



**Hamtramck Housing Commission  
Hamtramck, MI**

**American Recovery and Reinvestment Act Public  
Housing Capital Fund Competitive Grant**



Issue Date: April 30, 2014

Audit Report Number: 2014-CH-1003

TO: Douglas Gordon, Acting Director of Public Housing, 5FPH

//signed//

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

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

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



Date of Issuance April 30, 2014

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

# Highlights

Audit Report 2014-CH-1003

### What We Audited and Why

We audited the Hamtramck Housing Commission's American Recovery and Reinvestment Act of 2009 Public Housing Capital Fund competitive grant. We selected the Commission based upon our analysis of the risk factors relating to public housing agencies in Region 5's<sup>1</sup> 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. This is the second of two audit reports on the Commission's Recovery Act grants.

### What We Recommend

We recommend that HUD require the Commission to (1) support or reimburse HUD more than \$1.1 million from non-Federal funds, for transmission to the U.S. Treasury, for not complying with Federal procurement and Recovery Act requirements and (2) implement adequate procedures and controls to address the issues cited in this audit report.

### What We Found

The Commission did not comply with Recovery Act, HUD's, or its own requirements. Specifically, it (1) improperly awarded a noncompetitive Recovery Act-funded contract, (2) lacked support for the reasonableness of the price paid for its Recovery Act-funded activities, and (3) used Recovery Act funds to pay for work activities that were not included in its approved annual or 5-year action plan. As a result, the Commission subverted full and open competition, and both HUD and the Commission lacked assurance that more than \$1.1 million in Recovery Act competitive grant funds was used appropriately.

Further, the Commission did not (1) support that the upgrades to its electrical utilities resulted in purported energy savings; (2) issue payments to its contractor in accordance with HUD's requirements; (3) ensure that its contractors complied with the buy American, Section 3, and Davis-Bacon Act requirements of the Recovery Act; and (4) file the required declaration of trust. It also did not accurately report its Recovery Act grant activities in [FederalReporting.gov](http://FederalReporting.gov). As a result, HUD and the Commission lacked assurance that its Recovery Act competitive grant was administered in accordance with HUD's requirements.

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<sup>1</sup> Region 5 includes the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

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## **BACKGROUND AND OBJECTIVE**

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The Hamtramck Housing Commission was established in 1936 under the regulations 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. The Commission's primary funding source is the U.S. Department of Housing and Urban Development (HUD). A five-member board of commissioners, appointed by the mayor of Hamtramck, 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 Commission administers the projects under its annual contributions contract with HUD.

On February 17, 2009, the President signed the American Recovery and Reinvestment Act. The Recovery Act provided an additional \$4 billion to public housing agencies to carry out capital and management activities, including the modernization and development of public housing. The Recovery Act required that \$3 billion of these funds be distributed as formula grants and the remaining \$1 billion be distributed through a competitive process. The competitive grant funds could be used to carry out priority capital and management activities at public housing projects.

On July 19, 2009, the Commission applied for a category 4, option 2, the creation of energy-efficient, green communities – moderate rehabilitation, grant to replace the windows at its Colonel Hamtramck Homes project. A grant of more than \$1.1 million was awarded to the Commission by HUD and was effective September 24, 2009, with the Commission's signing of an amendment to its annual contributions contract. On May 28, 2010, the Commission requested permission from HUD to amend its competitive grant activities to upgrade the electrical utility components at Colonel Hamtramck Homes instead of replacing the windows. On July 1, 2010, HUD approved the Commission's request to amend its competitive grant activity.

According to the Recovery Act, the Commission was required to obligate 100 percent of its competitive grant funds within 1 year, expend 60 percent of the funds within 2 years, and fully expend the funds within 3 years. The Commission obligated its funds before the obligation deadline by signing a contract with its contractor and had expended 100 percent of the funds as of January 2012, before the 3-year deadline.

On August 5, 2010, the Commission entered into a contractual agreement with its contractor to upgrade the electrical components at Colonel Hamtramck Homes and provide a green assessment manual, a green operations and maintenance manual, a green procurement policy, and green training. The contract was for more than \$1.1 million.

Our objective was to determine whether the Commission administered its Recovery Act competitive grant in accordance with HUD's requirements and its own policies.

## RESULTS OF AUDIT

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

The Commission did not comply with Recovery Act, HUD's, or its own procurement requirements. Specifically, it (1) improperly awarded a noncompetitive Recovery Act-funded contract, (2) lacked support for the reasonableness of the price paid for its Recovery Act-funded activities, and (3) used Recovery Act funds to pay for work activities that were not included in its approved annual or 5-year action plan. The deficiencies occurred because the Commission disregarded Federal procurement requirements and lacked adequate procedures and controls to ensure that it administered its grant in accordance with Federal and its own requirements. As a result, the Commission subverted full and open competition, and both HUD and the Commission lacked assurance that more than \$1.1 million in Recovery Act competitive grant funds was used appropriately.

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#### **The Commission Did Not Properly Procure Its Recovery Act-Funded Contract**

On July 14, 2009, the Commission executed a memorandum of agreement with its contractor. According to the agreement, its contractor pledged to assist the Commission in completing the application to apply for a Recovery Act-funded competitive grant. In exchange, the Commission agreed that if it were awarded the grant, it would use the funds to noncompetitively award a contract to its contractor for the work.

In September 2009, HUD awarded the Commission a more than \$1.1 million Recovery Act-funded competitive grant. On August 5, 2010, in accordance with its agreement with its contractor, the Commission executed the noncompetitive contract. However, it did not maintain support (1) to justify the use of the noncompetitive procurement method and (2) to show that the awarding of the contract was infeasible under sealed bidding or the competitive procurement method as required.<sup>2</sup>

By executing the memorandum of agreement before applying for the competitive grant, the Commission documented its intent to not procure the grant activities competitively as required by HUD's regulations,<sup>3</sup> which was in violation of the

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<sup>2</sup> 24 CFR (Code of Federal Regulations) 85.36(d)(4); 24 CFR 85.36(b)(9); HUD Handbook 7460.8, REV-2, section 8.5; the Commission's procurement policy; and section VI.B.3a of the notice of funding availability

<sup>3</sup> Regulations at 24 CFR 85.36(c) state that all procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of section 85.36.

grant requirements<sup>4</sup> and contrary to the certification<sup>5</sup> on the grant application that the Commission would administer the grant in compliance with all requirements. At the time the agreement was executed, the Commission had 14 months until the grant was required to be obligated, during which it could have solicited bids or proposals.

According to the Director of the Detroit Office of Public Housing, in addition to subverting full and open competition through the agreement, by way of having its contractor assist in preparing the application and planning the projects, the Commission opened itself to possible conflicts of interest and gave the contractor an unfair competitive advantage<sup>6</sup> because it would have had internal knowledge of the grant, including the amount of funds awarded to the Commission.

**The Commission Did Not Adequately Support the Cost Reasonableness of Recovery Act-Funded Activities**

On August 5, 2010, in accordance with the agreement with its contractor, the Commission executed a noncompetitive contract to upgrade the electrical components at Colonel Hamtramck Homes<sup>7</sup> and provide an environmental or green (1) assessment manual, (2) operations and maintenance manual, (3) procurement policy, and (4) training. The Commission did not provide support showing that it completed an independent cost estimate before entering into a contract for its Recovery Act-funded projects as required by HUD.<sup>8</sup> The Commission's architect completed an independent cost estimate; however, it was dated 4 days after the date on which the contract was executed. According to the Commission's project manager, the Commission prepared an independent cost estimate for the project before executing the contract. However, she discarded the estimate because it was substandard in comparison with the independent cost estimate prepared by the Commission's architect.

In reviewing the independent cost estimate completed by the Commission's architect, we determined that it also was inadequate. For instance, the estimate covered only the electrical infrastructure upgrades, which were estimated to cost between \$745,000 and \$785,000. However, the estimate did not include costs for the Commission's green (1) assessment manual, (2) operations and maintenance manual, (3) procurement policy, or (4) training. Documentation

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<sup>4</sup> Section VI.B.2.c of the notice of funding availability

<sup>5</sup> In box 9 of the grant application, the Commission certified that it would administer the grant in accordance with all the requirements of the notice of funding availability and all requirements applicable to public housing, including HUD regulations, and all other requirements as such requirements may be amended from time to time.

<sup>6</sup> HUD Handbook 7460.8, REV-2, paragraph 9.3(E)

<sup>7</sup> The electrical component upgrades included the replacement of 18 pole-mounted transformers, overhead feeders, and the main distribution panels for 36 buildings.

<sup>8</sup> 24 CFR 85.36(f)(1)



provided during the execution of the project showed that the contractor listed the cost of these items at \$20,833. Further, the Commission did not provide support showing that it compared the independent cost estimate to the contract price and did not explain the difference between the independent cost estimate and contract price in the procurement file as required by HUD<sup>9</sup> since the final contract price exceeded the independent cost estimate by more than 30 percent.

HUD regulations require that, in addition to the independent cost estimate,<sup>10</sup> a cost analysis<sup>11</sup> needs to be conducted for noncompetitive procurements and profit should be negotiated separately.<sup>12</sup> However, the Commission did not conduct the required cost analysis or negotiate the profit separately. Therefore, it did not maintain adequate support to fully determine the reasonableness of the contract price and did not maintain support for the basis of the contract price.<sup>13</sup>

Additionally, we identified costs for work items that were not included in the scope of work of the actual contract or the independent cost estimate. The contract price included \$79,975 for the replacement of exterior doors and door locks to the electrical rooms and to demolish the electrical rooms at Colonel Hamtramck Homes. However, in reviewing documentation provided by the Commission, these activities were part of a different contract with the same contractor. Therefore, since these work items were not allocable<sup>14</sup> to the contract, they were ineligible<sup>15</sup> to be paid for with Recovery Act grant funds.

The Commission also did not provide support for the \$239,033<sup>16</sup> difference between the independent cost estimate and contract price. Because the Commission did not (1) have support showing that it completed an independent cost estimate before awarding the grant, (2) explain the difference between its independent cost estimate and contract price in its procurement file, and (3) complete the required cost analysis or negotiate the profit separately, HUD had no assurance that the price paid for the grant activities was reasonable and that all activities were necessary.

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<sup>9</sup> HUD Handbook 7460.8, REV-2, paragraph 10.3(E)

<sup>10</sup> 24 CFR 85.36(d)(4)(ii)

<sup>11</sup> HUD Handbook 2210.18, paragraph 1-2(B)

<sup>12</sup> 24 CFR 85.36(f)(2)

<sup>13</sup> 24 CFR 85.36(b)(9)

<sup>14</sup> HUD Handbook 2210.18, Appendix 1, Federal Acquisition Regulation, Part 31.201-4

<sup>15</sup> HUD Handbook 2210.18, Appendix 1, Federal Acquisition Regulation, Part 31.201-2(a)

<sup>16</sup> \$1,124,841 - \$785,000 - \$20,833 - \$79,975 = \$239,033

### **Some of the Commission's Recovery Act-Funded Modernization Activities Were Not Included in the Commission's Annual Plan**

HUD requires<sup>17</sup> that the grant-funded activities be included in a current annual plan or a 5-year plan. The Commission did not ensure that it included each of its Recovery Act-funded activities in either its revised annual plan or 5-year plan. The plans did not include the green (1) assessment manual, (2) operations and maintenance manual, (3) procurement policy, and (4) training. Therefore, these items totaling \$20,833 were ineligible for payment using Recovery Act funds.

The Commission amended its annual plan to include the electrical infrastructure upgrades; however, the revision to the plan would have been considered a substantial deviation.<sup>18</sup> As a result, the Commission was also required to hold a public meeting to discuss the change and to post the notice of the meeting at least 10 days before it was to be held.<sup>19</sup> The revised plan was approved by HUD on July 20, 2010; however, the Commission failed to post the notice of the meeting 10 days before the meeting. The Commission provided documentation showing that it posted the notice of the meeting on May 28, 2010, and that the meeting was held on June 2, 2010. Therefore, the notice was posted for only 5 days. As a result, the amendment to the plan to include the electrical infrastructure upgrades was not conducted in accordance with Recovery Act requirements.

### **The Commission Disregarded Federal Requirements and Lacked Adequate Procedures and Controls**

The Commission disregarded Federal procurement requirements regarding full and open competition and lacked adequate procedures and controls to ensure that it administered its grant in accordance with Federal and its own requirements.

### **Conclusion**

As a result of the deficiencies detailed above, HUD and the Commission lacked assurance that more than \$1.1 million in Recovery Act competitive grant funds was used appropriately and efficiently. Further, had the Commission allowed full and open competition in its procurement or complied with HUD's requirements, the project may have been obtainable at a lower cost.

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<sup>17</sup> Public and Indian Housing Notice 2009-12

<sup>18</sup> Based upon the Commission's definition in its 5-year plan

<sup>19</sup> Section VI.B.2.b of the notice of funding availability

## Recommendations

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

- 1A. Reimburse HUD \$79,975 from non-Federal funds, for transmission to the U.S. Treasury, for the work items that were not allocable to the Recovery Act competitive grant-funded contract.
- 1B. Reimburse HUD \$20,833 from non-Federal funds, for transmission to the U.S. Treasury, for the Recovery Act-funded work items that were not included in the Commission's annual or 5-year plan.
- 1C. Support the reasonableness or reimburse HUD \$239,033 from non-Federal funds, for transmission to the U.S. Treasury, for the amount of the Commission's Recovery Act-funded contract that exceeded the independent estimate.
- 1D. Support the use of the sole-sourcing procurement method for its Recovery Act-funded competitive grant or reimburse HUD \$785,159 from non-Federal funds for transmission to the U.S. Treasury.<sup>20</sup>
- 1E. Develop and implement adequate contract administration procedures and controls to ensure that the Commission's contracts are procured and administered in accordance with HUD's requirements and the Commission's policies.

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<sup>20</sup> The actual unsupported amount was \$1,125,000. However, the amount was reduced by recommendations 1A (\$79,975), 1B (\$20,833), and 1C (\$239,033), thus totaling \$785,159. If the Commission is able to provide support for recommendation 1C, the amount for recommendation 1D would increase to \$1,024,192 (\$785,159 + \$239,033).

## Finding 2: The Commission Did Not Comply With Recovery Act, HUD's, or Its Own Grant Administration Requirements

The Commission did not comply with Recovery Act, HUD's, or its own grant administration requirements. Specifically, it did not (1) support that energy savings were achieved, (2) issue payments to its contractor in accordance with HUD's requirements, and (3) ensure that its contractor purchased American-made products. It also did not (1) ensure that it complied with the Section 3 and Davis-Bacon Act requirements of the Recovery Act, (2) file the required declaration of trust, and (3) accurately report Recovery Act grant activities in FederalReporting.gov. The deficiencies occurred because the Commission lacked adequate procedures and controls to ensure compliance with Recovery Act, HUD's, and its own requirements. As a result, HUD and the Commission lacked assurance that the Commission's Recovery Act competitive grant was administered in accordance with HUD's requirements and its activities achieved their intended purpose.

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### **The Commission Did Not Support That Energy Savings Were Achieved**

The Commission did not provide support showing that the electrical utility upgrades achieved the purported energy savings in its grant application or its request to HUD to amend its Recovery Act grant activities.

Section V.A.4.c.2.b of HUD's notice of funding availability, dated June 3, 2009, states that to comply with category 4, option 2, rating factor 2, strategy for energy-efficient communities, a public housing agency is required to document savings in energy and water consumption. The public housing agency must substantiate a savings in energy consumption for the project that is the subject of the application by converting all energy sources to a common unit, the British thermal unit. The savings will be verified through the comparison of an established baseline, developed upon an independent energy audit and a postretrofit energy audit.

- In its Recovery Act grant application, the Commission certified that it would develop and document a strategy that would provide a greater than 35 percent savings in energy and water consumption.
- In its request to amend its grant activities, the Commission stated that its efforts would achieve an estimated 35.39 percent reduction in energy consumption.
- In a letter sent to HUD on behalf of the Commission, the Commission's contractor stated that the proposed electric distribution replacement was a primary energy conservation measure and that the distribution replacement conservation measure would save energy as a stand-alone measure (more than 46,000 kilowatts per year).

According to the Commission's executive director, the contractor had yet to provide the energy savings report for the grant activities. Section 3.1.2 of exhibit A of the Commission's contract with its contractor stated that at the end of the work, the contractor would prepare and deliver a savings report detailing the amount of energy savings attributable to the measures implemented as part of the work. Therefore, in addition to not supporting the energy savings, the Commission did not enforce all of the requirements of the contract.

As a result, HUD had no assurance that the Recovery Act grant-funded activities achieved the purported savings. HUD's notice of funding availability, dated June 3, 2009,<sup>21</sup> states that failure to comply with the performance measure will subject the grant to sanctions, including recapture of grant funds proportional to the shortfall in scope of committed activities. Thus, since the Commission did not provide support showing that energy savings were achieved as required, the entire grant amount was unsupported.

### **Contract Payments Were Not Issued in Accordance With HUD's Requirements**

The Commission did not properly document progress inspections for the Recovery Act activities. According to HUD's notice of funding availability for the Recovery Act competitive grant, the public housing agency must requisition funds only when payment is due and after inspection and acceptance of the work.<sup>22</sup> Further, HUD's requirements<sup>23</sup> state that all progress inspections should be documented using an appropriate public housing agency inspection report form. The inspection report should include a description of the work completed and a determination as to whether the work is acceptable. However, the Commission's inspection reports for its electrical infrastructure upgrade project did not indicate whether the work had been inspected and determined to be acceptable.

The Commission also did not issue progress payments to its contractor in accordance with the payment schedule of the contract in compliance with HUD's requirements.<sup>24</sup> According to the payment schedule, the Commission was supposed to pay its contractor in 7 installments; instead, it issued more than 11 payments to its contractor.

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<sup>21</sup> Section VI.B.2.f.4.b.i of the notice of funding availability

<sup>22</sup> Section I.C.2. of the notice of funding availability

<sup>23</sup> HUD Handbook 7460.8, REV-2, section 11.2

<sup>24</sup> HUD Handbook 7460.8, REV-2, paragraph 11.2(E)(5)

### **The Commission Did Not Ensure That Its Contractor Purchased American-Made Products**

The Commission did not ensure that \$278,561 in manufactured goods,<sup>25</sup> such as pole-mounted electrical transformers, electrical distribution panels, electrical cabling, electrical conduits, and electrical connectors, used for its Recovery Act-funded project, complied with the buy American requirements of the Recovery Act.<sup>26</sup> The Commission obtained statements from its contractor before starting the project, emphasizing the intent to follow the buy American requirements of the Recovery Act. However, it did not verify or provide support that the materials purchased by its contractor were produced in the United States. The Commission did not provide sufficient support to determine whether the items were manufactured in the United States in accordance with the requirements.

### **The Commission Did Not Comply With or Ensure Compliance With Section 3**

The Commission did not always comply with Section 3<sup>27</sup> requirements for its Recovery Act competitive grant. Specifically, it (1) did not provide support showing that it achieved the Section 3 minimal numerical goal of awarding 10 percent of the total dollar amount of all covered construction contracts to Section 3 business concerns and (2) was unable to meet the goals required by HUD.<sup>28</sup> Further, the Commission did not submit the required form HUD-60002 for 2009 or 2010.<sup>29</sup>

The Commission also did not ensure that its contractor complied with Section 3 requirements. It did not provide support showing that its contractor incorporated the Section 3 clause into all subcontracts.<sup>30</sup> Additionally, its contractor's Section 3 narrative did not contain a description of the actions taken to provide subcontracting opportunities to Section 3 business concerns as required by the Commission's Section 3 plan.<sup>31</sup> We requested on multiple occasions but the

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<sup>25</sup> Public and Indian Housing Notice 2009-31

<sup>26</sup> Section VI.B.3.a.7 of the notice of funding availability

<sup>27</sup> Section 3 is a provision of the Housing and Urban Development Act of 1968. It requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training and employment opportunities to low- or very-low income residents and contracting opportunities to the businesses that substantially employ them (Section 3 business concerns).

<sup>28</sup> 24 CFR 135.30 and (d)(2)

<sup>29</sup> 24 CFR 135.90

<sup>30</sup> 24 CFR 135.38(b)

<sup>31</sup> Part 5 of the Commission's Section 3 plan

Commission did not provide copies of the contracts between its contractor and subcontractors.

### **The Commission Did Not Ensure Davis-Bacon Compliance**

The Commission did not ensure that all mechanics and laborers working on its Recovery Act competitive grant activities were paid the prevailing wages in accordance with the Davis-Bacon Act.<sup>32</sup> The Commission obtained certified payroll documentation from its contractor that did not always contain employees' job classifications as required.<sup>33</sup> Therefore, we were not able to determine whether the appropriate Davis-Bacon wage rates were paid.<sup>34</sup>

One of the subcontractor's employees, who was designated as an apprentice on the contractor's certified payroll, was paid at a rate less than the prevailing wage rate applicable for any category of worker applicable to the contract. The certified payroll did not include a classification for the apprentice. The compensation at a rate less than the prevailing rate is allowed only if the worker is enrolled 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 with a recognized State apprenticeship agency. The Commission did not verify or provide support showing that the employee was enrolled in an approved apprenticeship program to justify the employee's being paid at a rate less than the prevailing wage rate.

Further, at least four of the subcontractors' employees, who were designated as equipment operators, were compensated at rates less than the prevailing wage rate for that job classification. Documentation provided by the Commission suggested that the Commission identified the classification of one of the subcontractor's employees as "equipment operator." However, when the Commission reviewed the documentation, it did not identify that this employee was underpaid because it did not match the wage paid to the required wage rate on the wage decision. Further, the Commission did not provide support showing that it reviewed the payroll documentation for the remaining three subcontractor employees.

### **The Commission Did Not Amend or File the Required Declaration of Trust**

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<sup>32</sup> Section VI.B.3.j of the notice of funding availability

<sup>33</sup> 29 CFR 5.5(a)(3)(i)

<sup>34</sup> The job classifications are needed for the Commission to determine the applicable rate and role of each worker and evaluate the wage paid versus the required wage.

The Commission was required to have a declaration of trust<sup>35</sup> recorded in relation to the acceptance of the Recovery Act competitive grant. All public housing authorities are required to record a declaration of trust against all property that has been acquired, developed, maintained, or assisted with funds under the U.S. Housing Act of 1937. However, the Commission did not provide support showing that a declaration of trust was recorded for its Colonel Hamtramck Homes project. Additionally, the Commission did not file or amend a declaration of trust as a result of the Recovery Act competitive grant.

HUD issued Public and Indian Housing Notices 2009-28 and 2010-44, which reminded housing authorities of their responsibility to record declarations of trust for their projects. Based on the U.S. Housing Act of 1937, HUD regulations, and the annual contributions contract, public housing agencies certify (with their 5-year or annual plan under 24 CFR (Code of Federal Regulations) Part 903) their compliance with all Federal requirements, including declaration of trust requirements. Further, according to the notices, “if HUD determines that a public housing agency is noncompliant with its public housing agency plan and certifications, it may take whatever action it deems necessary and appropriate, including but not limited to the following actions (1) disallow all or part of the cost of the activity or action not in compliance or (2) require that some or all of the grant amounts be remitted to HUD.”

The Commission’s executive director said that he was not aware of the requirement.

### **The Commission Did Not Accurately Report Recovery Act Grant Information**

We reviewed the Commission’s [FederalReporting.gov](http://FederalReporting.gov) prime recipient reports from the third quarter of 2009 through the first quarter of 2012. We reviewed 11 reports and determined that 6 (55 percent) were submitted after the reporting deadline. Additionally, the Commission did not report that any jobs were created or retained, although work was being performed during the second, third, and fourth quarters of 2011 at Colonel Hamtramck Homes. However, we determined, using documentation provided by the Commission and the reporting formula,<sup>36</sup> that at least (1) six jobs were created or retained during the third quarter of 2011 and (2) two jobs were created or retained during the fourth quarter of 2011. Also, for one of the quarters, the Commission reported that

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<sup>35</sup> The declaration of trust is a legal instrument that grants HUD an interest in the public housing property and provides public notice that the property must be operated in accordance with all Federal public housing requirements, including the requirement to not convey or otherwise encumber the property unless expressly authorized by Federal law or HUD.

<sup>36</sup> Office of Management and Budget Memorandum M-10-08, part 2, section 5.3



work was performed; however, the work described was not related to its Recovery Act grant activities.

### **The Commission Did Not Always Comply With HUD's Requirements**

The Commission did not always comply with HUD's or its own grant and contract administration requirements. HUD's Office of Public and Indian Housing issued multiple notices during the grant period, which explained the program requirements and provided guidance for their implementation; however, the Commission failed to comply with many of the requirements. The deficiencies occurred because the Commission disregarded HUD directives, did not adopt adequate policies to ensure compliance with HUD's directives, and lacked adequate procedures and controls to ensure compliance with HUD's and its own requirements. The Commission's executive director acknowledged that there were mistakes in the implementation of the Commission's policies and procedures.

### **Conclusion**

As a result of the deficiencies detailed above, HUD and the Commission lacked assurance that the Commission's Recovery Act competitive grant was administered in accordance with HUD's requirements and achieved its intended purpose.

### **Recommendations**

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

- 2A. Support that the grant activities achieved the purported energy savings. If the Commission did not achieve the purported savings, it should reimburse HUD the amount proportional to the shortfall in scope of committed activities.<sup>37</sup>
- 2B. Support that the manufactured goods used in the Commission's Recovery Act competitive grant-funded project complied with the buy American requirements of the Recovery Act.<sup>38</sup>

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<sup>37</sup> This recommendation does not contain any costs, since the questioned amount of \$1,125,000 was included in recommendations 1A, 1B, 1C, and 1D. If the Commission provides documentation to support recommendations 1C and 1D, it needs to support that the energy savings were achieved.

<sup>38</sup> This recommendation does not contain any costs since the questioned amount of \$278,561 was included in recommendations 1D and 2A. If the Commission provides documentation to support its procurement method and that energy savings were achieved, it needs to support that the items used complied with the buy American

- 2C. Support that the worker who was compensated as an apprentice was enrolled in an approved apprenticeship program as required by the Davis-Bacon Act and obtain and review proper Davis-Bacon support and ensure that any workers who were not compensated in accordance with the prevailing wage requirements receive wage restitution, taking the appropriate administrative actions as outlined in the requirements for any contractors that willingly do not comply with their obligations.
- 2D. Provide the required form HUD-60002 for the years 2009 and 2010 to HUD for review and approval.
- 2E. File the required declaration of trust against the Commission's projects to protect the interests of HUD.
- 2F. Review all grant information reported on the FederalReporting.gov Web site, provide HUD with a summary of any discrepancies between what was reported and what should have been reported, and maintain corrected documentation on file.
- 2G. Develop and implement adequate grant and contract administration procedures and adequate controls to ensure that all grants and contracts are administered in accordance with HUD's and the Commission's requirements.

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requirements. The value of any noncompliant or unsupported manufactured goods should be reimbursed from non-Federal funds for transmission to the U.S. Treasury.

## SCOPE AND METHODOLOGY

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We performed our onsite audit work between February and July 2013 at the Commission's office located at 12025 Dequindre Avenue, Hamtramck, MI. The audit covered the period March 1, 2009, through September 30, 2012, but was expanded when necessary to include other periods.

To accomplish our objective, we reviewed

- Applicable laws; regulations; Federal Register notices; HUD's program requirements at 24 CFR Parts 85, 135, 902, 903, 905, 965, and 968; 29 CFR Part 5; HUD public and Indian housing notices; HUD Handbook 2210.18; HUD Handbook 7460.8, REV-2; HUD Guidebook 7510.1; the U.S. Housing Act of 1937 as amended; Office of Management and Budget requirements at 2 CFR Part 225; Office of Management and Budget Circular A-133; and Office of Management and Budget Memorandums M-09-10, M-09-15, M-09-21, and M-10-08.
- The Commission's accounting records; annual audited financial statements for fiscal years 2009, 2010, and 2011; bank statements; general ledgers; contract and procurement files; policies and procedures; board meeting minutes for March 2009 through December 2011; organizational charts; program annual contributions contract with HUD; and HUD's Line of Credit Control System information and requests for payments.
- HUD's files for the Commission.

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

### **Finding 1**

We reviewed 100 percent of the documentation provided by the Commission to support its procurement process for the Recovery Act competitive grant to determine whether the grant activities were procured in accordance with HUD's and the Commission's requirements. We determined that the Commission did not maintain all of the required documentation and did not perform all of the required actions for its procurement. We evaluated the Commission's contract price against the independent cost estimate and other support to try to assess the reasonableness of the contract price. Based on inadequate support, we were unable to determine whether some costs were reasonable based upon market conditions or whether they were necessary to the grant.

We reviewed documentation from HUD's and the Commission's files to determine whether the Commission's Recovery Act competitive grant activities were included in an approved annual or 5-year plan. We also reviewed support provided by the Commission to determine whether the plan was amended by the Commission in accordance with HUD's requirements.

## **Finding 2**

We reviewed the Commission's grant application and request to change the grant activity to determine the energy savings that the Commission purported would be achieved by its project. We reviewed the Commission's investment-grade energy audit and grant application support to determine the baseline for the energy use. The Commission did not provide the postretrofit energy savings report or support that the energy savings were achieved; therefore, we were unable to determine whether savings were achieved.

We reviewed the Commission's inspection reports and compared them to the draws from HUD's Line of Credit Control System to determine whether the Commission inspected the work before requisitioning funds in accordance with the Recovery Act. We evaluated the inspection reports against relevant criteria to determine whether they were documented correctly. We compared the rate of grant draws and payment disbursements to the payment schedule for the Commission's contract.

We reviewed the support for buy American compliance provided by the Commission. We requested the Commission's review and enforcement support and support that the materials used were produced in the United States in accordance with the Recovery Act.

We requested the Commission's Section 3 enforcement support and support for compliance with Section 3. We reviewed the Commission's procurement activities to determine whether the Commission achieved the Section 3 goals to the greatest extent feasible or documented why it was not feasible to achieve the goals. We reviewed the support documentation the Commission obtained to ensure the compliance of contractors and subcontractors and evaluated that support against the Commission's policies and procedures and Federal requirements. We reviewed the Commission's submission of form HUD-60002, Section 3 Summary Report.

We reviewed the support documentation used by the Commission to ensure Davis-Bacon compliance. We compared the certified payroll to the wage determination to determine whether the workers were compensated in accordance with the prevailing wages. We requested support from the Commission to demonstrate that it identified and resolved any deficiencies.

We requested that the Commission provide support for the declaration of trust filed against its Colonel Hamtramck Homes project related to the Recovery Act competitive grant. The Commission's executive director admitted that the Commission did not file the declaration of trust.

We reviewed the support documentation provided by the Commission for its Federal reporting. We evaluated submission dates versus the deadlines to determine whether the reports were submitted during the required timeframe. We recalculated the Commission's figures, using Davis-Bacon certified payrolls and the jobs created and retained formula, to determine whether the Commission reported accurate information for its grant.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate

evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our finding and conclusion based on our audit objective.

# INTERNAL CONTROLS

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

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

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

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## Relevant Internal Controls

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

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

We assessed the relevant controls identified above.

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

## Significant Deficiency

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

- The Commission did not comply with Recovery Act, HUD's, or its own procurement and obligation requirements and did not administer its grant in accordance with the requirements (see findings 1 and 2).

## APPENDIXES

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### Appendix A

#### SCHEDULE OF QUESTIONED COSTS

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Recommendation number	Ineligible 1/	Unsupported 2/
1A	\$79,975	
1B	<u>20,833</u>	
1C		\$239,033
1D		<u>785,159</u>
	<u>\$100,808</u>	<u>\$1,024,192</u>

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



## Appendix B

### AUDITEE COMMENTS AND OIG'S EVALUATION

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#### Ref to OIG Evaluation

#### Auditee Comments



Audit Draft Response

#### **Comment 1**

In responding to this draft audit report please know that each and every document that is referred to in this response as an attachment or in the body of this response has already been provided to the auditor at least once.

#### **Comment 2**

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 five of the last six years the HHC has been recognized by the Department of Housing and Urban Development (HUD) as the largest "Public Housing High Performer" by Capital Fund Program (CFP) in the state of Michigan. The fact that our buildings are nearly 80 years old is an important aspect when considering the modifications completed with this funding. The necessity to replace the electrical infrastructure must be adamantly considered when assessing this audit. In addition to the 36 buildings encompassing three hundred (300) mixed family units ranging in size from 1 to 5 bedrooms comprising the Colonel Hamtramck Homes, the HHC has is an eight (8) story tall Senior high rise built in 1986 which is comprised of 150 elderly apartments.

The funding received and the expenditures associated with the funding being assessed through this audit amounts to \$1,125,000.00.

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**Auditee Comments**

The HHC through a competitive process applied for this grant funding after receiving a “notice of funding availability” (NOFA) update (June 3, 2009). Upon learning of the NOFA the HHC began assessing the likelihood of obtaining funding, and after meeting all prerequisites ultimately received \$1,125,000.00. The HHC, through a HUD Washington Substantial Deviation Approval was authorized to spend these funds on electrical infrastructure upgrades at the Colonel Hamtramck Homes. The HHC spent \$1,125,000.00 on electrical upgrades.

**Comment 3**

The HHC per an Energy Performance Contract (EPC) had an investment grade energy audit performed by Siemens and had accurate, up to date data in regards to what energy upgrades would save enough money to warrant the available upgrades. As background, the energy performance contract (EPC) is another financial vehicle encouraged by HUD that allows public housing commissions to obtain private funding to perform upgrades to their properties that provide savings to the commission by reducing the commission’s consumption of water, electricity, and gas, and ultimately reducing the bills associated with the commission’s usage. HUD agrees to continue to fund the commission at old consumption rates, and the difference between HUD funding and the savings experienced because of the upgrades, is utilized to pay the private funding back. While this project is technically not part of the audit it is imperative to understand its functionality and how it is intertwined with the ARRA Competitive Grant that the HHC received.

**Comment 4**

Two important things were assessed when HUD determined which PHA’s were eligible to receive ARRA funding. The first was a PHA’s ability to leverage non-HUD funding, which for the HHC was the energy performance contract (EPC financing). The second was the commission’s ability to save energy through a guaranteed savings. Again for the HHC this was the energy performance contract with savings guaranteed by Siemens.

**Comment 5**

It is imperative to understand the intricate dependency the ARRA Competitive Grant has on the EPC, and vice versa. Neither project exists without the other. The HHC has included a time line for easy reference to

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**Auditee Comments**

**Comment 6**

understand the complete history of this project. (See appendix A) The time line will be very important in understanding the way in which the HHC arrived at competing for, receiving, obligating, and expending the ARRA competitive grant. At all times the HHC completed all machinations of this process in concert and with complete approval Detroit Field Office and HUD Washington.

**Comment 7**

The first step in the HHC’s process of obtaining the ARRA competitive grant (CFCRG) began many years before the NOFA became available.

**Comment 8**

In order to compete for the ARRA CFCRG the commission had to have the EPC process in place which it did by contract. Specifically the MOA dated April 22, 2008. As such our ARRA journey began long before the ASSA CFCRG funding became available.

**Comment 9**

On February 13, 2007 the Hamtramck Housing Commission sent the Request for Qualifications for an energy consulting firm to [REDACTED] of the Detroit Field Office. The HHC had to receive permission from the Detroit Field Office in order to advertise the Request for Proposals for an energy consulting firm. After receiving the approval to proceed the HHC advertised for energy consulting services. Please refer to see Attachment B to review a copy of the RFP. The RFP states on page 1 paragraph 2, *“The Hamtramck Housing Commission is interested in entering into a cooperative relationship with an energy services firm to implement a full range of water and energy conservation measures and related capital improvements.”* Further, note that on page 7 under **Contract Duration**, the HHC request states emphatically, that the duration of the contract “shall not be fewer than six (6) years. . . . . appropriations”.

The HHC published the advertisement requesting qualifications of an “Energy Services Company”, (ESCO) on August 26, 2007 in The Detroit Free Press, The Detroit News, and on the Internet Bill Board. In the ad itself the language states the HHC is seeking proposals from *“Energy Savings Companies (ESCOs) that are capable of providing comprehensive energy management and energy related capital improvement services through an energy performance contract that will improve the energy efficiency of the authority’s 450 housing units and related administrative facilities. PHA is contracting full*

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**Auditee Comments**

*range of energy service and energy related capital improvements... ”. Please refer to Attachment C, which contains a copy of the advertisement.*

**Comment 9**

It is clear and obvious that the HHC competitively procured an energy services company to handle all of the HHC’s energy projects. The language in the request to proceed submitted to, and authorized by [REDACTED] the ESCO specialist at the Detroit Field Office, in all three of the official ads placed in the newspapers and on the internet, convincingly, overwhelmingly, and plainly states the intent of the HHC to procure a long term relationship with an energy company to provide for ALL of the energy projects of the HHC. Finally, the RFP itself states on page 7 that this is minimally a 6 year contract. There can be no other interpretation, it exists there in black and white. The HHC’s intent cannot be any more obvious, to procure an energy services company for a minimum of 6 years, which is via an MOA, still legally in force as of April 22, 2014. (Per the MOA signed on April 22, 2008 which has been identified by the auditor as a contract, see audit draft report dated June 26, 2013 page 1, *Memorandum of Agreement*). (Attachment MM)

The OIG has produced nothing in written or oral form to suggest that the HHC was seeking to procure an energy savings company for some limited time or some limited purpose. The only language which does exist is that which is plainly stated in the only documents that could or would describe it, as previously described above.

**Comment 10**

On February 28, 2008 the Hamtramck Housing Commission body as a whole heard live presentations from representatives of the two companies who responded to the RFP advertisement. (see Attachment H, *presentations, board minutes*) (also refer to the full RFP responses from both interested parties in attachments F&G) All Commissioners and the Executive Director rated the two companies as per the technical appendix contained in the original RFP. (Attachment B) After the presentation and tally of the ratings sheets Siemens Industries Inc. was chosen. (see Attachment I)

The first task performed by Siemens was an energy audit. After receiving the energy audit and analyzing the results the Commission selected energy upgrades based on the payback potential and needs of our residents. The

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**Auditee Comments**

**Comment 11**

factors which influenced our decisions were to replace items which would save enough energy and money to afford the cost of the upgrade, and chose items that would continue to save energy over time. During the energy audit it was discovered that whole blocks of apartments at the Colonel Hamtramck Homes were not receiving 100% of the required amperage into the residences. Some of these residences were receiving as little as 80%. This explained a chronic problem we were having with ignition failures in the furnaces and lighting problems with our stoves. Although old inefficient equipment could operate with the decreased amperage, the new proposed high efficiency furnaces and water heaters needed 100% amperage in order to operate, and in order for Siemens Industries to guarantee their proposed savings, the very cusp of the project payback.

**Comment 11**

The HHC selected all items determined necessary and cost effective including the Electrical Infrastructure upgrades. The total cost to complete all modifications was approximately 4.6 million dollars. The HHC began seeking out financial mechanisms to fund the improvements. The HHC attempted conventional financing methods however, those could not be amortized in a way that allowed enough cost savings for the duration of the loans. Attempts at obtaining financing through municipal bonds also proved to be useless. During this time the Notice of Funding Availability (NOFA) was released.

On May 7, 2009 the NOFA for the ARRA CFCRG was released. On June 3, 2009 an update to the NOFA was released. At this point the HHC already had in its possession a key element to applying for the NOFA grant to wit an energy audit with current data and an ESCO company, namely Siemens, under contract. Upon initial competition and application for the CFCRG the Commission was still under the thought that the full EPC amount would be financed through the EPC private funding. Only after being awarded the ARRA CFCRG, did the Commission learn that the proposed financing of the EPC was not going to be possible. At this point the Commission re-examined its position and determined the only ability for either project to proceed would be to request a substantial deviation from HUD allowing the Commission to scrap the window project originally proposed in our grant application. Now,

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**Auditee Comments**

**Comment 11**

the electrical infrastructure upgrades had to be moved from the original scope of work contained in the EPC to the ARRA CFCRG. This ultimately reduced the dollar amount being financed through private funding and allowed the amortization and the guaranteed savings payback of the EPC to move forward as well as the Commission retaining the Competitive award of the CFCRG. Without HUD approval, neither project would have moved forward.

To do this, the Commission requested via letter dated May 28, 2010 an amended 50075.1 (annual statement and performance form) requesting the revision to expend funds on electrical system upgrades. (Attachment N)

**Comment 12**

Since the HHC had already procured Siemens and contracted them for a minimal 6 years, the HHC, on July 15, 2009 signed and issued a second MOA in which Siemens agreed to manage and guarantee the savings experienced by the proposed expenditures of the ARRA CFCRG. (see Attachment L). The HHC applied for and submitted the ARRA CFCRG grant application on June 14, 2009. The HHC, requested the substantial deviation in accordance with PIH notice 2009-25 clause 9, paragraph 3, in which it states “ECM (energy conservation measures) may be added or replace current ecm’s in the original projects”, specific permission to amend the ARRA CFCRG grant was required. The HHC applied for and received permission to amend our grant application from windows to the electrical grid upgrade from [REDACTED] Washington in an email dated July 1, 2010. (see Attachment O)

**Comment 13**

In a letter dated July 14, 2010 the HHC indicated to HUD our intent to proceed with the approved substantial deviation and proposed budget approved by HUD. (see Attachment P)

Following the HUD approval to deviate from our original grant application on July 1, 2010, the incessancy and depth of the interaction in regards to simultaneously moving forward on both the EPC and the CFCRG, among the HHC, the Detroit HUD Field office, and HUD Washington is evidenced in the attachments enclosed for your review:

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Attachment R: Letter to HUD dated August 6, 2010, HHC's clarification to HUD explaining and reiterating the leveraging ties and commitments of the EPC and the CFCRG.

Attachment U: Letter to HUD dated August 10, 2010 memorializing the intricate relationship and connection of the EPC and the CFCRG

Attachment V: Letter from [REDACTED] dated August 20, 2010

Attachment W: Letter from the HHC in response to HUD Washington's Letter dated 08/20/2010

Attachment X: Letter from HHC dated September 7, 2010 requesting that approval to proceed with EPC be given from HUD.

Attachment Y: E-mail from [REDACTED] Director of the Office of Capital Improvement dated September 21, 2010 officially granting the Substantial Deviation.

**Comment 14**

These letters are imperative to review and understand because the history outlines the exigent time line that the Commission was under to get these funds under contract and ultimately obligated. Upon final HUD approval being received on September 21, 2010 from Washington, **the Commission had 48 hours to obligate its funds.**

**Comment 15**

The HHC received HUD approval to move forward with the EPC on November 23, 2010. (Attachment AA). The Commission could not contract with Siemens Industries Inc. until this approval was received from HUD and as such formally executed its EPC contract on December 15, 2010. (Attachment CC). It is important to note that the Commission could not sign the full EPC contract because it was waiting on the necessary approvals from HUD, thus explaining the use of the MOA contracts executed earlier in the process. This requirement of HUD approval to enter into a full EPC contract made it necessary for the HHC to contract every earlier step of the relationship between the chosen ESCO company and the Commission in phases.

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**Comment 16**

The Hamtramck housing commission (HHC) ascertains that it fully complied with HUD and its own requirements during the contract management process of its American Recovery and Reinvestment Act (Recovery Act) Public Housing Capital Fund Competitive Grant.

**Comment 17**

The commission provided support that it ensured its contractor obtained the required performance and payment bond for the Recovery Act Grant funded contract. (See attachment CC) Per the contract documents, specifically HUD form 5370 clause 24, "prohibition against liens", the contractor is prohibited from placing a lien on the PHA's property.

**Comment 18**

The commission made progress payments to its contractors for Recovery Act Grant activities and did so after completing daily HHC Management inspections and monitoring. HHC also received third party inspections and written reports. The Construction Observation Reports (COR), detailing weekly progress, commenced on June 2, 2011 and ran weekly through December 2, 2011. (See attachment GG, COR Reports 1-20) Please note the COR's included observations of both the Recovery Grant as well as the Energy Performance Contract as both projects were intertwined and simultaneously under construction.

**Comment 19**

The Housing Commission reviewed and assessed all payment requests and made by the contractor and paid them according to third party oversight's weekly inspections, and only upon the third party A/E firm reviewing, approving, and certifying that all work being requested for payment had substantially been completed did the Commission request a voucher draw down. Funds were only received from HUD after a HUD review was completed of all eloccs draw down's supporting documentation that was sent to HDU with each draw request. As the only differences and corresponding corrective remedies of materials and workmanship are noted on CORs, observations noting the completion of individual components are or should be implied as conforming to the contract documents.

**Comment 20**



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**Comment 19**

The commission has provided support for all of its draws from HUD's Line of Credit Control Systems (LOCCS). See attachment HH in which all draws are present. Attached to each draw you will find a copy of the checks written to the vendor proving that payment was issued to its contractors within three (3) working days of receipt of the funds.

**Comment 18**

As stated earlier, ALL payment requisitions from the Contractor were issued to Alliance Architects, the commission's third party oversight, who completed the weekly walk through and produced the construction observation reports in which work was deemed either acceptable or outlined further action necessary. Upon Alliance Architects receipt of the requisition, Alliance would review and cross reference that the work being invoiced as part of the requisition was completed and had been inspected and deemed acceptable. Upon those criteria being met, the Architect would sign the AIA document, See attachment HH in which you will find the reviewing party's signature on each pay requisition.

Upon being approved by the architect, the pay requisition would be sent to the housing commission. The housing commission would review the documentation of acceptability from the third party, would process the voucher, and send the field office all ESSR required forms. The commission would cut the checks for payment to the vendor upon release of funds from the Detroit Field Office.

**Comment 21**

The commission contends that it fully complied with the Buy American for all materials utilized in the ARRA funded portion of the project. See Attachment II for supporting documentation regarding compliance of electrical closet doors and hardware, electrical service panels, electrical conduit, and electrical transformers.

**Comment 22**

The commission has provided support to show it complied with Section 3 and did ensure compliance of its contractors and sub-contractors for its

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Recovery Act Competitive Grant. See attachment JJ in which the commission's general and sub-contractors provided certification of Section 3 compliance.

**Comment 23**

The commission complied and reviewed all payroll documentation for completeness and accuracy of job classifications and correct wages paid per Davis Bacon requirements. See Attachment KK, as previously submitted to auditor in its entirety, for supporting documentation included are payroll reports for the following contractors:

Motor City Electric	PR-1 (6/1/11) to PR-38 (11/20/11)
Mudzilla	PR-1 (6/25/11) to PR-2 (7/2/11)
Qualified Construction	PR-1 (8/27/11) to PR-11 (10/29/11)
██████████	PR-1 (7/2/11) to PR-8 (8/20/11)

All payroll reports correspond in sequence with payment application submitted by Siemens Technologies.

**Comment 24**

The commission believes that it complied with the cost reasonableness review of the ARRA Portion of the contract in multiple ways. First, the electrical upgrades were competitively bid by Siemens Technologies. Two, bids were received and were within \$3000.00 of each other. The commission then had a third party firm perform an Independent Cost Estimate (ICE) for the electrical upgrades. The ICE concluded that Motor City's bid of \$758,000, fell within their projected range of \$745,000 – \$785,000. The remainder of the contract amount, attributed to Siemens Technologies fees and services were evaluated by the commission to be reasonable based on historical data received for similar work performed at other housing agencies.

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

## OIG Evaluation of Auditee Comments

- Comment 1** We acknowledge that we received documentation throughout the audit. The reason for the repetitive information requests was to give the Commission an opportunity to provide complete support documentation that had not been previously provided. We disagree with the Commission's assertion that every document had been provided at least once. For instance, the energy performance contract, product brochures, and apprenticeship documentation referred to in attachments CC, II, and JJ, respectively, of the Commission's response had not been previously provided.
- Comment 2** The Commission stated that the necessity to replace the electrical infrastructure must be adamantly considered when assessing this audit. However, it did not provide support for its assertion that the items were necessary. Further, finding 1 of the report did not address the necessity of upgrading the electrical infrastructure. Instead, the finding related to the Commission's procurement and administration of its Recovery Act-funded project and whether the Commission maintained the required documentation to support its use of Federal funds to perform the upgrades.
- Comment 3** We acknowledge that the Commission executed an energy performance contract with its contractor in December 2010. The Commission's contractor assisted in designing the contract and conducting an investment-grade energy audit under a separate agreement with the Commission. However, that agreement was not related to the memorandum of agreement the Commission executed with the same contractor in 2009 as discussed in finding 1.
- Comment 4** We agree that the Commission's energy performance contract was not part of the audit.
- Comment 5** The Commission stated that it is imperative to understand the intricate dependency the Recovery Act competitive grant had on the energy performance contract, and vice versa. According to the Commission, neither project existed without the other. The Commission did not provide support to show that the energy performance contract would not be feasible without the electrical infrastructure upgrades funded by the Recovery Act competitive grant or vice versa.
- Comment 6** We disagree with the Commission's assertion that all machinations of the process were completed with approval of the Detroit field office and HUD Washington. Neither the public housing staff in HUD's Detroit field office nor Washington, D.C., were aware that the Commission agreed to award a Recovery Act-funded noncompetitive contract before it applied for the grant.
- Comment 7** We disagree with the Commission's assertion that it had to have the energy performance contract process in place to compete for the competitive grant. HUD regulations did not require the Commission to (1) have an energy performance

contract process in place to obtain a grant or (2) use an energy savings company to perform the work funded using Recovery Act grant funds.

**Comment 8** The Commission stated that its Recovery Act journey began long before the ASSA Recovery Act funding became available. For clarification purposes, “ASSA” should read “ARRA” for the American Recovery and Reinvestment Act.

**Comment 9** The Commission indicated that it competitively procured an energy services company to handle all energy projects. Although the Commission procured a contractor to develop an energy performance contract, it did not justify the Commission awarding additional unrelated contracts to the same contractor noncompetitively. HUD regulations at 24 CFR 85.36(c) state that all procurement transactions will be conducted in a manner providing full and open competition.

The Commission’s comment asserted that it had an agreement in place that would allow it to use that same contractor for its Recovery Act work; however, the Commission did not provide support for its assertions. The memorandum of agreement, dated April 2008, stated that the Commission’s contractor would perform an investment-grade energy audit. The agreement further stated that the parties could elect to enter into a performance contract at a later date. At the time the Commission signed the memorandum of agreement pledging to noncompetitively award a Recovery Act-funded contract to the same contractor, the Commission was planning to use the grant funds to install energy-efficient windows at its project. This activity was not included in energy performance contract planning as explained by the executive director during the audit. Therefore, it would not be unallowable to enter into a memorandum of agreement to use the contractor under Public and Indian Housing Notice 2009-25.

Under Public and Indian Housing Notice 2009-25, if the work was not integral to the energy performance contract or if it was not included in the original contract, the items would be considered add-on items, and the public housing agency would need to first determine whether a contract for the additional item was infeasible under small purchase procedures, sealed bids, or competitive proposals before noncompetitively procuring the work. These determinations were required to be recorded in the public housing agency’s procurement files.

As stated in the report, the Commission entered into a noncompetitive contract but did not (1) include a justification for the procurement type, (2) determine that the procurement by other methods was infeasible, and (3) document the significant history of the procurement in the procurement file as required by HUD and the Commission. The Commission has not provided support to show that the electrical infrastructure upgrades were integral to the perspective energy performance contract development or that the upgrades were included in any original plan, proposal, or specifications. Further, the electrical upgrades were not included or cited as necessary in the contractor’s proposal or the investment-

grade energy audit report. Therefore, the Commission did not comply with HUD's and its own procurement requirements.

**Comment 10** The Commission stated that its intent to procure an energy company for a minimum of 6 years, via a memorandum of agreement, was obvious and still legally in force as of April 22, 2014. The Commission further stated that the auditor referred to the agreement signed on April 22, 2008, as a contract. We disagree. In a draft outline that was subject to review and revision, the audit staff referred to the memorandum of agreement, dated June 26, 2013, as a contract. However, this statement made by the audit staff did not apply to all of the Commission's agreements, in particular, the memorandum of agreement dated April 22, 2008, that the Commission referred to in its comments. Further, the April 2008 agreement was for the contractor to perform an investment-grade energy audit. The terms of the agreement did not state that the company had an exclusive right to the management of energy-related work in perpetuity or for a set amount of time. The agreement clearly stated that the parties could elect to enter into a performance contract at a later date. It also described (1) what would happen if the Commission decided not to enter into a later performance agreement and (2) the Commission's right to cancel the agreement. Further, the Commission has not provided support to show that it had an agreement in place with the contractor for any activities other than to obtain an investment-grade energy audit.

**Comment 11** The Commission provided an explanation for the amendment to the grant activity to include the electrical upgrades; however, it did not provide support to show that the electrical infrastructure upgrades were (1) necessary and (2) included in the original scope of work under its prospective energy performance contract. It also did not support its assertions that the electrical upgrades were integral to the feasibility of the energy performance contract.

**Comment 12** We disagree with the Commission's assertion that through the memorandum of agreement, dated July 15, 2009, the Commission's contractor agreed to manage and guarantee the savings experienced by the proposed expenditures of the competitive grant. Based on the terms of the agreement, the contractor agreed to (1) assist the Commission in applying for the grant by providing an application completion process manual and (2) inform the Commission of the requirements imposed by the grant. In exchange, the Commission agreed that any funds received as the result of the contractor's efforts would be used to fund work that would be noncompetitively awarded to the contractor. The agreement did not include a guarantee of savings.

**Comment 13** The Commission stated that it submitted the Recovery Act-funded grant application on June 14, 2009. It further stated that it requested and received permission to amend the grant activities that were listed on the application. However, documentation provided by the Commission during the audit showed that the Commission applied for its Recovery Act competitive grant on July 19,

2009, not June 14, 2009. We acknowledge that the Commission received approval from HUD to deviate from the work activities identified in its original Recovery Act grant application. However as mentioned in the report, the Commission did not amend its annual plan in accordance with the Recovery Act requirements because it did not post the notice of the public meeting at least 10 days before the meeting was held as required by HUD. The report also addressed the Commission's noncompliance with Federal and its own procurement requirements.

- Comment 14** We disagree that the Commission had 48 hours to obligate its Recovery Act funds on September 21, 2010. The funds were considered obligated when the Commission signed the contract with its contractor on August 5, 2010.
- Comment 15** As mentioned in comment 4, the energy performance contract was not the subject of the audit.
- Comment 16** We disagree with the Commission's assertion that it fully complied with HUD's and its own requirements during the contract management process. As cited in findings 1 and 2 of this audit report, the Commission did not comply with Recovery Act, HUD's, or its own procurement and contract administration requirements.
- Comment 17** We commend the Commission on obtaining the performance and payment bonds as required by HUD's and the Commission's policies. However, the performance and payment bonds were not cited as deficiencies in the draft or final audit reports.
- Comment 18** The Commission stated that it made progress payments to contractors after completing daily inspections and monitoring. It also stated that it received third-party inspections and reports. As cited in finding 2 of this audit report, the construction observation reports did not comply with HUD requirements as outlined in HUD Handbook 7460.8, REV-2, section 11.2, because there were no (1) descriptions of the work that was completed and reviewed and (2) indications of whether the work was determined to be acceptable.
- Comment 19** As cited in finding 2 of this audit report, the Commission did not issue payments to its contractor in accordance with the payment schedule of the contract as required by HUD Handbook 7460.8, REV-2, section 11.2(E)(5), and section I.C.2 of the notice of funding availability.
- Comment 20** The Commission stated that funds were only received after HUD reviewed the eloccs draw down's support documentation that was sent to HDU with each draw request. For clarification purposes "HDU" should read "HUD" for the United States Department of Housing and Urban Development.

- Comment 21** The Commission stated that it fully complied with the buy American Act for all the materials related to its Recovery Act-funded project. It further stated that attachment II, included with its written response, contained support for the electrical closet doors and hardware, electrical service panels, electrical conduits, and electrical transformers. However, the electrical doors and hardware were not part of the competitive grant contract and the support for the electrical service panels, electrical conduits, and electrical transformers did not indicate that these items were used for the Commission's Recovery Act-funded project. Further, the brochure provided by the Commission suggested that the Commission's contractor used Prolec GE transformers in the project; however, Prolec GE's Web site states that its manufacturing plant is located in Apodaca, Mexico. If these transformers were indeed used in the Commission's project, they may not have complied with the buy American requirements, and the \$175,450 spent on the transformers would be an ineligible expense.
- Comment 22** We disagree with the Commission's assertion that it complied with and ensured compliance with Section 3. As cited in finding 2 of this audit report, the Commission did not provide support that (1) it achieved the contracting numerical goal and (2) its contractor incorporated the Section 3 clause in all subcontracts. It also did not (1) submit the required forms to HUD and (2) ensure that the contractor's Section 3 narratives contained the information required by the Commission's Section 3 plan.
- Comment 23** As cited in finding 2 of this report, the Commission did not ensure that it complied with Davis-Bacon requirements because the payroll documentation did not contain the required information. Additionally, the Commission did not identify workers who were underpaid or require that wage restitution be provided. Further, the apprenticeship documents provided in attachment JJ of the appendix were for individuals who were not listed on the certified payroll reports and did not perform work relating to the competitive grant. The Commission provided payroll reports in attachment KK. However, only one of the four contractors identified on the payroll reports worked on activities allocable to the Recovery Act-funded competitive grant.
- Comment 24** We disagree with the Commission's assertion that it complied with the cost reasonableness requirements. As cited in finding 1 of this audit report, contrary to HUD's requirements, the independent cost estimate was completed after the contract was signed. Further, the Commission estimated the cost of the work to be between \$745,000 and \$785,000; however, it entered into a contract for more than \$1.1 million. The Commission did not (1) explain the difference in the contract file and (2) perform a cost analysis as required. The Commission also did not provide support to show that it evaluated the amount that was attributable to its contractor's fees and services and that the costs were necessary and reasonable.

## Appendix C

### FEDERAL AND THE COMMISSION'S REQUIREMENTS

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#### Finding 1

Section VI.B.2.b of the notice of funding availability, dated June 3, 2009, states that when a public housing agency needs to amend its annual or 5-year plan, according to HUD's regulations at 24 CFR 903.17, the public housing agency's board of directors or similar governing board must conduct a public hearing to discuss the 5-year action plan or annual plan and invite the public to comment on the plan. For all public housing agencies accepting these grant funds, the HUD Secretary is using the waiver authority in the Recovery Act to reduce the public notice period to 10 calendar days.

Section VI.B.2.c of the notice of funding availability, dated June 3, 2009, states that grantees must administer the grant in accordance with all requirements of the notice and all requirements applicable to public housing, including the U.S. Housing Act of 1937; the Recovery Act; HUD regulations; the annual contributions contract, including all amendments; and all other Federal statutory, executive order, and regulatory requirements as such requirements may be amended from time to time.

Section VI.B.3.n of the notice of funding availability, dated June 3, 2009, states that the commitments made for each grant application will be strictly monitored and enforced. A false statement in an application is grounds for denial or termination of an award and possible criminal, civil, or administrative sanctions. Capital Fund competitive grant funds not used in accordance with the notice will be recaptured or repaid with non-public-housing funding sources. Further, failure to comply with the performance measures indicated in the notice will subject the grant to sanctions, including recapture of grant funds proportional to the shortfall of the performance measure(s).

HUD regulations at 24 CFR 85.36(b)(9) state that grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

HUD regulations at 24 CFR 85.36(c) state that all procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of section 85.36.

HUD regulations at 24 CFR 85.36(d)(4) state that 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 circumstances applies. Cost analysis, such as verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.



HUD Regulations at 24 CFR 85.36(f)(1) state that grantees must make independent estimates before receiving bids or proposals.

HUD regulations 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 2210.18, paragraph 1-2(B), states that a 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. The grantee must request a complete cost breakdown and use these cost principles to establish a fair and reasonable price or established cost.

HUD Handbook 2210.18, Appendix 1, Federal Acquisition Regulation, Part 31.201-3(a), 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 a 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 should 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 should be upon the contractor to establish that such cost is reasonable.

HUD Handbook 2210.18, Appendix 1, Federal Acquisition Regulation, Part 31.201-4, 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. A cost is allocable to a Government contract if it (a) is incurred specifically for the contract; (b) benefits both the contract and other work and can be distributed to them in reasonable proportion to the benefits received; or (c) is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

HUD Handbook 2210.18, Appendix 1, Federal Acquisition Regulation, Part 31.201-2(a), states that the factors to be considered in determining whether a cost is allowable include the following: (1) reasonableness and (2) allocability.

HUD Handbook 7460.8, REV-2, section 8.5, states, "A. that procurement by noncompetitive proposals must be conducted only if a written justification is made as to the necessity of using this method ... The justification should include the following information: 1. Description of the requirement; 2. History of prior purchase and their nature (competitive vs. noncompetitive); 3. The specific exception in 24 Code of Federal Regulations 85.36 (d)(4)(i)(A) through (D) which applies; 4. Statement as to the unique circumstances that require award by noncompetitive proposals; 5. Description of the efforts made to find competitive sources, e.g., advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.; 6. Statement as to the efforts that will be taken in the future to promote competition for the requirement; and, 7. Signature of the contracting officer and any higher

approving official as required by the public housing agency's policy B. The contracting officer must include the written justification and approval in the contract file.”

HUD Handbook 7460.8, REV-2, paragraph 9.3(E), states that to ensure objective contractor performance and eliminate unfair competitive advantage, contractors funded to develop or draft specifications, requirements, statements of work, invitations for bid, or requests for proposals must be excluded from competing in the procurement. The only exception to this rule is if, before the solicitation, all respondents to solicitations are provided with materials and information made available to the contractor involved in matters pertinent to the solicitation.

HUD Handbook 7460.8, REV-2, paragraph 10.3(E), states that documentation is required to demonstrate price reasonableness whenever the price obtained varies significantly from the independent cost estimate, in which case the contracting officer should note or explain the reasons for the differences; that is, poor estimate, etc.

Office of Management and Budget Memorandum M-09-10 states that although the law calls on agencies to commence expenditures and activities as quickly as possible consistent with prudent management, this statement, by itself, does not constitute a sufficient justification to support award of a Federal contract on a noncompetitive basis. Agencies are expected to follow the same laws, principles, procedures, and practices in awarding noncompetitive contracts with Recovery Act funds as they do with other funds. Competition is the cornerstone of our acquisition system. The benefits of competition are well established. Competition saves money for the taxpayer, improves contractor performance, curbs fraud, and promotes accountability for results. To the maximum extent practicable, contracts using Recovery Act funds must be awarded as fixed-price contracts using competitive procedures.

Public and Indian Housing Notice 2009-12 states that if a solicitation of a proposal is from only one source or if the public housing agency finds that after the solicitation of a number of sources, that competition is inadequate, the public housing agency may award the contract noncompetitively when small purchase procedures, sealed bids, or competitive proposals are infeasible and one of the circumstances in 24 CFR 85.36(d)(4)(i) applies. Public housing agencies may use the noncompetitive proposals method but must do so on a contract-by-contract basis and in compliance with all 24 CFR Part 85 requirements, including the requirement for a cost analysis.

Public and Indian Housing Notice 2009-12 states that public housing agencies must use the funds on Capital Fund-eligible activities currently identified in either their annual statement (a component of the annual plan) or 5-year action plan.

Public and Indian Housing Notice 2009-25, section 8, states that for agencies which have already procured energy performance contractors, no additional procurement is required to enable the contractor to perform the work using Recovery Act capital funds for a scope of work integral to the energy performance contract, provided those energy improvement activities were in the original contract and provided that other funds were not previously obligated for that purpose and the procurement meets the Recovery Act procurement requirements.

Public and Indian Housing Notice 2009-25, section 8, states that in a situation in which a public housing agency has an approved energy performance contract but wishes to add an energy infrastructure improvement, the public housing agency must first determine, pursuant to 24 CFR 85.36(d)(4), whether a contract for the additional item is infeasible under small purchase procedures, sealed bids, or competitive proposals. Then, if infeasible under these competitive methods, the public housing agency must determine whether this additional item is available only from a single source or is there a public “exigency” or emergency for this work, which will not permit a delay resulting from competitive solicitation. These determinations must be recorded in the public housing agency’s procurement files.

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

The Commission’s procurement policy, dated May 19, 2006, states that each procurement based on noncompetitive proposals must be supported by a written justification for the selection of this method. The justification, to be included in the procurement file, should include the following information: “1. Description of the requirement; 2. History of prior purchases and their nature (competitive vs. noncompetitive); 3. The specific exception in HUD’s regulations at 24 Code of Federal Regulations 85.36(d)(4)(i)(A) through (D) which applies; 4. Statement as to the unique circumstances that require award by noncompetitive proposals; 5. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of written solicitation, etc.); 6. Statement as to efforts that will be taken in the future to promote competition for the requirement; 7. Signature by the contracting officer’s supervisor (or someone above the level of the contracting officer) and; 8. Price reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals should be determined by performing an analysis, as described in this policy.”

The Commission’s procurement policy, dated May 19, 2006, states that the Hamtramck Housing Commission must maintain records sufficient to detail the significant history of each procurement action. These records must include but should not necessarily be limited to the following: “A. Rationale for the method of procurement (if not self-evident); B. Rationale for the contract pricing arrangement (also If not self-evident); C. Reason for accepting or rejecting the bids or offers; D. Basis for the contract price (as prescribed in this handbook); E. A copy of the contract documents awarded or issued and signed by the Contracting Officer; F. Basis for Contract modifications; and G. Related contract administration actions.”

The Commission’s Recovery Act procurement policy amendment states that the Commission adopts the “Non-Competitive Proposal Rules, IF DETERMINED NECESSARY[sic],” and in accordance with HUD regulations at 24 CFR 85.36(d)(4)(i)(B) and discussed in chapter 8 of the Procurement Handbook.

## **Finding 2**

Title XV, section 1512(c), of the Recovery Act states that 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 Act 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 Act funds were expended or obligated, including an estimate of the number of jobs created and the number of jobs retained by the project or activity.

Section I.C.2. of the notice of funding availability, dated June 3, 2009, states that the public housing agency may requisition funds only when payment is due and after inspection and acceptance of the work.

Section V.A.4.c.2.d of the notice of funding availability, dated June 3, 2009, states that grant recipients must comply with Section 3 of the Housing and Urban Development Act of 1968 and its implementing HUD regulations at 24 CFR Part 135. Specifically, grantees are required to ensure, to the greatest extent feasible, that training, employment, and other economic opportunities will be directed to low- and very low-income persons and to business concerns that provide economic opportunities to low- and very low-income persons in that area in which the project is located.

Section VI.B.3.a.7 of the notice of funding availability, dated June 3, 2009, states that public housing agencies must follow buy American requirements of Section 1605 of the Recovery Act and use only iron, steel, and manufactured goods produced in the United States in their projects.

Section VI.B.3.j of the notice of funding availability, dated June 3, 2009, states that Federal labor standards are applicable to Capital Fund competitive grants. These labor standards involve the payment of not less than prevailing wage rates and may include overtime requirements and record-keeping and reporting requirements. Davis-Bacon wage requirements apply to the activities funded with Capital Fund competitive grant funds.

Section V.A.4.c.2.b of the notice of funding availability, dated June 3, 2009, states that to comply with category 4, option 2, rating factor 2, strategy for energy-efficient communities, a public housing agency is required to document savings in energy and water consumption. The savings will be verified through the comparison of an established baseline developed upon an independent energy audit and a postretrofit energy audit.

HUD regulations at 24 CFR 85.36(b)(2) state that grantees and subgrantees must maintain a contract administration system, which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

HUD regulations at 24 CFR 135.30(c) state that each recipient and contractor and subcontractor 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 3 percent of the total dollar amount of all other Section 3-covered contracts.

HUD regulations at 24 CFR 135.30(d)(2) state that 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.

HUD regulations at 24 CFR 135.32 state that each recipient has the responsibility to comply with Section 3 in its own operations and ensure compliance in the operations of its contractors and subcontractors.

HUD regulations at 24 CFR 135.38(b) state that all Section 3-covered contracts must include the Section 3 clause.

HUD regulations at 24 CFR 135.90 state that each recipient that 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.

HUD regulations at 24 CFR 905.505(4) state that all public housing rental projects must show evidence satisfactory to HUD of an effective declaration of trust being recorded in first position, meeting the requirements of paragraph (c) of this section and covering the term of the financing.

HUD regulations at 24 CFR 905.505(3)(c)(2) state that any public housing or portion of public housing that is modernized using amounts under this part (including proceeds from financing authorized under this part) must be maintained and operated during the 20-year period that begins on the latest date on which the modernization is completed, except as otherwise provided in the U.S. Housing Act of 1937.

Labor standards regulations at 29 CFR 5.5(a)(3)(i) state that payrolls and basic records relating to them must be maintained by the contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records should contain the name, address, and Social Security number of each such worker and his or her correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Labor standards regulations at 29 CFR 5.5(a)(3)(i) state that 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 the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

Section 8 of the Commission's annual contributions contract with HUD states that promptly upon the acquisition of the site of any project, the Commission should execute and deliver an instrument confirming and further evidencing, among other things, the covenant of the Commission not to convey or encumber the project except as expressly authorized in the annual

contributions contract. Such instrument and all amendments should be duly recorded or filed for record when necessary to give the public notice of their contents and protect the rights and interests of HUD and any bondholders. The Commission must furnish HUD with appropriate evidence of such recording or filing. From time to time, as additional real property is acquired by the Commission in connection with projects, the Commission must promptly amend such instrument to incorporate all such real property and should record the instrument as amended.

HUD Handbook 7460.8, REV- 2, paragraph 10.9(E), states that the public housing agency is responsible for the administration and enforcement of labor standards requirements 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, section 11.2, states that all progress inspections should be documented using an appropriate public housing agency inspection report form. The inspection report should include a description of the work completed and a determination as to whether the work is acceptable.

HUD Handbook 7460.8, REV-2, section 11.2(E)(5), states that the public housing agency is responsible for making progress payments to the contractor based on the public housing agency-approved schedule of amounts for contract payments.

Public and Indian Housing Notice 2009-31 defines a manufactured good as a good brought to the construction site for incorporation into the building or work that has been processed into a specific form and shape or combined with the other raw material to create a material that has different properties than the properties of the individual raw materials.

Office of Management and Budget Memorandum M-10-08, part 2, section 5.2, number 10, states that recipients should be prepared to justify their [jobs created or retained] estimates.

Office of Management and Budget Memorandum M-10-08, part 2, section 5.3, states that the [jobs created or retained] 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.