price negotiation. Therefore, we were unable to determine the reasonableness of the contract modification. Contrary to 24 CFR (Code of Federal Regulations) 85.36(f)(1) and its own procurement policy, the Commission did not ensure that it performed cost analyses for two contract modifications to its kitchen cabinet replacement contract at Colonel Hamtramck Homes.

The Commission provided 9 schedules that summarized nearly 600 contractor work order forms that were used to price the second modification. According to the schedule, the contractor's work order forms provided the basis for the contractor to charge nearly $160,000. The Commission provided the contractor's job work order forms to support more than $155,000 of the charges. However, it did not provide job work order forms for the remaining costs of nearly $4,700, which were also included on the summarized schedules.

Further, of the more than $155,000 in costs for which the Commission provided contractor job work order forms, nearly $127,000 was for labor only. At the time of negotiation, the Commission did not obtain from the contractor adequate supporting documentation for the labor rates to determine whether they were reasonable. The amount for labor, which was first calculated on the job work order forms and then added to the summary schedules, included $81 per hour for carpenters, $56 per hour for electricians, and $150 per hour for trucking fees. However, the documentation provided by the Commission's contractor in March 2012 showed that the labor rates included a 1 percent increase for the Michigan business tax and a 10 percent increase for profit and overhead that were included as separate costs on the summary schedules. Therefore, the Commission overpaid $14,139 for labor costs because the Michigan business tax assessment, overhead, and profit were included twice.

Additionally, the supporting documentation for labor rates was based only on foreman and journeyman wages and did not account for the use of apprentices, who were paid less. Therefore, the schedules used to determine the rates were inadequate. The labor schedules showed that the labor wage rate had increased by 144 percent, which was attributable to 108 percent for fringe benefits plus 36 percent for labor burden (144 percent added to the direct labor rate). The schedules also did not include a corresponding history to compare with the costs used to develop the trucking rates. The reasonableness of the labor and trucking rates could not be determined without adequately detailed supporting documentation and analysis as required by HUD Handbook 2210.18, section 1-2.

The Commission did not ensure that these prices were reasonable before it modified the original contract. Also, the procurement file did not contain documentation to support the incurred costs to the contractor for the additional work performed and the additional profit, which should have been separately negotiated.

Additionally, the nearly 600 work orders prepared by the contractor and signed by the Commission's operations director, who authorized the work, were not dated. The date of signature is required so that the Commission can determine whether the change was properly authorized according to the contract. Therefore, we could not determine whether the work was properly authorized before it was performed and that the priced work orders prepared by the contractor included only the work that the operations director authorized. In reviewing the work descriptions included on the work order forms, we identified work items that were included in the initial contract. These work items should not have been paid with Recovery Act grant funds and included (1) plumbing labor costs totaling $27,398, (2) kitchen filler labor costs totaling $24,300, (3) electrical labor costs totaling $7,168, (4) electrical material costs totaling $6,247, (5) drywall labor costs totaling $27,135, and (6) labor costs totaling $11,178 for toe kicks and the installation of range cabinets. In addition, we identified duplicate work orders to perform the same work for the same housing unit, which totaled $9,154. Because the work orders were not adequately compared, we could not differentiate the costs among the multiple activities described on each work order.

The Commission Did Not Ensure That Contract Modifications for Its Canopy and Lobby Renovation Project Were Reasonably Priced

In February 2010, the Commission solicited bids for a Recovery Act formula grant-funded project to renovate the canopy and lobby at the Hamtramck Senior Plaza location. The original contract was awarded in March 2010 to National Maintenance Services, LLC, for $211,000. However, the Commission's independent cost estimate for the project was $260,000, which was $49,000 less

than the winning bid. Additionally, the estimate did not include a breakdown of major categories, including labor, materials, and other direct costs, as required

The Commission executed two contract modifications for $125,955 and $30,520 on November 12, 2010, and June 8, 2011, respectively, which changed the scope of the work beyond the original contract and increased the price by more than $156,000 (74 percent). The modification was mainly as a result of additional discretionary items decided upon during the construction phase, such as installation of flood lights in the parking lot, repairs to existing parking lot lighting, additional tile work, additional movable bulkhead doors, etc. The Commission used $29,961 in Recovery Act grant funds for the first contract modification. It used $126,514 from its Public Housing Capital Fund program to pay for the balance of the first contract modification and all of the second.

The Commission did not ensure the contract modifications for its canopy and lobby renovation project were reasonably priced. Specifically, it did not ensure that the required cost analysis was prepared for the first contract modification or that the cost analysis for the second modification was adequate. HUD Handbook 7460.8, REV-2, states that a cost analysis is an evaluation of the separate elements that make up a contractor's total cost proposal or price to determine whether they are allowable, directly related to the requirement, and reasonable. A cost analysis must be conducted when there is a contract modification. The level of detail and complexity of the cost analysis should reflect the dollar value and complexity of the contract.

Additionally, since the Commission's independent cost estimate was more than 10 percent less than the winning bid, the Commission should have reassessed its estimate when evaluating the cost reasonableness of the modifications. The contract modifications were executed after the work was completed; therefore, the Commission had already incurred the costs. It should have requested documentation of the costs to assist in determining the cost reasonableness for each modification. According to HUD's requirements, techniques to determine cost reasonableness include a comparison of actual costs previously incurred by the same contractor and previous cost estimates from the contractor or other contractors for the same or similar items.

The Commission provided a schedule for the first contract modification, which summarized 22 of the subcontractor's change order proposals and job work order forms showing the use of $125,955 for various extras that were used to price the modification. Of that amount, Recovery Act funds were used to pay for 23.8 percent ($29,961 * $125,955) of the contract modification.

Additionally, the change order proposals and job work order forms included more than 450 hours for supervision, carpenters, cleanup, tapers, administrative costs, and trucking fees totaling nearly $43,000 for labor charges paid (more than $10,000 paid with Recovery Act funds). The amounts for labor were calculated

on the job work order forms and then added to the summary schedules based on nearly $82per hour for supervision; $81 per hour for carpenters, tapers, and administrative costs; $78 per hour for cleanup; and $175 per hour for trucking fees. The Commission did not provide adequate supporting documentation for the labor rates to determine their reasonableness. The documentation provided showed that the total labor cost was $42,610, which included 1 percent for Michigan business tax ($38,353 * 1 percent = $384) and 10 percent for overhead and profit ($38,736 * 10 percent = $3,874). However, the contractor's Michigan business tax, overhead, and profit were included on the summary schedule. Therefore, the Commission overpaid $1,013 (($384 + $3,874) * 23.8 percent) for the Michigan business tax and all labor included in the first modification because the Michigan business tax assessment of 1 percent and overhead and profit of 10 percent were included twice.

Also, the labor and trucking rate documentation provided by the contractor during the audit was not adequate to support that the rates were reasonable. The supporting documentation for the labor rates was based only on foreman and journeyman wages and did not account for the use of apprentices, who were paid less. Additionally, the schedules used to determine the rates were inadequate. The schedules did not include a corresponding history to compare with the costs used to develop the labor and trucking rates. The labor schedules showed that the labor wage rate had increased by 144 percent, which was attributable to 108 percent for fringe benefits plus 36 percent for labor burden added to the direct labor rate (108 + 36 = 144). The reasonableness of the labor and trucking rates could not be determined without adequately detailed supporting documentation and analysis as required by HUD Handbook 2210.18, section 1-2.

Further, the work orders were prepared by the contractor and signed by the Commission's property manager authorizing the work. However, the property manager's signatures authorizing 10 work orders were dated after the work was completed, and another 17 signatures were not dated. Therefore, we could not determine whether the work was properly authorized before it was performed and that the priced work orders prepared by the contractor after the property manager signed them included only the work that the property manager authorized. Additionally, our review of the work descriptions included on the job work order forms found that some included costs for work that was also performed and priced on different work orders. Therefore, the Commission did not provide documentation to support that the price paid for the contract modification was reasonable.

The contractor used subcontractors to perform electrical, concrete, roofing, and millwork on the canopy and lobby renovation project. The contractor's change order proposals were supported by quotes submitted by these subcontractors at or near the time the work was performed; therefore, the contract modification was based on the quotes. Since November 22, 2010, the date the contract modification

was executed, the Commission had not obtained evidence of available incurred cost or the amount the subcontractors were paid.

Further, after the contract was awarded, the Commission decided to modify the contract to install new lights in the parking lot. On April 10, 2010, the contractor submitted change order proposal 6, which was based on an electrical subcontractor's quote of $27,781 and added 24 hours of contractor supervision, a Michigan business tax assessment, overhead, and profit, which increased the price charged to the Commission to $32,956. However the Commission stated that once the work began, unforeseen buried concrete was encountered and hand trenching included in the quote was no longer a sufficient method. Therefore, the contractor revised and submitted change order proposal 1, and added proposal 7. The change order proposals increased the cost of installing the lights due to the unforeseen excavation issues.

The modified change order proposal 1 was for a concrete subcontractor to take over the excavation portion. Change order proposal 6 was for the cost of hand trenching, quoted at $6,050 by the electrical subcontractor, which had been determined by the contractor as no longer necessary. Change order proposal 7 was for an additional 9 hours of contractor supervision of the concrete subcontractor on April 22 and 23, 2010; however, change order proposal 1 included contractor supervision, and no concrete excavation was performed on April 22, 2010. Therefore, the first contract modification included ineligible costs of $6,838 ($1,626 in Recovery Act funds) consisting of hand trenching costs of $6,050 ($1,439 in Recovery Act funds) for change order proposal 6 because deductions were not applied and supervision costs of $788 ($187 in Recovery Act funds) for change order proposal 7.

The Commission Did Not Ensure That Its Contract Modification for Its Parking Lot Resurfacing Project Was Reasonably Priced

In February 2010, the Commission solicited bids for a Recovery Act formula grant-funded project to resurface the parking lot at the Hamtramck Senior Plaza location. The original contract was awarded in March 2010 to Asphalt Specialists, Incorporated, for $98,675.

On November 9, 2010, the Commission executed a change order with its contractor for additional work. This contract modification totaled $7,334 and increased the total cost of this project to $106,009. The Commission did not ensure that the contract modification for its parking lot resurfacing project was reasonably priced. Contrary to Federal regulations and its own policies, the Commission did not prepare a cost estimate or analysis for the contract modification.

The contract modification provided a schedule of the additional costs, which included (1) $2,816 to furnish and install all labor and materials to trench for electric utilities, replace trench spoils with aggregate base, and compact in place and (2) $2,700 to provide labor and material to excavate and backfill electric utility trenches at the north parking lot. The trenching for electrical utilities was included in change order proposals 1 and 6 of modification 1 of the canopy and lobby renovation contract. Therefore, the parking lot resurfacing contract included $5,516 in questionable costs for work impacted by change orders for the canopy and lobby renovation contract, and the Commission did not ensure that the change included credits for work no longer required. The Commission's procurement file did not include documentation showing the incurred cost to the contractor for the additional work performed and the additional profit that should have been separately negotiated.

The Commission Did Not Provide Adequate Oversight of Its Architects

The Commission did not provide adequate oversight of its architects. The weakness occurred because the Commission relied too heavily on its architects to ensure compliance with Federal and Commission procurement requirements and control the administration of the contract. The executive director said that the architects were hired based on their experience with HUD's projects and it was the Commission's expectation that the architects obtained all of the documentation and analyses required for negotiating the contract modifications.

However, regardless of whether the architect obtained all of the analyses and documentation required for the negotiation of contract modifications, it was the Commission's responsibility to ensure that all of the required analyses were performed and the documentation maintained. Further, documents provided by one of the Commission's architects showed that the architect was aware of the duplication of profit in contractor's proposals for the canopy and lobby renovation contract modifications.

Lastly, HUD's Detroit Office of Public and Indian Housing's monitoring reports for the Commission's Recovery Act grants found significant deficiencies in the quality of the documentation included in the procurement files. Some of the issues related to the contract modifications identified in this report were the subject of the monitoring reports. As part of HUD's proposed corrective actions, documentation was required of the Commission; however we did not find support that the issues related to cost estimates, cost analyses, and documentation that costs were reasonable were addressed before the findings were closed by HUD.

Conclusion

The Commission did not always ensure that it paid reasonable prices for Recovery Act-funded construction projects. As a result, HUD and the Commission lacked assurance that contract modifications totaling more than $230,596 ($33,347 + 159,954 + 29,961+ 7,334) paid using Recovery Act funds were reasonable and justified and that more than $121,830 ($14,139 + 27,398 + 24,300 + 11,178 + 7,168 + $6,247 + $27,135 + 1,013 + 1,626+ 1,439 +187) was for eligible contractor payments rather than for duplicate profit and overhead on labor and trucking rates and duplicate payments made for kitchen cabinet installations and canopy and lobby renovations.

Recommendations

We recommend that the Director of HUD's Detroit Office of Public Housing require the Commission to

1A. Reimburse from non-Federal funds, for repayment to the U.S. Treasury, $121,830 for ineligible expenses, including duplicate profit and overhead paid on labor and trucking rates and duplicate payments made for kitchen cabinet installations and canopy and lobby renovations.

1B. Provide documentation for the three contracts to support that the costs paid for the contract modifications totaling $108,766 ($230,596 less the ineligible use of funds from recommendation 1A) were reasonable. Any amounts that cannot be shown to be reasonable should be repaid to the U.S. Treasury from non-Federal funds.

1C. Develop and implement adequate quality control procedures to ensure that contracts are procured and executed in accordance with Federal requirements and the Commission's policies and procedures. These procedures and controls should include but not limit to providing oversight of its architects on any future construction work for compliance with Federal and other applicable requirements.

Finding 2: The Commission Did Not Follow Recovery Act, HUD's, or Its Own Requirements for the Davis-Bacon Act

The Commission did not follow Recovery Act, HUD's, or its own procurement and Davis-Bacon Act requirements. Specifically, it did not ensure that its contractors and subcontractors paid prevailing wages in accordance with the Davis-Bacon Act. The weaknesses occurred because the Commission lacked written procedures or a process to verify contractors' payrolls and did not fully understand the requirements under the Act. As a result, two contractors underpaid their employees a total of $702, and HUD and the Commission lacked assurance that nearly $14,000 in wages was not withheld from workers compensated as eligible apprentices since their eligibility was not sufficiently supported according to Davis-Bacon Act requirements.

The Commission Did Not Ensure That Contractor Employees Were Adequately Compensated

The Commission did not adequately administer the Davis-Bacon requirements for all of its Recovery Act grant projects. Its contractors for the canopy and lobby renovation and HVAC projects underpaid three employees, collectively, $702 in wages. Despite the Commission's having received the appropriate certified payroll records and performed a targeted interview with one of the underpaid employees, it failed to identify the underpayment or take action to remedy either of the contractors' noncompliance with Federal regulations until July 2012. On July 27, 2012, the Commission provided support that the contractor for the HVAC project wrote a check to the underpaid employee on July 13, 2012, in payment of wage restitution to comply with the Davis-Bacon Act. However, there was no certification from the worker that the worker received the payment.

Further, the Commission did not ensure that each of 11 apprentices who worked on its kitchen cabinet replacement and canopy and lobby renovation projects were eligible via enrollment in an approved apprenticeship program and, thus, adequately compensated. The Commission did not provide sufficient documentation showing that the apprentices were enrolled in approved apprenticeship programs to justify their receiving $13,905 ($6,411 for the kitchen cabinet replacement + $7,494 for the canopy and lobby renovation projects) less than the amount required in accordance with Davis-Bacon.

The Commission Lacked an Understanding of Davis-Bacon Act Requirements

The Commission had weaknesses in its procedures and controls and lacked an understanding of Davis-Bacon Act requirements. The Commission's executive assistant said that the problem with employees other than apprentices, who were paid less than prevailing wages, was due to the lack of written procedures or a process for verifying all contractor payrolls to ensure compliance with the Davis-Bacon Act. Further, she said that the Commission had verbally verified that some employees were apprentices and were, therefore, paid less than prevailing wages. However, she said that the Commission was unaware that specific documentation was required to verify that the employees were in an approved apprenticeship program.

Conclusion

The Commission did not follow Recovery Act, HUD's, or its own procurement and Davis-Bacon Act requirements. As a result, two contractors underpaid their employees $702, and HUD and the Commission lacked assurance that nearly $14,000 ($6,411 for the kitchen cabinet replacement + $7,494 for the canopy and lobby renovation projects) in wages was not withheld from workers compensated as eligible apprentices in accordance with the Davis-Bacon Act.

Recommendations

We recommend that the Director of HUD's Detroit Office of Public Housing require the Commission to

2A. Pursue collections from the applicable contractor and reimburse the appropriate employees $327 from non-Federal funds for the wages paid by the canopy and lobby renovation that were less than those required by the Davis-Bacon Act.

2B. Ensure that the employee who received $375 less than required from the HVAC contract receives the wage restitution payment that was prepared by the contractor.

2C. Provide support that all of the 11 apprentices were enrolled in an approved apprenticeship program in accordance with the Davis-Bacon Act or fulfill its administrative duties, including (1) taking appropriate actions to ensure that workers who received less than the prevailing rate receive $13,905 ($6,411 from the kitchen cabinet replacement project and $7,494 from the canopy and lobby renovation project) in wage restitution from non-Federal funds and (2) taking the appropriate administrative actions as outlined in the requirements for contractors that willingly do not meet their obligations.

2D. Develop and implement adequate written procedures, controls, and supervision to ensure that its contractors' and subcontractors' employees are paid at the appropriate Federal prevailing wage rates for covered contracts and provide training to its employees on Federal labor requirements.

Finding 3: The Commission Did Not Comply With HUD's or Its Own Section 3 Requirements

The Commission did not comply with HUD's or its own Section 3 requirements. Specifically, it (1) did not achieve its Section 3 minimal numerical goals for contracting, (2) did not ensure that contractors complied with the Section 3 requirements, and (3) did not submit the required form HUD-60002 for 2009 and 2010. The weaknesses occurred because the Commission lacked a complete understanding of how to adequately implement the requirements under Section 3. As a result, the Commission did not ensure that opportunities to become employed or receive employment training were provided to eligible Section 3 participants.

The Commission Did Not Ensure Its Section 3 Policies

The Commission did not achieve its Section 3 minimal numerical goal of awarding 10 percent of the total dollar amount of all covered construction contracts to Section 3 business concerns as described at 24 CFR 135.30 and did not provide sufficient documentation showing that it was unable to meet the goals required by the regulations. Additionally, rather than through advertised invitations to bid, the Commission used a modified procurement method by directly soliciting bids from contractors. Therefore, Section 3 business concerns may have been deprived of the opportunity to compete for the contracts.

The Commission Did Not Take an Active Role To Ensure Contractor Compliance With Section 3 Requirements

The Commission, throughout the term of its contracts, did not take an active role to ensure contractor compliance with the Section 3 requirements. It attempted to determine compliance through six contractors' statements received between October 2011 and February 2012 which was after the contracts were completed. Final payments to the contractors were issued between November 2010 and January 2011. However, the Commission's actions did not ensure contractor compliance with Section 3 requirements. Further, in reviewing the six statements, we determined that two identified current low-income residents but did not identify whether new employment or training opportunities were created by the projects. Since none of the contractors claimed to be Section 3 business concerns, Section 3 resident low-income designations did not apply to existing employees.

Additionally, for four of the Commission's seven Recovery Act-funded projects (kitchen cabinet replacements, new community building roof, canopy and lobby renovation, and signage), the Commission or its architects were unable to document actions, if any, that were undertaken by contractors to comply with

Section 3 requirements. The Commission's kitchen cabinet replacement, canopy and lobby renovation, and signage contractors stated that they employed low-income individuals, but they did not claim to be Section 3 business concerns.

For the Commission's HVAC project, the contractor identified a new employee that it hired for compliance with Section 3. However, neither the Commission nor its architects were able to provide documentation showing that the Commission verified the eligibility of the newly hired employee as a Section 3 resident as defined in the Commission's Section 3 plan. The Commission also did not provide documentation showing actions taken by its contractors to provide subcontracting opportunities to Section 3 business concerns, in compliance with the regulations, for four projects (new community building roof replacement, kitchen cabinet replacement, canopy and lobby renovation, and signage) that used a total of nine subcontractors.

The Commission's Section 3 plan and written procurement policies and procedures did not include steps to identify Section 3 business concerns or a method for considering Section 3 businesses for preference in contracting opportunities. Further, its procurement policy contained the statement that because of the administrative impracticality of Section 3 for smaller contracts, the agency had established a contract threshold of $25,000 for application of Section 3. However, its policy contradicted HUD's regulations at 24 CFR 135.3, which state that there are no thresholds for Section 3-covered public and Indian housing assistance. The requirements of this part apply to Section 3-covered assistance provided to recipients, regardless of the amount of the assistance provided to the recipient and to all contractors and subcontractors performing work in connection with projects and activities funded by public and Indian housing assistance covered by Section 3, regardless of the amount of the contract or subcontract.

As a result of this finding, the Commission provided documentation to show that its board of commissioners had taken action to amend its policies to remove the threshold and enact a method of providing preference to Section 3 business concerns.

The Required Form HUD-60002 Was Not Submitted in Fiscal Years 2009 and 2010

The Commission submitted its fiscal year 2011 form HUD-60002 (Section 3 Summary Report) but had not submitted its fiscal years 2009 and 2010 forms. The form is used to report the number of Section 3 hires to HUD. Regulations at 24 CFR 135.90 state that the report is to be submitted by January 10 of each year or within 10 days of project completion, whichever is earlier.
Office of Management and Budget (OMB) Circular A-133, Compliance Supplement, addendum 1, Public and Indian Housing, section III(L)(2), states that the prime recipient must submit form HUD-60002.

The Commission Lacked Knowledge of the Section 3 Requirements

The Commission's executive assistant stated that the Commission believed that it complied with Section 3 requirements and was unaware of issues within its program. She added that the Commission's employees did not have adequate training for Section 3. The Commission lacked adequate knowledge of HUD's Section 3 requirements, and its procedures and controls had weaknesses as a result.

Conclusion

The Commission did not comply with HUD's or its own Section 3 requirements. As a result, HUD lacked assurance that the Commission, its contractors, and its subcontractors complied with Section 3 requirements to the greatest extent feasible and low-income persons, very low-income persons, and Section 3 business concerns were afforded adequate opportunities to receive Recovery Act grant awards.

Recommendations

We recommend that the Director of HUD's Detroit Office of Public Housing require the Commission to

3A. Ensure that staff members responsible for contract administration receive training on Section 3 requirements.

3B. Implement adequate procedures and controls to ensure that its policies and procedures comply with HUD's requirements and contain clear guidance on how to ensure that its contractors comply with Section 3 requirements.

Finding 4: The Commission Did Not Accurately Report Recovery Act Grant Information in FederalReporting.gov

The Commission did not correctly report the number of jobs created or retained for various quarters and was unable to justify its reported estimates for the number of jobs reported in FederalReporting.gov. This condition occurred because the Commission lacked adequate procedures and controls to ensure that it fully implemented federally mandated changes to its program and its reporting of program results. As a result, the public did not have access to accurate information regarding the number of jobs created and retained with formula grant funds, and the Commission's use of formula grant funds was not transparent.

Jobs Created or Retained Were Not Properly Calculated or Reported

The Commission was unable to justify the number of jobs created or retained that it reported in FederalReporting.gov based on its Recovery Act activities.

OMB Memorandum M-10-08 states that the number of new jobs created or jobs retained should be reported using the following formula: total number of hours worked and funded by the Recovery Act within a reporting quarter divided by quarterly hours in a full-time schedule equals the full-time equivalent. Our review of the Davis-Bacon payroll reports the Commission provided for its grant-funded projects revealed that work was performed on the kitchen cabinet replacement project during the first quarter of 2010, although the Commission did not report jobs created or retained during the first quarter of 2010.

Additionally, the Commission reported that it created 12 jobs in each of the 4 quarters of 2011, although based on the payroll reports provided by the Commission, there was no work performed during those quarters for any of the grant projects.

The Commission Did Not Use the New Methodology for Its Jobs Calculation

The Commission's executive assistant said that despite receiving timely notifications from HUD, the Commission mistakenly did not incorporate the change to the methodology for calculating the number of jobs created and retained.

Conclusion

The Commission did not correctly report the number of new jobs created or retained. As a result, the Commission's use of formula grant funds was not transparent, and HUD and the public did not have access to accurate information regarding the number of jobs created and retained with formula grant funds.

Recommendations

We recommend that the Director of HUD's Detroit Office of Public Housing require the Commission to

4A. Develop and implement procedures and controls to ensure the accuracy, completeness, and timeliness of the all reports submitted to HUD or other Federal agencies for the Commission's programs.

SCOPE AND METHODOLOGY

We performed our onsite audit work from October 2011 to April 2012 at the Commission's office located at 12025 Dequindre Avenue, Hamtramck, MI, and HUD's Detroit field office. The audit covered the period March 18, 2009, through September 30, 2011, but was expanded when necessary to include other periods.

To accomplish our objective, we reviewed

- Applicable laws; regulations; Federal Register notices; 2 CFR Part 176; 24 CFR Parts 85 and 135; 29 CFR Parts 3 and 5; Office of Public and Indian Housing Notices 2009-12, 2009-16, 2009-25, 2009-31, 2010-34, 2010-44, 2011-4, 2011-12, and 2011-37; HUD Handbooks 1344.1, REV-1, 7460.8, REV-2, 7475.1, and Supplement to HUD Handbook 7475.1; the Recovery Act; The United States Housing Act of 1937 as amended; 40 U.S.C. (United States Code) chapter 31, subchapter IV, 3141; OMB Circulars A-87 and A-133; OMB Memorandums M-09-21, M-10-08, and M-10-34; HUD's Making Davis-Bacon Work guide for public housing agencies; and the U.S. Department of Labor's Memorandum Number 207.

- The Commission's annual contributions contract with HUD, accounting records, bank statements, computerized databases, policies and procedures, board meeting minutes pertinent to the program, organizational chart, and Line of Credit Control System information and requests for payment.

- HUD's files for the Commission.

We also interviewed the Commission's employees, architects, and contractors and HUD staff.

Finding 1

We reviewed 100 percent of the Commission's procurement documentation related to projects funded by the Recovery Act grant to determine whether procurements were conducted in accordance with HUD's and the Commission's requirements during the period March 18, 2009, through September 30, 2011. The audit period was expanded when necessary to include other periods. We determined that the Commission did not maintain all of the required documentation. We also contacted the Commission's architect to determine whether he maintained additional documentation pertinent to the Commission's Recovery Act grant projects.

We reviewed 100 percent of the Commission's reporting of core activities in the Recovery Act Management and Performance System.

Finding 2

We reviewed 100 percent of the Commission's project files to determine whether the Commission maintained documentation to support that it ensured that its contractors paid the appropriate prevailing wages.

Finding 3

We reviewed the Commission's Section 3 policies. We also reviewed 100 percent of the Commission's Recovery Act grant contracts to determine whether required Section 3 clauses were included as part of the contracts.

We reviewed the Commission's submission of form HUD-60002, Section 3 Summary Report, for fiscal years 2008 and 2011 for the Recovery Act grant.

Finding 4

We reviewed 100 percent of the Commission's submissions to FederalReporting.gov for the third quarter of 2009 through the fourth quarter of 2011 to determine whether they were accurate, complete, and timely.

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

INTERNAL CONTROLS

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:

- Effectiveness and efficiency of operations – Policies and procedures that the audited entity has implemented to provide reasonable assurance that a program meets its objectives, while considering cost effectiveness and efficiency.

- Reliability of financial reporting – Policies and procedures that management has implemented to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with generally accepted accounting principles.

- Compliance with laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiencies

Based on our review, we believe that the following items are significant deficiencies:

- The Commission lacked adequate procedures and controls to ensure that procurements were conducted in accordance with HUD's requirements and the Commission's policies and procedures (see finding 1).

- The Commission lacked adequate procedures and controls to ensure that it complied with Recovery Act, HUD's, or its own requirements for the Davis-Bacon Act (see finding 2).

- The Commission lacked an understanding of Federal requirements to ensure compliance with Section 3 requirements (see finding 3).

- The Commission lacked adequate procedures and controls to ensure compliance with Federal and its own requirements regarding the reporting of appropriate information in FederalReporting.gov (see finding 4).

APPENDIXES

Appendix A

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

Recommendation number	Ineligible 1/	Unsupported 2/	Funds to be put to better use 3/
1A	$121,830		
1B		$108,766	
2A			$327
2B		$375	
2C		$13,905	
Totals	$121,830	$123,046	$327

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.

3/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation **Auditee Comments**

Comment 1

Audit Draft Response
July 25, 2012

By way of introduction, The Hamtramck Housing Commission (HHC) is the fourth oldest public housing agency (MI004) in the state of Michigan. Built in 1936 by the Civilian Conservation Corps, all of the original buildings (36), including the administrative offices are still fully utilized. In fact, the Hamtramck Housing Commission is recognized by the Department of Housing and Urban Development (HUD) as the largest *"Public Housing High Performer"* (by CFP) in the state of Michigan, and has been for the last four years running. The fact that our buildings are three-quarters (3/4) of a century old is an important aspect when considering retrofitting anything, particularly kitchen cabinets, and must be adamantly considered when assessing this audit. The Colonel Hamtramck Homes is comprised of 36 buildings encompassing three hundred (300) mixed family units ranging in size from 1 to 5 bedrooms. The other property in the HHC portfolio is an eight (8) story tall *"Senior"* high rise built in 1986 and encompasses 150 elderly apartments.

The HHC received notice of the ARRA formula grant in March 2009. From the very day of receiving notification the HHC has worked hand in hand with numerous personnel from the Detroit Field Office of HUD to ensure that all ARRA monies were obligated and expended appropriately and in compliance with all HUD regulations. In fact, the HHC received three on site reviews from various personnel of the (HUD) Detroit Field Office who inspected everything from the grade of plywood used in cabinet replacements to the placement of "Recovery Act Fraud Posters" throughout our premises.(See appendix MM for copies of the reviews from HUD) All reviews have been duly noted by the auditors. Through the course of the seven (7) contracts and $1,393,865 expended with *Recovery Act* funds the HHC and the Detroit Field Office of HUD have been in continuous contact, with HUD lending guidance and support every step of the way.

Ref to OIG Evaluation	Auditee Comments
Comment 2	The Office of Inspector General(OIG) began their American Recovery Act audit in October 2011 and stayed on site at the Hamtramck Housing Commission offices for six months(6) until April 2012. The audit was performed by two (2) OIG auditors who worked full time during the entire six (6) month audit procedure. During this time the two auditors were presented with all requested information several times in different formats. The auditors were taken through both developments at their request and were encouraged to take pictures at will and were let into apartments that they themselves selected. The auditors were given in-depth descriptions of the cabinets installed at the Colonel Hamtramck Homes (CHH), to the point of being presented with the actual physical cabinets for a hands-on inspection. Personnel from the HHC, and James Childs and Architects, spent an entire half day showing the auditors the necessary work which was completed at the Hamtramck Senior Plaza. The auditors were given access to both of the architectural firms employed by the HHC. The first, James Childs Architects with 35 years of architectural experience in public housing, and the second Tuomaala and Associates with 48 years of government architectural experience FINDING 1: The Hamtramck Housing Commission (HHC) did maintain adequate procurement documentation and ensured that the HHC paid reasonable prices for Recovery Act-funded construction projects. Independent cost estimates and cost analysis of contract modifications associated with the Canopy and Lobby Renovation Project, the Asphalt Replacement Project, and the Kitchen/Cabinet/Countertop Replacement Project were completed by our third party architectural and engineering firms, James Childs Architects and Siegel Toumaala and Associates. These cost estimates and cost analysis were submitted in a form widely and historically accepted as the industry standard. Further, they were submitted by two firms with over a half century of combined experience in construction and HUD documents, and have been accepted and recognized by HUD as meeting procurement regulations as set forth in section 24 of the Code of Federal Regulations (24 CFR). (See appendices A through H for the Independent Cost Estimates and Cost Analysis performed in conjunction with the aforementioned ARRA-Funded Projects). Justifications for the modifications were maintained and given in multiple discussions with the auditors during the six (6) months that they were on site. The justifications were reviewed and reiterated to the auditors in a meeting and physical walk through on Wednesday, February 22, 2012. The management staff of the HHC, the Managing Partner of James Childs Architects, and the Project Staff Architect discussed at length with the auditors during this meeting the justifications and reasons for all modifications. There were not duplicate costs paid to contractors for the same work as was the original fear of the auditors. These items were explained at length and with great detail to the auditor showing that no duplicate payments had been made for duplicative work. The enclosed Independent Cost Estimates and Cost Analysis shows that the Commission had assurances that it paid reasonable prices for the original contract sums as well as the $212,00.00 in contract modifications. *Ibid.*
Comment 3	
Comment 4	
Comment 5	

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Comment 6	The Commission ensured contract modifications for its Canopy and Lobby Renovation Project were reasonably priced. (see appendices A,D & E for the Independent Cost Estimate and the Cost Analysis prepared by our Independent third party Architectural firm James Childs Architects) HHC felt that the Independent Cost Estimates and the Cost Analysis performed by its Architects were done in compliance with 24 CFR 85.36 (f.). *Ibid.* In the industry this is a confidently and generally accepted standard method of performing an Independent Cost Analysis, performed by a company with 35 years experiences in meeting HUD procurement guidelines. The HHC decided to move forward with the contract after reviewing the cost analysis performed and source documentation reviewed by our architect in accordance with 24 CFR 85.20(b)(6) and 24 CFR 85.36 (d)(4).(see appendices D & E). In conducting the Cost Analysis, and in utilizing the Procurement Handbook for Public Housing Agencies, 7460.58 REV 2, the HHC stringently adhered to Section 10.3, and complied fully with sub part a (2), which states, "If adequate competition does not exist, including sole source procurements or non-competitive proposals, the PHA must perform a Cost Analysis…."(see appendices D & E*).* The Cost Analysis performed ensured the cost submitted were, "allowable…allocable…and reasonable…" per the Procurement Handbook for Public Housing Agencies, HUD-Handbook 7460.8 REV 2, section 3 *Conducting a Cost Analysis.* (See appendix M)
Comment 7	All modifications made to the Canopy and Lobby Renovation Project was directly driven by the HHC's required compliance with Section 504, "The Americans with Disabilities Act" (ADA), state codes, and local ordinances. Furthering the demand for the modifications were the health, safety, welfare, and exigency factors surrounding the project. Further compelling the modification was the HHC's dedication to its residents, the mandate to uphold and adhere to its *Admissions and Continued Occupancy Policy* (ACOP) and its mission statement to provide safe housing. The necessity to provide safe housing for the residents we serve is not discretionary. The aforementioned factors are evidenced by a letter from an elderly, severely handicapped resident requesting a reasonable accommodation to alleviate the barrier for her wheel chair to access emergency exit doors on the first floor. (See appendix N) Further evidence of an ADA issue is the Hamtramck Fire Marshall's letter dated; August 13, 2012, citing the exits located on the first floor as emergency egresses and that the hallways leading to them had to be free from barriers to our wheel chair bound residents. (See appendix O) All modifications generating additional work, specifically additional concrete work, security lighting in the parking lot, canopy area, emergency egress tile work, and structurally integral bulk heads were necessary to

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ensure compliance and imperative to the health, safety, and welfare of our residents. As evidence to the non-discretionary nature of the additional work, refer to Appendix I.

Comment 8

The HHC justified its non-competitive bidding of additional work by directly referring to an e-mail sent to the HHC by Roberta Scott of the Detroit HUD Field Office on March 3, 2009. The e-mail (supplied to the auditors) which specifically addressed ARRA CFP funds provided to Michigan PHA's per the *American Recovery and Reinvestment Act of 2009*, stated emphatically, "PHA's **MUST** consider the current circumstances as a time of public exigency which will not permit delays resulting from competitive solicitation." (See appendix P) This directive, along with the pragmatic concerns of time, expense, advertising, printing, and remobilization is the only justification needed by the Commission to use non-competitive bidding, period. Based on the Directive from the Detroit Field Office of HUD, the HHC performed a supplemental agreement with the contractor per the Procurement Handbook for Public Housing Agencies, HUD-Handbook 7460.8 REV 2 Chapter 11.4(a) (2) which states under the heading of Contract Modifications;

Comment 9

A. **General.** Occasionally, it is necessary to modify a contract or purchase order to reflect changes in the required effort, period of performance, or price. Contract and purchase order modifications shall be issued in writing in one of the following forms:
   1. Unilateral . . . . . , or
   2. "Bilateral modifications (such as a supplemental agreement in which both parties mutually agree on contract changes) that is signed by both the Contracting Officer and the contractor. Bilateral modifications are the preferred method of modifying contracts and purchase orders."

This is the correct regulation to utilize since it addresses modifications to contracts that are already in place, just as is the case with the HHC contracts. The HHC by conducting a cost analysis through its independent third –party architect followed the appropriate steps in modifying the original contract.

Comment 8

The Commission's further justification for non-competitively bidding the additional work was due to the exigent nature of the work, the barriers imposed by the staging of concurrent contracts that affected the same area, and as allowable under 24 CFR 85.36(d)(4)(B) and (C). Under section 85.36(d) (4) (i) the handbook 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:" It then

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	lists four (4) circumstances, two of the four (B) and (C) are met by HUD and the HHC in this contract. Under subsection (B) "The Public Exigency or emergency for the requirement will not permit a delay from competitive solicitation" and (C) in which it states, "The awarding agency authorizes non-competitive proposals", as HUD, the awarding agency did under the ARRA regulations. This language was adopted by the Hamtramck Housing Commission as an amendment to our procurement policy entitled, *Stimulus Grant Procurement Policy* at our March 2009, regular board meeting via unanimous vote. This was done as a direct mandate by the HUD Detroit Field Office in the Roberta Scott email which stated " . . .PHA's MUST amend their procurement policies as necessary to expedite the use of funds". (See appendix J, K, L and R) Again, 11.4 (a)(2) of the HUD Procurement Handbook for Public Housing Agencies HUD-Handbook 7460.8 REV 2, (See appendix Q) states in part that, "…bilateral modifications are the preferred method of modifying contracts and purchase orders".
Comment 10	The Commission did ensure that the required cost analyses were performed for both Contract Modifications. In the professional opinion of our independent Architectural firm James Childs Architects, the cost analysis performed and provided hereto, in appendices D and E, are in full compliance with the requirements of 24 CFR 85.36. Please refer to appendices D and E which includes the job work orders that comprise the $156,
Comment 11	474.77 total change orders. Negotiated profit as indicated by the auditors had already been stipulated within the contract document under, "Adjustments to the Contract", and agreed upon and signed by both parties in the Executed Contract. (See appendix S)
Comment 12	According to auditors, "the contractor's actual cost for the modifications should have been provided by the contractor and used by the Commission to determine the cost". The HHC followed the Procurement Handbook for Public Housing Agencies, HUD Handbook 7460.8 REV 2, Chapter 11.4(b)(4), the requirements of which the contractor fully complied. (See appendix Q)
Comment 13	The auditors state that, "the HHC did not provide all the change order proposals and job work order forms need to support the entire $125,955 that was used for this project." The Housing Commission absolutely provided each and every change order proposal and work order forms several times, as evidenced by 159 pages in appendix D and 73 pages in appendix E.
Comment 14	The auditors state, HHC did not provide, *"adequate"* supporting documentation for labor rates to determine reasonableness. The HHC provided the following supporting documents for the corporate labor rates; wage, vacation/holiday, special assessment, health and welfare, pension, apprentice, training, industry, app/reimbursement fund, annuity fund, jbc fund, small

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tools/phones/safety/training/admin, OT production loss, and labor burden rates. This information is nearly identical to the information submitted by other contractors to support their labor rates. (See appendix T) James Childs Architects' thirty-five (35) years of architectural HUD experience throughout the mid-west supports the fact that the documentation provided by them is not only more than adequate, but likely the industry standard. The HHC, throughout this project relied upon our architects' 35 years of public housing experience to identify the standards necessary to meet adequate compliance with the *Procurement Handbook for Public Housing Agencies.* Adequacy, identified by the auditors to date, is still nebulous at best.

Comment 15

The labor and trucking rate provided during the audit are more than necessary to support the reasonableness of the trucking rates billed and expended. In the professional opinion of our architects, after performing a cost reasonableness test, determined the rate of $175.00 was reasonable and commensurate with comparable trucking rates in the area. HHC obtained three more independent additional quotes for trucking fees and found that the $175.00 per hour rate was reasonable as compared to other rates obtained for similar work in the area. The use of apprentices as truck drivers was never stated in any invoices and therefore makes the accounting of apprentice wages inapplicable. (See appendix U)

Comment 16

The HHC cannot formulate a response to the accusations of the auditors in the final paragraph of page 7 because the calculations and conclusion of the auditors were not adequately defined. For example, from what base was the 108% labor wage increase derived from? The 36% for labor burden stated by the auditors is inaccurate. The true figure is 13.7%, i.e. calculated by 11.19 (labor burden) divided by $81.50 (hourly rate is 13.7%).

The project manager reviewed all work orders before submitting them to the Architect. His acquiescence to their veracity is supported by the acknowledgement of the architect that the work was performed successfully and thus approved for the next step.

Comment 17

The auditors state that some of the additional work in the modifications was part of the original contract. He further states that the same additional work was billed multiple times on different work orders. This is blatantly false and misleading. During the meeting on February 22, 2012, held with the auditors, the HHC's Executive Director, The Managing Partner from James Childs Architects, the Project Architect, the HHC's Financial Officer, Property Manager, and the Executive Assistant, the following facts were disclosed:

A spreadsheet was generated by the auditors and given to the HHC. The spreadsheet contained the auditors' concerns for work that they felt may be duplicative. (Please refer to the

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Comment 17	spreadsheet included below.) Each of the auditors' separate concerns are labeled as *A through J,* and are addressed as such after the spreadsheet as part of the body of our response. The HHC addressed each line of the auditors' concern during multiple conversations, including during the February 22, 2012 walk through meeting with the auditors. *Change Order Proposals* 1, 6, and 7, were three of the proposals that combined to make up *Change Order One (1)* to the Canopy and Lobby Renovation Project, and can be found in their entirety as part of Appendix D. *Change Order Number One (1)* for the Asphalt Replacement Contract, was thought by the auditors to be part of duplicative work, and can be found in its entirety in Appendix F. Please review the Spreadsheet below and the HHC's responses to the auditors' concern.

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Comment 17

In response to *letter A above,* for $ 907.58 expended, in which the auditors classified the work as, "Effort related to concrete removal for electrical trench". The contractor had to cut the concrete to run the conduit. The sidewalk was not part of the original tear out, and upon arrival Maryland Electric indicated that the sidewalk would have to be saw-cut so the conduit could be installed. Maryland Electric had been told all concrete and asphalt would be removed, and upon arrival observed that the sidewalk was not removed. Sidewalk removal was not part of Maryland Electric's original bid. Considering sidewalk removal was not part of Maryland Electric's original scope of work, National Maintenance contracted with a sub-contractor Aielli Construction to saw-cut the concrete and remove it so it that Maryland Electric could complete the electrical conduit run as planned. (See Appendix P3 and P4) This was for the east parking lot lights. This additional concrete work was not part of the original contract, was unforeseen, and as such needed to be added as a modification. This work was not billed in any of the other items of any modifications or original contracts.

In response to *letter B above,* for $1,043.40 expended, in which the auditors classified the work again as, "Effort related to concrete removal for electrical trench". This work was in regards to the trench from the entrance to the building to the east side of the island so that the electrical conduit for lighting could be run. Upon digging the necessary depths, additional buried concrete spoils were found and had to be removed. (See Appendix P31 and P32) The original contract did not scope for depths of concrete as deep as what was found on the east side of the island. This additional concrete found was additional work which extended hours and disposal of more material beyond the scope of the contract. This work was unforeseen, and as such needed to be added as a modification to the original contract. This work was not billed in any of the other items of any modifications or original contracts.

In response to *letter C above,* for $1,254.44 expended, in which the auditors classified the work as, "Excavation for footing". This work was for extra footing work at the building for depth required by the inspector. The Hamtramck City Inspector required deeper than standard or normal footings because of standing water. He required that the contractors dig to a point of *"undisturbed"* soil. (See P1 and P1a) The contractors dug the hole to normal depths, hit water and were required to stop work. The hole had to be refilled for obvious safety reasons until the inspector could return to inspect the work two days later. The additional depth required by the Inspector as a result of the soil being disturbed at normal depths, was unforeseen and unpredictable, and as such needed to be added as a modification to the original contract. This work was not billed in any of the other items of any modifications or original contracts.

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In response to *letter D above*, for $2,772.96 expended, in which the auditors classified the work again as, "Excavating for footing". This work was relative to the contractors returning two days later to accompany the inspector for his final approval. Please refer to the Appendix P1 for a picture of the disturbed soil which made the City Inspector require deeper excavation. The crew returned to work on 05/24/2010 and began re-excavating the hole. They reached previous depths and again did not clear to undisturbed soils as required by the city inspector. Crews continued excavating to a depth of 6'6", contractors at this depth found the spread footing, and contacted the inspector. (See Appendix P1 and P1a) Inspector cleared the crew to proceed. Crew constructed the new frame, which was larger than originally specified due to the unforeseen depth. The 7 yards of additional concrete was billed. Now the 42" frame originally scoped had to now be 84" (7 foot). Extra material was required. The contractors poured the footing. The footing was billed, and we were billed for the building of the larger fame. The aforementioned additions were a result of unforeseen circumstances and requirements by the City Inspector. The additional hours, supervisory hours, material, and re-excavation was all billed as a result. This work was not billed in any of the other items of any modifications or original contracts.

In response to *letter E above*, for $1,007.79 expended, in which the auditors classified the work again as, "Excavation for footing". This work was related to digging the footings for the bike rack. In the compacted gravel, contractor encountered buried concrete, requiring additional four hours of additional excavating with heavy equipment. Considering that the concrete was buried and the additional depths were not included in the price of removal in the original contract. (See Appendix P28 and P29) The additional excavation and removal required a modification to the original contract. This work was unforeseen and was not billed in any of the other items of any modifications or original contracts.

In response to *letter F above*, for $505.05 expended, in which the auditors classified work again as, "Excavating for footing". The HHC requested that a security camera be relocated because it was no longer functional due to the new construction of the canopy. As a result of the relocation, additional conduit had to be run, this time from the west side of the island to the building. Upon digging at the west side of the island, buried concrete at unforeseen depths was found. This addition was required because the hand trenching originally quoted in *proposed change order 6* was not a sufficient method to get through the depths of concrete found at the west side of the island. Heavy equipment had to be brought in to remove the additional depths. This work was unforeseen and was not billed in any of the other items of any modifications or original contracts.

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Comment 18

In response to *letter G above*, for *Change Order Proposal No 6*, the $32,956.00 expended is for the cost of installing new additional lighting on the island. The lighting was not part of the original contract and as such was added as a modification to the original contract. Price was based on the contractor's assumption that the base would be loose filled gravel. Please note that letters A and B for additional work addressed above, specifically Aielli's invoices 1025101x1 and 1025101x2 are changes to this change as discussed under their descriptions. The additional buried concrete drove modifications A and B above and the additional unforeseen depths of concrete needed to be removed. This removal was not part of the $32,956.00 billed under *Change Order Proposal Number 6*. (See Appendix P3 and P4) The work under *Change order Proposal 6* came as a result of the tenants' for better lighting in the parking lot and due to the fact that our tenants at this location are elderly, their eyesight is not the best and so they were hindered by the existing lighting which was poor. Upon the request, and in knowing the ease of upgrading the lighting with the asphalt already removed, the Commission decided to act on the reasonable and logical request and upgrade the lighting. This work was not billed in any other items of any modifications on the original contracts.

Comment 19

In response to *letter H above*, for the 24 Hours of supervision for NMS @ $81.50 per hour for a total of $1,956.00 expended. The auditors questioned the need for the supervision and stated that he felt it was excessive. HUD Form, *HUD-5370 General Conditions for Construction Contracts,* requires the foreman of the general contractor and all subs (sub contractors) be present on the job site at all times. (See appendix W, to review form, *HUD-5370 Section 2(c).* Thus, the supervision was mandated by contract.

In response to *letter I above*, for the 9 Hours of supervision for NMS for a total of $716.00 expended. The auditors questioned the need for the supervision and stated that he felt it was excessive. Again *HUD-5370 General Conditions of Contractors,* requires the foreman of the general contractor and all subs be present on the job site at all times, again per contract. The subcontractors work took additional days to perform and thus required additional hours of supervision from our General Contractor per HUD-5370, work that was not part of the original contract.

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Comments 3 and 20

In response to *letter J above*, in which the auditors claim work under *Change Order 1* of the Asphalt Replacement job is duplicative to the aforementioned work in items A through I. Please refer to Appendix F for *Change Order 1* to the Asphalt Replacement Contract in its entirety. Line items 2 and 4 from *Change Order 1* of the Asphalt Replacement Contract are invoices for work that had to be redone as a result of some of the other changes. Asphalt Specialists Incorporated (ASI), the asphalt Contractor had previously prepared and finished an undisturbed surface with which they could begin their asphalt application. (See appendix P30) When they arrived on the job site, ready to apply, the asphalt base previously undisturbed was now disturbed. This created an unstable surface not conducive for an asphalt finish. ASI had to again, perform the work required to prep the trench area for asphalt finish. This included removal of the material and additional hard pack being brought in. The original contract did not require them to prep the surface twice, and being that they had to for an effective application, required additional labor hours, supervisory hours and materials not included in the original contract. Doing this work twice was not part of the original contract and was not billed under any other modifications.

The Commission ensured the contract modification for its parking lot was reasonably priced. Our architects prepared a cost analysis for the contract modification for its parking lot resurfacing project at the Senior Plaza, all of which was presented to and acknowledge by the auditors. The claim of the auditors that, "the trenching and backfilling for electrical utilities were already included in *Change Order proposal 1 and 6*, of *Change Order 1*, of the Canopy and Lobby Renovation Project" is false and inaccurate. As discussed above. The allegation that $5,516.00 was paid for duplicative work is likewise false and inaccurate. *Change order proposal # 6* of modification 1 of the Canopy and Lobby Renovation Project was strictly for installation of the Security Lighting in the Parking Lot of the Senior Plaza as provide by Maryland Electric. See the aforementioned spreadsheet provided by the auditors, also attached as Appendix V. *Change Order Proposal #1* of *Change Order #1* to the Canopy and Lobby Renovation Project was for excavation for conduit, removal of concrete spoils, excavation of concrete sidewalks, and excavation for concrete footings which was additional work as previously described and attached in Appendix I and V. (See Appendix P9) The work performed under *Change Order 1* of the Asphalt Contract, specifically items number 2 and 4, as seen in Appendix F, was the backfilling and compaction to prep the previous undisturbed base for asphalt application. (See Appendix P27) The utility pole trenching and the excavation necessary for relocating the security camera

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Comment 20	CAT 5 Communication Cable that had been required to be repositioned as a result of the canopy configuration, was what resulted in ASI having to prep the surface a second time. The $5,516.00 billed by ASI for additional work under *Change Order 1* of the Asphalt Resurfacing Contract items 2 and 4 were not under any circumstance billed as part of Modification 1 *Change Order Proposals #'s 1 and 6* of the Canopy and Lobby Renovations project, as billed by National Maintenance, Aielli, and Maryland Electric. See Appendix F, *Change Oder # 1* of Asphalt Contract, and Appendix V description of additional work under Modification 1 of Canopy and Lobby Renovation Project.
Comment 21	Had the auditors possessed any experience from conducting audits on Public Housing Agencies they would have known that the Department of Housing and Urban Development mandates and encourages housing agencies to use professional services such as Architects when applicable. To this date the HHC believes that the Architect involved in this project James Childs Architects with their 35 years of experience in Public Housing, trumps the admittedly limited knowledge of Public Housing construction possessed by the auditors. As such, the HHC believes that concomitant with a project of this size, coupled with the task of managing concurrent staging of multi-facetted projects requires, and further would be irresponsible not to, depend heavily on professional services. Because the HHC does not concern or believe that there was any duplicative work performed, further analysis of the architect's actions are moot.
Comments 3 21, and 22	This body of work speaks for itself. All construction after being vetted by HHC architects was found to be reasonable. The Commission felt completely comfortable with the work of its architects as evidence by the Cost Analysis performed in accordance with 24 CFR 85.36(d)(4), and the Procurement Handbook 7460.8 REV 2, chapters 10.3, 11.4(a)(2), and 11.4(b)(4). Professionals in housing will recognize these analyses as standards of the industry, and historically accepted as meeting HUD requirements. Further, in referring to the allegation of duplicative work performed and billed, the auditors' claim that $18,386.00 is ineligible because it is a duplicate payment for the same work performed is unfounded, and misleading. This is evidenced by ample and irrefutable documentation that these change order items were distinct and independent modifications, each one performed and billed by a different contractor. The Commission did ensure that the contract modifications for its kitchen cabinet replacement project were reasonably priced. The Commission entered into two contract modifications for $33,347.00 and $159,954.00 upon the recommendations of our Architect

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Comment 3 and 23

Siegel Toumaala and associates who has 48 years of professional experience in the industry who felt the prices proposed were reasonable.

The formal analysis of our contract modifications by our architect for the Kitchen Cabinet/Countertop Replacement Project, Siegel Toumaala and Associates, indicated that after the execution of the contract for 285 living units as originally specified in the Construction Documents, the HHC authorized NMS, the Contractor, to add 15 barrier free units for an agreed upon sum of $33,347.00, inclusive of profit and overhead. The per unit cost for the 285 standard unit was $1,701.75 per unit. The per unit cost for the 15 barrier free units was $2,223.13 per unit. The per unit difference of $517.38 is attributable to several factors related to barrier free requirements. For the standard units, the sinks and faucets were supplied by the HHC. The type of sink required for the barrier free units required that NMS supply them. As a result of barrier free requirements, light switches and range hood switches were relocated for accessibility. The wheelchair access at the sink necessitated the fabrication and installation of an apron to support the sink counter. The wheelchair recess created by the removal of the former sink cabinet resulted in the need to extend the floor tile into the recess. It also added additional base and required the painting and finishing of the back wall of the recess. The base cabinets were non-standard in terms of overall height and the toe kick. The barrier free sinks caused the drain and the domestic water lines to need adjusting. The exposed sink drains required non-scald protection. The additional demolition work for the 15 added units resulted in more debris removal and disposal. All of the above conditions which are unique to barrier free units contributed to a cost increase of $517.38 per unit which in the professional opinion of our Architect was both reasonable and justified. Without any further information, professionals in the industry will recognize:

a.) that $1,701.75 and $2,223.13 respectively for the tear out and replacement of "Armstrong HUD Severe Use Cabinets" in a standard and handicapped kitchen, are plausibly reasonable amounts.

b.) that the cost difference of $ 517.38 is an absolutely reasonable amount for retrofitting and ADA unit kitchen.

In regards to *Change Order Number 2*, at the Pre-Construction meeting on September 15, 2009, it was mutually agreed by the HHC, NMS (Contractor) and Siegel Toumaala Architect that in order to expedite construction progress, the Operations Director of the HHC would evaluate, review, and approve all field changes and orders for additional work and that if he had any questions regarding such work he would contact the architect. Otherwise, it was felt that whenever a field condition arose, the Architect would have to be notified and the work would be halted until he had the opportunity to visit the site to make a determination. Therefore, the Operations Director, with his knowledge and experience of the buildings, would evaluate and approve all work orders. The Contractor periodically transmitted the work orders to the Architect to be incorporated in a final change order which became *Change Order Number 2*. The total sum of the work orders was $159,954.29, inclusive of overhead and profit. This amounted to $533.18 per unit.

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Comment 24

Comment 25

Comment 21

Comment 26

A large portion of the additional cost was attributable to the addition of plumbing yokes and additional fillers which were ordered by the HHC. (See Appendix P25, P26, P18, P18a, P19, and P20) The cost of the plumbing yokes was $23,675.91 and the cost of the fillers was $ 26,973.00 for a combined total of $50,648.91 or $168.30 per unit. The remainder of the work orders amounted to $364.88 per unit. They consisted of a number of items such as wall and soffit repairs which became apparent when the existing cabinets were removed, repair of leaking plumbing, replacement of defective or missing valves, replacement of defective electrical outlets and/or switches, additional painting and finishing of repaired walls and soffits, correction of code deficiencies and other items often encountered in the renovation of buildings which are 76 years old and which have undergone various degrees of maintenance and repairs over the years. Based on the familiarity with the existing conditions of the buildings and the Architects 48 years of professional experience, the architect felt that the additional cost of the work was reasonable for this project.

Again, due deference must be given to an architect with 48 years of experience in the industry when he is the sole arbiter of determining whether the cost HHC paid for a given task was reasonable. Further, there is a distinct advantage to a professional who was on-site and observed the degree of work required in conjunction with the age of these units versus the opinion of auditors who admittedly have no experience with Public Housing and were unable to observe firsthand how 76 years of maintenance and repairs will affect individual units with individual requirements. The experience of the Architect indicated that labor rates were reasonable as an industry standard for work performed in Detroit, Michigan.

The 594 dated and signed work orders each contain an adequate description of work performed, labor hours and rates, and material used. Please refer to Appendix X to review the work orders submitted. Please note that the number of work orders (500+) is a more than reasonable amount when considering that 300 apartments were modernized with this project. Further is the fact that the apartments are 76 years old. A fact which an experience professional in the Public Housing industry would recognize as a fertile scenario necessitating additional modifications due to code deficiencies that could not be grandfathered and had to be brought up to current State of Michigan code.

Ref to OIG Evaluation	Auditee Comments
Comment 15	The labor and trucking rate provided during the audit is adequate to support the reasonableness of the trucking rates billed and expended. In the professional opinion of our Architects after performing a cost reasonableness test determined the rate of $175.00 was reasonable and commensurate with comparable trucking rates in the area. HHC obtained three (3) independent additional quotes for trucking fees and found that the $175.00 per hour rate was certainly reasonable as compared to other rates obtained for similar work in the area. The use of apprentices as truck drivers was never stated in any invoices and therefore makes the accounting of apprentice wages inapplicable. (See appendix U)
Comments 3 and 27	The auditors' claim that work done under the Work Orders as found in Appendix X was duplicative in nature is false and inaccurate. The Hamtramck Housing Commission did not approve work that was unnecessary, and as such did not approve work that was duplicative. The work found on these work orders, may have appeared to the untrained eye, as duplicative. However the situation such as it was on this project required multiple entries into units and follow up visits to complete tasks after the prior work had time to set "set up" or cure. In many instances the work required to properly fix the cabinets and to leave functional piping in place required plumbing work and soffit repairs that could not be foreseen. The simple fact that until the demolition of each cabinet took place, the idiosyncrasies could not be forecasted or included in an original contract. These served as the primary reason for the additional work orders that made up *Change Order Number 2* for the Kitchen Cabinet/Countertop Replacement contract. Some of the tasks questioned by the auditors specifically were the range cabinet (filler over cabinet), toe kick modification, replaced plumbing, repair of soffit, fixing the washer drain, and replacement of the power lead to the hood range, all explained individually below.
Comment 28	In the instances in which the "Range Cabinet, Filler over the cabinet" (See Appendix P18, P18a, P19, and P20) and the "toe kick modification", was billed on work orders, the work completed on the work orders is a result of the existing kitchen wall cabinets not being a standard width. As specified, the filler pieces were required to be custom cut after new cabinet installation, to fit the width of the oddly sized kitchen layout. Kitchen cabinetry has standard widths as set by the Kitchen Cabinet Manufacturers Associations (KCMA) and increased by increments of 3". Standard practices dictate that filler pieces run vertically, however after seeing complete installations HHC recognized potential safety and sanitation issues. In an effort to provide uniformity and reduced future maintenance and repairs the HHC decided to add filler pieces on a horizontal plane. The decision added a horizontal filler in two locations, one at the bottom near the range cabinet and one at the bottom of the cabinet above the refrigerator/washing machine space. (See Appendix P18a) This additional filler piece was not in the original scope of work thus requiring a modification to the original contract. This modification increased labor hours, supervisory hours, and materials, and necessitated 300 work orders alone.

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Comment 29

In the instances where the contractors replaced plumbing, the original contract did not include the replacement of the supply lines or drain lines from the kitchen sink. (See Appendix P26) Upon construction commencing it was discovered in multiple locations that existing plumbing was deteriorating to the extent that replacement was required, again unforeseen and unpredictable.

In the instances where the contractors replaced sink/sink strainers, the original contract did not include the replacement of a new sink, strainer, and faucets. (See appendix P23) Upon construction commencing it was discovered that in multiple locations that the existing sinks, strainer, and faucets were deteriorating or not properly functioning to the extent that replacement was required.

Comment 30

In the instances where the contractors repaired soffit, in very limited circumstances upon pre-demolition inspection it was discovered that limited amounts of soffit plaster had separated from the lath necessitating its replacement.

In the instances where the contractors fixed the washer drain, the original contract did not include the replacement of the washer drain piping. (See appendix P24) In very limited circumstances it was discovered that the existing washer drains were either

Comment 31

deteriorating or not functioning to the extent that replacement was required.
In regards to the work orders in which the extension of wiring for under cabinet light fixture was required, it was discovered upon demolition that existing wiring was not installed to current code, and per current Michigan electrical code, and the National Fire Prevention Agency (NFPA) Code it is required that installation of a serviceable junction box, referred to in job work orders as a "J-box", be installed. (See appendices P21& P22)

The additional wiring was required when existing wire was insufficient to complete the code compliance of the junction box, referred to in job work orders as "wire to (sic) short to feed light".

Comments 3 and 5

The Commission felt that the prices paid for the additional work was reasonable and necessary, as evidenced by the cost estimate of our respective architects. HHC did not feel that any of the additional work invoiced was at all duplicative as evidenced by architects' clearance to release funds and the Commission's expenditure of said monies. If at any time the HHC was concerned about unreasonable prices, we would not have proceeded with the additional work as quoted. Due to our determination of reasonableness, and in determining the necessity of the work to be performed, we approved the contractors to proceed with additional work as agreed upon.

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FINDING 2:

Comment 32 The Commission made every effort to administer the Davis-Bacon requirements for all of its Recovery Act Grant Projects. While there was $702 of underpayments to employees who performed work under this funding, letters have been sent to the General Contractors in an effort to rectify this underpayment and satisfy the Davis Bacon requirement. This applies to the Canopy and Lobby Renovation Project, regarding the $326.64 under payment of two employees of one the General Contractors. The General Contractor has received a letter outlining the course of action needed to be taken to rectify the situation. They have been notified of the implications if they fail to rectify these

Comment 33 underpayments in accordance with the Davis-Bacon Act. The HHC's letter to the General Contractor on the Canopy Renovation is contained in Appendix Y. In regards to the HVAC Project, regarding the $375.36 underpayment of one employee, the General Contractor has received a letter outlining the course of action needed to be taken to rectify the situation. The General Contractor has been notified of the implications if they fail to rectify these underpayments in accordance with the Davis-Bacon Act. (See appendix Z) The General Contractor for the HVAC Replacement Project submitted to the HHC an amended wage and hour division form WD-347 in which he certifies he paid the employee the gross amount of $375.36, you will also find a copy of the check that he issued to the under paid employee. This submittal satisfies and puts into full compliance the HVAC Replacement Contract with the Davis Bacon Act. (See Appendix LL)

Comment 34 In regards to the eleven apprentices who were paid apprentices wages, a letter has been sent to the General Contractor asking him to provide sufficient documentation to show their enrollment in the apprenticeship program. (See appendix AA for a copy of this letter) Appendix BB is the apprentice certificates that the General Contractor supplied in response to the HHC's letter demanding compliance.

Comment 35 The Hamtramck Housing Commission will take the appropriate administrative actions as outlined in the requirements for contractors who do not comply with their obligations should the General Contractor fail to supply adequate documentation that the individuals who received apprentice wages were enrolled in an apprenticeship program.

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FINDING 3:

Comment 36

The Commission, throughout the term of the contract, took an active role to ensure contractor compliance with Section 3 requirements, in accordance with CFR 24 Part 135.30 (specifically *Numerical goals for meeting the greatest extent feasible requirement*). The HHC demonstrated compliance with the Section 3 requirement by doing everything it could to the greatest extent feasible, to provide training, employment, and contracting opportunities to Section 3 residents. The definition given by HUD in the *Frequently Asked Questions (FAQ), Section 3 of the Housing & Urban Development Act of 1968* describes the "Greatest Extent Feasible" as, "that every effort must be made to comply with the regulatory requirements of Section 3. (See attachment CC) By this, the department means that recipients of Section 3 covered financial assistance should make every effort within their disposal to meet the regulatory requirements." The Hamtramck Housing Commission through its efforts felt that it did, by definition, attempt to the Greatest Extent Feasible meet the training, employment, and contracting goals of Section 3.

Comment 37

The Commission included in all of the Executed Contracts that were paid for through the Expenditure of American Reinvestment and Recovery (ARRA) Funds, a clause that states "Contractor warrants that the contracted services and all materials, parts, and products thereto, shall meet and comply with all applicable laws, ordinances and regulations…. contractor shall comply with all applicable regulations of HUD pertaining to the contracted services and materials as set forth in 24 CFR this includes Section 3 compliance". The specifications and the *Invitation for Bid* included the Section 3 language. (See appendix EE) The contractors signed acknowledgement to comply with all specifications set forth in the bid specifications is also executed with every contract. (See appendix FF) Evidence of the notice to contractors regarding Section 3 Compliance can be seen in letters from the contractors. (See appendix GG) The Housing Commission encouraged, in the situations where hiring was determined necessary, the hiring of individuals who met the Section 3 resident classifications. By definition, a Section 3 resident is "1.) a public housing resident; or 2.) a low- or very low-income person residing in the metropolitan area or Non-metropolitan County where Section 3 covered assistance is expended." (See appendix CC) In the cases where contractors hired employees, you will find that the individuals hired met Section 3 resident definition by being unemployed or underemployed prior to our contract execution and as such being either low or very low income persons, and thus meeting the definition of a Section 3 Resident.

Comments 37and 38

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Comment 39

Comment 40

Comments 38, 39, and 40

The Commission also made every effort to have Public Housing Residents hired through the contracting process. The HHC solicited residents to submit applications for potential job opportunities. (See appendix II for copies of the actual resident applications submitted) The HHC collected applications from residents who were interested in work, and in our pre-construction meetings with every contractor gave the applications that were submitted to us by our residents to the contractors. The Housing Commission through its policies also allows for preferences to Section 3 Residents and Section 3 Businesses, however, none of the bidders that submitted bids met these criteria. Our understanding of Section 3 was that the requirement of Section 3 only applied if the contractor/subcontractor had the need to hire new persons to complete the Section 3 covered contract or had the need to subcontract portions of the work to another business, then and only then are they required to direct the newly created employment and/or subcontracting opportunities to Section 3 residents and business concerns. In some scenarios, there was not a need for a new hire, and thus the Requirements of Section 3 did not pertain to that contract. In appendix GG, it is noted that three (3) of the contractors did not require hiring new employees for their work. The remaining four (4) contractors all hired individuals that were either unemployed or under employed and as such were low or very low income individuals. The HHC's understanding was the recipient agencies are not required to create jobs or contracts for "Section 3 residents and business concerns simply for the sake of creating them." (See appendix CC) Further, that "Section 3 requires that ***when*** employment or contracting opportunities are generated because a project or activity undertaken by a recipient of covered HUD financial assistance necessitates the employment of additional personnel through individual hiring or the awarding of contracts, the recipient must give preference in hiring to low- and very low-income persons and/or business that are owned by these persons or that substantially employ them."

The Hamtramck Housing Commission made it very clear that we required a minimum of 30% of the contractors new hires meet the definition of a Section 3 resident in the event that hiring was going to occur. Please refer to the Letters from the General Contractors, on the job, (See appendix GG) self-certifying that the new hires that they had on their job, if there were new hires, met the Section 3 resident definition.

In an effort to further comply with Section 3 numerical goals, since 2006 ninety percent (90 %) of the new hires as permanent staff at the HHC have been individuals who have met the standard definition of Section 3 resident. The HHC also employed a resident from one of our developments in a temporary position that was available at the Senior High Rise.

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Comment 41	In looking for guidance for certifying that individuals meet the regulatory definitions under Section 3, we found that, "the regulation allows agencies to use their discretion for developing specific procedures to meet the requirements of Section 3. This includes establishing our own standards/processes for verifying eligibility of Section 3 residents and businesses. Each recipient is also free to accept or reject the standards/process used by other recipients…" We felt that our processes throughout the expenditure of the ARRA funds were sufficient in encouraging compliance with Section 3 by encouraging the training, employment, and contracting with low- and very low income individuals and the companies that employed them. In further support of allowing recipient agencies to allow residents or businesses to "self-certify" that they meet the Section 3 eligibility requirements, we found that, "the regulation allows recipient agencies to use their own discretion to meet the Section 3 resident's eligibility, and that many recipient agencies choose to allow prospective Section 3 residents or businesses to self-certify their eligibility." (See appendix CC)
Comment 42	In regards to the auditors' statement regarding Section 3 Business Concerns, the Commission did allow for preferences to be given to any bidder who claimed to be a Section 3 business concern. However, none of the bidders for any of the contracts even the unsuccessful bidders made the assertion that that they were a Section 3 business concern, and the Section 3 Business Registry will not have been started for another two years in 2011. Therefore, despite our greatest effort, we were forced to choose successful bidders, without considering the allowable preference. Despite the fact that none of the contractors who were awarded contracts were self proclaimed Section 3 Business Concerns, all hiring done as a result of their contract reward, as previously stated, was encouraged to be of individuals who met Section 3 resident criteria. Further, at a minimum the HHC required contractors who were hiring new personnel,

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	hire individuals who met the definition of a section 3 resident and the total number of new personnel be comprised of at least 30% Section 3 qualified individuals. We would like to reiterate that although we did receive applications from residents of our Public Housing development, either their skill set or the work being offered was not mutually agreeable, and the contractors were forced to look outside of our development for workers with skills that were needed.(see appendix HH & II)
Comment 43	In the execution of HUD-5370 the contractors agreed to adhere to all Section 3 requirements. The HHC further did its due diligence to ensure training, employment, and contracting opportunities to Section3 qualified individuals by ensuring HUD 5370 was executed and made part of every contract the HHC entered into. As HUD 5370 states, "As evidenced by their execution of this contract . . . the parties of this contract. The Contractor will certify that any vacant employment positions, including training positions, that are filled, (1) After the contractor is selected but before the contract is executed, (2) With persons other than those, to whom the regulations of 24 CFR 135 require employment opportunities to be directed, were not filled to circumvent the contractors obligation under 24 CFR part135." HUD- 5370 further states that contractors by signing this form understand the following, "Non compliance with HUD regulations in 24 CFR Part 135 may result in sanctions, termination of the contract for default, and debarment or suspension from future HUD contracts". (See appendix W) The inclusion of HUD 5370 in all of our contracts with this language amplifies the HHC's dedication to the greatest extent feasible compliance with all Section 3 requirements.
Comment 44	The HHC at its February 15, 2012 regular meeting passed a resolution, specifically resolution 2012-21 to amend the procurement policy to omit all language establishing the threshold and to approve the contracting officer to provide for preferences for Section3 business concerns and to ensure Section 3 compliance. (See attachment JJ)
Comments 37, 38, and 41	With the aforementioned evidence of the HHC's efforts to comply with Section 3, we feel that HUD can be assured that the Commission, its contractors, and its subcontractors complied with Section 3 requirements to the greatest extent feasible and low-income persons, very low-income persons, and Section 3 business concerns were afforded adequate opportunities to receive Recovery Act Grant Awards.

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Comment 45

In order to better equip the staff that directly handles Section 3 and the Procurement of Goods and Services the HHC has scheduled and intends to train all staff members that are responsible for contract administration, despite our belief, and in our own discretion, as allowable, met the Section 3 Requirement to the greatest extent feasible.

FINDING 4:

Comment 46

The Commission, upon calculating the number of jobs determined that 12 jobs had been either maintained or created by the expenditure of the funds we received. HHC inadvertently, upon utilizing the "copy forward" option on the FederalReporting.gov website, copied the quantity of 12 forward without realizing, and failed to erase the quantity.

CONCLUSION:

Comment 3

As noted, described, and supported above, the Hamtramck Housing Commission believes that with stringent HUD oversight throughout the entire process, it obligated and expended every penny of the $1,393,865.00 in American Recovery and Reinvestment Act funds received in accordance with the regulations that govern it. As such, we feel that 100% of the funds were eligible, supported, and put to the best use possible.

Submitted By: Kevin Kondrat, M.A., J.D., PHM
Executive Director
Hamtramck Housing Commission

OIG Evaluation of Auditee Comments

Comment 1 As mentioned in the audit report, the Detroit Office of Public and Indian Housing's monitoring reports for the Commission's Recovery Act grants identified significant deficiencies in the quality of the documentation maintained in the procurement files. As part of HUD's proposed corrective actions, documentation was required of the Commission; however, the Commission could not provide support that the issues related to cost estimates, cost analyses, and documentation supporting that costs were reasonable were addressed. We also inquired with the Commission regarding the outstanding issues and requested the support documentation; however, the documentation was not provided.

Comment 2 The Commission asserts that the audit was performed by two OIG auditors who worked full time during the entire six month audit procedure. During this time the two auditors were presented with all requested information several times in different formats. The audit team's requests for information or documentation and following up on the requested items is part of the audit process. Also (1) performing site inspections of the products purchased and work performed using Recovery Act funds, (2) obtaining an understanding of the cabinet installation process, and (3) meeting with Commission's staff and hired architects were necessary audit procedures to ensure that the audit team gained knowledge of the Commission's procedures and controls to ensure accountability for Recovery Act funds.

Comment 3 The audit report acknowledges that the Commission's architects prepared independent cost estimates for the initial contracts for its Recovery Act-funded projects. For the kitchen cabinet and canopy and lobby projects, the independent estimates were either more or less than the winning bids. The Commission provided cost estimates again in connection with its response to the discussion draft audit report; however, the estimates were for the initial contracts that the audit team reviewed in performing the audit, not the modifications. According to HUD Handbook 74.60.8, REV-2, paragraph 3.2(A), an independent cost estimate is the cost of goods or services to be provided under a contract or modification.

Further, the Commission did not prepare and maintain cost analyses for two modifications to its kitchen cabinet replacement contract and the one modification to its parking lot resurfacing contract. For the Commission's canopy and lobby renovation project, it did not ensure that the cost analysis prepared for the two modifications was adequate. Therefore, without preparing or ensuring that the analyses were adequate, the Commission could not be assured that the price it paid for these contract modifications were reasonable. HUD requirements at 24 CFR 85.36(f) state that grantees and subgrantees must perform a cost or price analysis in connection with every procurement action, including contract modifications.

Comment 4 The Commission asserts that justifications for the modifications were maintained and given in multiple discussions with the auditors during the six months that they were on site. The report did not state that the Commission did not maintain justifications for contract modifications. It stated that the Commission did not maintain written documentation to justify its use of the noncompetitive procurement method for its canopy and lobby renovation project in accordance with HUD's requirements. However, since the Commission provided adequate documentation with its comments to the discussion draft report, we removed this statement from the audit report.

Comment 5 The Commission stated that no duplicate costs were paid to contractors and provided documentation such as independent cost estimates and an inadequate cost analysis. However, as discussed in the report, we used the contractors' supporting summary schedules and job work orders to determine the actual costs for the Commission's kitchen cabinet replacement and canopy and lobby renovation projects. Based on our review of the provided documentation, the amount of profit to its contractors was charged twice. Further, as mentioned in comment 3, the Commission did not prepare and maintain cost analyses for two modifications to its kitchen cabinet replacement contract and the one modification to its parking lot resurfacing contract. For the Commission's canopy and lobby renovation project, the Commission did not ensure that the required cost analyses for the two contract modifications were adequate. Therefore, without this required documentation, the Commission could not be assured that the price it paid for these modifications was reasonable.

Comment 6 According to the Commission, it ensured that contract modifications for its canopy and lobby renovation project were reasonably priced. We disagree. Appendix D related to contract modification 1, dated November 12, 2010. The provided documentation did not contain a cost analysis in accordance with HUD requirements. Instead, it was the contract modification and a summary list of the changes, followed by each job work order submitted by the subcontractor. The documentation showed that the architect approved each change order, but it did not include an analysis of the separate elements of costs or a cost comparison with the independent cost estimate, etc., as required.

Appendix E related to contract modification 2, dated June 8, 2011, but it also did not contain a cost analysis in accordance with HUD requirements. Instead, it consisted of the approved contract modification, a summary list of the changes, and an assessment performed by the architect, dated February 24, 2011, which included findings of the work orders submitted by the subcontractor, a copy of each job work order submitted by the subcontractor, and commercial catalog prices. However, the documentation for this contract modification did not include an analysis of the separate elements of costs, a comparison to an independent cost estimate, incurred costs, or an analysis of labor rates. Therefore, the analysis by the architect was not adequate. Further in reviewing the analysis, we identified work that had been previously paid for under modification 1, along with other

issues. The analysis also resulted in a reduction of more than 62 percent of the contractor's proposal. However, the cost of the modification was not paid with Recovery Act funds as discussed in the report.

Comment 7 The report does not question the need for the modifications; however, it does question the reasonableness of the price that was paid for the modifications since the required cost analysis was not performed. The Commission states that all modifications made to the canopy and lobby renovations were based on requirements under Section 504. HUD Notice 2009-12, section V, states that by signing the annual contributions contract amendment, the Commission agreed that capital and management activities would be carried out in accordance with all HUD regulations, including 24 CFR Parts 905, 941, and 968. HUD's regulations at 24 CFR Part 968.110 state that the Commission must comply with Title II of the Americans with Disabilities Act, among other nondiscriminatory requirements. Based upon these requirements, the Commission's statement that the canopy and lobby renovation project modifications were driven by compliance with Section 504 was not adequate justification for the contract modification since the project was already required to comply with the Americans with Disabilities Act.

Further, regarding appendix N, it is unclear whether the tenant's complaint was due to (1) a need for additional work or (2) poor workmanship and a lack of compliance with the Act regarding the contractor's tile installation. Regarding appendix O, the letter from the Hamtramck Fire Marshall was dated August 13, 2010, not August 13, 2012. Regarding appendix I, not all of the additional work was nondiscretionary. According to the Commission's architect for the project in a letter, dated October 12, 2010, there were some change orders due to unforeseen existing conditions during design, but the majority of the cause for change order 1 was derived from an increased scope of work decided upon during construction. The Commission did not provide documentation to support its assertions that all of the changes were to address imperative health or safety issues.

Comment 8 The report has been revised to reflect that the Commission maintained adequate documentation to justify its use of the noncompetitive procurement method to add additional work items for its canopy and lobby renovation project based upon (1) the criteria found in section 29 of HUD form 5370, section 11.4 of HUD Handbook 7460.8 REV-2, and Notice 2009-12; (2) the specification work identified in the original contract and independent cost estimates; and (3) the documentation the Commission maintained regarding its increased scope of work and the timing aspect in its procurement files.

Comment 9 HUD requirements at 24 CFR 85.36(f) state that grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. Paragraph 10.3.A of HUD Handbook 7460.8, REV-2, states that for every procurement, public housing agencies are required to perform a cost or price analysis to determine that the price is reasonable. A cost

analysis is an evaluation of the separate elements that make up a contractor's total cost proposal or price (for example, labor, materials, overhead, profit, etc.) to determine whether they are allowable, directly related to the requirement, and reasonable.

As mentioned in comment 3, the Commission did not prepare and maintain cost analyses for two modifications to its kitchen cabinet replacement contract and one modification to its parking lot resurfacing contract. For its canopy and lobby renovation project, the Commission did not ensure that the required cost analysis was prepared for contract modification 1 or that the cost analysis for modification 2 was adequate. Therefore, the Commission did not follow the appropriate steps in modifying the original contracts for its Recovery Act-funded projects.

Comment 10 For the Commission's canopy and lobby renovation project, the report stated that the Commission also did not ensure that the required cost analysis was prepared for contract modification 1 or that the cost analysis for modification 2 was adequate. The Commission provided documentation in appendix D, related to contract modification 1, dated November 12, 2010. However, the documentation did not contain a cost analysis in accordance with HUD's requirements. Instead it included (1) a copy of the contract modification, (2) a summary list of the changes, and (3) supporting job work orders that were submitted to the Commission by the subcontractor. Although the documentation showed that the architect approved each change order, it did not include an analysis of the separate elements of costs or a cost comparison with the independent cost estimate, etc., as required.

The Commission provided documentation in appendix E, related to contract modification 2, dated June 8, 2011. However, the documentation did not contain a cost analysis in accordance with HUD's requirements. Instead it consisted of (1) the approved contract modification; (2) a summary list of the changes; (3) an assessment performed by the architect, dated February 24, 2011, which included findings of the work orders submitted by the subcontractor; (4) a copy of each job work order submitted by the subcontractor; and (5) commercial catalog prices.

The documentation for this contract modification did not include an analysis of the separate elements of costs, a comparison to an independent cost estimate, incurred costs or an analysis of labor rates, or an assessment of how the commercial catalog prices were used to support the reasonableness of the cost. Further, the provided documentation identified costs that were supposedly paid under the first modification, among other discrepancies.

Comment 11 Contrary to HUD requirements and the Commission's procedures, the Commission, after the task was completed, executed a contract modification and established a price for service. The Commission and its contractor did not agree upon a price and execute the contract modification until all of the work was completed. Therefore, the Commission did not evaluate the cost of the

modifications to assess reasonableness. It is against Federal procurement requirements to apply a percentage of cost for profit (that is, cost plus percentage of cost) to procurements. HUD's regulations at 24 CFR 85.36(f)(4) state that the cost-plus-a-percentage-of-cost and percentage-of-construction-cost methods of contracting must not be used. Further, paragraph 10.1.A.5 of HUD Handbook 7460.8, REV-2, states that the cost-plus-percentage-of-cost and the cost-plus-percentage-of-construction-cost types of contracts are prohibited.

Comment 12 As mentioned in comment 11, the construction work had been completed before the modification was priced. Therefore, HUD Handbook 7460.8, REV-2, paragraph 11.4(b)(4) no longer applies. The handbook refers to proposed changes, estimates of time, etc., which were not applicable because at the time the Commission entered into the contract modification, construction costs had already been incurred. HUD Handbook 2210.18, paragraph 1-3(b), requires that incurred costs be included in the contractor's change proposal and evaluated in the Commission's cost analysis.

Comment 13 We acknowledge that the Commission provided documentation, such as change order proposals, job work orders, and price quotes, with its response to the draft report. The job work orders totaled $125,955, which was the price of its first modification for its canopy and lobby renovation project. Therefore, the report had been modified.

Comment 14 The Commission did not provide evidence that it performed a cost analysis of the contractors' proposals. HUD's requirements at 24 CFR 85.36(f)(1) state that a cost analysis must be performed when the contractor is required to submit the elements of the estimated cost. Therefore, providing the contractor's documentation of its proposed rates does not substantiate the reasonableness of incurred costs. Additionally, HUD Handbook 2210.18, section 1-3, states that the following techniques, as appropriate, should be used to perform a costs analysis: (1) actual costs previously incurred by the same contractor, (2) previous cost estimates from the contractor or other contractors for the same or similar items, (3) the methodology to be used by the contractor with the requirements of the solicitation, and (4) the independent cost estimate. Appendix 1, part 31.201-3, of the handbook states that for determining reasonableness, no presumption of reasonableness should be attached to the incurrence of costs by a contractor.

Comment 15 The Commission provided the contractor's proposed labor and trucking rates to support the reasonableness of the costs. As mentioned in comment 14, the contractors' cost proposals were not sufficient to determine cost reasonableness. The three additional quotes, obtained 2 years after the project was completed, do not substitute for the required analysis that should have been performed. Further, the quotes did not contain a breakdown of cost. The Commission did not provide documentation of the architect's cost reasonableness test. Further, the architect's experience does not substitute for available documentation or required estimates or analyses that should have been done to verify the reasonableness of the

contractors' rates. The report stated that supporting documentation for the labor rates was based only on foreman and journeyman wages and did not account for the use of apprentices, who were paid less. It did not state that the truck drivers were apprentices.

Comment 16 The contractor's fringe benefits of 108 percent were determined by using the direct labor base of approximately $31per hour in comparison to the total of fringe benefits categories of nearly $34 as included in the 2010 and 2011 corporate labor rates documentation provided by the Commission and included in appendix T of its response. Also, the labor burden rate of 36 percent (35.970 percent) was identified on the same document. The Commission would need to perform a detailed analysis to determine what specific costs and cost elements were used to determine the labor burden rate. Further, as mentioned in the audit report, the work orders were signed but not dated. Therefore, we were not able to determine when the Commission reviewed them.

Comment 17 The spreadsheet mentioned in the Commission's response and referenced as A through F was provided during the audit. In working with the Commission, we either adjusted or removed the costs that were initially questioned before the report was issued for comment. The report questioned the costs for hand trenching (change order proposal 6) and supervision (change order proposal 7) because the work was not performed or the charges were included as part of change order proposal 1, respectively. Both of these costs were associated with the Commission's canopy and lobby renovation project.

Comment 18 We acknowledge that change order proposal 6 was the cost of installing additional lighting; however, included in the proposal was the cost for hand trenching. The Commission also acknowledged that hand trenching, which was originally quoted in the proposal, was not a sufficient method to get through the depths of concrete. However, the Commission paid the proposed amount, without adjusting for the work that was not performed using that method, and then incurred additional charges to remove the concrete.

Comment 19 As mentioned in comment 17, the spreadsheet mentioned in the Commission's response was provided during the audit. In working with the Commission, we either adjusted or removed the costs that were initially questioned before the report was issued. The report does not address whether the costs incurred for supervision were excessive or question the need for supervision. Instead, it reports that the Commission paid duplicative costs under multiple change orders for supervision that occurred on the same dates.

Comments 20 As stated in the report, the contract modification for the Commission's parking lot resurfacing project contained work items that were included as part of its canopy project (change orders 1 and 6). Specifically, line item 2 of the modification included a cost of $2,816 to furnish and install all labor and material to trench for electric utilities, replace trench spoils with aggregate base, and

compact in place. Line item 4 included a cost of $2,700 to provide labor and material to excavate and backfill electrical utility trenches at the Commission's north parking lot. This was essentially the same description, including location, provided by the concrete and electrical subcontractors for work provided under proposed change orders 1 and 6 associated with the Commission's canopy project. The Commission did not provide documentation showing that the work was not duplicative. Therefore, without the adequate support, we determined that the Commission paid $5,516 in duplicate costs. Further, the Commission did not prepare a cost estimate or cost analysis for the contract modification. Instead, it relied on the contractors' summaries of their cost proposals, which included duplicate costs.

Comment 21 The audit involved a review (1) of the expenditure of grant funds and (2) for compliance with Federal requirements such as contracting and procurement. Therefore, the auditors were well equipped to perform the audit assignment. Further, the architect's opinion and experience do not substitute for required detailed cost estimates, required cost analyses, or the fact that the Commission's architect had access to information regarding previously incurred costs at the time the contract modification was negotiated. We recognize that HUD encourages public housing agencies to use professional services such as those of architects. However, the use of professionals does not negate the Commission's responsibility to ensure that it administers its Recovery Act grant funds and other Federal programs in accordance with requirements.

Comment 22 The discussion draft audit report identified that the Commission paid $18,386 in ineligible costs. In response to the report, the Commission provided documentation to show that this amount was not for duplicate costs. However, based on the documentation provided, we reduced the amount of unsupported costs and increased the amount of ineligible costs.

Comment 23 The discussion draft report did not question the need for additional work required to replace kitchen cabinets in accessible units. Instead, it reported that the Commission lacked adequate documentation to support that the price paid with Recovery Act funds were reasonable. The ad hoc report analysis provided by the Commission's architect was dated more than 2 years after the fact and did not substitute for the required analysis because it did not contain all of the necessary elements. As discussed in comment 3, a cost analysis is an evaluation of the separate elements that make up a contractor's total cost proposal or price (for example, labor, materials, overhead, profit, etc.) to determine whether they are allowable, directly related to the requirement, and reasonable. Further, as mentioned in the Commission's response, the agreed-upon cost for the additional work for its kitchen cabinet replacement project included profit and overhead.

Although the work orders totaled nearly $160,000, the total cost for the work was considerably more due to the Commission's supplying nearly all materials required outside of the contract. The average amount per unit would likewise be

substantially more than the Commission suggested because based on the work orders, the Commission provided nearly all of the plumbing, electrical, and trim materials required for installation that were included in the cost estimate, the written specifications, and the contract. However, Recovery Act funds were not used for these purchases.

Comment 24 The Commission paid nearly $24,000 for yokes as mentioned in its response; however, this amount included labor costs for the installation of the plumbing yokes and nearly $2,300 for the materials used for the installation such as paneling and silicone. The amount did not include the actual cost for the yokes. The Commission has not yet provided an adequate description of what work was performed in relation to the yokes, the purpose of the yokes, or why the installation was necessary and unforeseen, despite many inquiries during the course of the audit. Regarding the fillers, again the amount cited in the Commission's comments was for labor only and did not include the actual cost of the fillers. Further, as mentioned in the report, the Commission did not perform a cost analysis of its contract modifications as required by HUD.

Comment 25 All of the described repairs and replacements were included in the bid specifications and the base contract, which was competitively bid. Therefore, the cost for these items should not have been included in modifications to the contract. Further, as mentioned in the audit report, the Commission's architect prepared an independent cost estimate that estimated the project to cost more than the winning bid. The estimate included a 5 percent contingency for unforeseen issues. The Commission had yet to show the difference between the work that was performed under the initial contract, which included repairs to the walls and soffits, replacement of missing valves, etc., and the repairs made under the modification that contained the same work description.

Comment 26 We acknowledge that the 594 work orders described the work performed, labor hours and rates, and material used. However, the work orders' descriptions stated precisely the work that was required under the base contract (for example, installed sink and sink basin). However, neither the Commission or its architect prepared documentation for the procurement files that explained why the work stated on the work orders was unforeseen and how it differed from the work specifications that were included as part of the base contract. In many cases, the work orders contained work items for multiple units without breaking out the cost for each category of work (such as plumbing, electrical, etc.). However, the Commission's procurement policy and Federal regulations require that only unforeseen costs be included in change proposals. The report does not question the reasonableness of the number of work orders.

Comment 27 The work described in the Commission's response was exactly the work described in the work specifications and included in the architect's cost estimate for the initial contract. Therefore, the Commission paid for the same service in its base contract and again in its change order. The architect's cost estimate also

included 24 hours of labor for the carpenter foreman, carpenter helper, and laborer for the demolition and reinstallation of kitchen cabinets and an additional $50 per unit for miscellaneous cabinetry supplies. The specifications state that all (matching) trim, filler strips, etc., required for a finished installation must be included in the contractor's bid. The Commission paid $24,300 for labor through work order 4823 to install cabinet fillers for all 300 housing units. The Commission also paid $11,178 for 276 modifications to toe kicks and 276 modifications to range cabinets in 266 and 274 housing units, respectively. Contrary to the estimate, specifications, and contract, the Commission provided the materials for the changes; however, Recovery Act funds were not used. The labor cost included in the work orders should not have been paid because the labor cost was included in the base contract and the Commission was unable to differentiate between the work that was done under the contract and the modifications.

Further, the work specification documentation provided by the Commission during the audit was not complete. HUD's records included an additional page that contained the architect's drawing of the kitchen cabinets, specified the need for field measurements, and included the required fillers and washer drain replacements that should not have been included as contract changes. The Commission did not provide two important pages of the cost estimate, which showed in detail the work that was estimated as part of the initial contract.

Comment 28 The details regarding questioned costs for range cabinet filler, over-the-cabinet (described on work orders as range cabinet modification), and toe kick modifications as part of the base contract were discussed in finding 1. The filler pieces were all included on one work order as discussed in finding 1. The specifications called for all cabinet filler pieces to be provided under the base contract; therefore, filler pieces were not unforeseen. Further, the architect's drawing as part of the specifications showed an example of the required fillers and the standard widths of the cabinets. The specifications leave no doubt that the standard widths requiring fillers were not unforeseen; they were contemplated and included in the base contract.

Comment 29 The architect's cost estimate included 3 hours of labor for the plumber and $150 per unit for plumbing supplies to complete the reinstallation of the water supply lines and drain for the kitchen sink and laundry. The contract specifications indicated that only the kitchen sinks and faucets were to be provided by the Commission and the contractor was responsible for all other labor and materials related to the reinstallation of the sink and washer drain plumbing. However, the Commission paid at least $27,400 in labor costs for 343 sink replacements and repairs to plumbing (for example, water supply lines, strainers, faucets, tee setups, waste extensions, waste arms, p traps, and washer drains) in 293 housing units. Contrary to the estimate, specifications, and contract, the Commission provided the materials for the changes; however, Recovery Act funds were not used. The cost for the plumbing changes also included labor for 299 sink and sink basin

installations in 289 housing units and 24 washer drain modifications in 24 units. Therefore, the labor cost, included on the work orders for any plumbing labor related to reinstalling or repairing plumbing and sinks, should not have been paid with Recovery Act funds because the labor cost and work were included in the base contract.

Comment 30 We do not agree that the soffit work was limited to a few instances. The Commission paid for 260 soffit repairs to 252 units. Since Hamtramck Homes consists of 300 units, the repairs were not required in just a limited number of circumstances. The original specifications for the kitchen cabinet replacement project stated that the contractor was to patch, fill, prime, paint, and apply finish paint to any disturbed areas of drywall. The Commission paid $27,135 for labor for 260 modifications to repair soffits for 252 housing units. The amount paid also included labor for 286 modifications to paint soffits in 272 housing units. Therefore, the labor costs included on the work orders were included in the base contract.

Comment 31 As discussed in the report, either the Commission did not prepare the required cost analyses, or the analyses were inadequate for its contract modifications. If it had prepared the required analyses and properly reviewed the specific work descriptions included on each work order, it could have detected the issues identified in this audit report. Because of the large number of changes, without a detailed analysis, it could not be known whether duplications were included. Also, if the Commission had compared the work included on the work orders to the architect's cost estimate and bid specifications, it would have detected that the work orders duplicated work included in the contract.

Comment 32 The Commission acknowledged that it underpaid wages to two of its subcontractors' employees and sent letters to the general contractors to rectify the underpayments. We commend the Commission's efforts to ensure compliance with Davis-Bacon.

Comment 33 The report has been adjusted to reflect the payment by the contractor.

Comment 34 The Commission provided, for some of the workers, apprenticeship agreements that would have been created and signed at the workers' enrollment in an apprenticeship program. However, many of the documents did not contain signatures of any of the involved parties, including the enrollee, the sponsors, or a representative of the registering agency, as required by the agreement. Further, several of the documents were not in existence as of the date of the agreements they were supposed to represent. We adjusted the report based on our evaluation of the provided documentation. Further, the Commission did not provide documentation or support to show that it identified the apprentices who received less than the prevailing wage or took actions to ensure their enrollment in an approved program was in compliance with the regulations at 29 CFR 5.5(a)(3)(i) as required by HUD's Labor Relations Desk Guide, Making Davis-Bacon Work.

Comment 35 We commend the Commission for its decision to take appropriate administrative actions for contractors that do not comply with their obligations as required under Davis-Bacon.

Comment 36 Regulations at 24 CFR 135.30 describe compliance to the greatest extent feasible for Section 3 as meeting the numerical goals. As discussed in the report, the Commission did not meet its Section 3 numerical goals for contracting as set forth at 24 CFR 135.50. Further, the Commission did not provide justification demonstrating why it was not feasible to meet its goals, as required by 24 CFR 135.50, despite multiple requests. Further, by directly soliciting bids and not publicly advertising the bidding opportunities for some of the projects, the Commission did not afford Section 3 business concerns an opportunity for contracting because it did not inform them of the existence of the work generated by the grant funds. Therefore, the Commission did not ensure to the "greatest extent feasible" opportunities for companies that engage in Section 3 concerns to be awarded contracts as required by the Recovery Act.

Comment 37 As discussed in the report, the Commission did not ensure that its contractors complied with Section 3 requirements. It also failed to submit the required form HUD-60002 for 2009 and 2010. Additionally, although its contracts contained verbiage regarding Section 3, instead of advertising invitations to bid, the Commission used a modified procurement method by directly soliciting bids from contractors. Therefore, Section 3 business concerns may have been deprived of the opportunity to compete for the contracts.

Comment 38 As discussed in the report, several of the letters were inadequate to determine compliance with Section 3 because they did not discuss (1) whether the low-income workers were new hires or (2) the actions taken by contractors to provide subcontracting opportunities to Section 3 businesses as required by the Section 3 contract clauses and the Section 3 requirements, despite the use of nine subcontractors throughout the grant projects. This is contrary to HUD's regulations at 24 CFR 135.32.

Comment 39 The audit report did not contain information related to contractors that did not need to hire workers but, rather, referenced an employer who asserted to hiring a Section 3 resident. Neither the Commission or architect was able to provide supporting documentation as required by the Commission's Section 3 plan.

Comment 40 Only one contractor letter claimed the hiring of a new worker. The remaining letters indicated that certain employees met Section 3 requirements; however, adequate documentation was not provided to support these claims.

Comment 41 According to the document provided by the Commission in its appendix CC, Frequently Asked Questions, Section 3 of the Act, number 33, recipients are required to ensure their own compliance and the compliance of their contractors

or subcontractors with the Section 3 requirements as outlined at 24 CFR 135.32. These responsibilities include designing and implementing procedures to comply with the requirements of Section 3. To comply with Section 3, recipient agencies must take an active role in ensuring Section 3 compliance. The first step is designing or planning and implementing procedures to ensure that all parties, including residents, businesses, contractors, and subcontractors, comply with Section 3. Additionally HUD's regulations at 24 CFR 135.32 state that this responsibility includes but is not limited to "(d) assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors and subcontractors with the requirements of this part." Further, frequently asked question number 43 refers to acceptable evidence to determine eligibility of a Section 3 resident. Lastly, the Commission's Section 3 plan included "eligibility criteria to be used for certifying Section 3 residents." The Commission has not provided support that it used its criteria to certify the eligibility of the Section 3 residents to ensure the contractor's compliance with Section 3 as required by the regulations.

Comment 42 As discussed in the report, the written policies and procedures in place at the Commission did not include a method of identifying businesses as Section 3 business concerns, such as asking potential businesses to disclose whether they are a Section 3 business concern or an inclusion or mention of the preference for those businesses in contracting. Thus, the Commission did not have the policies and procedures in place to ensure that it complied with 24 CFR 135.36.

Comment 43 As discussed in the report, the Commission did not ensure that its contractors complied with Section 3. Further, the inclusion of the language of HUD Form 5370 is a required addition for construction contracts awarded by public housing agencies.

Comment 44 The report has been updated to show that the Commission has taken actions to address deficiencies in its policies, determined during the audit and detailed in the report, to ensure compliance with 24 CFR 135.3, which prohibits Section 3 thresholds, and 24 CFR 135.36, which describes Section 3 business preferences to be used in contracting.

Comment 45 As discussed in the report, the Commission's executive assistant said that the Commission lacked an adequate understanding of Section 3 and did not have sufficient training pertaining to Section 3. We commend the Commission's efforts to implement recommendation 3A by seeking training related to Section 3 requirements.

Comment 46 The Commission agreed with finding 4 that it incorrectly reported the number of jobs created or retained in FederalReporting.gov.

Appendix C

FEDERAL AND THE COMMISSION'S REQUIREMENTS

Finding 1

Regulations at 2 CFR 225, appendix A, paragraph (c)(1), state that to be allowable under Federal awards, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.
b. Be allocable to Federal awards under the provisions of this circular.
g. Except as otherwise provided for in this circular, be determined in accordance with generally accepted accounting principles.
j. Be adequately documented.

Regulations at 2 CFR 225, appendix A, paragraph (c)(2), state that a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally funded.

Regulations at 24 CFR 85.36(d)(4) state that 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. "(i) 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: (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. (ii) 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."

Regulations at 24 CFR 85.36(f)(1) state that 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 an independent cost analysis before receiving bids or proposal. 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 regulations.

Regulations at 24 CFR 85.36(f)(2) state that grantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases in which cost analysis is performed.

HUD Handbook 7460.8, REV-2, paragraph 3-2(d), states that the contracting officer should prepare or have prepared an independent cost estimate reflecting the purchase requirement. The level of detail will depend upon the dollar value of the proposed contract and the nature of the goods or services to be acquired. The independent cost estimate must be prepared before the solicitation for offers. Paragraph (d)(3) states that for purchases above the small purchase threshold, the level of detail will vary but should reflect the dollar value, complexity, and commercial nature of the requirement. Independent costs estimates are normally broken out into major categories of cost (for example, labor, materials, and other direct costs such as travel, overhead, and profit). Noncommercial type requirements and work designed specifically for the Commission will require much more extensive estimation and a detailed independent cost estimate.

HUD Handbook 2210.18, section 1-2, states, as specified in 24 CFR 85.36(f), that a cost analysis or price analysis must be performed for every procurement action, including contract modifications (for example, "change orders"). Paragraph b(4) states that when negotiating a modification (including change orders) to any contract, which changes the work previously authorized and impacts the price or estimated cost upward or downward, a cost breakdown of the contractor's proposed cost must be requested. Note: Modifications that change the work beyond the scope of the contract must be justified as a noncompetitive action according to 24 CFR 85.36(d)(4). If none of those conditions apply, the work must be procured competitively.

Paragraph 1-2(b) of the handbook states that cost analysis is a review and evaluation of the separate elements of cost, which make up a contractor's cost proposal. It requires that the cost principles in appendix 1 be used to determine the allowability and reasonability of costs. A cost analysis is required when negotiating a contract with a sole source as justified under 24 CFR 84.36(d)(4); a complete cost breakdown must be provided and used to establish a fair and reasonable price or established cost.

Paragraph 1-2(c) of the handbook states that costs analysis also requires that profit be negotiated as a separate element of the prices (see 24 CFR 85.36(f)(2)). Cost-plus-a-percentage-of-cost and percentage-of-construction-cost type contracts are prohibited (see 24 CFR 85.36(f)(4)).

Paragraph 1-2(d) of the handbook states that when negotiating a modification (including change orders) to any contract (even if the basic contract was awarded competitively), which changes the scope of work previously and impacts the price or estimated cost, cost analysis and the principles in appendix 1 must be used to arrive at a reasonable cost. The only exception to this rule is contract modifications, which are based on pricing terms established in the contract document. Changes in scope do not always result in increased costs. A reduction in the work requirements may result in a decrease in the contract price. Regardless of the direction of the price change, such modifications require the use of cost analysis and the cost principles in appendix 1.

Paragraph 1-3(B) of the handbook states that, as appropriate, the techniques discussed below should be used to perform cost analysis:

1. Verify cost and pricing data and evaluate cost estimates, including:
   a. Necessity for and reasonableness of proposed costs, including allowances for contingencies;
   b. Projection of offeror's cost trends;
   c. Technical appraisal (e.g., by an engineer) of proposed direct cost elements; and,
   d. Application of audited or pre-negotiated (e.g., by the Federal Government) indirect cost rates, labor rates, or other factors.
2. Evaluate the effect of the offeror's current practices on future costs.
3. Compare costs proposed by the offeror with:
   a. Actual costs previously incurred by the same offeror;
   b. Previous cost estimates from the offeror or other offerors for the same or similar items;
   c. The methodology to be used by the offeror with the requirements of the solicitation (i.e., do the costs reflect the technical approach proposed); and,
   d. Your independent cost estimate (or that of an independent architect, engineer, appraiser, etc.).
4. Verify that the offeror's cost submissions comply with the cost principles in Appendix 1 (FAR Part 31).

Appendix 1, part 31.201-1, of the handbook states that the total cost of a contract is the sum of the allowable direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits, plus any allocable cost of money under 31.205-10. In determining what constitutes a cost, any generally accepted method of determining or estimating costs that is equitable and is consistently applied may be used, including standard costs properly adjusted for applicable variances.

Appendix 1, part 31.201-3(a), of the handbook states that a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints. No presumption of reasonableness may be attached to the incurrence of costs by a contractor. If an initial review of the facts results in a challenge of a specific cost by the contracting officer or the contracting officer's representative, the burden of proof must be upon the contractor to establish that such cost is reasonable.

Appendix 1, part 31.201-4(a), of the handbook states that a cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it is incurred specifically for the contract.

Appendix 1, part 31.202(a), of the handbook states that a direct cost is any cost that can be identified specifically with a particular final cost objective. No final cost objective should have allocated to it as a direct cost any cost if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective. Costs identified specifically with the contract are direct costs of the contract

and are to be charged directly to the contract. All costs specifically identified with other final cost objectives of the contractor are direct costs of those cost objectives and are not to be charged to the contract directly or indirectly.

Appendix 1, part 31.203(a), of the handbook states that an indirect cost is any cost not directly identified with a single, final cost objective but identified with two or more final cost objectives or an intermediate cost objective. It is not subject to treatment as a direct cost. After direct costs have been determined and charged directly to the contract or other work, indirect costs are those remaining to be allocated to the cost objectives. An indirect cost may not be allocated to a final cost objective if other costs incurred for the same purpose in like circumstances have been included as a direct cost of that or any other final cost objective. Paragraph (b) states that indirect costs may be accumulated by logical cost groupings with due consideration of the reasons for incurring such costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the cost objectives. Commonly, manufacturing overhead, selling expenses, and general and administrative expenses are separately grouped. Similarly, the particular case may require subdivision of these groupings; for example, building occupancy costs might be separable from those of personnel administration within the manufacturing overhead group. This necessitates selecting a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the several cost objectives. When substantially the same results can be achieved through less precise methods, the number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

Appendix 1, part 31.205-26(d), states that when materials are purchased specifically for and are identifiable solely with performance under a contract, the actual purchase cost of those materials should be charged to the contract.

HUD Handbook 7460.8, REV-2, paragraph 10-3(E), states that documentation is required to demonstrate price reasonableness whenever the price obtained varied significantly from the independent cost estimate, in which case the contracting officer should note and explain the reasons for the differences; for example, poor estimate, etc.

The specifications for the kitchen cabinet replacement contract, dated April 16, 2009, section D, part I, paragraph C, states that for the cabinets, the contractor is solely responsible for field measuring and determining the material quantities and labor required to fully execute the intent of the project to the submittal of the bid. No contract adjustment will be made as a result of the contractor's failure to adequately determine material and labor amounts to complete the work. Paragraph E states that the contractor is to remove and install kitchen sinks, water supply lines, strainers, faucets, traps, stoppers, laundry drains or sumps, laundry supplies, valves, and shutoffs. The Commission will supply sinks and faucets. All materials must operate without leakage and as intended. Paragraph T states that all electrical work must be performed by a licensed electrician except for minor repairs such as (but not limited to) replacement of switches, lighting fixtures, and hood range reinstallation.

The specifications for the kitchen cabinet replacement contract, dated April 16, 2009, section IIA, state that all (matching) trim, filler strips, etc., required for a finished installation must be included.

The specifications for the kitchen cabinet replacement contract, dated April 16, 2009, section III, state that the following materials are to be supplied by the owner and installed by the contractor: refrigerators, ranges, range hoods, sinks, faucets, over-sink light fixtures, and floor tile.

HUD's Quick Guide to Cost and Price Analysis for HUD Grantees and Funding Recipients states that modifications that change the scope of the contract must be justified in accordance with the conditions set forth in 24 CFR 86(d)(4). If the out-of-scope change cannot be justified, the work must be procured competitively.

The Commission's procurement policy, dated May 19, 2006, states that for all purchases above the micropurchase level, the Commission must prepare an independent cost estimate before solicitation. The level of detail should reflect the cost and complexity of the item to be purchased.

The Commission's procurement policy states that a cost analysis, consistent with Federal guidelines, should be conducted for all contract modifications for procurements that were procured through sealed bids, competitive proposals, or noncompetitive proposals or for projects originally procured through small purchase procedures and the amount of the contract modification will result in a total contract price in excess of $100,000.

Finding 2

The United States Housing Act of 1937, as amended, section 12(a), states that any contract for loans, contributions, sale, or lease under this Act must contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (after a determination under applicable State or local law) by the HUD Secretary, should be paid to all architects, technical engineers, draftsmen, and technicians employed in the development and all maintenance laborers and mechanics employed in the operation of the low-income housing project involved and should also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor under the Davis-Bacon Act, must be paid to all laborers and mechanics employed in the development of the project involved (including a project with nine or more units assisted under Section 8 of this Act, when the public housing agency or the Secretary and the builder or sponsor enter into an agreement for such use before construction or rehabilitation is commenced), and the Secretary should require certification as to compliance with the provisions of this section before making any payment under such contract.

Section 1606 of the Recovery Act requires that all laborers and mechanics of contractors and subcontractors working on projects funded by the Recovery Act be paid at least prevailing wages in accordance with subchapter IV of chapter 31 of Title 40 of the United States Code (40 U.S.C. 3141), which requires that prevailing wages be paid to laborers and mechanics working on contracts in excess of $2,000 that specify the construction, alteration, or repair, including painting and decorating, of public buildings.

Regulations at 29 CFR 3.3(b) state that each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States should furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by part 3 and part 5 of this title during the preceding weekly payroll period. This statement should be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages and should be on the back of Form WH 347, "Payroll (For Contractors Optional Use)," or on any form with identical wording. Copies of Form WH 347 may be obtained from the Government contracting or sponsoring agency or from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site.

Regulations at 29 CFR 3.4(a) state that each weekly statement required under 24 CFR 3.3 must be delivered by the contractor or subcontractor, within 7 days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work or if there is no representative of a Federal or State agency at the site of the building or work, the statement must be mailed by the contractor or subcontractor within such time to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement or a copy thereof should be kept available or should be transmitted, together with a report of any violation, in accordance with applicable procedures prescribed by the U.S. Department of Labor.

Regulations at 29 CFR 5.5(a)(1)(iii) state that whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit that is not expressed as an hourly rate, the contractor should either pay the benefit as stated in the wage determination or pay another bona fide fringe benefit or an hourly cash equivalent thereof.

Regulations at 29 CFR 5.5(a)(3)(i) state that apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed under and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration; Office of Apprenticeship Training, Employer, and Labor Services; or a State apprenticeship agency recognized by the Office or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program but who has been certified by the Office of Apprenticeship Training, Employer, and Labor Services or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, should be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

HUD Handbook 7460.8, REV-2, paragraph10-9(E), states that the public housing authority is responsible for the administration and enforcement of labor standards requirements as provided

in HUD Handbook 1344.1, REV-1, CHG-1, and as required by U.S. Department of Labor regulations applicable to Davis-Bacon-covered work (29 CFR Part 5).

HUD Handbook 7460.8, REV-2, paragraph 10-9(E)(2), states that the public housing agency is responsible for conducting interviews with the laborers and mechanics on the job site to determine whether the work performed and wages received are consistent with the job classifications and wage rates contained in the applicable wage determination and the classifications and wages reported by the employer on certified payrolls.

HUD Handbook 7460.8, REV-2, paragraph10-10(G)(3), states that the public housing authority must perform contractor compliance monitoring with such frequency and depth as appropriate (based upon the scope and duration of the contract involved) to ensure that all laborers and mechanics are paid no less than the HUD prevailing wage rate for the type of work performed.

The U.S. Department of Labor's Memorandum Number 207 states that Federal contracting or assistance-administering agencies have the primary responsibility for the enforcement of Davis-Bacon and related acts to ensure that laborers and mechanics are paid at least the prevailing wage rates required by covered contracts.

HUD's Labor Relations Desk Guide LR04.DG, Making Davis-Bacon Work, a guide for public housing agencies, Key Labor Standards Objectives III, states that the local agency is responsible to perform reviews of certified payroll submissions and other information to help ensure contractor compliance with labor standards provisions and the payment of prevailing wages to workers. Local Agency Responsibilities number 6 states that the local agency is responsible to review certified payroll reports and related documentation, identify any discrepancies or violations, and ensure that any needed corrections are made promptly. Local Agency Responsibilities number 7 states that the local agency is responsible to maintain full documentation of Federal labor standards administration and enforcement activities. Labor Standards Enforcement number 3 states that in addition to comparing forms HUD-11 to the certified payroll reports, the contract administrator reviews the payroll reports generally to ensure that all laborers and mechanics are being paid no less than the wage rates contained on the applicable Davis-Bacon wage decision for the type of work they perform. Contract administrators should be particularly alert for indications of payroll falsification-misinformation on payrolls to conceal underpayments. Falsification on payroll indicates that an employer (contractor or subcontractor) is aware of its obligations, is knowingly underpaying its employees, and is attempting to avoid detection of the violations.

According to HUD's Streamlining Davis-Bacon publication, HUD recognizes that onsite interviews are an invaluable tool in Davis-Bacon enforcement and that it is a resource that should be used to its greatest advantage. Accordingly, we strongly encourage contract administrators to target onsite interviews to projects, contracts, and employers when violations are suspected and the interview data can be most useful. Targeting may mean that no interviews are conducted on certain contracts when remote monitoring (such as payroll reviews) indicates full compliance so that more interviews may be conducted where problems are indicated. Targeting does not mean closing our eyes but, rather, focusing our sights on potential violations.

According to the HUD forms HUD-5370 and HUD-5470-EZ, contractors employing apprentices or trainees under approved programs must maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. Additionally, the contractor or subcontractor should make the records required in paragraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the contracting officer, or the U.S. Department of Labor.

Finding 3

Regulations at 24 CFR 135.3 state that requirements of this part apply to Section 3-covered assistance provided to recipients, regardless of the amount of the assistance provided to the recipient. The requirements of this part apply to all contractors and subcontractors performing work in connection with projects and activities funded by public and Indian housing assistance covered by Section 3, regardless of the amount of the contract or subcontract.

Regulations at 24 CFR 135.30 state that recipients and covered contractors may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth in this section for providing training, employment, and contracting opportunities to Section 3 residents and Section 3 business concerns.

(1) *Numerical goals for Section 3 covered public and Indian housing programs.* Recipients of Section 3 covered public and Indian housing assistance (as described in §135.5) and their contractors and subcontractors may demonstrate compliance with this part by committing to employ Section 3 residents as:

(iii) 30 percent of the aggregate number of new hires for one year period beginning in FY [fiscal year] 1997 and continuing thereafter.

(c) *Contracts.* Numerical goals set forth in paragraph (c) of this section apply to contracts awarded in connection with all Section 3 covered projects and Section 3 covered activities. Each recipient and contractor and subcontractor (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to award to Section 3 business concerns:

(1) At least 10 percent of the total dollar amount of all Section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and

(2) At least three (3) percent of the total dollar amount of all other Section 3 covered contracts. (d) *Safe harbor and compliance determinations.* (1) In the absence of evidence to the contrary, a recipient that meets the minimum numerical goals set forth in this section will be considered to have complied with the Section 3 preference requirements.

(2) In evaluating compliance under subpart D of this part, a recipient that has not met the numerical goals set forth in this section has the burden of demonstrating why it was not feasible to meet the numerical goals set forth

in this section. Such justification may include impediments encountered despite actions taken.

Regulations at 24 CFR 135.30 (a)(3) state that for recipients that do not engage in training or hiring but award contracts to contractors that will engage in training, hiring, and subcontracting, recipients must ensure that, to the greatest extent feasible, contractors will provide training, employment, and contracting opportunities to Section 3 residents and Section 3 business concerns.

Regulations at 24 CFR 135.32 state that each recipient has the responsibility to comply with Section 3 in its own operations and to ensure compliance in the operations of its contractors and subcontractors. This responsibility includes but may not be necessarily limited to

(a) Implementing procedures designed to notify Section 3 residents about training and employment opportunities generated by Section 3 covered assistance and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance;
(b) Notifying potential contractors for Section 3 covered projects of the requirements of this part, and incorporating the Section 3 clause set forth in part 135.38 in all solicitations and contracts.
(c) Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns by undertaking activities such as described in the Appendix to this part, as appropriate, to reach the goals set forth in part135.30. Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of Section 3 residents and contract award to Section 3 business concerns that exceed those specified in part135.30;
(d) Assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors and subcontractors with the requirements of this part, and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR part 135.
(e) Documenting actions taken to comply with the requirements of this part, the results of actions taken and impediments, if any.
(f) A State or county which distributes funds for Section 3 covered assistance to units of local governments, to the greatest extent feasible, must attempt to reach the numerical goals set forth in 135.30 regardless of the number of local governments receiving funds from the Section 3 covered assistance which meet the thresholds for applicability set forth at 135.3. The State or county must inform units of local government to whom funds are distributed of the requirements of this part; assist local governments and their contractors in meeting the requirements and objectives of this part; and monitor the performance of local governments with respect to the objectives and requirements of this part.

Regulations at 24 CFR 135.36 state the preference for Section 3 business concerns in contracting opportunities.

(a) Order of providing preference. Recipients, contractors and subcontractors should direct their efforts toward Section 3 covered contracts, to the greatest extent feasible, to Section 3 business concerns in the order of priority provided in paragraph (a) of this section.
(1) Public and Indian housing programs. In public and Indian housing programs, efforts should be directed to award contracts to Section 3 business concerns in the following order of priority:
(i) Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the Section 3 covered assistance is expended, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 1 businesses);
(ii) Business concerns that are 51 percent or more owned by residents of other housing developments or developments managed by the HA [housing authority] that is expending the Section 3 covered assistance, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 2 businesses); or
(iii) HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the Section 3 covered assistance is expended (category 3 businesses).
(iv) Business concerns that are 51 percent or more owned by Section 3 residents, or whose permanent, full-time workforce includes no less than 30 percent Section 3 residents (category 4 businesses), or that subcontract in excess of 25 percent of the total amount of subcontracts to business concerns identified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

Regulations at 24 CFR 135.90 state that each recipient who receives directly from HUD financial assistance that is subject to the requirements of this part must submit to the HUD Assistant Secretary an annual report in such form and with such information as the Assistant Secretary may request, for the purpose of determining the effectiveness of Section 3. When the program providing the Section 3-covered assistance requires submission of an annual performance report, the Section 3 report will be submitted with that annual performance report. If the program providing the Section 3-covered assistance does not require an annual performance report, the Section 3 report is to be submitted by January 10 of each year or within 10 days of project completion, whichever is earlier. All reports submitted to HUD in accordance with the requirements of this part will be made available to the public.

Regulations at 24 CFR 135.92 state that HUD should have access to all records, reports, and other documents or items of the recipient that are maintained to demonstrate compliance with the requirements of this part or that are maintained in accordance with the regulations governing the specific HUD program under which Section 3-covered assistance is provided or otherwise made available to the recipient or contractor.

OMB Circular A-133, Compliance Supplement, addendum #1, Public and Indian Housing, section III(L)(2), states that the prime recipient must submit form HUD-60002.

HUD Handbook 7460.8, REV-2, paragraph 15-2(E), states: "Pursuant to 24 CFR 135.90, public housing authorities must submit to, the Assistant Secretary for Fair Housing and Equal

Opportunity, an annual report using the Section 3 Data Reporting System on form HUD-60002-Economic Opportunities for Low- and Very Low-Income persons."

HUD's technical assistance for form 60002 states that absent evidence to the contrary, HUD considers public housing authorities to be in compliance with Section 3 if they meet the minimum numerical goals set forth at 24 CFR 135.30:

a. 30 percent of the aggregate number of new hires should be Section 3 residents;
b. 10 percent of the total dollar amount of all covered construction contracts should be awarded to Section 3 business concerns; and
c. 3 percent of the total dollar amount of all covered non-construction contracts should be awarded to Section 3 business concerns.

Public housing authorities that fail to meet the numerical goals above bear the burden of demonstrating why it was not possible. Such justifications should describe the efforts that were taken, barriers encountered, and other relevant information that will enable the Department to make a compliance determination.

HUD's economic stimulus funding and the creation of jobs, training, and contracting opportunities publication states that Section 3 recognizes that the normal expenditure of certain HUD funds typically results in new jobs, contracts, and other economic opportunities and when these opportunities are created, low- and very low-income persons residing in the community in which the funds are spent (regardless of race and gender) and the businesses that substantially employ them should receive priority consideration.

Finding 4

Section 1512(c) of the Recovery Act requires recipients of funds to comply with the transparency and accountability requirements of the Recovery Act. Recipients of funds are required to submit quarterly reports on the Internet (FederalReporting.gov). No later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency must submit a report to that agency that contains a detailed list of all projects or activities for which recovery funds were expended or obligated, including (1) the name of the project or activity, (2) a description of the project or activity, (3) an evaluation of the completion status of the project or activity, and (4) an estimate of the number of jobs created and the number of jobs retained by the project or activity.

OMB Memorandum M-10-08, part 2, section 5.1, number 2, states that recipients of Recovery Act funds subject to Section 1512 are required to submit estimates of jobs created and jobs retained for each project or activity in their recipient reports; this updated guidance changes the job estimate calculation such that the recipient will now report job estimate totals by dividing the hours worked in the reporting quarter (that is, the most recent quarter) by the hours in a full-time schedule in that quarter. Recipients will no longer be required to sum across multiple quarters of data as part of the formula. A second important change is in the definition of a job created or retained. Previous guidance required recipients to make a subjective judgment on whether a given job would have existed were it not for the Recovery Act. The updated guidance eliminates

this subjective assessment and defines jobs created or retained as those funded in the quarter by the Recovery Act. Jobs funded with non-Recovery Act funds will not be counted unless they will be reimbursed (see section 5.9). Jobs funded partially with Recovery Act funds will be counted based only on the proportion funded by the Recovery Act.

OMB Memorandum M-10-08, part 2, section 5.2, number 5, states that prime recipients are required to report an estimate of jobs directly created or retained by project and activity or contract and enter this information into a single numeric field in FederalReporting.gov.

OMB Memorandum M-10-08, part 2, section 5.2, number 10, states that this guidance does not establish specific requirements for documentation or other written proof to support reported estimates on jobs created or retained; however, recipients should be prepared to justify their estimates. Recipients must use reasonable judgment in determining how best to estimate the job impact of Recovery Act dollars, including the appropriate sources of information used to generate such estimate. When such written evidence exists, it can be an important resource for validating the job estimates reported.

OMB Memorandum M-10-08, part 2, section 5.3, states that to perform the calculation, a recipient will need the total number of hours worked by employees in the most recent quarter (the quarter being reported) in jobs that meet the definition of a job created or a job retained as defined in section 5.3.2. The recipient will also need the number of hours in a full-time schedule for the quarter. For instance, if a full-time schedule is 2,080 hours per year, the number of hours in a full-time schedule for a quarter is 520 (2,080 hours/4 quarters = 520). The formula for reporting can be represented as the total number of hours worked and funded by the Recovery Act within the reporting quarter divided by quarterly hours in a full-time schedule equals the full-time equivalent.