



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

September 30, 2015

**MEMORANDUM NO:**  
2015-PH-1808

## *Memorandum*

TO: Jacqueline A. Molinaro-Thompson  
Director, Office of Public Housing, Pittsburgh Field Office, 3EPH

//signed//

FROM: David E. Kasperowicz  
Regional Inspector General for Audit, Philadelphia Region, 3AGA

SUBJECT: The Housing Authority of the City of Pittsburgh, PA, Did Not Always Make Payments for Outside Legal Services in Compliance With Applicable Requirements

### **INTRODUCTION**

We conducted a review of the Housing Authority of the City of Pittsburgh's payments for outside legal services in conjunction with an ongoing internal audit of the U.S. Department of Housing and Urban Development's (HUD) oversight of public housing agencies' expenditures for outside legal services. Our review objective was to determine whether the Authority made payments for outside legal services in compliance with applicable requirements.

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.

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

### **METHODOLOGY AND SCOPE**

The Authority was one of three Moving to Work public housing agencies selected for review as part of our ongoing internal audit. We conducted our review from January 2014 to August 2015 at our office in Philadelphia, PA. To accomplish our review objective, we identified payments that the Authority made from October 1, 2007, through September 30, 2012, for outside legal

expenses.

We determined that the Authority made \$2.9 million in payments related to 978 invoices for outside legal services during the review period. We statistically selected 86 sample invoices totaling \$758,165 and requested that the Authority provide documentation supporting its payment of the sample invoices. In addition, we obtained and reviewed the following:

- Relevant HUD regulations and requirements.
- Invoices, canceled checks, contracts, general journal entries, and purchase orders related to payments that the Authority made to 11 outside law firms.
- The Authority's procurement policy and record retention policy.
- The Authority's Moving to Work agreement, annual plans, and annual reports.

We also held discussions with HUD program officials and Authority officials.

We relied in part on computer-processed data provided by the Authority. This consisted of a disbursements register listing invoices for outside legal services during the review period. Although we did not perform a detailed assessment of the reliability of the data, we performed a minimal level of testing and found the data to be adequate for our purposes. The testing entailed matching information from the Authority's data to source documentation, including invoices and cancelled checks.

We used statistical sampling procedures to estimate the potential unsupported payments related to the universe of payments based on issues identified.

Our review covered transactions and events that occurred during the period October 1, 2007, through September 30, 2012. This was a limited scope review. Therefore, it was not performed in accordance with generally accepted government auditing standards. For example, we did not perform an assessment of internal controls as it relates to the objective.

## **BACKGROUND**

The U.S. Housing Act of 1937, as amended, initiated the Nation's public housing program. That same year, the City of Pittsburgh established the Housing Authority of the City of Pittsburgh under Pennsylvania laws to address housing issues affecting low-income persons. The Authority's main administrative office is located at 200 Ross Street, Pittsburgh, PA. The Authority is governed by a six-member board of commissioners. The board is responsible for establishing goals, approving policy and budgets, and providing general direction to the Authority's executive director. The Authority manages approximately 4,000 public housing units and oversees an additional 900 mixed-finance units, serving about 20,000 people in Pittsburgh, PA.

The Authority is a participant in HUD's Moving to Work Demonstration program. In 1996,

Congress authorized the Moving to Work Demonstration program as a HUD demonstration program. This program allowed certain public housing agencies to design and test ways to promote self-sufficiency among assisted families, achieve programmatic efficiency, reduce costs, and increase housing choice for low-income households. Congress exempted participating agencies from much of the Housing Act of 1937 and associated regulations as outlined in the Moving to Work agreements. Participating agencies have considerable flexibility in determining how to use Federal funds. In 1999, the Authority was specifically named and authorized to be a Moving to Work program participant by the 1999 Appropriations Act. In January 2009, it entered into a new 10-year Moving to Work agreement with HUD. The agreement expires in December 2018. The Authority's fiscal year begins on January 1.

## **RESULTS OF REVIEW**

The Authority did not always make payments for outside legal services in compliance with applicable requirements. It paid for legal services that were not within contract terms and did not always maintain adequate documentation to support payments for legal services. These problems occurred because the Authority lacked controls to ensure that it adequately verified invoices before payment and followed Federal requirements and contract terms. As a result, the Authority made \$141,164<sup>1</sup> in unsupported payments for outside legal services using its Moving to Work program funds.

### **The Authority Paid for Legal Services That Were Not Billed in Accordance With Federal Requirements and Contract Terms**

The Authority made \$141,164 in payments for legal services that were not billed in accordance with Federal requirements and contract terms. It paid for services based on block-billed entries, services rendered by unapproved personnel, and unreasonable and unnecessary charges. It also paid for services that were not identified in its contracts with its outside law firms. Regulations at 2 CFR (Code of Federal Regulations) Part 225, appendix A, required that costs be necessary, reasonable, and adequately documented. Also, Office of Management and Budget (OMB) Circular A-133, subpart C.300(c), required the Authority to comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs. In addition, regulations at 24 CFR 85.36 required the Authority to ensure that contractors performed in accordance with the terms, conditions, and specifications of their contracts. The Authority lacked controls to ensure that it adequately verified invoices before payment and followed Federal requirements and contract terms and as a result, made \$141,164 in payments for legal services that were not billed in accordance with Federal requirements or the contract. The following paragraphs provide details.

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<sup>1</sup> Some invoices had more than one deficiency. Appendix C contains a summary of payments to law firms by deficiency identified.

### *The Authority Paid for Legal Services Based on Block Billing*

Regulations at 2 CFR Part 225 required that costs be necessary, reasonable, and adequately documented. We identified 39 invoices totaling \$508,347, which included \$118,707 in block-billed entries. This type of billing does not identify the nature of the work performed; therefore, it was impossible to know how much time was spent on an activity to determine the necessity and reasonableness of the work performed and the accuracy of the billing. During our review, the Authority contacted the associated law firms to obtain additional details. Several of the firms provided revised invoices, which included a breakdown of the hourly charges that were not included on the original invoices. However, since the Authority made payments to the firms based on block-billed time entries, the amounts paid were unsupported. Appendix D provides a sample excerpt from an invoice showing block billing. To resolve this issue, HUD needs to assess whether the documentation the Authority provided and any additional documentation it provides after the review are sufficient to support the payments totaling \$118,707 or require the Authority to repay its program for costs that it cannot support.

### *The Authority Paid Outside Law Firms To Respond to an OIG Audit*

The Authority paid \$40,223 to two outside law firms to assist it in preparing a response to a HUD Office of Inspector General (OIG) audit report<sup>2</sup> in which we recommended that it provide documentation to support \$58,470 in housing assistance payments, reimburse its leased housing program \$16,991 for ineligible payments, and reimburse applicable tenants \$1,708 for housing assistance underpayments. The Authority paid the outside law firms more than twice as much as needed<sup>3</sup> and more than 50 percent of the total questioned costs to handle a matter routinely handled in-house at other agencies. The legal expenses were not necessary or reasonable, especially since the audit findings were sustained and the Authority repaid \$44,725. Regulations at 2 CFR Part 225 required that costs be necessary, reasonable, and adequately documented. It was unnecessary and unreasonable for the Authority to pay the outside law firms at least \$40,000<sup>4</sup> to respond to the audit report. Appendix E provides a sample excerpt from an invoice showing charges for assistance in preparing the Authority's response to the audit report. To resolve this issue, HUD needs to assess whether the documentation the Authority provided and any additional documentation it provides after the review are sufficient to support the payments totaling \$40,223 or require the Authority to repay its program for costs that it cannot support.

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<sup>2</sup> 2008-PH-1014, dated September 30, 2008, The Housing Authority of the City of Pittsburgh, Pennsylvania, Did Not Adequately Administer Its Housing Assistance Payments for Leased Housing

<sup>3</sup> The audit report recommended that the Authority pay \$18,699, including \$16,991 to reimburse its program and \$1,708 to reimburse applicable tenants. The Authority paid outside law firms at least \$40,223 to respond to the audit, which is more than twice the \$18,699 recommended in the report.

<sup>4</sup> This amount is related to 3 of the 86 invoices reviewed as part of the statistical sample. There could be additional invoices the Authority paid that contained legal fees to respond to HUD OIG audits.

### *Outside Legal Services Were Not Always Performed by Approved Personnel*

The Authority failed to comply with OMB regulations and its own contractual agreement when it paid for services that were performed by personnel not listed in the contract. Of the 86 invoices reviewed, 4 invoices totaling \$137,941 showed \$2,245 in legal services that were performed by unapproved personnel. The personnel listed on the invoices were not listed in the contract(s) or the law firm's fee proposal submitted in response to the Authority's request for proposal. During our review, the Authority contacted the associated law firm about the unapproved personnel. The law firm stated that the employees were members of its legal opinion committee and it would be impractical to expect every employee of the firm to sign the contract. Ensuring that personnel performing services were authorized to do so is an important control to safeguard funds spent in relation to the contract. Therefore, the Authority should have ensured that the services for which it paid were performed by authorized personnel. To resolve this issue, HUD needs to assess whether the documentation the Authority provided and any additional documentation it provides after the review are sufficient to support the payments totaling \$2,245 or require the Authority to repay its program for costs that it cannot support.

### *The Authority Paid for Legal Services That Were Not Identified in the Contract*

The Authority failed to comply with OMB regulations and its own contractual agreement when it paid for legal services that were not identified in the contract. The Authority paid \$2,816 for legal research included in three invoices. This type of service was not identified or covered in the contract. To resolve this issue, HUD needs to assess whether the documentation the Authority provided and any additional documentation it provides after the review are sufficient to support the payments totaling \$2,816 or require the Authority to repay its program for costs that it cannot support.

### **Conclusion**

The Authority did not always make payments for outside legal services in compliance with applicable requirements. It lacked controls to ensure that it adequately verified invoices before payment and followed Federal requirements and contract terms. As a result, it paid unsupported costs totaling \$141,164<sup>5</sup> for outside legal services. However, based on our review, at least \$743,899 of the \$2.9 million in payments for outside legal services could be unsupported.<sup>6</sup>

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<sup>5</sup> Some invoices had more than one deficiency. Appendix C contains a summary of payments to law firms by deficiency identified.

<sup>6</sup> For the 978 invoices with payments totaling \$2.9 million, the weighted average per invoice was \$1,684.74. Deducting for a statistical margin of error, we can say – with a one-sided confidence interval of 95 percent – that the average amount of unsupported funds paid per invoice is \$760.63 based on the 86 sample invoices reviewed. Extrapolating the \$760.63 average unsupported amount to the universe of 978 invoices indicates that at least \$743,899 of the \$2.9 million in payments for outside legal services could be unsupported.

## **RECOMMENDATIONS**

We recommend that the Director of HUD's Pittsburgh Office of Public Housing

- 1A. Determine whether the documentation the Authority provided and any additional documentation it provides in response to the review are adequate to support the \$141,164 in unsupported payments identified by the review or require the Authority to reimburse its program from non-Federal funds for costs that it cannot support.
  
- 1B. Require the Authority to develop and implement controls to ensure that invoices for legal services are adequately verified and its payments for outside legal services are made in accordance with the terms of the related contracts and other applicable requirements.

# APPENDIXES

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## Appendix A

### SCHEDULE OF QUESTIONED COSTS

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Recommendation number	Unsupported 1/
1A	\$141,164

- 1/ 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



**Housing Authority**  
of the **City of Pittsburgh**

LEGAL DEPARTMENT  
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James D. Harris, General Counsel  
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September 15, 2015

U.S. Department of Housing and Urban Development  
Office of Inspector General  
Attention: David E. Kasperowicz, Regional Inspector General for Audit,  
Philadelphia Region 3AGA  
Philadelphia, PA

**Re: Memorandum dated September XX, 2015**

Dear Mr. Kasperowicz:

Please accept this correspondence as the response of the Housing Authority of the City of Pittsburgh's (HACP's) Results of Review.

The HACP paid for Legal Services that were not billed in Accordance with Federal Requirements and Contract Terms. As per assertions, the following are applicable:

**First:** The HACP Paid for Legal Services Based on Block Billing:

**Response:** There is no direct prohibition of "Block Billing". Office of Inspector General (OIG) created a 2014/2015 HACP standard without legal basis, as stated below, and applying it retroactively to the HACP back to 2007. There is no Regulation, HUD policy, HUD procedure, or HACP contract that prohibits "Block Billing".

Comment 1

Comment 2

Comment 1

1. The OIG has not clearly defined and consistently applied a definition of the term "Block Billing". This is at least the third time the OIG has cited a housing authority for "Block Billing" and in each instance the OIG has used a different definition. Clearly, if the definition used in the 2011 Philadelphia audit was used in this audit, the HACP would be deemed to be in compliance.
2. The HACP complies with the Generally Accepted Accounting Principles (GAAP).
3. The HACP's legal services contract(s) and/or procurement policies have no prohibition against Block Billing.



**Ref to OIG Evaluation**

**Auditee Comments**

Comment 1

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4. HUD standards and guidelines regarding legal services are not based in any manner on Block Billing. The HUD standard is that costs incurred by housing authorities be "necessary and reasonable for proper and efficient performance and administration of Federal awards" and "required in the administration of Federal Programs." 2 CFR Part 225, Appendix A, §C.1.a, and Appendix B, §10b.

Comments 1 and 3

5. The OIG is equating Block Billing with a failure to comply with 2 CFR Part 225. As of the date of these invoices, that fact was simply not the case. The OIG can cite to no authority (e.g. a regulation, policy, procedure or HACP contract) equating to 2 CFR Part 225 with "Block Billing".

Comment 4

6. Finally, the OIG has given no direction on the use of "Task Based Billing", "Clumped Task Based Billing", or "Line Item Pricing" as possible alternatives.

**Second: The Authority Paid Outside Legal Firms To Respond to an OIG Audit:**

**Response:** The costs attributable to the OIG audit almost equaled the \$44,725 in question. The HACP should not be penalized for a positive result. In this instance, the OIG chose to conduct the audit. The fact that the result was almost equal to the cost of the audit could not be foreseen at the outset.

Comment 5

1. There is no direct prohibition of paying for outside counsel to address an audit. OIG is creating a 2014/2015 standard without legal basis, as stated below, and applying it retroactively to the HACP back to 2007. There is no Regulation, HUD policy, HUD procedure or HACP contract that prohibits use of outside counsel to address an audit. The HACP paid all invoices in accordance with the contract terms. All contracts were procured in accordance with the HACP Procurement Policy.

Comment 6

2. Again, the OIG can't even agree with itself. In other portions of this review, the OIG alleges that the HACP failed to pay law firms in accordance with Contract Terms and, in this result, the OIG totally ignores the Contract Terms. Instead, the OIG advocates payment based on the Outcome.

Comment 7

3. With regard to use of outside legal services to address a previous OIG inquiry, the decision to use outside counsel was appropriate at the time due to the HACP Legal Department's existing workload, nature and volume of the OIG request as well as the limited staff in the HACP Legal Department at the time of the request. The law firm(s) that performed the work was appropriately procured and all of the invoices met the appropriate standards then in place. The HACP stands by its determination to utilize outside assistance to assist it with the process.

4. Generally, law firms will bill a client based on the lawyer's, paralegal's etc. hourly rate agreed upon in the contract with the HACP. The hourly rate is multiplied by the time increments worked by the lawyer, paralegal etc.

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Comment 7

5. It is common in the legal industry to have a legal bill that exceeds the amount in dispute. With the benefit of hindsight as to the outcome, disputes and litigation could be resolved earlier thus reducing legal costs and expenses, but that simply is not reality.

Comment 8

6. Finally, the OIG failed to take into account the hundreds of thousands of dollars initially in dispute. The audit was driven by the OIG. The required work was in response to the issues raised by the OIG. The final bill was paid in accordance with the terms of the contract(s). All contracts were procured in accordance with the HACP Procurement Policy.

**Thrd: Outside Legal Services Were Not Always Performed by Approved Personnel:**

Comment 9

**Response:** On page 2 of the OIG Memorandum it states: "...we did not perform an assessment of internal controls as it relates to the objective." The OIG also acknowledges that they did not review the procurement process utilized by the HACP to secure the HACP legal contracts; the process used by the HACP to assign counsel to litigation; the process used by the HACP to have a law firm approved as panel counsel by the insurance carrier; or the process used by the HACP to have the insurance carrier approve the HACP assignment of counsel for each piece of litigation. Thus, it is unclear the basis for the OIG's assertion. It appears the OIG is making an assumption based on a contract near the beginning of the review period and applying it to an invoice near the end of the review period to justify its finding. With regard to attorney and paralegal names appearing on the invoice, but not on the contract, generally, this practice is common when employing a corporation or limited partnership. The HACP reviews and approves a firm based on the firm(s) qualifications as a whole and not on specific individuals in that firm;

Comment 10

1. Corporations and partnerships often are comprised of dozens, hundreds or thousands of managers and supervisory personnel. As such, it is common to designate one or a small number to execute contracts on behalf of the corporation or partnership. It would be impractical to expect every employee of a law firm to sign or be named in the HACP contracts.
2. Moreover, insurance companies often, as a condition of coverage, require the use of "panel counsel". In short, the insurance company wants to make certain that the law firms have the economic foundation and experience to mount a rigorous defense. As a result, insurance companies tend to approve only the mid-size and larger firms to defend claims that are covered by insurance. With regard to the HACP, a number of the firms, including Cohen & Grigsby and Tucker Arensberg have dozens, if not more than one hundred, attorneys and paralegals and it would be simply impractical, if not impossible, to have each one sign the HACP contract or to modify the HACP contract each time an employee leaves or is hired after going through some type of approval process by the HACP.
3. As part of the HACP procurement process, the HACP retains law firms not individuals within firms, although the HACP may procure a solo

Comment 10

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**Auditee Comments**

Comment 11

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practitioner (but the insurance carrier(s) have refused to approve such individuals as panel counsel. To take the OIG's reasoning and apply it to the HACP's other service contracts, the HACP would have an obligation to have every one of the approximately 62,000 employees of the UPMC sign or be listed in the HACP contract. Every time the UPMC experienced a personnel change, the HACP would have to go through the approval process and modify the contract. The alternative is to execute a contract with a substandard health care provider that had a manageable number of employees that the HACP could "authorize" or "approve". The HACP could do the same with law firms and limit a firm to a manageable number of employees that the HACP could "authorize" or "approve". However, this procedure may jeopardize the HACP insurance coverage.

Comment 12

4. Further, corporate legal firms and partnerships:
  - a. Carry malpractice insurance that insures against "unapproved" or "unauthorized" practitioners from working on a case;
  - b. Insure that attorneys etc. are properly licensed for the jurisdiction/court in question;
  - c. Insure that attorney's etc. meet their continuing legal education obligation requirements;
  - d. Will compensate the HACP or correct the errors, if any, made by their employees.

Comment 13

5. The proposal seeming to be suggested by the OIG would place the HACP at a severe disadvantage in litigation. It is typical for a Court to require an initial response from the HACP within twenty (20) days after being served. If the HACP has to review and/or amend its contract with a law firm each time it is served with complaint, the odds are high that the HACP will fail to meet a court's deadline which could result in an unfavorable result for the HACP.

Comment 14

6. Finally, the OIG fails to identify or define who is an "authorized personnel" or who is an "approved personnel".

**Fourth:** The Authority Paid for Legal Services That Were Not Identified in the Contract.

**Response:** The OIG is correct with regard only to the specific examples listed in the Memorandum totaling \$2,816.00.

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Auditee Comments

Comment 15

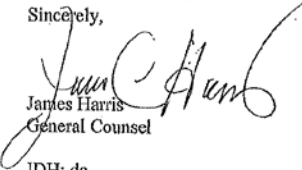
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**Conclusion:**

Except for the specific items totaling \$2,816 that were not identified in the Contract(s), the HACP paid for all legal services in accordance with federal requirements and contract terms. There was no violation of Federal Requirements, regulation, HUD policy, HUD procedure, or the HACP contract terms.

Sincerely,



James Harris  
General Counsel

JDH: dc

CC: Ms. Jacqueline A. Molinaro-Thompson, Director  
Pittsburgh Field Office of Public Housing  
Kimberly S. Dahl  
James Carrington  
Paul K. Miller  
Caster D. Binion  
David Weber  
Yasmine Shaheed  
John Cirolì

## OIG Evaluation of Auditee Comments

Comment 1 The Authority stated that there was no regulation, HUD policy, HUD procedure, Authority contract, or procurement policy that prohibited block billing. We agree. Further, for the contracts related to the invoices in question, we did not identify any provisions that prohibited block billing. However, as detailed in the report, regulations at 2 CFR Part 225 required that costs be necessary, reasonable, and adequately documented. The block-billed entries for the 39 invoices in question did not identify the specific nature of the work performed; therefore, it was impossible to know how much time was spent on an activity to determine the necessity and reasonableness of the work performed and the accuracy of the billing. As a result, we classified the related costs as unsupported. As part of the audit resolution process, HUD will need to determine whether the documentation the Authority provided and any additional documentation it provides after the review are sufficient to support the payments totaling \$118,707 or require the Authority to reimburse its program from non-Federal funds for costs that it cannot support.

Comment 2 The Authority stated that we had not clearly defined and consistently applied a definition of the term “block billing.” It further stated that this was at least the third time OIG had cited a housing authority for block billing and that in each instance, we used a different definition. The Authority also indicated that if the definition from the 2011 Philadelphia audit report was used in this audit, it would have been in compliance.

The Authority referred to two previous OIG audit reports, as well as the current report. The previous reports related to the Philadelphia Housing Authority (report number 2011-PH-1007, dated March 10, 2011) and the Chicago Housing Authority (report number 2015-PH-1805, dated April 20, 2015). In the Philadelphia Housing Authority report, we defined block billing as, “the act of billing more than one activity in a single line item while billing only one aggregate amount for multiple activities.” In the Chicago Housing Authority report, we defined block billing as, “a single time charge for multiple activities.” While the language in these two reports was not identical, the overall meaning was the same. In these two cases, the related contracts included terms addressing block billing. Because there were specific criteria prohibiting the practice in these cases, we cited the contract terms as the criteria. The regulations at 2 CFR Part 225 also applied. Although the Pittsburgh Housing Authority’s contracts for the invoices in question did not contain language prohibiting block billing, it was still required to comply with requirements at 2 CFR Part 225.

Comment 3 The Authority stated that we equated block billing with a failure to comply with 2 CFR Part 225. As stated in the report, the Authority failed to comply with 2 CFR Part 225 which required that costs be necessary, reasonable, and adequately documented. The block-billed entries for the 39 invoices in question did not

identify the specific nature of the work performed; therefore, it was impossible to know how much time was spent on an activity to determine the necessity and reasonableness of the work performed and the accuracy of the billing.

- Comment 4 The Authority stated that we had not given direction on the use of “task based billing,” “clumped task based billing,” or “line item pricing” as possible alternatives. As indicated during the exit conference, rather than evaluate a specific billing practice, we compared documentation against applicable requirements, including 2 CFR Part 225. The Authority needs to work with HUD to update its policies and procedures to ensure that payments for outside legal services are made in accordance with requirements.
- Comment 5 The Authority stated that there was no regulation, HUD policy, HUD procedure, or Authority contract that prohibited the use of outside counsel to address an audit. We agree that there was no regulation, HUD policy, HUD procedure, or Authority contract that prohibited the use of outside counsel to address an audit. However, regulations at 2 CFR Part 225 required that costs be necessary, reasonable, and adequately documented. The Authority paid at least \$40,223<sup>7</sup> to two outside law firms to assist it in preparing a response to an OIG audit report in which we recommended that it repay \$18,699. The Authority paid the outside law firms more than twice as much as the \$18,699 and more than 50 percent of the total questioned costs of \$77,169<sup>8</sup> in the report to handle matters routinely handled in-house at other agencies. We believe the \$40,223 paid was unnecessary and unreasonable. Since \$21,371 of the charges were block billed they were not adequately documented as well. As part of the resolution process, HUD will need to determine whether the documentation the Authority provided and any additional documentation it provides after the review are sufficient to support the payments totaling \$40,223 or require the Authority to repay its program for costs that it cannot support.
- Comment 6 The Authority stated that we were not consistent when citing criteria. It further stated that we alleged that it failed to pay law firms in accordance with contract terms and, in this result, we ignored the contract terms. The Authority also asserted that we advocated payment based on the outcome. We were not inconsistent when citing criteria. We cited the appropriate criteria based on the circumstances related to the legal services we reviewed. As stated in the report, the Authority paid for some services that were performed by personnel not listed in the contract and for some services that were not identified in the contract. We

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<sup>7</sup> This amount is related to 3 of the 86 invoices reviewed as part of the statistical sample. There could be additional invoices the Authority paid that contained legal fees to respond to HUD OIG audits.

<sup>8</sup> \$77,169 = \$58,470 unsupported costs + \$16,991 ineligible costs + \$1,708 housing assistance underpayments

did not advocate for payment based on outcome. However, the Authority should have considered the potential outcome before incurring significant costs for legal services to handle matters routinely handled in-house at other agencies.

- Comment 7 The Authority stated that the decision to use outside counsel to address a previous OIG inquiry was appropriate at the time due to the Authority's legal department's workload, the nature and volume of the OIG request, as well as, the limited staff in the legal department at the time of the request. It further stated that it was common in the legal industry for bills to exceed the amount in dispute and that the Authority does not have the benefit of hindsight to reduce legal costs and expenses. Our review objective was to determine whether the Authority made payments for outside legal services in compliance with applicable requirements. Based on the documentation reviewed, we believe the \$40,223 paid did not comply with 2 CFR Part 225 which required that costs be necessary, reasonable, and adequately documented. As part of the audit resolution process, HUD will need to determine whether the documentation the Authority provided and any additional documentation it provides after the review are sufficient to support the payments totaling \$40,223 or require the Authority to repay its program for costs that it cannot support.
- Comment 8 The Authority stated that we failed to take into account the hundreds of thousands of dollars initially in dispute and that the final bill was paid in accordance with contract terms. We do not dispute that the Authority paid for legal expenses in accordance with the contracts. However, regardless of the total amount in dispute, the Authority's payments for legal services had to comply with regulations at 2 CFR Part 225. We believe the amount the Authority paid was unnecessary and unreasonable because matters such as these are routinely handled in-house at other agencies. Further, since some of the payments were for charges that were block billed, they were not adequately documented.
- Comment 9 The Authority stated that it appeared we were making an assumption based on a contract near the beginning of the review period and applying it to an invoice near the end of the review period to justify our finding. The Authority further stated that it reviewed and approved firms based on the firm's qualifications as a whole and not on specific individuals in that firm. Regulations at OMB Circular A-133, subpart C.300(c), required the Authority to comply with laws, regulations, and provisions of contracts or grant agreements related to each of its Federal programs. The Authority was required to follow the terms of its contracts. The contracts between the Authority and the law firms specifically listed names and rates of attorneys who would be performing legal services. However, we identified payments totaling \$2,245 for personnel that were not listed in the contracts.
- Comment 10 The Authority stated that it would be impractical to expect every employee of a law firm to sign or be named in its contracts. The issue discussed in the report addressed only \$2,245 in legal services on four invoices from one law firm. Our

review showed that the other law firms included in their contracts the names of their personnel approved to perform services and we were able to verify that personnel and billing rates identified on invoices were listed in the related contracts or the law firm's fee proposal submitted in response to the Authority's request for proposal.

- Comment 11 The Authority provided an example of the challenges it would face if it applied the report's reasoning to one of its service contracts for health care. Our review objective was to determine whether the Authority made payments for outside legal services in compliance with applicable requirements. We are only reporting on the invoices and related contracts that we reviewed, which all relate to legal services. Because attorneys advise their clients, act on their behalf in legal matters, and charge significant hourly fees for billable hours of service, ensuring that the personnel performing and billing for services were authorized to do so is an important control to protect the Authority and safeguard its funds.
- Comment 12 The Authority stated that corporate law firms and partnerships carry malpractice insurance that insures against unapproved or unauthorized practitioners working on a case; ensures that attorneys are properly licensed; ensures that attorneys meet continuing education requirements; and will compensate the Authority or correct errors made by their employees. Although law firms may be held to these requirements, the Authority was responsible to comply with OMB regulations and its own contractual agreements and pay for services performed by approved personnel identified in the contract.
- Comment 13 The Authority stated that the report's proposal would place it at a severe disadvantage in litigation because courts typically require an initial response within 20 days of being serviced. The Authority indicated that reviewing or amending its legal services contracts each time it is served with a complaint could cause it to miss such deadlines. However, the issue discussed in the report addressed only \$2,245 in legal services on four invoices from one law firm. We do not believe that adding the names and rates of personnel approved to perform legal services under existing contracts would place the Authority at a severe disadvantage in litigation.
- Comment 14 The Authority stated that we failed to identify or define who is considered "authorized" or "approved" personnel. As explained in the report, we considered authorized or approved personnel as those personnel identified in the contract or in the law firm's fee proposal submitted with the Authority's request for proposal.
- Comment 15 The Authority stated that with the exception of the specific items totaling \$2,816 that were not identified in the contract(s), it paid for all legal services in accordance with Federal requirements and contract terms. We disagree. As stated in the report, we determined that payments for legal services totaling \$141,164 were unsupported because the Authority did not always make payments in compliance with requirements. As part of the audit resolution process, HUD



will need to determine whether the documentation the Authority provided and any additional documentation it provides in response to the review are adequate to support the \$141,164 in unsupported payments identified or require the Authority to reimburse its program from non-Federal funds for costs that it cannot support.

## Appendix C

### SUMMARY OF PAYMENTS TO LAW FIRMS BY DEFICIENCY IDENTIFIED

Law firm	Number of invoices reviewed <sup>9</sup>	Total dollar amount	Unsupported amount	Number of invoices with block billing (1)	Number of invoices with assistance replying to a HUD OIG audit (2)	Number of invoices with unapproved personnel (3)	Number of invoices with charges billed that were not identified in the contract (4)
Babst, Calland, Clements, Zomnir, P.C.	2	\$1,159	\$0	0	0	0	0
Ballard Spahr Andrews & Ingersoll, LLP	15	130,474	48,662	9	2	0	2
Berry and Associates	3	4,890	960	2	0	0	0
Campbell, Durrant & Beatty, P.C.	8	20,716	17,689	5	0	0	0
Cohen & Grigsby, P.C.	28	498,701	20,687	11	0	4	0
Dickie, McCamey & Chilcote, P.C.	1	2,955	2,313	1	0	0	1
Grogan Graffam, P.C.	12	18,643	270	1	0	0	0
Pepper Hamilton, LLP	1	4,355	1,860	1	0	0	0
Schnader Harrison Segal & Lewis, LLP	1	12,334	12,334	1	1	0	0
Thomson, Rhodes & Cowie, P.C.	1	355	0	0	0	0	0
Tucker Arensberg, P.C.	14	63,583	36,389	8	0	0	
<b>Totals</b>	<b>86</b>	<b>\$758,165</b>	<b>\$141,164</b>	<b>39</b>	<b>3</b>	<b>4</b>	<b>3</b>

<sup>9</sup> Some invoices had more than one deficiency.

**(1) Block Billing:**

A single-time charge for multiple activities performed.

**(2) Assistance Replying to a HUD OIG Audit:**

Charges for outside law firms assisting the Authority in preparing a response to audit findings raised in a HUD OIG audit report.

**(3) Unapproved Personnel:**

Lack of supporting documentation to show that a law firm's staff was authorized (approved) to perform legal services according to the contract.

**(4) Charges Billed That Were Not Identified in the Contract:**

Charges billed that were not identified in the contract, such as research services.



# Appendix E

## EXAMPLE OF OUTSIDE LAW FIRM ASSISTANCE IN RESPONDING TO AN OIG AUDIT

Housing Authority for the City of Pittsburgh November 24, 2008 Page 2		Invoice No. 2244361	
3010338-0001 HUD Review			
Date	Name	Description	Hours
06/10/08	[REDACTED]	Reviewing, revising draft letter from [REDACTED].	0.80
06/12/08	[REDACTED]	Drafted letter to [REDACTED] re: Audit.	1.60
06/16/08	[REDACTED]	Researched PA contract law re: validity without signature date.	2.30
06/16/08	[REDACTED]	Revised draft letter to [REDACTED] re: Audit.	1.10
06/17/08	[REDACTED]	Conference with [REDACTED] re: [REDACTED] letter.	0.20
06/17/08	[REDACTED]	Finalizing letter to [REDACTED]; Telephone conference with [REDACTED].	1.60
06/18/08	[REDACTED]	Revised letter to [REDACTED] re: audit,	0.80
06/18/08	[REDACTED]	Finalizing letter to [REDACTED]; Review Kroll Report; Telephone conference with [REDACTED].	2.00
07/15/08	[REDACTED]	TRANSFERRED FROM OLD JWL CL-MAT #3000733-0001: TCW [REDACTED]; email exchange w [REDACTED]; reviewing letter to [REDACTED]	2.10
07/17/08	[REDACTED]	Preparing for meeting with [REDACTED]; Reviewing letter and Kroll Report.	1.00
07/18/08	[REDACTED]	Meetings with [REDACTED]; Telephone conference with client with [REDACTED].	1.50
07/23/08	[REDACTED]	Telephone conference with [REDACTED] re: [REDACTED] meeting.	0.50
07/30/08	[REDACTED]	Reviewing HUD IG "minor finding"; Review Audit Report.	2.00
08/05/08	[REDACTED]	Preparing for HUD IG meeting; Telephone conference with [REDACTED].	1.00
08/06/08	[REDACTED]	Researched IG Audit Procedure.	1.20
08/06/08	[REDACTED]	Conference with [REDACTED] re: IG Audit Procedure.	0.30
08/06/08	[REDACTED]	Travel to Pittsburgh for IG meeting.	4.00
08/07/08	[REDACTED]	Meeting with IG; Conference with [REDACTED]; Conference with [REDACTED]; Travel to Philadelphia.	7.00
08/15/08	[REDACTED]	Reviewing revised audit report; Conference call with [REDACTED] et al.	1.20
08/18/08	[REDACTED]	Reviewing, revised Audit Report; Telephone conference with [REDACTED].	0.50
		<b>Total Hours</b>	<b>32.70</b>
		<b>Total Services</b>	<b>\$ 11,421.00</b>
<b>Name</b>		<b>Hours</b>	<b>Rate</b>
[REDACTED]		25.20	355.00
[REDACTED]		7.50	330.00
			<b>Value</b>
			8,946.00
			2,475.00

The example above is from an outside law firm that billed the Authority for assistance in preparing a response to a HUD OIG audit report.