



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

June 11, 2015

MEMORANDUM NO:
2015-FW-1806

Memorandum

TO: Joseph Uviedo
Acting Director, San Antonio Office of Public Housing, 6JPH

Craig T. Clemmensen
Director, Departmental Enforcement Center, CACB

//signed//

FROM: Gerald Kirkland
Regional Inspector General for Audit, 6AGA

SUBJECT: The Housing Authority of Bexar County, TX, Did Not Operate Its HUD Public Housing Programs in Accordance With Regulations and Other Requirements

INTRODUCTION

Because of an anonymous complaint, we reviewed the Housing Authority of Bexar County, TX. The complaint included allegations of improper procurement, improper use of Authority funds, misuse of the Authority's credit card, and violations of Housing Choice Voucher regulations. Our objective was to determine whether the Authority operated its public housing and Housing Choice Voucher programs in accordance with the U.S. Department of Housing and Urban Development's (HUD) requirements. More specifically, we wanted to determine whether the complainant had valid allegations regarding procurement, expenditures, and the misuse of HUD program funds.

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

METHODOLOGY AND SCOPE

We conducted the review at the Authority's administrative offices in San Antonio, TX, and our offices in San Antonio and Fort Worth, TX, from September 2014 through April 2015. We did

not review allegations in the complaint that did not concern HUD funding. Due to the size of the complaint, we limited our testing to high-risk HUD-funded areas. The scope of the review generally covered a review of contracts obligating HUD funds; financial operations, including cost allocations and credit card use; and aspects of the Housing Choice Voucher program identified in the complaint for the period July 1, 2012, through June 30, 2014. We expanded the scope as necessary to meet the review objectives.

To accomplish our objective, we reviewed

- Relevant laws, regulations, contracts, and other HUD guidance.
- The Authority’s relevant policies, procedures, and board meeting minutes.
- Electronic general ledgers and check registers for the review period. We determined that the electronic financial data were sufficiently reliable since payments to vendors matched check stubs and supporting documentation reviewed.
- Contracts paid with HUD funds and named in the complaint.
- Payroll allocations.
- Public housing program tenant files for tenants named in the complaint.
- Housing Choice Voucher program tenant files for tenants named in the complaint.
- HUD’s Portfolio and Risk Management Tool and Line of Credit Control System data. We did not assess the reliability of the HUD data and used it only for informational purposes.
- Audited financial statements for fiscal years 2012 through 2013.
- The Authority’s bank statements for the review period.
- Credit card statements, payments, and supporting documentation throughout the review period. We used the Authority’s check registers to identify payments made on various credit cards during the review period. Due to the small number of transactions and the limited nature of the review, we selected representative nonstatistical samples of transactions for review as shown in table 1. We selected transactions from the beginning, middle, and end of the review period. We did not project the results of our samples.

Table 1: Credit card sampling information

Credit card	Total payment transactions (universe)	Payment transactions reviewed (sample)
General bank account	36	25
Wholesaler account	12	10
Fuel account #1	11	3
Fuel account #2	19	3
Hardware business account	19	12
Hardware account #1	1	1
Maintenance supply account	8	4
Hardware account #2	7	5

We also interviewed HUD’s staff, the Authority’s staff, the Authority’s independent contractors, and the board chairman.

BACKGROUND

The Commissioner’s Court of Bexar County established the Housing Authority of Bexar County on September 3, 1975, according to State law. A five-member board of commissioners, appointed by the Commissioner’s Court, governs the Authority. The board of commissioners selects the executive director, who is entrusted with the care and custody of all funds of the Authority. The executive director is responsible for the general supervision of the business and affairs of the Authority, and the management of the Authority’s housing projects.

The Authority managed public housing program units, housing choice vouchers, and non-Federal program units during the review period as shown in table 2. Table 3 contains the funding HUD authorized the Authority to receive in fiscal years 2013 and 2014.

Table 2: Project or program units overseen by the Authority

Project name or program description	Funding entity	Number of units
Housing Choice Voucher	HUD	1,911
Public housing	HUD	30
Bear Management Development Corporation	Non-Federal	656
Bear Springs	Non-Federal	204
Colonia Remigio Valdez	Non-Federal	75
Total		2,876

Table 3: HUD funding for fiscal years 2013-2014

Program	2013	2014	Total
Housing Choice Voucher program	\$10,093,212	\$9,441,383	\$19,534,595
Low-rent operating subsidy	42,783	49,054	91,837
Public Housing Capital Fund program	6,819	42,456	49,275
Total	\$10,142,814	\$9,532,893	\$19,675,707

The Authority’s 2013 independent public accountant’s financial statement audit contained a finding regarding the use of Housing Choice Voucher program housing assistance payment funds for administrative operations. In addition, as a follow-up to a finding in the 2012 financial statement audit, the 2013 audit report noted that the Authority had not maintained written documentation to support the allocation of its “consultants” costs.

RESULTS OF REVIEW

The complainant had some valid allegations concerning housing assistance payments, utility reimbursement payments, and misuse of Authority credit cards. Our testing identified additional issues with the Authority’s operation of its HUD-funded programs. Specifically, the Authority (1) could not support its allocation of employee and contractor salaries, (2) improperly purchased goods and services, (3) mismanaged its independent contractors, and (4) inconsistently allocated other costs. These conditions occurred because Authority management (1) disregarded directions from HUD, (2) relied on its contracted attorneys, (3) did not appoint a procurement officer to oversee procurement activities, (4) did not establish a written cost allocation method,

and (5) failed to exercise proper oversight. As a result, the Authority incurred \$583,756 in questioned costs and created a tax liability for Federal and State employer-related taxes.

We recommend that the Director of HUD's San Antonio Office of Public Housing require the Authority to (1) support or repay \$583,756 in questioned costs; (2) update and implement compliant policies, procedures, and controls; (3) take action concerning its contracts with its independent contractors; and (4) determine and pay any tax liabilities owed. We further recommend that the Director require training for the board, request that the county commissioners evaluate the board's capabilities, and take appropriate action as necessary. In addition, we recommend that the Director of the Departmental Enforcement Center impose appropriate administrative sanctions.

The Authority Could Not Support Its Allocation of Employee and Contractor Salaries

In violation of Federal cost principles¹ and directions from HUD, the Authority did not require its employees and independent contractors working on multiple programs to keep timesheets to support salary allocations to its Federal and non-Federal programs. Further, the Authority did not properly allocate its employee benefits. For example, it allocated all benefits for seven employees who worked on multiple programs solely to its Housing Choice Voucher program. The improper cost allocations occurred because the Authority lacked timesheets for employees working on more than one program and management disregarded the Office of Public Housing's August 20, 2013 directions to maintain timesheets. Instead, the executive director said that keeping timesheets was too time consuming. The Authority did not properly allocate its employee benefits because the independent auditors told it that the cost was immaterial.

As a result, the Authority could not support payroll expenditures from HUD program accounts totaling \$372,832 for salaries and benefits paid for individuals working on two or more programs.² Further, HUD has no assurance that Authority management will take proper corrective action to follow the requirements. HUD should require the Authority to (1) implement previously approved timekeeping measures for all employees working on two or more programs and (2) support payroll and contractor costs from HUD programs totaling \$372,832, or reimburse the funds from non-Federal funds. In addition, since Authority management disregarded HUD's directions concerning this issue, HUD should consider other administrative actions or sanctions.

The Authority Improperly Purchased Goods and Services

Generally, the complainant's procurement allegations lacked merit. However our testing showed that the Authority's staff did not properly procure goods and services. Specifically, the Authority did not provide full and open competition when it entered into contracts with independent contractors and when it renewed its legal and auditing contracts. Additionally, it did not maintain required documentation to show that it competitively procured the following items at the best price: appliances, an air conditioning contract, a roofing contract, and cleaning services. The improper purchases occurred because the executive director and board did not properly oversee procurement activities. Further, the executive director did not appoint a procurement officer to oversee procurement activities. As a result, the Authority incurred

¹ 2 CFR (Code of Federal Regulations) Part 225, appendix B, (8)(h)(4) through (8)(h)(5). See appendix C.

² Housing Choice Voucher program funds totaled \$321,684, and public housing program funds totaled \$51,148.

\$123,791 in unsupported Housing Choice Voucher program expenditures and \$71,289 in unsupported public housing program expenditures.

The Authority Improperly Obtained the Services of Two Independent Contractors

Contrary to its procurement policy which required advertising and competition,³ the Authority arbitrarily entered into contracts with two individuals, one of whom was its executive director, for services costing at least \$210,000 per year,⁴ or \$420,000 for the review period. The Authority did not use a competitive process before contracting with either individual.⁵ The Authority did not follow procurement requirements for these contracts because its board believed they were continuing the employment of both individuals as staff members. However, in 2012, the Authority entered into new contracts with both individuals to serve in new positions.⁶ As a result, it could not support the \$140,775 in Housing Choice Voucher program funds it used to pay for the two contracts during the review period as shown in table 4.

Table 4: Amounts paid to contractors from July 1, 2012, through June 30, 2014

Independent contractor position	Contract amount	Housing choice voucher amount	Non-HUD amount
Executive director	\$300,000	\$116,625	\$183,375
Board consultant	120,000	24,150	95,850
Total	\$420,000	\$140,775	\$279,225

The Authority Improperly Renewed Its Legal and Auditing Contracts

The Authority automatically renewed its contracts with its legal and audit firms without performing any procurement activities, which violated HUD’s guidelines and requirements regarding full and open competition.⁷ Contracts should not exceed a period of 5 years, including options for renewal or extension. The Authority had retained the same legal firm since 2002 and the same audit firm since 2011, even though its audit firm’s engagement letter did not contain a renewal option. Further, it could not produce any procurement documents for the review period. The Authority entered into these contract renewals because the board relied on the executive director and contracted attorney’s statements that the contracts were reasonable. As a result, the Authority incurred \$122,032 in unsupported expenses to its Housing Choice Voucher program and \$51,942 in unsupported expenses to its public housing program as shown in table 5.

³ The Authority’s procurement policy, “Introduction” section, “Open Market Procurement” section, and “Authorization and Administration” section, paragraph 1.d. See appendix C.

⁴ The executive director’s contract salary was \$150,000 per year plus bonuses, and the board consultant’s contract salary was \$60,000 per year plus bonuses.

⁵ Both contracts identified the contract relationships as principal-independent contractor.

⁶ The Authority originally hired individual 1 as chief operating officer and made him the executive director in the 2012 contract. The Authority originally hired individual 2 as the executive director and made him the board consultant in the 2012 contract.

⁷ HUD Handbook 7460.8, paragraph 10.8.C.2, and 24 CFR 85.36(c). See appendix C.

Table 5: Questioned contract costs by contract type and HUD program

Contract type	Unsupported amount by program		Total
	Housing Choice Voucher program	Public housing program	
Legal	\$ 72,122	\$35,410	\$107,532
Auditing	49,910	16,532	66,442
Total	\$122,032	\$51,942	\$173,974

The Authority Improperly Purchased Appliances for Its Public Housing Program Units

The Authority could not provide documentation to show that it obtained three quotes as required⁸ for several appliances purchased for its public housing program units. It claimed that it did not obtain three quotes because it used the General Services Administration’s (GSA) Multiple Award Schedule contract to purchase the appliances. However, its invoices did not identify the GSA contract number and did not reflect the GSA discount. Further, the Authority did not issue a purchase order on all appliances as required by its policy.⁹ The improper appliance purchases occurred due to a lack of management oversight, and its procurement policy did not address the use of GSA contracts. As a result, the Authority incurred \$11,572 in unsupported expenses to its public housing program.

The Authority Lacked Quotes for Some Small Purchases

Contrary to its procurement policy,¹⁰ the Authority could not provide evidence that it obtained three quotes when it purchased an additional refrigerator for its break room, cleaning services for its main office, an air conditioning contract for its public housing program units, and one roofing contract for a public housing program unit. These improper purchases occurred because the executive director did not appoint a procurement officer and different employees procured each contract. As a result, the Authority could not show that it obtained the items at the best price and incurred \$1,759 in unsupported expenses to its Housing Choice Voucher program and \$7,775 in unsupported expenses to its public housing program as shown in table 6.

Table 6: Questioned small purchase amounts by HUD program

Small purchase item	Unsupported amount by program		Total
	Housing Choice Voucher program	Public housing program	
Air conditioning contract		\$2,300	\$2,300
Refrigerator	\$1,259		1,259
Roofing contract		5,475	5,475
Cleaning contract	500		500
Total	\$1,759	\$7,775	\$9,534

HUD should require the Authority to (1) support or repay the various improper purchases totaling \$123,791 paid with Housing Choice Voucher program funds and \$71,289 paid with

⁸ See appendix C.

⁹ The Authority’s procurement policy, “Miscellaneous” section. See appendix C.

¹⁰ See footnote 8.

public housing program funds, (2) evaluate its contracts to ensure that they comply with Federal requirements, and (3) update its procurement policy.

The Authority Mismanaged Its Independent Contractors

The Authority improperly treated its independent contractors as employees and entered into contradictory contracts. Additionally, it paid costs prohibited by the contracts' provisions. The Authority entered into these contracts because it relied on its contracted attorneys' advice and believed that the individuals were a "good value" and necessary to manage the Authority's programs and operations. As a result, it created a tax liability for Federal and State employer-related taxes. Further, it could not show that it received the full services for which it paid. Finally, it paid costs that it should not have paid.¹¹

The Authority Largely Treated Its Independent Contractors as Employees

The Authority entered into contracts with the executive director and board consultant but mainly treated them as employees. Its contracts identified the relationships as principal-independent contractor. During the review period, the Authority did not withhold any employment taxes or take any deductions from the contractors' checks and issued them Internal Revenue Service (IRS) Forms 1099 for Miscellaneous Income at the end of each year reviewed. However, the Authority provided amenities typically provided only to employees. Specifically, it provided office space, furniture, computers, an executive assistant, an office phone, and an Authority credit card. Additionally, it paid costs normally associated with employees.

In addition, the executive director's position was more than likely an employee position because it met the IRS common law rules¹² used to identify an employee. For example, the Authority paid employee benefits for the executive director. His position description identified him as the secretary to the Authority with complete responsibility for its management, and his contract required him to perform all duties and obligations as assigned by the board. His responsibilities included interpreting and implementing all Authority policies, and planning, organizing, and controlling all facets of operations. The executive director's business card did not identify him as an independent contractor; instead, it indicated that he was a representative of the Authority.

Further, the executive director provided conflicting statements and information on his employment status. For example, he identified himself as a "staff member" rather than an independent contractor. When asked why the Authority did not have documents concerning the procurement of his contract, he referenced U.S. Department of Labor rules concerning State and local government record-keeping requirements for personnel and employees.

The Authority's Contracts Included Contradictory Provisions

The Authority's contracts included contradictory provisions, apparently designed to allow the individuals to earn both a salary at the Authority and perform outside consulting work at other public housing agencies. Texas law prohibits an employee from being employed by or otherwise contracted to provide services to another authority unless the first authority gives its written

¹¹ We questioned the total amount of contractor salary costs in the salary and contractor cost allocation section of this memorandum.

¹² See appendix C.

consent.¹³ For example, the executive director's contract paid him a "salary" of \$12,500 per month. His contract required him to "...devote one-hundred percent (100%) of his time, skill, labor, and attention to his duties as HABC [Housing Authority of Bexar County] Executive Director during his employment with HABC." Yet, the contract also allowed him to "...with advance approval of the Board, undertake consulting work, speaking engagements, writing, lecturing, or other outside professional duties and obligations." The consultant's contract paid him a salary of \$5,000 per month, even though his contract required him only to serve as a consultant to the board on "...local, state, and federal matters as, from time to time, requested by the Board of Commissioners."

Both individuals worked at Pearsall Housing Authority under a February 2014 contract with the executive director and his business entity. This contract appointed the executive director as Pearsall's interim executive director for a salary of \$7,000 per month. The executive director and his firm agreed to "...devote his best efforts, time, skill, labor, and attention to his duties as PHA [Pearsall Housing Authority] Interim Executive Director during his employment."

The Board Did Not Provide Assigned Tasks as Required by the Contracts

Both contracts required the individuals to perform all tasks assigned by the board of commissioners. However, both individuals stated that the board did not provide them assigned tasks. Further, they had no records or invoices to show how much time or for which Authority program they worked.

The Authority Paid Ineligible Contract Costs

The Authority paid costs that it was not obligated to pay according to its contracts' payment restriction provisions. Specifically, both contracts stated that the Authority would not provide compensation or employment benefits of any type or character other than the agreed-upon salaries and specific bonuses for real estate acquisitions. However, it paid life insurance and workmen's compensation expenses on behalf of the executive director.

The Authority entered into these contracts because it relied on its contracted attorneys' advice and believed that the individuals were a "good value" and necessary to manage the Authority's programs and operations. The board admitted that it did not read the contracts before approving them. It entered into these contracts even though these individuals maintained other business ventures and contractual commitments. The board appeared to have been unaware of the individuals' contract with Pearsall Housing Authority and could not provide its written approval of the outside contract. The executive director stated that he had discussed the Pearsall contract with the board in a closed executive session. Yet the board minutes did not show formal board approval of the outside contract. In addition, the board appeared to have been unaware of the payment of additional compensation and benefits. Further, the Authority had no records or invoices to show how much time these individuals spent working on the Authority's operations.

Because it treated its independent contractors as employees, the Authority created a tax liability for Federal and State employer-related taxes. Since its contractors also worked at another public housing agency, it also could not show that it received the full services for which it paid. In addition, it paid costs that it should not have paid.

¹³ Texas Housing Authorities Law 392.043(c). See appendix C.

HUD's Office of Public Housing should require the Authority to (1) review its contracts with the contractors and their outside employment and take necessary action to either properly treat them as contractors or reclassify them as employees and (2) determine the amount of Federal and State taxes it owes and pay those tax liabilities. Further, HUD should require the board to attend training regarding its roles and responsibilities as a board of commissioners. In addition, HUD should request that the county commissioners evaluate whether the board is capable of providing proper oversight of Authority operations to ensure compliance with HUD requirements and take appropriate action as necessary.

The Authority Inconsistently Allocated Other Costs

The Authority inconsistently allocated the costs of other goods and services among its various programs, which violated Federal cost principles.¹⁴ Specifically, it did not (1) consistently allocate materials and supplies purchased for the main office across all programs in accordance with the benefits received or (2) allocate fuel charges in accordance with program use. These conditions occurred because Authority management did not establish a written cost allocation method as required.¹⁵ As a result, HUD programs paid an inequitable share of costs, and we estimated that the Authority used \$10,624¹⁶ in HUD program funds for costs that it should have allocated to its other programs.

The Authority Did Not Consistently Allocate Main Office Materials and Supplies

Contrary to Federal cost principles,¹⁷ the Authority did not consistently allocate the cost of materials and supplies purchased for its main office. The Authority purchased a refrigerator for the break room and cleaning services for common areas. It charged the entire cost to the Housing Choice Voucher program, even though all staff in the main office used the common areas and refrigerator. The Authority also purchased furniture for the executive director's office and its accounting staff. It allocated the chairs in the executive director's office among three programs and the desk and other furniture among five programs. It allocated the accounting staff's furniture entirely to the Housing Choice Voucher program. In addition, the Authority used its credit cards to purchase food and general office supplies for the main office staff, but it allocated the entire cost to the Housing Choice Voucher program.

The Authority Did Not Properly Allocate Fuel Charges

The Authority improperly allocated fuel charges for its maintenance and inspection staff in violation of Federal cost principles.¹⁸ For example, it allocated all fuel charges on a fuel credit card to its Housing Choice Voucher program, but it authorized inspection and site visit staff working for three different Authority programs to use the card. Additionally, the Authority allocated 75 percent of fuel costs incurred by its maintenance staff to its public housing program when the staff performed work for three different programs.

¹⁴ 2 CFR Part 225, appendix A, paragraph C.3. See appendix C.

¹⁵ See footnote 14.

¹⁶ Appendix D contains a comparison of the Authority's actual cost allocation and our allocation method, which is based on the relative number of employees in the main office assigned to each program.

¹⁷ See footnote 14.

¹⁸ *ibid.*

These conditions occurred because Authority management did not develop and implement a written cost allocation method. As a result, HUD programs paid an inequitable share of costs, and we estimated that the Authority used \$10,624¹⁹ in HUD program funds for costs that it should have allocated to its other programs. HUD should require the Authority to (1) support the \$10,624 in excessive expenses charged to its HUD-funded programs or reimburse the applicable HUD-funded programs and (2) develop and implement a cost allocation method that reflects a more equitable distribution of costs based on the benefits received.

The Authority Improperly Paid for Personal and Other Unsupported Expenses

The complainant's general allegation was valid. In violation of the Authority's annual contributions contract, its credit card policy,²⁰ and its executed contracts,²¹ the executive director and board consultant used the Authority's general bank credit card for personal expenses, such as local meals and fuel, without board approval. In addition, the Authority could not support other meals and grocery store purchases as it lacked receipts, the HUD purpose of the expenses, and the attendees at the meetings or meals. Our testing of 25 of 36 payments to its general bank credit card company showed that the Authority allocated these expenses to the Housing Choice Voucher program. The improper charges occurred because the board failed to properly oversee the executive director's and board consultant's use of the cards. Instead, the board relied on the executive director to ensure that the Authority's operations met requirements. As a result, the Authority improperly used Housing Choice Voucher program funds to pay personal and other expenses incurred by the executive director and board consultant totaling at least \$831. Further, it could not support additional charges totaling \$2,197. HUD should require the Authority to (1) repay the Housing Choice Voucher program \$831 for the ineligible personal expenses and support or repay the additional \$2,197 in unsupported expenses, (2) review all general bank credit card charges during the review period and repay the applicable HUD program for any additional ineligible charges, and (3) adopt a policy to ensure that its credit card charges receive appropriate review.

The Authority Did Not Properly Pay Utility Reimbursements to a Few Public Housing Program Tenants

Contrary to Federal requirements,²² the Authority did not make utility reimbursement payments for five of eight public housing program tenants identified by the complainant. However, we could not confirm the complainant's allegation that the executive director intentionally withheld the payments. The payment error occurred because the Authority's accounting software did not trigger utility reimbursement payments for public housing program tenants as it did for Housing Choice Voucher program tenants. Further, Authority management and accounting staff were unaware of the requirement to make utility reimbursement payments to public housing program tenants. As a result, the Authority owed at least five tenants a total of \$2,557. HUD should require the Authority to (1) reimburse the five tenants; (2) review all of its occupied public housing program units occupied during the past 2 years and repay any tenant owed a utility

¹⁹ We did not question the allocated costs of the refrigerator and cleaning services as we questioned those amounts in the improperly purchased goods and services section.

²⁰ The Authority's consolidated annual contributions contract, section 11.a, and its Accounting Policies and Procedures Manual, section 4. See appendix C.

²¹ The executive director's and board consultant's contract prohibited compensation outside the salaries stipulated and bonuses for specific work performed.

²² 24 CFR 5.632(b). See appendix C.

reimbursement payment(s); and (3) update its policies, procedures, or systems as needed to ensure that it makes appropriate utility reimbursement payments to entitled public housing tenants.

The Authority Made Ineligible Housing Assistance Payments for One Abated Unit

The complainant's allegation was valid. In violation of Federal requirements,²³ the Authority made ineligible housing assistance payments for 4 months for a Housing Choice Voucher program unit in abatement due to housing quality standards violations. The Authority failed the unit when it inspected it in October 2013, November 2013, and March 2014 for both tenant- and owner-caused violations. The Authority stopped payments as required. However, an Authority employee overrode requirements and backdated inspection data based on statements made by the executive director to correct the deficiencies. The data entry triggered an improper retroactive payment in March 2014. HUD's Public and Indian Housing Information Center system showed that the unit passed inspection on November 23, 2013, but the inspection report showed that the Authority did not pass the unit until April 17, 2014. As a result, the Authority made improper assistance payments totaling \$2,192 for a unit in abatement. HUD should require the Authority to reimburse its Housing Choice Voucher program fund \$2,192 from non-Federal funds for the ineligible housing assistance payments.

CONCLUSION

The Authority did not operate its HUD programs in accordance with regulations and other requirements. These conditions occurred because Authority management failed to exercise proper oversight. As a result, the Authority incurred \$583,756 in questioned costs and created a tax liability for Federal and State employer-related taxes.

RECOMMENDATIONS

We recommend that the Director of the San Antonio Office of Public Housing require

- 1A. The Authority to implement previously approved timekeeping measures for all employees and contractors working on two or more programs.
- 1B. The Authority to support payroll costs totaling \$372,832 or repay its Housing Choice Voucher program fund \$321,684 and public housing program fund \$51,148 from non-Federal funds.
- 1C. The Authority to support purchases totaling \$195,080 or repay its Housing Choice Voucher program fund \$123,791 and public housing program fund \$71,289 from non-Federal funds.
- 1D. The Authority to evaluate its contracts to ensure that they comply with Federal requirements.
- 1E. The Authority to update its procurement policy, including developing new policy as appropriate, to ensure that all procurement transactions comply with Federal requirements.

²³ 24 CFR 982.404(a)(3). See appendix C.

- 1F. The Authority to determine the amount of Federal and State taxes it owes for payments made to its contractors and pay those tax liabilities.
- 1G. The Authority to review its contracts with the contractors and their outside employment and take necessary action to either properly treat them as contractors or reclassify them as employees.
- 1H. The board to attend training regarding its roles and responsibilities.
- 1I. The Authority to support the \$10,624 in excessive expenses charged to its HUD-funded programs or repay the applicable HUD-funded programs from non-Federal funds.
- 1J. The Authority to develop and implement a cost allocation method that reflects a more equitable distribution of costs based on the benefits received.
- 1K. The Authority to repay its Housing Choice Voucher program fund \$831 from non-Federal funds for the ineligible personal charges to the Authority's credit card.
- 1L. The Authority to support or repay its Housing Choice Voucher program fund \$2,197 from non-Federal funds for other unsupported amounts charged to the Authority's credit card.
- 1M. The Authority to review all credit card charges during the review period and repay the applicable HUD program from non-Federal funds for any additional ineligible charges.
- 1N. The Authority to adopt a policy to ensure that its credit card charges receive appropriate review.
- 1O. The Authority to repay the five public housing program tenants a total of \$2,557 for unpaid utility reimbursement payments, thereby putting the funds to better use.
- 1P. The Authority to review all of its public housing program units occupied during the past 2 years and repay any tenant owed utility reimbursement payment(s).
- 1Q. The Authority to update its policies, procedures, or systems as needed to ensure that it makes utility reimbursement payments to entitled public housing program tenants.
- 1R. The Authority to repay its Housing Choice Voucher program fund \$2,192 from non-Federal funds for the ineligible housing assistance payments.

We further recommend the Director of the San Antonio Office of Public Housing

- 1S. Request that the county commissioners evaluate whether the board is capable of providing proper oversight of Authority operations to ensure compliance with HUD requirements and take appropriate action as necessary.

We recommend that the Director of the Departmental Enforcement Center

- 1T. Impose appropriate administrative sanctions, including suspension, limited denial of participation, and debarment against the executive director.

APPENDIXES

Appendix A

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

Recommendation number	Ineligible 1/	Unsupported 2/	Funds to be put to better use 3/
1B		\$372,832	
1C		195,080	
1I		10,624	
1K	\$ 831		
1I		2,197	
1O			\$2,557
1R	2,192		
Totals	<u>\$3,023</u>	<u>\$580,733</u>	<u>\$2,557</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 review. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.
- 3/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. In this instance, if the Authority implements recommendation 1O, it will ensure that tenants receive funds to which they are entitled.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

<p>Albert T. Aleman, Jr. <i>Executive Director</i></p>	 <p>1017 N. Main Ave., Suite 201, San Antonio, Texas 78212 (210) 225-0071 • Fax (210) 225-6976</p>	<p>Dr. Morris Spector <i>Chairman, Precinct 2</i></p> <p>Frank Moreno <i>Vice Chairman, Precinct 1</i></p> <p>Hugo A. Gutierrez, Jr. <i>Commissioner, Precinct 4</i></p> <p>Choco Meza <i>Commissioner, County Judge</i></p> <p>Noe Medina <i>Commissioner, Precinct 3</i></p>
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May 20, 2015

Theresa Carroll,
Assistant Regional Inspector General
U. S. Department of Housing & Urban Development
Office of Inspector General
Office of Audit (Region 6)
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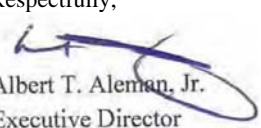
Re: OIG draft audit report titled, "The Housing Authority of Bexar County, TX, Did Not Operate Its HUD Public Housing Programs in Accordance With Regulations and Other Requirements".

Dear Ms. Carroll:

The Housing Authority Bexar County (HABC), has reviewed the above referenced draft audit report and would like to take this opportunity to submit its' basis and corrective actions to satisfy these findings. We appreciate the time and effort that you and your staff spent with us in reviewing these findings. HABC has taken action throughout the audit period, implementing numerous checks and balances to insure proper procedures are in place to meet the compliance of all our HUD programs.

We have acted on the recommendations that your agency have made and are making additional changes to operating procedures to ensure compliance.

Respectfully,


Albert T. Aleman, Jr.
Executive Director

Albert T. Aleman, Jr.
Executive Director

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Comment 1

Comments and Responses

Comment 1

1) *The Authority Could Not Support Its Allocation of Employee and Contractor Salaries*

The Board of Directors of HABC has taken action to ensure that its employees maintain adequate documentation that will meet the requirements needed to support its cost allocation model. In addition, an updated cost allocation plan is being developed to line up the job responsibilities of employees and their time to the appropriate funding streams.

2) *The Authority Improperly Purchased Goods and Services*

- i) The Authority Improperly Obtained the Services of Two Independent Contractors*
- ii) The Authority Improperly Renewed Its Legal and Auditing Contracts*

Comment 2

The Board of Directors of HABC have taken steps to ensure that its Procurement activities will be in compliance with Bexar County's Purchasing Policies and Procedures and in compliance with the State Purchasing Act. A Memorandum of Understanding will be finalized with Bexar County that specifies that HABC procurements will be handled by Bexar County until HABC Procurement policies can be revised and its staff properly training on how to conduct Procurements. The Board is scheduled to take action on this corrective action on May 21, 2015. A copy of the MOU is attached here.

Comment 3

HABC secured the services of the audit firm in 2011 via request for proposal. Based upon the Respondent's demonstrated competence in the HABC renewed the services of the audit firm annually via Letters of Engagement for four years. To date, the Authority's relationship with the audit firm has not exceeded 5 years.

The HABC Board of Directors has the issuance of an RFQ for auditing services on its May 21, 2015 agenda.

iii) The Authority Improperly Purchased Appliances for Its Public Housing Program Units

Comment 4

While it is correct that the quotes did not reflect all discounts and free deliveries, the cost comparisons done by Bexar County staff indicate that the costs expended by HABC were still the lowest of all price quotes. HABC Board of Directors will take the appropriate action on May 21, 2015 in approving a MOU with Bexar County to ensure that proper procurement practices are followed.

iv) The Authority Lacked Quotes for Some Small Purchases

Comment 5

The HABC obtained the appropriate number of quotes in regards to the purchases of an additional refrigerator for its break room. To further document and support, the HABC obtained comparable quotes which will reflect the Agency's purchase were fair and reasonable.

Comment 6

The HABC obtained the appropriate number of quotes in regards to the cleaning services for its main offices. While it is correct that the quotes did not reflect all discounts and free

deliveries, the cost comparisons done by Bexar County staff indicate that the costs expended by HABC were still the lowest of all price quotes. HABC Board of Directors will take the appropriate action on May 21, 2015 in approving a MOU with Bexar County to ensure that proper procurement practices are followed.

Comment 7

The HABC obtained the appropriate number quotes in regards to the roofing contract for the public housing program unit located at [REDACTED].

Comment 8

The HABC followed proper procedure in obtaining the appropriate number of quotes for the Air Condition Contract, however is unable to locate the corresponding documentation.

v) *The Authority Largely Treated Its Independent Contractors as Employees*

Comment 1

HABC Board of Directors will take action on May 21, 2015 to post the position of the Executive Director.

vi) *The Authority's Contracts Included Contradictory Provisions*

Comment 1

HABC Board of Directors will utilize contract formats developed by the Bexar County District Attorney's office for all professional, employment and personal services contracts it enters into.

vii) *The Board Did Not Provide Assigned Tasks as Required by the Contracts*

Comment 1

HABC Board of Directors will ensure that a detailed Scope of Work is received from proposed contractors and that this Scope of Work is included in contract formats developed by the Bexar County District Attorney's office that will be used for all professional, employment and personal services contracts it enters into.

viii) *The Authority Paid Ineligible Contract Costs*

Comment 1

HABC Board of Directors will ensure that a detailed schedule of benefits is included in all future employments contracts.

3) The Authority Inconsistently Allocated Other Costs

i) *The Authority Did Not Consistently Allocate Main Office Materials and Supplies*

Comment 9

From July 1 2012 through June 30 2014 all supplies were ordered by the manager of each cost center and paid by each cost center general fund. For example the HVC program ordered their own supplies, and were paid through there general fund account. The programs managers ordered their own supplies and were paid through their own separate general fund account.

Comment 9

Materials and supplies were ordered for each cost center from the main office and were allocated and paid out from their respective accounts.

Comment 10

The accounting staff furniture was reallocated at the end of the fiscal year 6-30-14. This adjusted with a journal entry was acknowledged and accepted by the auditors and subsequently submitted and accepted by REAC.

ii) The Authority Did Not Properly Allocate Fuel Charges

The HABC assigns gas card accounts to each program as follows:

- An Exxon Account is assigned to the HCV Program for HQS inspections and caseworker home visits.
- A Shell Account is assigned to Colonia Remigio Valdez Apartment Complex.
- A Valero Account is assigned to Bear Springs (204 units - multifamily complex) and Public Housing (30 Units – 150 mile radius). The HABC utilized the sole truck for various maintenance related uses between the aforementioned programs. Thus the fuel costs were allocated as 25% to Bear Springs and 75% to Public Housing respectively.
- As an added measure, the HABC has opened an additional Shell account to be used exclusively by Public Housing Program

Comment 1

4) The Authority Improperly Paid for Personal and Other Unsupported Expenses

Comment 1

HABC will implement policies involving payment of expenses that will include full documentation to support these expenses prior to being reimbursed.

5) The Authority Did Not Properly Pay Utility Reimbursements to a Few Public Housing Program Tenants

Comment 1

The HABC concurs with OIG's assessment. The error occurred due to a flaw in the housing software and therefore did not identify utility reimbursement payments for public housing program tenants as it did for Housing Choice Vouchers program tenants. HABC intends to take appropriate action to reconcile this error by reviewing the residents in question and creating a schedule of unpaid benefits to be approved by HUD for payment.

6) The Authority Made Ineligible Housing Assistance Payments for One Abated Unit

During the Housing Quality Standards (HQS) inspection of October 2013, both the owner and the family were determined to have deficiencies. A letter was sent informing the owner and the family of the deficiencies and the abatement process. However, as the tenant deficiencies were not corrected, a program termination letter was sent to the family, with an

opportunity for an Informal Hearing, and the landlord was informed.

Comment 11

In March 2014, it was determined that proper notice of abatement was not given due to an incorrect abatement date on the original violations letter. For this reason, Housing Assistance Payments were paid for the time period of December 2013 through March 2014. As per HUD's HCV Guidebook, page 10-29, "the owner must receive 30-day written notification of the abatement." It goes on to state that "a separate Notice of Abatement . . . must be sent to the owner" (if 30 days' notice wasn't included in the original violations notice).

Also in March 2014, an Informal Hearing was completed and the decision was to continue HCV program assistance. At this time, the HQS process was restarted, and the housing unit passed inspection within less than 30 days.

Comment 11

It is the position of the HABC that this housing unit did not qualify for abatement status. Therefore, the Housing Assistance Payments of \$2,192 were paid in accordance with HUD regulations and guidance referenced in the HCV Guidebook. This agency understands the effect of late implementation of abatements with HUD's SEMAP requirements. Since then, HABC staff has attended trainings that included updated procedures, processes and flow charts to prevent this occurrence.

Regarding "backdated inspection data", a file review shows that an incorrect "Approval Date" was written on the Request for Tenancy Approval (RTA), i.e. 11/22/13. The result of this incorrect date is most likely the reason that it was reported on the Form HUD-50058. Staff that processes recertification documents, including the Form HUD-50058 uses the RTA Approval Date as a source of information.

OIG Evaluation of Auditee Comments

- Comment 1** The Authority agreed with several of the issues identified in the OIG’s memorandum. It stated that it took action to ensure employees maintain adequate documentation to support a cost allocation plan for employee time under development. It also stated that it has taken, or will take additional corrective actions. We acknowledge the Authority’s statements. However, HUD’s Office of Public Housing will need to confirm that the Authority implemented its new policies and supported its allocation methodology.
- Comment 2** The Authority stated that the board of directors took steps to ensure that its procurement activities will be in compliance with Bexar County’s purchasing policies and the State Purchasing Act. It will finalize a Memorandum of Understanding with Bexar County wherein Bexar County will handle the Authority’s procurements until the Authority revises its procurement policies and properly trains its staff. The Authority’s response did not include a copy of the memorandum. However, we acknowledge the Authority’s actions to ensure procurement compliance. HUD’s Office of Public Housing will need to verify that the Authority’s procurements policies are compliant.
- Comment 3** The Authority stated that it renewed its audit services based on demonstrated competence, and the relationship has not exceeded 5 years. We disagree. Although its 2010 request for proposals included the possibility for renewal, the Authority never provided the proposals it received, its evaluation of them, or an executed contract. It only provided engagement letters for each year’s audit, which did not include renewal language. Therefore, the Authority could not show that it properly renewed its audit services contract.
- Comment 4** The Authority stated that cost comparisons provided by Bexar County staff indicate that costs paid by the Authority were the lowest of all price quotes. We disagree. The Authority admitted in its response provided at the exit conference that it did not maintain documentation of the quotes, as required,²⁴ and it performed the cost comparisons in May 2015 for purchases made in 2013 and 2014. In order for a cost to be reasonable, it must be adequately documented.²⁵ Further, we reviewed the cost comparisons, and noted that online prices were lower than the provided verbal quotes. Thus, the Authority could not support that it properly purchased the appliances.
- Comment 5** The Authority stated that it obtained the appropriate number of quotes for its break room refrigerator, and, to further support the purchase, it obtained comparable quotes which showed the purchase was fair and reasonable. We disagree. The Authority admitted in its response provided at the exit conference

²⁴ 24 CFR 85.36(b)(9). See appendix C.

²⁵ 2 CFR 225, Appendix A, C.1.j. See appendix C.

that it did not maintain documentation of the quotes, as required,²⁶ and it performed the cost comparisons in May 2015 for a purchase made in February 2013. Therefore, the Authority lacked documents showing the history of the procurement and could not support the purchase.²⁷

Comment 6 The Authority stated it obtained the appropriate number of quotes for cleaning services. We disagree. The Authority admitted at the exit conference that it could not provide documentation for the winning bidder, as required.²⁸ Thus, the Authority cannot support the purchase.

Comment 7 The Authority stated that it obtained the appropriate number of quotes for a roofing contract. It did not provide the documents until after the exit conference. We repeatedly asked for these documents during our work. HUD's Office of Public Housing will need to review the documents and verify that the Authority properly procured the roofing contract in accordance with the Authority's policy.

Comment 8 The Authority stated it followed procedures for obtaining quotes for the air conditioning contract. We disagree. The Authority admitted that it did not have documentation, making the purchase unsupported.²⁹

Comment 9 The Authority indicated that each cost center purchased its own supplies. We disagree as our finding showed the Authority generally allocated the costs of the main office solely to the Housing Choice Voucher program.

Comment 10 The Authority stated that it reallocated the accounting staff furniture at the end of the fiscal year June 30, 2014. We disagree. As of October 2014, the Authority's general ledger did not reflect the adjusting entries. In addition, the Authority only provided documentation of proposed adjusting entries at the exit conference. Further, the proposed adjusting entries included an improper allocation to a fund that was restricted at the time of the original furniture purchase. HUD's Office of Public Housing will have to review the adjusting entries and ensure appropriate repayment to the Housing Choice Voucher program occurred.

Comment 11 The Authority stated that it did not provide proper notice of abatement to the owner for owner-caused damages. Therefore, the unit did not qualify for abatement status. We disagree. The Authority did not provide documentation to support its statements. Further, HUD regulations³⁰ required the Authority to take prompt and vigorous action to enforce owner obligations, making the Authority responsible for its failure to provide proper notice of abatement. As the unit did not meet housing quality standards, the payments are ineligible.

²⁶ See footnote 24.

²⁷ See footnotes 24 and 25.

²⁸ *ibid.*

²⁹ *ibid.*

³⁰ 24 CFR 982.404(a)(2). See appendix C.

Appendix C

CRITERIA

Cost Principles for State, Local, and Indian Tribal Governments (Office of Management and Budget Circular A-87)

(2 CFR (Code of Federal Regulations) Part 225)

Appendix A to Part 225

“C. Basic Guidelines

(1) Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:

...

(j) Be adequately documented.

...

(3) Allocable costs

- (a) A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.
- (b) All activities which benefit from the governmental unit’s indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs.
- (c) Any cost allocable to a particular Federal award or cost objective under the principles provided for in 2 CFR Part 225 may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons.
- (d) Where an accumulation of indirect costs will ultimately result in charges to a Federal award, a cost allocation plan will be required.”

Appendix B to Part 225

“(8) Compensation for personal services

...

(h) Support of salaries and wages

...

- (4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection (8)(h)(5) ... Such documentary support will be required where employees work on:
 - (a) More than one Federal award,
 - (b) A Federal award and a non-Federal award,
 - (c) An indirect cost activity and a direct cost activity,
 - (d) Two or more indirect activities which are allocated using different allocation bases, or
 - (e) An unallowable activity and a direct or indirect cost activity.

- (5) Personnel activity reports or equivalent documentation must meet the following standards:
 - (a) They must reflect an after-the-fact distribution of the actual activity of each employee,
 - (b) They must account for the total activity, for which each employee is compensated,
 - (c) They must be prepared at least monthly and must coincide with one or more pay periods, and
 - (d) They must be signed by the employee.
 - (e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes...”

Section 8 and Public Housing, and Other HUD Assisted Housing Serving Persons with Disabilities: Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance

(24 CFR Part 5)

§ 5.632 Utility Reimbursements

...

“(b) Payment of utility reimbursement.

- (1) The responsible entity pays a utility reimbursement if the utility allowance (for tenant-paid utilities) exceeds the amount of the total tenant payment.
- (2) In the public housing program (where the family is paying an income-based rent), the Section 8 moderate rehabilitation program and the Section 8 certificate or voucher program, the PHA [public housing agency] may pay the utility reimbursement either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount paid to the utility supplier.”

Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments

(24 CFR Part 85)

Subpart C – Post-Award Requirements

§ 85.36 Procurement

...

“(b) Procurement standards.

...

- (9) 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.

...

(c) Competition.

- (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §85.36. Some of the situations considered to be restrictive of competition include but are not limited to:

- i. Placing unreasonable requirements on firms in order for them to qualify to do business,
- ii. Requiring unnecessary experience and excessive bonding,
- iii. Noncompetitive pricing practices between firms or between affiliated companies,
- iv. Noncompetitive awards to consultants that are on retainer contracts,
- v. Organizational conflicts of interest,
- vi. Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and
- vii. Any arbitrary action in the procurement process.”

“(d) Methods of procurement to be followed.

...

(3) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- i. Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- ii. Proposals will be solicited from an adequate number of qualified sources;
- iii. Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
- iv. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- v. Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors’ qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.”

**Section 8 Tenant-Based Assistance: Housing Choice Voucher Program
(24 CFR Part 982)**

“§982.404 Maintenance: Owner and family responsibility; PHA remedies.

...

(a)(2) If the owner fails to maintain the dwelling unit in accordance with HQS [housing quality standards], the PHA must take prompt and vigorous action to enforce the owner obligations. PHA remedies for such breach of the HQS include termination, suspension, or reduction of housing assistance payments and termination of the HAP contract.

- (a)(3) The PHA must not make any housing assistance payments for a dwelling unit that fails to meet the HQS, unless the owner corrects the defect within the period specified by the PHA and the PHA verifies the correction. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within no more than 30 calendar days (or any PHA-approved extension).”

**Consolidated Annual Contributions Contract
Rental Certificate and Rental Voucher Programs – Section 8**

§ 11 Use of Program Receipts.

- “a. The HA [housing agency] must use program receipts to provide decent, safe, and sanitary housing for eligible families in compliance with the U.S. Housing Act of 1937 and all HUD requirements. Program receipts may only be used to pay program expenditures.”

HUD Handbook 7460.8, REV-2, Procurement Handbook for Public Housing Agencies

Chapter 7. Competitive Proposals

7.5 Employment Contracts

- “A. Employment vs Independent Contracts. There is a distinction between employing an individual (employment contracts), such as an employment contract for an executive director, and contracting for independent services (independent service contract). The former is part of the personnel process and is subject to those rules and regulations. The latter is considered to be a procurement action, subject to the standards in 24 CFR 85.36(d)(3).”

Chapter 10. Miscellaneous Requirements

10.8 Use of Options

...

C. Limitations

...

2. Time and Quantity. Contracts shall not exceed a period of 5 years, including options for renewal or extension. Contracts, other than energy performance contracts, with terms, plus extensions, that exceed a total of 5 years are viewed as restrictive of competition and in violation of 24 CFR 85.36(c). A Field Office may approve contracts in excess of 5 years if it determines there is no practical alternative. A PHA must also follow its own procurement policy and any applicable local or State laws and regulations. There must be a finite period for a contract, including all options, and a specific limit on the total quantity or maximum value of items to be purchased under an option.

Chapter 12. HUD Review Requirements

12.2 Contracting Actions Requiring HUD Approval

The following contracting actions shall have prior HUD approval:

- A. Noncompetitive procurements expected to exceed the Federal small purchase threshold;
- B. Brand name-only procurements expected to exceed the Federal small purchase threshold;
- C. Awards over the Federal small purchase threshold to other than the apparent low bidder under a sealed bid;
- D. Proposed contract modifications that change the scope of the contract or increasing the contract amount by more than the Federal small purchase threshold;

- E. Use of the Qualifications Based Selection method of procurement for other than Architectural/Engineering services, joint venture partners or developers, or energy service contracts;
- F. For PHAs operating under the “old” Annual Contributions Contract 53010 and 53011, any agreement or contract for professional, management, fee accountants, legal, or other professional services with any person or firm if the total period or term of the contract, including renewal option provisions, exceeds two years;
- G. Procurements for legal or other non-personal services in connection with litigation, per HUD’s Litigation Handbook, that exceed \$100,000;
- H. Procurements that exceed the amount included in (1) the HUD-approved Development Cost Budget or (2) where HUD has required prior approval on a Notice of Deficiency or corrective action order under the Capital Fund Program;
- I. Contracts that exceed five years, including options. To approve terms in excess of five years, Field Offices must determine whether there is no practical alternative;
- J. PHAs operating under the “old” Annual Contributions Contract who enter into a transaction with any joint venture, subsidiary, affiliate, or other identity-of-interest entity;
- K. Solicitations, and any resulting contracts, related to energy performance contracting and utility add-ons;
- L. Solicitation and contracts by any PHA whose procurement procedures or operations fail to comply with the procurement standards in 25 CFR 85.36.

**Internal Revenue Service Publication 15-A
Employer’s Supplemental Tax Guide**

Common Law Employees

“Under common-law rules, anyone who performs services for you is generally your employee if you have the right to control what will be done and how it will be done.”

...

Employers generally have to withhold and pay income, social security, and Medicare taxes on wages paid to common-law employees.

Federal unemployment (FUTA) tax

For Federal unemployment tax (FUTA), the term “employee” means the same as it does for social security and Medicare taxes.

Common-Law Rules

“To determine whether an individual is an employee or an independent contractor under the common law, the relationship of the worker and the business must be examined. In any employee-independent contractor determination, all information that provides evidence of the degree of control and the degree of independence must be considered.

“Facts that provide evidence of the degree of control and independence fall into three categories: behavioral control, financial control, and the type of relationship of the parties.”

Behavioral control: Facts that show whether the business has a right to direct and control how the worker does the task for which the worker is hired include the type and degree of:

Instructions that the business gives to the worker. An employee is generally subject to the business' instructions about when, where, and how to work. Even if no instructions are given, sufficient behavioral control may exist if the employer has the right to control how the work results are achieved. The key consideration is whether the business has retained the right to control the details of a worker's performance or instead has given up that right.

Training that the business gives to the worker. An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods.

Financial control: Facts that show whether the business has a right to control the business aspects of the worker's job include:

The extent to which the worker has unreimbursed expenses. Independent contractors are more likely to have unreimbursed expenses than are employees.

The extent of the worker's investment. An independent contractor often has significant investment in the facilities or tools he uses in performing services for someone else.

The extent to which the worker makes his services available to the relevant market. An independent contractor is generally free to seek out business opportunities. Independent contractors often advertise, maintain a visible business location, and are available to work in the relevant market.

How the business pays the worker. An employee is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time. This usually indicates that a worker is an employee, even when the wage or salary is supplemented by a commission. An independent contractor is often paid a flat fee or on a time and materials basis for the job.

The extent to which the worker can realize a profit or loss. An independent contractor can make a profit or loss.

Type of relationship: Facts that show the parties' type of relationship include:

- Written contracts describing the relationship the parties intended to create.
- Whether or not the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.
- The permanency of the relationship.
- The extent to which services performed by the worker are a key aspect of the regular business of the company. If a worker provides services that are a key aspect of your regular business activity, it is more likely that you will have the right to direct and control his or her activities.

Local Government Code

Title 12. Planning and Development

Subtitle C. Planning and Development Provisions Applying to More Than One Type of Local Government

Chapter 392. Housing Authorities Established by Municipalities and Counties

Subchapter A

§392.001 Short Title

“This chapter may be cited as the Housing Authorities Law.”

§392.043 Interested Employees

...

(c) “Except as otherwise permitted by this chapter or another law, an employee of an authority may not be employed by or otherwise contract to provide services to another authority unless the first authority gives its written consent to the employment or contract.”

Housing Authority of Bexar County Procurement Procedure Guidelines

Introduction:

“The Housing Authority of Bexar County shall comply with all applicable State and Local Laws governing the purchasing of equipment, materials, and supplies and in the award of contracts for services or repairs, maintenance, and replacement. The Housing Authority shall make such purchases, and award such contracts only to the lowest responsible bidder after advertising a sufficient time previously for proposals with specified exceptions.”

Open Market Procurement:

“Suppliers shall have an opportunity to compete for business of the Housing Authority of Bexar County except where the amount of purchases is so small that it is administratively impractical to do so. The Housing Authority of Bexar County shall follow this principal of free competition by soliciting bids in the open market.”

Small Purchases within the Dollar Amount Established by the HABC [Housing Authority of Bexar County] Board of Commissioners [sic]:

“This is a simple and informal method that applies to purchases under \$15,000.00 as required by the State of Texas, 24 CFR 85.36, OMB [Office of Management and Budget] Circular A-87 Procurement and Notice 91-0003 'Statement of Procurement Policy for PHA's. Quotes must be obtained from at least three sources. The quotes may be verbal or written. The HABC must maintain records of quotes with: name of firms contacted, address and telephone number for each firm/vendor, date of contact, name of person/s contacted, amount quoted. A copy of the exact description of item or service used to select the quotes.[sic] The records must obtain sufficient detail to documents [sic] the entire procurement process.”

Miscellaneous:

...

2. “All non-expendable equipment costing \$300.00 or more must be purchased on an original purchase order.”

Housing Authority of Bexar County Accounting Policies and Procedures Manual Purchases

Credit Card Purchases:

...

4. “Unauthorized use of the credit card includes:
 - a. Personal or non-business expenditures of any kind.
 - b. Expenditures which have not been properly authorized.
 - c. Meals, entertainment, gifts or other expenditures which are prohibited by:
 1. HABC’s [Housing Authority of Bexar County’s] budget and/or policies
 2. Federal, state, or local laws or regulations
 3. Grant conditions or policies of the entities from which HABC receives funds.

Proper Documentation for all Purchases, including HABC’s Credit Card Purchases:

Every instance of credit card or other purchase use must be documented with travel authorizations, receipts, individuals paid for, nature of business, etc. before the expense will be considered authorized and will be approved for reimbursement.” [sic]

Appendix D

OIG-DEVELOPED COST ALLOCATION

Item purchased or credit card	Actual allocation			OIG calculation of allocation			Over (under) allocation by program			Net over (under) allocation to HUD programs	Net over (under) allocation by category (3)
	HCV(1)	Public housing	Other programs	HCV(1)	Public housing	Other programs	HCV(1)	Public housing	Other programs		
Refrigerator(2)	\$1,259	\$0	\$0	\$470	\$247	\$543	\$789	(\$247)	(\$543)	\$543	
Cleaning services(2)	\$500	\$0	\$0	\$187	\$98	\$216	\$314	(\$98)	(\$216)	\$216	
Office furniture(2)	\$9,496	\$1,096	\$6,162	\$6,249	\$3,284	\$7,221	\$3,247	(\$2,188)	(\$1,059)	\$1,059	
Credit card 1 (2)	\$8,065	\$0	\$0	\$3,008	\$1,581	\$3,476	\$5,057	(\$1,581)	(\$3,476)	\$3,476	
Credit card 2 (2)	\$2,670	\$0	\$0	\$996	\$523	\$1,151	\$1,674	(\$523)	(\$1,151)	\$1,151	\$5,686
Fuel card 1	\$0	\$6,024	\$2,008	\$0	\$2,008	\$6,024	\$0	\$4,016	(\$4,016)	\$4,016	
Fuel card 2	\$3,415	\$0	\$0	\$1,366	\$1,127	\$922	\$2,049	(\$1,127)	(\$922)	\$922	\$4,938
Total	\$25,405	\$7,120	\$8,170	\$12,276	\$8,868	\$19,552	\$13,129	(\$1,748)	(\$11,382)	\$11,382	
Net over allocation to HUD programs without cost of refrigerator and cleaning services					\$10,624						

(1) Housing Choice Voucher program

(2) These charges represented materials and supplies purchased for the main office.

(3) The \$5,686 calculation does not include the cost of the refrigerator and cleaning services because those costs are already questioned in the improperly purchased goods and services section.