



U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
OFFICE OF INSPECTOR GENERAL

August 25, 2015

MEMORANDUM NO:
2015-AT-0801

Memorandum

TO: Renee Ryles, Director of Office of Field Management, Office of the Deputy Assistant Secretary for Operations, DOF

//signed//

FROM: Nikita N. Irons, Regional Inspector General for Audit, 4AGA

SUBJECT: HUD's Approval of the City of High Point's Use of a 15 Percent Margin for Procurement Bids

INTRODUCTION

We reviewed the U.S. Department of Housing and Urban Development's (HUD) Greensboro, NC, Office of Community Planning and Development's approval of the City of High Point's use of a 15 percent cost estimate margin. The review was performed based on indicators identified in an audit of the City's lead-based paint hazard control grant. The Office of Healthy Homes and Lead Hazard Control requested that we conduct a review of the City's 2008 and 2011 lead-based paint hazard control grants after its May 2013 review of the City's 2008 and 2011 grants. We found that the City used a 15 percent cost estimate margin to exclude bidders outside the margin from the selection process. The objective of this review was to determine whether HUD knowingly allowed the City to use the 15 percent margin.

This memorandum contains one recommendation for corrective action. 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 this review.

METHODOLOGY AND SCOPE

To accomplish our objective, we

- Reviewed applicable criteria, including 24 CFR (Code of Federal Regulations) 85.36, Federal procurement regulations, and North Carolina General Statute, NC GS 143, Article 8, Public Contracts;
- Interviewed HUD officials and City personnel;
- Reviewed the City's procurement records; and
- Reviewed 14 lead-based paint hazard control project files for compliance with procurement and eligibility requirements.

We performed our evaluation of this issue during the High Point audit, which covered the period September 2014 through March 2015, at the City's office in High Point, NC; HUD's Greensboro, NC, Office of Community Planning and Development; and our Greensboro and Atlanta regional offices. Our review generally covered the period December 1, 2008, through August 31, 2014. This was a limited scope review, and we did not review HUD's internal and information systems controls and procedures. Therefore, the review was not performed in accordance with generally accepted government auditing standards. To meet our objective, it was not necessary to fully comply with the standards, nor did our approach negatively affect our review results.

The Office of Field Management did not provide us formal comments.

BACKGROUND

The City's Lead-Based Paint Hazard Control Grant

The City's Community Development and Housing Department administers the Lead Safe High Point program. The program is federally funded by HUD. The purpose of the program is to identify and control lead-based paint hazards in eligible privately owned rental or owner-occupied housing. HUD awarded the City lead-based paint hazard control grants of \$5.5 million for grant years 2008 and 2011. As of March 17, 2015, the City had used its entire 2008 grant of more than \$2.9 million and more than \$755,000 of its more than \$2.4 million 2011 grant. Our audit found that the City did not select the lowest bidder for 5 of the 14 project bids, representing \$824,734 (91 percent) of the \$902,997 spent for contracts.

The HUD Office of Healthy Homes and Lead Hazard Control is responsible for overseeing lead-based paint hazard control grants. The field office for the HUD Greensboro, NC, Office of Community Planning and Development is responsible for overseeing community planning and development grants. It has provided the City guidance and technical support for all of its community planning and development grants since 1975.

2013 HUD Monitoring Review

The HUD Office of Healthy Homes and Lead Hazard Control conducted a review of the City in May 2013 and found that the City did not consistently follow procurement policy and regulations¹ as required by 24 CFR 85.36. The Office of Healthy Homes and Lead Hazard Control recommended that the City provide documentation showing that it followed required procurement procedures for all projects. Based on the review, the Office of Healthy Homes and Lead Hazard Control had placed the City on a zero threshold for approval of projects under the 2011 grant but had not reviewed later spending for eligibility.

RESULTS OF REVIEW

The Director of Community Planning and Development, Greensboro, NC, approved the City to use a 15 percent margin to disallow offers outside the margin. The City would determine the cost estimate amount and then determine the 15 percent margin above and below this amount. It would open the bids after it determined the range. For any bids outside the 15 percent range, the City would consider the contractor to be nonresponsive. This practice is a clear violation of 24 CFR 85.36(d)(2)(ii).² HUD's Director of Community Planning and Development stated that the 15 percent margin was common practice in the State of North Carolina; therefore, he did not take issue³ with the City's using the 15 percent margin.

The Director stated that he reviewed how the grantees handled procurements in North Carolina and researched the North Carolina Housing Finance Agency's⁴ procurement policy. He determined that the North Carolina Housing Finance Agency allowed its subgrantees to use a 15 percent margin above and below cost estimates. The North Carolina Housing Finance Agency had allowed this practice as a part of its model procurement policies, and since it was in the model policy, the Director believed it was acceptable. Therefore, he allowed the City to use the 15 percent margin but could not recall when he approved it to do so.

The State of North Carolina does not have a law in place to support the use of the 15 percent margin. We spoke with the State of North Carolina purchasing officer, and she stated that she was not aware of this common practice and that the North Carolina General Statute, NC GS 143, Article 8, Public Contracts, is the State regulation that the City should follow. The statute states that the contract must be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. Since HUD allowed the City to use the 15 percent margin, other grantees in North Carolina may also have been using improper procurement techniques and not using the lowest bidders.

¹ The review stated that the City used a 15 percent cost estimate margin.

² Regulations at 24 CFR 85.36(d)(2)(ii) state that the lowest bidder must be selected for sealed bids.

³ In follow-up interviews, neither the City nor HUD could say whether the City requested the use because of the time that had elapsed, but both stated that it was a common practice.

⁴ The North Carolina Housing Finance Agency is an organization that receives community planning and development funding in North Carolina. It is a self-supporting public agency that provides financing through the sale of tax-exempt bonds and management of Federal tax credit programs, the Federal HOME Investment Partnerships Program, the State Housing Trust Fund, and other programs.

Conclusion

HUD's Greensboro, NC, Office of Community Planning and Development allowed the City to use the 15 percent cost estimate margin, although it violated 24 CFR 85.36. This practice allowed the City to misspend \$824,734 of \$902,997 (91 percent) for inadequate contracts for 5 of the 14 (35.7 percent) projects for which the City did not select the lowest bidder for its lead-based paint hazard control grants.

RECOMMENDATION

We recommend that the Director of the Office of Field Management, Office of the Deputy Assistant Secretary for Operations, require the Director of the Greensboro, NC, Office of Community Planning and Development to

- 1A. Issue a notice to inform all North Carolina grantees that they must use the lowest bidder in a sealed bid process unless they are able to provide sufficient support in compliance with 24 CFR 85.36 to remove the bidder from the procurement process.