



Issue Date November 4, 2010

Audit Report Number 2011-LA-1002

TO: K.J. Brockington, Director, Los Angeles Office of Public Housing , 9DPH
Tanya E Schulze

FROM: Tanya E. Schulze, Regional Inspector General for Audit, Region IX, 9DGA

SUBJECT: The Housing Authority of the City of Los Angeles Generally Had Capacity;
However, It Needs To Improve Controls Over Its Administration of Its Capital
Fund Grant Awarded Under The Recovery Act Program

HIGHLIGHTS

What We Audited and Why

We completed a capacity review of the Housing Authority of the City of Los Angeles' (Authority) capital fund grant awarded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) program. We performed the audit because Recovery Act reviews are part of the Office of Inspector General's (OIG) annual plan and the Authority was awarded a significant amount of program funds.

The primary objective of our review was to evaluate the Authority's capacity in the areas of internal controls, eligibility, financial controls, procurement, and output/outcomes in administering its Recovery Act funds.

What We Found

The Authority generally had adequate capacity to manage and administer its Recovery Act funding. It had (1) sufficient staffing levels, (2) sufficient records to track financial expenditures, and (3) adequate policies and procedures for its financial activities and (4)

had obligated and was on track to spend its Recovery Act formula grant funds for eligible projects within the program's timeframe requirements. However, we identified various weaknesses that could impact the Authority's ability to effectively manage and administer its Recovery Act funding in the most economical and efficient manner. Specifically it (1) did not properly procure two of its contracts or evaluate compliance with requirements for a third contract, (2) failed to include all provisions required by 24 CFR (Code of Federal Regulations) 85.36(i) for five of its contracts, (3) did not record its employees' time accurately and consistently in its manual and Oracle time cards, (4) did not develop sufficient written policies and procedures to monitor for Davis-Bacon compliance, and (5) did not maintain documentation to show that Davis-Bacon certified payrolls were received and reviewed for compliance.

What We Recommend

We recommend that the Director of the Los Angeles Office of Public Housing (1) require the Authority to provide support showing the eligibility and reasonableness of \$369,259 disbursed for the repair of 12 fire-damaged units at Nickerson Gardens or reimburse this amount to its Recovery Act program, as appropriate, from non-Federal funds, (2) closely monitor the intergovernmental purchasing agreement transactions of the Authority for the quarters ending December 31, 2010, March 31, 2011, and June 30, 2011 to ensure that it follows the U.S. Department of Housing & Urban Development's (HUD) and its own procurement requirements, (3) implement procedures to ensure that it includes all mandatory contract provisions as required by 24 CFR 85.36(i), (4) rescind the Authority's HA-2006-047 Home Depot contract and require it to re-bid it out in compliance with 24 CFR 85.36(c) and its own internal procurement policy, and (5) monitor the Authority to ensure that it implements the procedures it has in place to establish project numbers before beginning work at each development. We also recommend that the Director of the Los Angeles Office of Public Housing require the Authority to (1) reallocate the payroll of force account employees in the Oracle system to the correct project numbers between September 12, 2009, and February 12, 2010, and (2) develop and implement formal written policies and procedures to assist staff in monitoring for Davis-Bacon compliance.

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-3. Please furnish us copies of any correspondence or directives issued because of the audit.

Auditee's Response

We provided the Authority a discussion draft report on October 7, 2010, and held an exit conference with the Authority's officials on October 22, 2010. The Authority provided written comments on October 22, 2010 and supplemental comments based on issues raised in our exit conference on October 27, 2010. It generally disagreed with our

findings. The complete text of the auditee's response, along with our evaluations of that response, can be found in appendix B of this report. Attachments to the auditee's response will be made available upon request.

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BACKGROUND AND OBJECTIVE

On February 17, 2009, the President signed the American Recovery and Reinvestment Act of 2009 (Recovery Act). This legislation includes a \$4 billion appropriation of capital funds for public housing agencies to carry out capital and management activities as authorized under Section 9 of the United States Housing Act of 1937. The Recovery Act requires that \$3 billion of these funds be distributed as formula funds and the remaining \$1 billion be distributed through a competitive process. Under both programs, housing agencies were required to obligate 100 percent of the grant within 1 year, expend at least 60 percent of the grant within 2 years, and expend 100 percent of the grant within 3 years from the date that funds are made available. Failure to comply with the 1-, 2-, or 3-year obligation and expenditure requirements will result in the recapture of unobligated and unexpended funds. The formula and competitive Recovery Act funds were made available to the Housing Authority of the City of Los Angeles (Authority) on March 18 and September 24, 2009, respectively. Accordingly, funds must be obligated and expended for both formula and competitive grants by the dates listed below:

Obligation deadline	Formula grant deadline	Competitive grant deadline
100 percent obligation due date	March 17, 2010	September 23, 2010
60 percent expended due date	March 17, 2011	September 23, 2011
100 percent expended due date	March 17, 2012	September 23, 2012

The Authority was awarded stimulus funds of more than \$25 million under the formula grant and more than \$8 million under the competitive grants. As of the end of our fieldwork, no funds had been expended from the competitive grants; therefore, our review focused on the Authority's formula grant, which was allocated as follows:

Cost category	Amount
Administration	\$2,507,383
Fees and costs	\$1,377,376
Contracts	\$17,602,870
Force account construction	\$3,141,000
Purchase orders	\$445,205
Total	\$25,073,834

Twenty contracts were awarded to 12 different contractors for the installation of wireless cameras and floor tile, reroofing, environmental asbestos abatement, and restoration and repair of fire-damaged units. The Authority also set aside funds to employ permanent and per diem or temporary employees under its force account for the installation of low-flush toilets, sprinklers, and temperature pressure relief valves and for the restoration and repair of fire-damaged units. Because it did not have the in-house supervisory capacity to manage all of its per diem employees at multiple projects and the considerable amount of work to be completed under the force account, it furloughed 32 of its per diem employees in February 2010 and replaced them with subcontractors. It entered into 11 subcontracts, totaling more than \$1.3 million, for work previously budgeted under the force account. The work included installation of low-flush toilets and sprinklers and fire-repair jobs.

The Authority manages more than 60 public housing locations throughout Los Angeles. The public housing program provides affordable housing to more than 6,500 families in Los Angeles with very low incomes.

Our objective was to determine whether the Authority had sufficient capacity to manage and administer its capital fund grant awarded under the Recovery Act program. The primary objective of our review was to evaluate the Authority's capacity in the areas of internal controls, eligibility, financial controls, procurement, and output/outcomes in administering its Recovery Act funds.

RESULTS OF AUDIT

Finding 1: The Authority Did Not Follow Required Procurement Procedures

The Authority did not properly procure two of its Home Depot contracts or evaluate a third made through an intergovernmental cooperative purchasing agreement with Maricopa County. It also significantly expanded the scope and amended the maximum value and term of the contracts outside of requirements. This condition occurred because the Authority misunderstood and misapplied U.S. Department of Housing and Urban Development (HUD) requirements and its own policies for procurement. It also failed to include all contracting provisions for five of its contracts because it did not have adequate controls in place to ensure that it complied with 24 CFR (Code of Federal Regulations) 85.36(i) and its own policies. As a result, it awarded contracts totaling \$699,225 that were not processed in a manner that provided full and open competition in accordance with Federal requirements. It also failed to ensure the Maricopa contract was procured in accordance with 24 CFR 85.36 before utilizing it for a \$15.9 million contract. It expended \$369,259 in Recovery Act funds that may not have been obtained at a fair and equitable price, and it could not ensure that its vendors complied with all mandatory Federal requirements because they were not included in the contracts.

Intergovernmental Cooperative Purchasing Agreement

The Authority entered into three contracts with Home Depot, totaling more than \$16 million, by “piggybacking”¹ off of the Maricopa County (County) and Home Depot contract for the purchase of maintenance, repair, and operating supplies; construction services; and the repair of 12 fire-damaged units at Nickerson Gardens. This arrangement was authorized by an executed master intergovernmental cooperative purchasing agreement through U.S. Communities, a nonprofit government purchasing cooperative that provides public agencies access to competitively solicited contracts. The County entered into its Home Depot contract by preparing and issuing competitive solicitations on behalf of U.S. Communities. The contract was then made available to agencies such as the Authority, which became a participating public agency by registering with U.S. Communities. The agreement allowed the Authority to purchase products and services under the same terms, conditions, and pricing as the County. The Authority’s three Home Depot contracts are specified in the chart below.

¹ “Piggybacking” is the postaward use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through the original document/process.

Contract	Amount	Work to be completed	Recovery Act related?
HA-2006-047	\$15.9 million (\$11.9 million for maintenance supplies and \$4 million for construction services)	Supplies and services	Yes, partial contract (\$1.1 million of the \$11.9 million for maintenance supplies and \$711,305 of the \$4 million for construction services)
HA-2010-044	\$451,305	Repair of nine fire-damaged units at Nickerson Gardens	Yes, entire contract
HA-2010-064	\$247,920	Repair of three fire-damaged units at Nickerson Gardens	Yes, entire contract
	\$16,599,225		

Failure To Meet Four of the Five Conditions Required of Intergovernmental or Interagency Agreements

Contrary to section 14.2 of HUD Handbook 7460.8, REV-2, the Authority did not meet four of the five conditions under which a public housing agency may enter into intergovernmental or interagency purchasing agreements without competitive procurement. This condition occurred because the Authority misunderstood and misapplied HUD requirements and its own policy for procurement.

Condition One Was Not Met

Condition one stated that “the agreement provides for greater economy and efficiency and results in cost savings to the public housing agency.”

The Authority did not show that this intergovernmental agreement with the County would result in cost savings to the Authority. It did not provide its complete cost comparison or price analysis to show the reasonableness of price and cost savings for its fire jobs. Therefore, it was unable to demonstrate that the goods and services were obtained at the most advantageous terms and whether the prices were reasonable. As of September 24, 2010, the Authority had spent \$369,259 for contract HA-2010-044 (see chart below).

Contract	Contract amount	Expended as of September 24, 2010	Balance
HA-2010-044	\$451,305	\$369,259	\$82,046
HA-2010-064	\$247,920	\$0	\$247,920
Total	\$699,225	\$369,259	\$329,966

Condition Two Was Not Met

Condition two stated that “the agreement is used for common supplies and services that are of a routine nature only.”

The Authority entered into two Home Depot contracts for the repair and restoration of fire-damaged units without providing documentation to substantiate that this type of non routine maintenance was included in the County’s original contract and that the contract amounts were evaluated to show the cost savings to the Authority. It stated that this type of service is not rare and generally considered routine to the housing authority. However, even at the Authority’s stated average of 10 fire damage restoration units per year, this equates to far less than 1 percent of its housing stock. In addition, although the Authority has devoted substantial amounts of its capital funds for the repair of these damaged units, fire damages do not occur on a day to day basis and the extensive and varied scope of the work is not common or routine; therefore, it is not proper to classify it as a routine service to a housing authority.

Condition Three Was Not Met

Condition three stated that “public housing agencies must take steps to ensure that any supplies or services obtained using another agency’s contract are purchased in compliance with 24 CFR 85.36.”

For the Authority to meet condition three, it must be able to show that the other agency’s contract was procured in compliance with 24 CFR 85.36. Although the Authority obtained additional documentation from Maricopa after the exit conference to support that the County’s original contract was procured properly (and thereby supported the cost reasonableness of supplies purchased with ARRA funds), the Authority did not obtain or evaluate all the County’s bidding documentation to ensure it met 24 CFR 85.36 before executing its \$15.9 million Home Depot contract. The Authority stated that it was not responsible for the County’s compliance with 24 CFR 85.36 and that it was responsible for only its own procurement. However, in addition to condition 3 of section 14.2 of the handbook, section 14.1 specifically states that “for PHAs to access various interagency purchasing agreements, the underlying contract must have been procured in accordance with 24 CFR 85.36.”

In addition, the County amended its original contract in 2008 to include the assembly and/or installation services for products purchased through Home Depot and rental of any tools or equipment necessary (amendment three). This amendment was included to expand on the general intent of section 1.1 in exhibit B of the original County contract, which was signed in 2005. However, as confirmed by the County, the general intent mentioned only providing supplies, building and construction equipment and materials, tools, and other related maintenance repair and operating supplies, but not services. The County significantly expanded the scope of its Home Depot contract through this unsigned amendment 3 years after it was originally executed. The County did not perform additional procurement to support the costs reasonableness of the services; therefore, amendment three of the County's contract was not procured in accordance with 24 CFR 85.36.

The County's solicitation package was also missing a complete comparison of cost for materials and of wage rates for labor as it relates to amendment 3. Therefore, the Authority was unable to demonstrate the reasonableness of Home Depot's prices for its materials and services or compliance with 24 CFR 85.36. Further, the County confirmed that this contract was procured based on County-established requirements and not necessarily Federal requirements; therefore, it may not have complied with 24 CFR 85.36. Thus, the Authority could not be completely assured that materials and services were procured according to Federal requirements.

Condition Four Was Not Met

Condition four stated that "a public housing agency's file should contain a copy of the intergovernmental agreement and documentation showing that cost and availability were evaluated before the agreement was executed, and these factors are reviewed and compared at least annually with those contained in the agreement."

The Authority did not provide evidence that it determined whether cost and availability were evaluated as part of the original solicitation, nor did it provide evidence that it had evaluated these factors and compared them at least annually with those contained in the agreement since 2007.

Contract Scope Significantly Expanded and Maximum Value and Term Amended Outside of Requirements

According to HUD Handbook 7460.8, section 1.9, a new procurement should be used when there are major changes to an existing contract that are beyond the general scope or a change to a substantive element of the contract. Contrary to section 1.9 of the handbook, the Authority significantly expanded the scope of contract HA-2006-047 from

supplies to supplies and services without obtaining a new procurement. Below is a timeline of events illustrating the changes to contract HA-2006-047:

- On February 26, 2007, the Authority entered into HA-2006-047 with Home Depot for 2 years for \$3 million without a defined option to extend.
- On June 6, 2008, it amended the contract and increased the contract amount by \$5 million to \$8 million.
- On February 25, 2009, it amended the contract and increased the contract term to 4 years with a 1-year option to renew.
- On May 24, 2010, it amended the contract for the third time and added construction service for \$4 million and maintenance supply for \$3.9 million. This change increased the total contract by \$7.9 million to a total of \$15.9 million. It also extended the term of the contract by 5 years through February 25, 2012.

As shown above, the Authority amended the contract on several occasions to increase the contract's scope, maximum value, and term. It increased the maximum value of the contract from \$3 million to \$15.9 million and extended the term of the contract from 2 years to 5 years. The Authority's contract with Home Depot (HA-2006-047) included an option to extend the contract's term; however, the option did not specify an option term. The Authority also did not include an option to increase the maximum value of its contract with Home Depot. HUD requires a finite period or term for a contract, including all options, and a specific limit on the maximum value of options to be purchased under an option. An undefined option is considered a new procurement and may not be used.

Insufficient Contract Provisions

The Authority did not include specific contract provisions that are required by 24 CFR 85.36 and its own procurement procedures. These provisions were put into place to protect the Authority's interests. They include equal employment opportunity requirements; compliance with the Anti-Kickback Act; labor requirements; work hours and safety standards; reporting and records retention; patent rights; copyright requirements; and compliance with the Clean Air Act and the Energy Policy and Conservation Act.

The contract with Motorola, Inc., did not include the provision from 24 CFR 85.36(i)(7), while the contract with High Tech Builders did not include three required provisions from 24 CFR 85.36(i)(7), (8), and (9). The Authority stated that it would include these provisions in an addendum or amendment to the contracts. The Authority also did not include specific contract provisions in three of its contracts with Home Depot or ensure that the "piggybacked" County contracts included the required provisions. It did not include nine required provisions from 24 CFR 85.36(i)(3), (4), (5), (6), (7), (8), (11), (12), and (13). The Authority did not include these provisions due to inadequate controls over procurement.

Conclusion

The Authority violated Federal procurement requirements and its own policies by entering into two contracts without undergoing proper procurement procedures because it signed onto an intergovernmental cooperative purchasing agreement without meeting all of the requirements necessary to enter into this type of agreement. It also failed to determine whether contract requirements were met before it executed a third contract with Home Depot. Further, it significantly expanded the scope and amended the maximum value and term of the contract outside of requirements. This condition occurred because the Authority misunderstood HUD rules and regulations and its own policies and procedures. It also did not include all applicable provisions in 24 CFR 85.36(i) for five of its contracts because it did not have adequate controls over procurement. Consequently, the Authority limited competition and may have paid excessive and/or ineligible costs for procurement actions totaling up to \$699,225, and it did not ensure it evaluated Maricopa's Home Depot procurement was properly procured in accordance with 24 CFR 85.36 before entering into a contract totaling \$15.9 million. It expended \$369,259 in Recovery Act funds that may not have been obtained at a fair and equitable price, and it could not ensure that its contractors complied with all mandatory Federal requirements because the requirements were not included in the contracts.

Recommendations

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

- 1A. Require the Authority to provide support showing the eligibility and reasonableness of \$369,259 disbursed for the repair of 12 fire-damaged units at Nickerson Gardens or reimburse this amount to its Recovery Act program, as appropriate, from non-Federal funds.
- 1B. Closely monitor the intergovernmental purchasing agreement transactions of the Authority for the quarters ending December 31, 2010, March 31, 2011, and June 30, 2011 to ensure that it follows HUD's and its own procurement requirements by soliciting bids, obtaining and retaining written cost estimates, and documenting the reasons for selection for all projects before awarding contracts to vendors and ensure that it includes contract provisions as required by 24 CFR 85.36(i).
- 1C. Rescind the Authority's HA-2006-047 Home Depot contract and require it to re-bid it out in compliance with 24 CFR 85.36(c) and its own internal procurement policy.
- 1D. Implement procedures and controls to ensure that all of its procurement contracts with Federal funds include the mandatory contract provisions at 24 CFR 85.36(i).

Finding 2: The Authority's Controls Were Not Sufficient To Ensure That It Would Effectively Administer Its Recovery Act Funds

The Authority generally had adequate financial capacity to manage its Recovery Act funds; however, it needs to strengthen its controls to effectively administer HUD funds and comply with applicable requirements. Specifically, the Authority did not (1) record its employees' time accurately and consistently on its manual and Oracle time cards, (2) develop sufficient written policies and procedures to monitor for Davis-Bacon compliance, and (3) maintain documentation to show that Davis-Bacon certified payrolls were received and reviewed for compliance. These weaknesses occurred because the Authority disregarded HUD rules and regulations. Although we did not identify significant effects to the Recovery Act program, the Authority is at risk of not administering the program according to HUD rules by inaccurately reporting employee payroll and paying less than the Davis-Bacon wage rates.

Project Numbers Not Established Before Allocating Payroll Costs

The Authority failed to establish project numbers in its Oracle system because it overlooked HUD requirements and its own policies and procedures. As a result, it misallocated payroll costs of its per diem employees to incorrect project developments on its manual and Oracle time cards and provided HUD with inaccurate support before obtaining reimbursement for its Recovery Act expenditures between September of 2009 and February of 2010. We did not identify significant negative effects to the Recovery Act program as the miscoding was contained within project numbers associated with the program.

The Authority discovered the payroll misallocations in May of 2010 but did not fully correct the problem. It explained that it had sufficient funds to expand its scope to include more HUD-approved project sites and in its rush to accomplish the work, it failed to establish the new project numbers for the sites. Although it had created one set of project numbers a few days after we began our audit fieldwork and another set in June of 2010, it did not reallocate the employees' payroll to the correct project sites until after we had notified it of the deficiency. The Authority completed its redistribution in August of 2010; however, the reallocations did not fully remedy the issues identified. We notified the Authority of the mistakes and they redistributed the employee payroll two more times, once in September of 2010 and a second time in October of 2010. The October of 2010 reallocation still reflected incorrect information in relation to our sample. A few of the reallocated hours were not accurate based on the percentage of time shown on the manual time card, or correct project numbers were not shown on the reallocation. The

pay for these payroll periods should be reallocated and corrected to ensure accurate reporting of employees' time.

Lack of Written Policies and Procedures and Log Not Implemented To Monitor for Davis-Bacon Compliance

We reviewed the certified payroll for three construction contracts in our sample and determined that the Authority generally complied with requirements by paying at least the Davis-Bacon wage rates. It also obtained weekly payroll reports from its contractors based on the payrolls reviewed. However, it did not have written policies and procedures to assist staff in accomplishing its monitoring responsibilities, nor did it maintain a separate report or log to show that certified payrolls were received and reviewed. The only documentation it maintained was in regard to the payrolls and onsite interviews of contractor employees. When we inquired about a log or documentation to illustrate that the Authority had received and reviewed its contractor's certified payroll, the Authority stated that it did not maintain one although it performed the required reviews. It provided a copy of a control log template it planned to implement based on our inquiries that appeared to be sufficient to monitor its review of certified payroll. However, the template was provided less than 2 weeks before the end of our fieldwork; therefore, we were unable to verify that the log was implemented.

Conclusion

The Authority generally had sufficient financial capacity to manage its Recovery Act funds. However, it needs to strengthen its controls to fulfill the requirements under the Recovery Act program. It can do so by (1) establishing a project number before beginning work at each development, (2) reallocating its payroll in its system to the correct projects, (3) developing written policies and procedures for Davis-Bacon compliance, and (4) ensuring that it documents its review of Davis-Bacon compliance by implementing a control log to track the review and receipt of certified payrolls. Although the outcome of our review in this area did not result in a material effect to HUD, failure to perform these steps could increase the risk of fraud, waste, and abuse.

Recommendation

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

- 2A. Monitor the Authority to ensure that it implements the procedures it has in place to establish project numbers before beginning work at each development to ensure accurate distribution of employee payroll.

- 2B. Require the Authority to correctly reallocate the payroll of force account employees on its manual time card between September 12, 2009, and February 12, 2010.
- 2C. Require the Authority to develop and implement formal written policies and procedures to assist staff in monitoring for Davis-Bacon compliance.
- 2D. Require the Authority to implement a log or reporting system to document review and receipt of Davis-Bacon certified payrolls.

SCOPE AND METHODOLOGY

We performed our onsite work at the Authority's administrative office at 2600 Wilshire Boulevard, Los Angeles, CA, between May and September 2010. Our review generally covered the period March 18, 2009, to the present. We expanded our scope as necessary.

To accomplish our objective, we

- Reviewed and obtained an understanding of the Recovery Act, the Authority's grant agreements with HUD, and planned activities found on its annual plan.
- Reviewed applicable financial management and procurement criteria.
- Reviewed relevant Authority policies and procedures.
- Reviewed the Davis-Bacon Act.
- Reviewed the Authority's financial records and procurement files.
- Interviewed HUD and Authority employees regarding the Authority's operations.
- Interviewed Maricopa County regarding its contracts with Home Depot.
- Reviewed job descriptions and the organizational chart.
- Reviewed the Authority's most current annual plan and board resolutions.
- Conducted site visits at Nickerson Gardens, Imperial Courts, Jordan Downs, Mar Vista Gardens, Estrada Courts, and the Torrance facility to observe the progress of work and the safeguarding of assets.

We reviewed a sample of seven contracts, totaling more than \$24 million, that were awarded between February 26, 2007, and May 17, 2010. Four of the contracts (Motorola, Inc., High-Tech Builders, Del Mar Floor Covering, and Millennium Design) were selected based on the type of procurement the Authority used (small purchase, competitive, sealed bid, and small purchase to supplement the force account). We also reviewed three Home Depot contracts, as these were related to the force account subcontracts. We chose this approach since testing 100 percent of the population was not feasible. Therefore, the sampling results apply only to the items tested and cannot be projected to the universe or population.

We selected a payroll sample for one permanent and three per diem employees who were working on force account-related activities based on the work at four developments with the highest labor budgets and expenditures as of June 23, 2010. We tested their pay stubs, manual and Oracle time cards, and job logs generally between August 29, 2009, and June 18, 2010. We

selected this approach because it allowed us to review payroll with higher risk and materiality. The results apply only to the items tested and cannot be projected to the universe or population.

We reviewed a sample of 181 force account purchase orders and 20 small work purchase orders, totaling \$757,772, that were invoiced between April 29, 2009, and April 15, 2010. The 201 purchase orders were selected based on the largest expenditure amounts in each category. We selected this approach because it allowed us to review purchase orders with higher risk and materiality. The results apply only to the items tested and cannot be projected to the universe or population.

To achieve our objective, we relied in part on Oracle-generated data and internally maintained spreadsheets. We performed a moderate level of testing to assess the integrity of the data with respect to payroll and material expenditures and found the data to be generally accurate for our purposes. The inaccuracies identified occurred because the Authority did not establish project numbers in its system in a timely manner (see finding 2).

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

INTERNAL CONTROLS

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

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

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

Relevant Internal Controls

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

- Policies and procedures to ensure that internal controls, financial management, and procurement activities are adequate.
- Policies and procedures to ensure that grant expenditures are eligible and adequately supported.

We assessed the relevant controls identified above.

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

Significant Deficiencies

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

- The Authority did not implement sufficient procedures and controls to ensure that it complied with applicable procurement requirements (see finding 1).
- The Authority did not implement procedures to ensure accurate distribution of payroll to each project (see finding 2).

- The Authority lacked written policies and procedures to ensure the monitoring of Davis-Bacon compliance (see finding 2).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Unsupported <u>1/</u>
1A	\$369,259


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

Ref to OIG Evaluation

Auditee Comments



HOUSING AUTHORITY OF THE CITY OF LOS ANGELES
AN EQUAL EMPLOYMENT OPPORTUNITY-AFFIRMATIVE ACTION EMPLOYER
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October 22, 2010

Ms. Tanya Schulze, Regional Inspector General for Audit
Office of Inspector General
U. S. Department of Housing and Urban Development
Los Angeles Area Office, Region IX
611 West 6th Street, Suite 1160
Los Angeles, CA. 90017

SUBJECT: HOUSING AUTHORITY RESPONSE TO OIG DRAFT AUDIT REPORT

Dear Ms. Schulze:

The Housing Authority hereby submits this letter as its formal written response to the October 7, 2010 draft audit report from the U.S. Department of Housing and Urban Development Office of Inspector General (OIG). We ask that the response along with the Home Depot letter be included in the final report in its entirety, except to the extent OIG deletes referenced findings or comments or chooses not to include the attachments.

“Finding 1: The Authority Did Not Follow Required Procurement Procedures

The Authority did not properly procure three of its Home Depot contracts when it entered into an intergovernmental cooperative purchasing agreement with Maricopa County. It also significantly expanded the scope and amended the maximum value and term of the contract outside of requirements. This condition occurred because the Authority misunderstood and misapplied U.S. Department of Housing and Urban Development (HUD) requirements and its own policies for procurement. It also failed to include all contracting provisions for five of its contracts because it did not have adequate controls in place to ensure that it complied with 24 CFR (Code of Federal Regulations) 85.36 (l) and its own policies. As a result, it awarded contracts totaling \$16.6 million that were not processed in a manner that provided full and open competition in accordance with Federal requirements.”

HACLA Response: The Housing Authority of the City of Los Angeles (HACLA) disagrees with the HUD OIG assessment that it improperly procured three of its Home Depot contracts and that it both misunderstood and misapplied HUD requirements and its own policies.

Comment 1

Comment 2

The HUD Office of Inspector General's letter dated April 21, 2010 to the Housing Authority of the City of Los Angeles stated, "The overall objective is to determine whether the Authority has the capacity to administer the \$25 million in grant funds that were provided under the American Recovery and Reinvestment Act of 2009." Accordingly, references in any report should be limited to the \$1.04 million in American Recovery and Reinvestment Act funds about which OIG has raised questions and not an amount that includes other funds.

Comment 3

The manner by which HACLA procured the three Home Depot contracts was through an intergovernmental agreement with Maricopa County. Per 24 CFR 85.36, PHAs are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

Maricopa County is one of several Lead Public Agencies through the U.S. Communities program for intergovernmental cooperative purchasing. The objective of the U.S. Communities program is to "help public agencies reduce the cost of purchased goods by combining the purchasing power of public agencies nationwide." This objective is accomplished by competitively soliciting quality products by a single lead public agency and making the resulting contract available to other public agencies nationwide. The Authority has greatly benefited from the significant time and cost savings of the program, which also helped the Authority efficiently and effectively obligate and expend the Recovery Act funds.

Comment 4

HACLA contends that it completed the required due diligence when it procured the Home Depot contracts and accurately and appropriately followed both HUD and its own policies. In this response, HACLA will provide a point-by-point explanation with supporting documentation as attachments to validate both the procurement and its associated practices.

"Failure to meet four of the five conditions required of intergovernmental or interagency agreements"

Contrary to section 14.2 of HUD Handbook 7460.8, REV-2, the Authority did not meet four of the five conditions under which a public housing agency may enter into intergovernmental or interagency purchasing agreements without competitive procurement. This condition occurred because the Authority misunderstood and misapplied HUD requirements and its own policy for procurement."

"Condition one was not met: The agreement provides for greater economy and efficiency and results in cost savings to the public housing agency"

HACLA Response: Condition one of Section 14.2 of HUD Handbook 7460.8, Rev -2, fully reads: "The agreement provides for greater economy and efficiency and results in cost savings to the PHA. Before utilizing an interagency agreement for procurement, the PHA should compare the cost and availability of the indentified supplies or services

on the open market with the cost of purchasing them through another unit of government to determine if it is the most economical and efficient method."

Comment 5

While the draft report references the "County's cost comparison," the Handbook imposes the responsibility to compare costs on the PHA, and HACLA did so in this procurement by soliciting prices by telephone from several vendors for toilets and determining that the prices from Home Depot were the lowest (Attachment No.1). HACLA also completed cost estimates using RS Means (the construction industry standard for construction estimating calculations) for the repair of 12 fire damaged units before entering into contracts with Home Depot (Attachment No. 2). As referenced in the draft report on page 8, the total amount from contracts HA-2010-044 and HA-2010-064 is \$711,305. The total amount from HACLA's cost estimates is \$905,203.

Comment 6

Further, the County of Maricopa also performed cost comparisons between two different vendors (Home Depot and MSC Industrial Suppliers) prior to contract award to demonstrate price reasonableness. This was part of Maricopa County's bidding documents (Attachment No. 3).

"Condition two was not met: The agreement is used for common supplies and services that are of routine nature only"

Comment 7

HACLA Response: Unfortunately, repair and restoration of fire damaged units is not rare, and is generally considered a regular and routine service required by PHAs nationwide to maintain appropriate standards of health and safety in their housing stock. In the past ten years, the HACLA has restored an average of 10 fire damaged units per year and annually budgets \$500,000 to \$1M of its Capital Fund dollars in order to uphold the applicable livability standards for its units. The component activities which make up a fire restoration include, but are not limited to the following: flooring replacement, painting, plumbing, installation of cabinets, windows, and roofing. These types of repairs are standard business operations for PHAs regardless of whether or not fire is the root cause.

Comment 8

The original Maricopa County contract under Exhibit B, 1.2 "Requirement" states, "County of Maricopa (herein "Lead Public Agency") on behalf of County of San Diego, the City of San Antonio, Hillsborough County School District and the U.S. Communities' Government Purchasing Alliance (GPA) (Refer Section 1.6), is soliciting Proposals from qualified companies to enter into Master Agreement for a complete line of Maintenance, Repair, and Operation supplies and related services" (Attachment No. 4). HACLA interprets "related services" as the County contract's inclusion of routine services.

As referenced in the response to Condition One, the HACLA completed its own cost estimates for the repair of 12 fire damaged units before entering into contracts with Home Depot to show cost savings (Attachment No. 2).

As to both the routine nature of the repairs and the reasonableness of the pricing, please also see Home Depot's letter.

“Condition three was not met: *Public housing agencies must take steps to ensure that any supplies or services obtained using another agency’s contract are purchased in compliance with 24 CFR 85.36”*

Comment 9

HACLA Response: HACLA reviewed the solicitation and submittals from the County’s contract and found that it met with 24 CFR 85.36. HACLA was provided with the County’s solicitation package that included the bidder’s mailing list, proof of advertisement, price comparison and the evaluation sheet for the vendors (Attachment No. 3). See also the discussion on the Home Depot letter regarding Maricopa County’s solicitation process. A comparison for wage rates for labor cannot be established in a contract under the Maricopa County’s contract wage rate as Davis Bacon rules are specific to the region or county of the services being performed.

Comment 10

The County’s contract Amendment No. 3 merely clarifies that assembly and installation services are a part of the General Intent of the contract and that renovation services entail the installation of products procured through Home Depot, but does not expand, the intent of Exhibit B, Section 1.2 of the contract. It cites the intent to “...enter into Master Agreement for a complete line of Maintenance, Repair, and Operation supplies and related services..” Though Amendment No. 3 was not signed by either party, it is readily found on the US Communities website and confirmed that the parties consistently have treated the amendment as “in effect.” See also the further explanation of Amendment No. 3 in Home Depot’s letter.

Comment 11

HACLA did not ignore its own procurement policy requiring sealed bids for purchases in excess of \$100,000, because the policy allows for the use of intergovernmental agreements (Attachment No. 5). Also, 24 CFR 85.36 encourages PHAs to enter into intergovernmental contracts.

Comment 12

As referenced in HACLA’s response to Condition One, HACLA did solicit prices by telephone from several vendors for toilets and determined that the prices from Home Depot were the lowest and demonstrated the \$673,382 spent on goods were obtained at the most advantageous terms and undertook the necessary analysis with respect to repair of the fire damaged units.

“Condition four was not met: *A public housing agency’s file should contain a copy of the intergovernmental agreement and documentation showing that cost and availability were evaluated before the agreement was executed, and these factors are reviewed and compared at least annually with those contained in the agreement.”*

Comment 13

HACLA Response: The HACLA procurement file does contain a copy of the intergovernmental agreement and documentation showing that cost and availability were evaluated before the agreement was executed (Attachments Nos. 3 and 6).

Comment 14

The intergovernmental agreement covers many goods and services that the Authority would never purchase and thus it is more efficient for the Authority to do evaluations on

Comment 14

the items at the time of purchase to ensure both availability of goods and price reasonableness.

Section 1.2 of HUD Handbook 7460.8, Rev -2, states: "To distinguish between instructions in this handbook that are mandatory versus those that are advisory, the following terms have the following meanings:

- "Shall" and "must," mean that an action or item is mandatory and is required by statute or regulation. Regulatory and statutory citations are provided throughout this handbook.
- "Should" and "may," mean that the action or item serves to provide guidance and/or best practices but is not mandatory.

Based on HUD language governing requirements and best practices, HACL A contends that it acted appropriately in pricing supplies at time of purchase.

"Contract Scope Significantly Expanded and Maximum Value and Term Amended Outside of Requirements

According to HUD Handbook 7460.8, section 1.9, a new procurement should be used when there are major changes to an existing contract that are beyond the general scope or a change to a substantive element of the contract. Contrary to section 1.9 of the handbook, the Authority significantly expanded the scope of contract HA-2006-047 from supplies to supplies and services without obtaining a new procurement."

HACL A Response: HACL A procured for services through the County's contract as permitted by the contract.

With regard to HUD's charge that the amendments provided for an indefinite term, HACL A is fully aware that under Chapter 10.8, paragraph C(2), Contracts shall not exceed a period of five years, including options for renewal or extension. Contracts, other than energy performance contracts, with terms, plus extensions, that exceed a total of five years are viewed as restrictive of competition and in violation of CFR 85.36(c).

Comment 15

Cognizant of this limitation, HACL A entered into its Amendments to HA-2006-047 with specific intention not exceed the five (5) year cap, and expressly set forth definitive end dates for contract HA-2006-047. For example, Amendment No. 2 clearly states, the option term under Amendment No. 2 would expire on February 25, 2011 (a mere 4 years from the start of the Contract). Moreover, under Amendment No. 3, the Term was extended through February 25, 2012, or through the end of the associated U.S. Communities contract (Contract #05091), WHICHEVER OCCURS FIRST [emphasis added]. Again, it is clear that HACL A intends the Contract to end on February 25, 2012 (the 5th anniversary of the Contract start date).

The challenged term of HACL A's contract, HA-2006-047, states, that it is for two years

Comment 16

“unless...extended by written amendment to this contract.” The language does not specify an option, but it was implied that an option term would be set in the written amendment. As required by HUD Handbook 7460.8, Rev 2, is limited to no more than five years (Attachment No. 7).

Comment 17

The Authority adopted the term and purchased materials as permitted by the Maricopa Contract. The contract is in the nature of an Indefinite Quantities contract and does not raise the concerns regarding the adjustments in the maximum amounts that a contract for a specified service would raise.

“Insufficient Contract Provisions

The Authority did not include specific provisions that are required by 24 CFR 85.36 and its own procurement procedures.”

Comment 18

HACLA Response: All vendors for the contracts in question have agreed to amend their contracts to include the required provisions. To ensure adequate control over procurement, all future contracts with HACLA will include the specific provisions required under 24 CFR 85.36.

“Recommendations

We recommend that the Director of HUD’s Los Angeles Office of Public Housing

- 1A. *Require the Authority to provide support showing the eligibility and reasonableness of \$1.04 million disbursed for the purchase of toilets and the repair of 12 fire-damaged units at Nickerson Gardens or reimburse this amount to its Recovery Act program, as appropriate, from non-Federal funds.*
- 1B. *Closely monitor the operations of the Authority for 1 year to ensure that it follows HUD’s and its own procurement requirements by soliciting bids, obtaining and retaining written cost estimates, and documenting the reasons for selection for all projects before awarding contracts to vendors and ensure that it includes contract provisions as required by 24 CFR 85.36 (i).*
- 1C. *Rescind the Authority’s HA-2006-047 Home Depot contract and require it to rebid it out in compliance with 24 CFR 85.36 (c) and its own internal procurement policy.*
- 1D. *Implement procedures and controls to ensure that all of its procurement contracts with Federal funds include the mandatory contract provisions at 24 CFR 85.36 (i).”*

Comment 19

HACLA’s Conclusion to Finding 1: Within our response, HACLA has submitted clear documentation demonstrating there is no basis in requiring the recommended actions. HACLA has provided support to show the purchase of toilets and repair of 12 fire-

Comment 19

damaged units totaling \$1.04 million was eligible and reasonable. Both the public housing and modernization departments of HACL A rely on the significant time and cost savings realized by the contract for its day to day operations. Rescission of the Home Depot contract would have a significant and destructive impact on HACL A's immediate programs and projects, and in the short term severely hinder its ability to remain a high performer in its operations and provide services to its residents.

"Finding 2: The Authority's Controls Were Not Sufficient To Ensure That It Would Effectively Administer Its Recovery Act Funds"

The Authority generally had adequate financial capacity to manage its Recovery Act funds; however, it needs to strengthen its controls to effectively administer HUD funds and comply with applicable requirements. Specifically, the Authority did not (1) record its employees' time accurately and consistently on its manual and Oracle time cards, (2) develop sufficient written policies and procedures to monitor for Davis Bacon compliance, and (3) maintain documentation to show that Davis Bacon certified payrolls were received and reviewed for compliance. These weaknesses occurred because the Authority disregarded HUD rules and regulations."

Comment 20

HACL A Response: As OIG has referenced below, the payroll inaccuracies were discovered by HACL A, and were in process of being corrected prior to the HUD OIG audit. This was an internal accounting oversight that did not have any negative effects on the Recovery grant to warrant a finding. HACL A would not have overdrawn on this grant as the HUD Los Angeles Field Office requires back-up documentation prior to voucher release of funds, thereby ensuring it remained within allowable expenditure.

"Project Numbers Not Established Before Allocating Payroll Costs"

Comment 21

HACL A Response: HACL A established procedures to set up project numbers prior to commencement of any construction activity in 2006 and has completed its reallocation of payroll costs (Attachment No. 1).

"Lack of Written Policies and Procedures and Log Not Implemented to Monitor for Davis-Bacon Compliance"

Comment 22

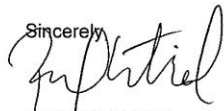
HACL A Response: HACL A has implemented the control log to monitor submission of certified payrolls.

HACL A Conclusion to Finding 2: HACL A understands the importance of effectively monitoring its employees' time to ensure proper payroll reporting and that Davis Bacon compliance is critical to effective administration of the grant funding. HACL A is taking the necessary actions to adopt a written policy for labor compliance for the Authority.

We appreciate your timely consideration of our additional data and supporting documentation regarding these findings and look forward to a positive determination regarding actions taken by HACL A in regard to the \$1.04 million in American Recovery

and Reinvestment Act funds under audit review by HUD OIG.

If you have any questions or require additional information, please feel free to call at (213) 252-1810.

Sincerely,


Rudolf C. Montiel
President and CEO

Enclosures

Cc: K.J. Brockington, Director, Office of Public Housing, 9DPH



2455 Paces Ferry Road • Atlanta, GA 30339

October 21, 2010

Mr. Rudolf Montiel
President and CEO
Housing Authority of the City of Los Angeles
2600 Wilshire Boulevard
Los Angeles, CA 90057

Re: HA-2006-047; HA-2010-044; HA-2010-064 (collectively referred to as the "HACLA Contracts").

Dear Mr. Montiel:

As you are aware, from 2006 through 2010, the Housing Authority of the City of Los Angeles ("HACLA") and Home Depot U.S.A., Inc. ("Home Depot") entered into the HACLA Contracts for the purchase of maintenance, repair and operating supplies; renovation services; and the repair of 12 fire-damaged units at Nickerson Gardens. The HACLA Contracts were not competitively bid, but rather "piggybacked" off of the November, 2005, intergovernmental cooperative purchasing agreement ("ICPA") entered into between Home Depot and Maricopa County ("County") for the sale of products and installation services purchased through the Home Depot.¹

I understand that the Housing & Urban Development's ("HUD's") Office of Inspector General ("OIG") recently performed an audit of HACLA and raised questions regarding the procurement of the HACLA Contracts. The following information should help HACLA to respond to some of the OIG's questions and show that the HACLA Contracts met the requisite conditions of section 14.2 of HUD Handbook 7460.0, REV-2.

First, under the HACLA Contracts, HACLA is obtaining goods and services at the most advantageous terms and at reasonable prices. The bid process for the ICPA was an open public solicitation with ten organizations invited to submit a proposal. The intent of the ICPA was "to provide a comprehensive competitively solicited Master Agreement offering products and

¹ The County awarded Home Depot the ICPA after soliciting and receiving competitive bids on behalf of U.S. Communities, a non-profit government purchasing cooperative that provides public agencies access to competitively solicited contracts.



services to the government agencies nationwide” (see Notice of Solicitation, Section 1.0(A), located at www.psacommunities.org/gpa/lib/pdf/mro_supplies/05091.pdf). Home Depot was awarded the ICPA because it was the lowest bidder with the most advantageous value proposition. Furthermore, based on the ICPA, Home Depot provided U.S. Communities a “pricing commitment”. According to the pricing commitment, Home Depot agrees that U.S. Communities pricing is “the lowest available pricing (net to buyer) to local agencies nationwide....and if a local agency is eligible for lower pricing [Home Depot] will match the pricing under U.S. Communities”. (See ICPA, Exhibit B, ¶2.1). Home Depot stands behind this pricing commitment. Therefore, based on the competitive bidding process of the ICPA and the pricing commitment, the HACLA Contracts provide for the required greater economy and efficiency in purchasing.

Comment 23

Second, the HACLA Contracts were used for common supplies and services that were of a routine nature. OIG has questioned whether repair and restoration of fire-damaged units was not routine services or common behavior for public agencies. Repairing and restoration of damaged units is a routine service for public agencies. Under the ICPA contract alone, excluding HACLA, Home Depot has performed over \$3.2 million of work to repair and restore damaged units. Home Depot has performed over \$250,000 of work to repair units that were completely uninhabitable at the time the work began. Similarly, Home Depot performed over \$300,000 of work to fifteen units that were in serious disrepair and questionably habitable. As evidenced in the HACLA Contracts, the scope of work for repairing and restoring fire-damaged units is not different than the scope of work for repairing and restoring units that have been damaged for any other reason. For example, under the HACLA contracts, the scope of work includes replacing windows, replacing appliances, replacing toilets, repairing and repainting drywall and paint. This type of work is exactly the type of work that Home Depot performs under its other repair and restoration contracts. In 2010 alone, under the ICPA, Home Depot performed over \$850,000 in window replacement and over \$180,000 for appliance replacement. As such, regardless of the reason for the damage, repair and restoration of damaged units is considered routine work.

Comment 24

Finally, OIG has questioned the validity of Amendment 3 to the ICPA. OIG is concerned that Amendment 3 expands the scope of the ICPA without additional procurement and was therefore invalid. Amendment 3 does not expand the scope of the original ICPA, but simply clarifies the intent of the parties. As explained in an October 14, 2008 email from [redacted], with Maricopa County² to [redacted], with Home Depot, Maricopa County proposed Amendment 3 simply to clarify that products assembled or installed had to be purchased through Home Depot. (a copy of the email is attached as Exhibit A). His reasoning, as stated in the email, was to prevent an agency from purchasing product elsewhere and then

² [redacted] was the procurement consultant team lead for Maricopa County Materials Management Department.

Names have been redacted for privacy reasons

asking Home Depot to assemble and install it (which was not part of the pricing structure). Maricopa County did not intend in any way to expand the original scope, as assembly and installation were part of the original scope.

I hope this letter addresses the concerns raised by OIG regarding the HACLA Contracts. The HACLA Contracts are valid and responsible in every respect. There are certainly no grounds for cancelling them.

Please let me know if you need any additional information or explanations. Home Depot values its relationship with HACLA and looks forward to a continued ongoing mutually beneficial relationship.

Best Regards, /

Director, Renovation Services

Names have been redacted for privacy reasons

Exhibit A

From:
Sent: Tuesday, October 14, 2008 1:43 PM
To:
Subject: Emailing: CONTRACT AMENDMENT.doc
Attachments: CONTRACT AMENDMENT.doc

<<CONTRACT AMENDMENT.doc>>

I had to modify the language for Item #1 to include that the products assembled or installed be purchased through Home Depot. This is to prevent an agency from purchasing something elsewhere and then coming to HD to for installation/assembly.

Acceptable?

Procurement Consultant-Team Lead
Maricopa County Materials Management
320 W. Lincoln 2nd Floor
Phoenix, AZ 85003
(602) 506-6476 Office
(602) 258-1573 Fax

Names have been redacted for privacy reasons



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BOARD OF COMMISSIONERS
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PRESIDENT AND CEO
RUDOLF C. MONTIEL

October 27, 2010

Ms. Tanya Schulze
Regional Inspector General for Audit
Office of Inspector General
U.S. Department of Housing and Urban Development
Los Angeles Area Office, region IX
611 West 6th Street, Suite 1160
Los Angeles, California 90017

SUBJECT: SUPPLEMENTAL HACLA RESPONSE TO OIG DRAFT AUDIT
REPORT –ISSUES RAISED AT OCTOBER 22, 2010 EXIT CONFERENCE

Dear Ms. Schulze:

I am writing to supplement the information provided by the Housing Authority of the City of Los Angeles (HACLA) to the U.S. Department of Housing and Urban Development Office of Inspector General (OIG) on the date of the exit conference, to address issues raised at the exit conference or in a follow-up conference call including HACLA, OIG and Maricopa County staff. I request that the enclosed supplemental information along with letter and the Home Depot letter be included in the final report in its entirety, except to the extent OIG deletes referenced findings or comments or chooses not to include the attachments provided to OIG on October 22, 2010.

Sincerely,

Rudolf C. Montiel
President & CEO

cc: K.J. Brockington, Director, Los Angeles Office of Public Housing

DRAFT OIG AUDIT REPORT: HACLA SUPPLEMENTAL RESPONSE TO ISSUES
RAISED AT OCTOBER 22, 2010 EXIT CONFERENCE

Comment 25

The concern that received the most emphasis from OIG staff at the exit conference was the need for additional back-up material to substantiate the adequacy of the process by which Maricopa County selected Home Depot for the contract award under the Intergovernmental Agreement (IGA). In a follow-up conference among OIG, HACLA, and Maricopa County representatives, the Maricopa County representative, [REDACTED], forwarded the proposal evaluation sheets compiled by each of the four evaluation panel members, in addition to [REDACTED]. The evaluation sheets assigned points to proposer separately for experience, national coverage, marketing plan, product categories to be provided and price. The panel consisted of government officials from various government entities, such as cities, counties, or school districts around the Nation, who were serving on the U.S. Communities Advisory Board and thus were familiar with such IGA procurements. The panel members first compiled individual ratings based on the proposers' written submissions, then interviewed both of the proposers, then compiled final ratings. The final ratings were added to provide an award to the proposer with the highest points, which was Home Depot. This thorough process certainly complied with the standards set forth for competitive procurements by 24 CFR 85.36.

Comment 26

During the conference call, the proposers' initial pricing for services was discussed. While both proposers responded "N/A" to "Category 17: Services" on the chart entitled "Attachment D: Product Price Analysis" in which proposers were to provide "pricing for sample products," Home Depot's bid in "Attachment A: Pricing" included a proposal of "0% Retail Discount" for "Category 17 Services" (attached).

There was further discussion on the call whether services such as the repair of fire-damaged units were contemplated under the original contract. Home Depot's bid was consistent with other statements in the Request for Proposal (RFP) covering services, including the very first objective listed in Section 1.1 of the RFP:

Comment 27

"The RFP is intended to achieve the following objectives:

A. Provide a comprehensive competitively selected Master Agreement offering Products and Services to government agencies nationwide;"

Various other sections of the RFP referenced services, including the request in section 2.6.4 to "Detail your program for the services offered by your firm through subcontractors."

Home Depot's RFP response also included the following language regarding "PRODUCT CATEGORIES" and specifically Category 17:

"Installation Services. Home Depot stores offer a variety of installation services for customers who select and purchase materials for a project and then arrange for professional installation

Names have been redacted for privacy reasons

through the Company. Our installed sales programs uses only qualified independent contractors throughout the U.S. and Canada. These programs include the installation of products that are sold in our stores, such as carpeting, flooring, cabinets, water heaters and countertops, as well as other products such as generators and furnace and central air systems.” Home Depot staff later explained that its Renovation Services platform is essentially an efficient combination of individual installation or other services; indicated Home Depot’s understanding that services such as the types of services HACLA used to repair fire-damaged units were contemplated under the IGA from the beginning; and indicated that Home Depot performed various services of this nature under the IGA prior to adoption of the clarifying contract amendment in 2008 that was discussed in the draft audit and the exit conference.

Comment 28

The conference call also addressed the question how the pricing for services was evaluated, given that proposers did not give examples of specific prices. [redacted] emphasized Maricopa County’s reliance on Home Depot’s pricing commitment, under which Home Depot agreed that the pricing under the IGA would be the “lowest available pricing (net to buyer) to local agencies nationwide...and if a local agency is eligible for lower pricing (Home Depot) will match pricing.” This pricing commitment is reflected if reflected in Exhibit B, section 2.1 of the Home Depot contract. In supplemental discussions, Home Depot staff explained that because it guaranteed its lowest available pricing at the time of purchase with respect to the materials involved, it could not quote an example in its RFP response of fixed prices for particular jobs that would involve specific mixes of materials and installation/renovation services. The materials rates would be the lowest available at the time and the services rates would be based on individual scoping with purchases regarding hours and types of labor needed, with wage rates substantially determined by Davis-Bacon Act requirements, which are specific to region and or county of the services being performed. In a competitive procurement situation where price was a limited element of the evaluation (up to 10% of possible points) and a wide range of potential products and services were being procured, this pricing method and bid were reasonable for Maricopa County to accept. More importantly, this pricing arrangement guaranteed a favorable price to HACLA and other governmental purchasers under the IGA.

Comment 29

It should be noted that the questions raised relate only to the use of the IGA for repair of fire-damaged units and not the purchase of the toilets. With respect to fire-damaged units, it is critical that HACLA did its own detailed cost estimates based upon both its knowledge of the market and its extensive experience with force account work on similar jobs, and determined that the Home Depot prices were significantly below its cost estimates. This step provided important additional assurance that restoration of the fire-damaged units by Home Depot was economical and efficient.

Comment 19

This supplement information is consistent with the material submitted previously. HACAL took the necessary steps to ensure that its use of the IGA, which saved the time and administrative expense of undertaking a separate solicitation, complied with all requirements and produced an economical and efficient result. The public was well served and no additional remedial action is necessary.

Names have been redacted for privacy reasons

ATTACHMENT A
PRICING

1.0 PRICING:

RETAIL DISCOUNTS ARE FOR RETAIL OUTLETS ONLY, AS A PERCENT OFF MARKED PRICE.

WHOLESALE CATALOG DISCOUNT IS A FIXED PERCENTAGE OFF WHOLESALE CATALOG PRICING FOR EACH CATEGORY SPECIFIED IN SECTION 2.12, INCLUDING ALL

CATEGORY	DESCRIPTION	RETAIL DISCOUNT	WHOLESALE CATALOG DISCOUNT PER CATEGORY	WHOLESALE: FREIGHT INCLUDED (Y/N)?
CATEGORY 1	APPLIANCES	0%	0-2%	Y *
CATEGORY 2	BUILDING MATERIALS		3-6%	N
CATEGORY 3	FLOORING		5-8%	Y
CATEGORY 4	HARDWARE		0-25%	Y
CATEGORY 5	HVAC		0-20%	Y *
CATEGORY 6	IRRIGATION		2%	Y
CATEGORY 7	JANITORIAL SUPPLIES		0-5%	Y
CATEGORY 8	LAWN, GARDEN, AND LANDSCAPING		2%	Y
CATEGORY 9	MOTORS AND PUMPS		0%	Y
CATEGORY 10	PAINTS AND COATINGS		0-10%	Y
CATEGORY 11	PLUMBING		0-5%	Y *
CATEGORY 12	SWIMMING POOL		0%	Y
CATEGORY 13	TOOLS, GENERAL PURPOSE, HAND HELD		3-10%	Y
CATEGORY 14	TOOLS, MACHINE TYPE		0%	Y
CATEGORY 15	WINDOW COVERINGS		3%	Y
CATEGORY 16	MISCELLANEOUS		0-6%	Y
CATEGORY 17	SERVICES	0%	N/A	N/A

INDICATE THE PERIOD OF TIME FOR WHICH CATALOG PRICING IS VALID

FEB, '06 /mo.yr

*SEE EXCEPTIONS

OIG Evaluation of Auditee Comments

Comment 1 Based on additional documentation provided after our exit conference, we determined that the Authority did not procure two of its Home Depot contracts or evaluate a third contract made through an intergovernmental agreement because it misunderstood and misapplied HUD requirements and its own policies. The Authority failed to meet four of the five conditions listed under section 14.2 of HUD Handbook 7640.8, REV-2. See finding 1 for discussion.

Comment 2 We agree that our overall objective is related to funds provided under the Recovery Act. Two of the Home Depot contracts, totaling \$699,225, were funded through the Recovery Act. The third Home Depot contract, totaling \$15.9 million, was partially Recovery Act related, as the Authority obligated \$1.1 million in maintenance supplies and \$711,305 of construction services under this contract to Recovery Act funds. Because we found issue with the method by which the Authority executed the three contracts, we reported on our expanded scope, which we mention in the scope and methodology section of our report.

Comment 3 We agree that public housing authorities (PHAs) are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services. However, PHAs must meet certain conditions in order to enter into a valid intergovernmental agreement. Based on our audit, we determined that the Authority did not meet four of those five conditions; therefore, it was inappropriate for the Authority to piggyback its Home Depot contracts to the County's contract without undergoing a procurement process.

Comment 4 We disagree. The Authority did not complete the required due diligence when it failed to procure the Home Depot contracts by disregarding HUD and its own policies. It also did not enter into a valid intergovernmental agreement with the County because it failed to meet four of the five conditions listed in HUD Handbook 7460.8, REV-2.

Comment 5 We revised our report and omitted the reference to the "County's cost comparison." Given the additional documentation we received after our exit conference, including additional documentation from Maricopa County, we amended our report and removed the questioned costs related to the toilet purchases.

However, although the Authority provided the cost estimates for the repair of 12 fire damaged units, it did not provide any documentation demonstrating that it compared the cost in the open market through another unit of government to determine if it is the most economical and efficient method before entering into its contracts with Home Depot.

Comment 6 We agree that the County performed cost comparisons between Home Depot and MSC prior to contract award to demonstrate price reasonableness; however, it

failed to perform a cost comparison for category 17 (services) of the Home Depot and MSC price analysis to demonstrate the price reasonableness of the services required under fire jobs.

Comment 7 We disagree. The repair and restoration of fire damaged units is not a routine service to the Authority. According to section 14.2 of HUD Handbook 7460.8, REV-2, “in deciding whether it is appropriate for the PHA to obtain supplies or services through an intergovernmental agreement rather than through a competitive procurement, the nature of the required supplies or services will be a determining factor. Intergovernmental agreements may be used only for the procurement and use of common supplies and services.” While we agree that fire restoration may include component activities the Authority had mentioned (such as painting, plumbing, installation of cabinets, etc.), the degree of restoration and service provided will vary and is a function of the damage to the unit. The repair of more seriously damaged units may include more complex and non-routine activities such as: demolishing damaged wall, ceiling, and flooring and other architectural components, fumigating units for insects, termites, and rodents, abating hazardous materials, cleaning and disposing of waste material, etc. When we performed our site visit at Nickerson Gardens, the building with the fire damaged unit was tented off because the property had significant termite, water, and “pigeoning” damage. Clearly, the services that are required are beyond painting, plumbing, and installation of cabinets; therefore, the services needed cannot be considered as “routine” to the housing authority.

Comment 8 We disagree. The Authority’s interpretation of “related services” as the County contract’s inclusion of routine services is incorrect. After our exit conference, we contacted the County with the Authority and the County repeatedly insisted that the original intent of the contract was to purchase products only. The County added services through amendment 3 approximately 4 years later without any additional procurement based solely on Home Depot’s low price guarantee.

Comment 9 Section 14.1 of HUD Handbook 7460.8, REV-2 specifically stated that “for PHAs to access various interagency purchasing agreements, the underlying contract must have been procured in accordance with 24 CFR 85.36.” The Authority did not evaluate the entire solicitation and submittals from the County’s contract in order to determine that the County met 24 CFR 85.36. During our exit conference, the president and CEO of the Authority stated that it reviewed the County’s contract on a “reasonable” basis and questioned why it would be concerned with how the County procured its Home Depot contract. Further, the Authority did not have the County’s complete bidding documentation, which we had to request from the County after our exit conference. Clearly, the Authority did not have all the documentation necessary to conclude whether they County met 24 CFR 85.36 when it entered into its Home Depot Contract.

Comment 10 According to our discussion with the County (see comment 8), the contract was amended approximately 4 years after the original contract was signed to add on

the assembly and installation of services. Amendment 3 was not included to clarify or expand on the general intent of the contract. The intent of the original contract was to provide only supplies.

Comment 11 Page 11 of the Authority’s procurement policy, dated January 26, 2010 stated, “if it is determined that any commodity/services will exceed \$100,000 per year a formal procurement shall be conducted.” However, based on the additional documentation we received after our exit conference, which demonstrated that Maricopa County properly obtained and evaluated bids for supplies, we omitted sections of the report questioning the toilet purchases.

Comment 12 Based on the additional documentation we received after our exit conference, we omitted sections of the report questioning the toilet purchases. We still maintain that a cost comparison or price analysis of the fire damaged units was not performed. Further, the County did not perform a price analysis of services in its contract when it expanded its scope in November 2008.

Comment 13 We did not state in the report that an intergovernmental agreement was not available. There was a U.S. Communities “master intergovernmental cooperative purchasing agreement” where Maricopa County signed as one of the “lead public agencies”. However, we do note that there was no signed intergovernmental agreement specifically between the Authority and the County.

The cost and availability were not evaluated as it relates to the fire job before the respective agreements were executed by both the Authority and County. The Authority only provided an estimate in cost for its fire jobs. It did not provide us with an evaluation to demonstrate whether “the terms of the agreement continued to pass the tests of economy and efficiency.”

Comment 14 Section 14.2.E of HUD Handbook 7460.8, REV-2, states that “after entering into an agreement, PHAs should compare cost and availability annually to determine if the terms of the agreement continue to pass the tests of economy and efficiency.” The Authority did not provide evidence that it performed this evaluation. We agree that HUD language distinguishes between mandatory versus advisory instructions. Based on additional information and documentation provided, we removed our questioned costs related to the purchase of toilets.

Comment 15 According to section 1.1 and 1.2 of the County’s Home Depot contract, the term is for a period of 3 years, beginning on the 1st day of December, 2005 and ending the 30th day of November, 2008. The County may, at its option and with agreement of the contractor, extend the period of the contract for additional one year terms up to a maximum of 3 additional terms. Essentially, the County’s contract duration will run for the period December 2005 through November 2011, a total of six years, if the options are exercised. During the exit conference, the Authority confirmed that its contract with Home Depot should not extend beyond the term of the County’s. However, because the County apparently followed

Maricopa County or the State's procurement code, it is in direct conflict with Federal procurement code, which does not allow a contract's term to exceed a period of five years, including options for renewal or extension. Since the Authority is piggybacking off of the County's contract, which must abide by 24 CFR 85.36 as well as applicable HUD Handbooks, the five year cap must also be applied to the County contract; therefore, shortening the allowable term to December 2005 through November 2010. By December 1, 2010, the County would have to obtain a new procurement for its contract before the Authority may "piggyback" off of it through an intergovernmental agreement without violating 24 CFR 85.36. The Authority cannot extend its contract through February 25, 2012 because the County contract would no longer be valid.

Comment 16 According to HUD Handbook 7460.8, REV-2, section 10.8.C.1, "the option to extend the term of the contract or to order additional quantities may only be exercised if the contract contained an options clause and if a price for the additional supplies or services was included." In addition, section 10.8.C.2 states, "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." The handbook specifically states that there **must** be a finite period (including options) for a contract; therefore, it cannot be implied that an option term would be set up in an amendment to the contract.

Comment 17 Since the Authority is using Recovery Act funds under the contract, the Authority cannot adopt the term and purchased materials as permitted by the County contract if the County's contract is not abiding by federal procurement requirements.

According to section 10.1 of HUD Handbook 7460.8, REV-2, "an indefinite quantity contract provides for delivery of an indefinite quantity, within stated limits (a minimum and maximum quantity), of supplies or services during a fixed period." Even if the Authority is utilizing an indefinite quantities contract, it must state a minimum and maximum quantity. The Authority's contract did not include a minimum quantity, and it repeatedly increased the total dollar amount and period past the respective maximums.

Comment 18 We agree. However, the Authority still needs to implement written procedures and controls to ensure this is done on future contracts.

Comment 19 The Authority provided cost estimates for the purchase of toilets and repair of 12 fire damaged units. It also provided the price analysis and scoring sheet from the County's contract for supplies. Based on the additional documentation we received, we omitted our questioned costs relating to the toilets; however, the Authority has not provided documentation to show that the services portion of the fire damaged units was eligible and reasonable. Further, the County's documentation did not include a price analysis of services. Therefore, we do not

agree that the Authority submitted clear documentation demonstrating that there is no basis for our recommended actions.

Comment 20 We agree that the project miscoding was discovered by the Authority; however, it did not establish its project numbers until after we began our audit fieldwork. It also did not redistribute the employees' payroll to the correct project sites until after we notified it of the deficiency. We agree that the Authority would not have overdrawn on this grant; however, coding payroll to the correct projects will ensure the accuracy the documentation it submits to HUD.

Comment 21 We agree that the Authority established procedures to set up project numbers; however, it has not completely reallocated its payroll costs accurately. We provided the Authority with a list showing the inaccurate reporting at the exit conference.

Comment 22 At the end of our audit fieldwork, we were provided with a control log template; however, we were unable to verify whether the log was implemented to monitor submission of certified payroll.

Comment 23 We disagree with Home Depot's contention that repair and restoration of fire damaged units is a routine service for public agencies. See comment #7.

Comment 24 Together with the Authority, we spoke with the County's procurement consultant after the exit conference. His explanation contradicts the information provided by the Home Depot director of renovation services. The County's procurement consultant stated that the original intent of the contract was to purchase supplies only. He added that Home Depot offered services at the time of the contract; however, services were not included as part of the Home Depot contract. Further, services were not considered as part of the evaluation of the proposals, which explains why category #17 (services) of the price analysis was left blank. The County's procurement consultant stated that the scope of the County's contract was later expanded solely based on Home Depot's low price guarantee.

Comment 25 We agree that the additional documentation supports the evaluation of the response to the request for proposal (RFP) for supplies between the Home Depot and MSC contracts. However, this documentation was needed by the Authority to determine whether the County complied in some part to 24 CFR 85.36. The Authority did not obtain this documentation until after our exit conference.

Comment 26 The "0% Retail Discount" included in Home Depot's bid in the "Attachment A: Pricing" does not clearly indicate that services were included in the scope of the original contract. Further, during the referenced conference call with the County and the Authority (see comment 8), the County's procurement consultant, clarified that services were not contemplated in the original contract and that the scope was expanded approximately 4 years later to include services.

Comment 27 We agree that the general intent listed in section 1.1 of the RFP mentioned providing “a comprehensively competitively solicited Master Agreement offering products and services to government nationwide.” However, the executed contract did not include this scope, and it is clear that section 1.1 of RFP provision was altered before it was incorporated in the executed contract. Section 1.1 of the County’s executed contract states “the intent of this contract is to provide a source for retail and wholesale supply of general and specialty hardware, building and construction equipment and materials, building supplies, tools, and other related maintenance repair and operating supplies.” Further, the County confirmed that the original intent of the contract was to purchase supplies and not services.

Comment 28 It is not feasible or allowed under 24 CFR 85.36 to award a contract to Home Depot without following proper procurement requirements even if its pricing would be “the lowest available pricing to local agencies nationwide, and if a local agency is eligible for lower price (Home Depot) will match pricing.” Further, Home Depot was selected over MSC based on other factors that take precedence over price, such as proven experience, national coverage, and marketing. Based on the evaluation sheet provided by the County, Home Depot scored 8.4 out of 10 in the pricing category, while its competitor, MSC, scored 10 out of 10, indicating that MSC’s prices (based on the product price analysis and price discounts proposed) were lower than Home Depot. Because the Authority did not provide a comparison of cost for the wages aspect of its fire job contracts, it did not demonstrate the reasonableness of Home Depot’s prices, despite its low price guarantee.

Comment 29 The Authority provided documentation showing it performed cost estimates on work to be performed at its fire-damaged units. Its first cost estimate for three fire damaged units was \$247,920 or \$82,640 per unit, and its second cost estimate for nine fire damaged units was \$657,283 or \$73,031 per unit. The Authority’s contract for the repair of three fire-damaged units at Nickerson Gardens was \$247,920, which is exactly the amount of the Authority’s cost estimate. The Authority’s contract for the repair of nine fire-damaged units at Nickerson Gardens was \$451,305, or \$205,978 less than the cost estimate. Even though the amount contracted for the second contract was less than the cost estimate, the Authority had not provided documentation substantiating the basis for how it arrived at this contracted amount. It may be that the cost estimate factored in work that Home Depot did not feel was necessary; therefore, reducing the total cost. At this point, we do not know what the basis was for contracting the fire damaged units and do not believe that the cost estimates alone were sufficient documentation to show the price reasonableness of the contract, or an adequate substitute for competitive procurement.

Appendix C

CRITERIA

24 CFR 85.36(c). Competition.1. All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Sec. 85.36.

24 CFR 85.36(d). 4. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

i. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

- A. The item is available only from a single source;
- B. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- C. The awarding agency authorizes noncompetitive proposals; or
- D. After solicitation of a number of sources, competition is determined inadequate.

24 CFR 85.36(i). Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

3. Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

4. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. [United States Code] 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

5. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation)

6. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers)

7. Notice of awarding agency requirements and regulations pertaining to reporting.

8. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

9. Awarding agency requirements and regulations pertaining to copyrights and rights in data.
11. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
12. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).
13. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

29 CFR 3.4(a) and (b). Submission of weekly statements and the preservation and inspection of weekly payroll records.

(a) Each weekly statement required under section 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

HUD Procurement Handbook for Public Housing Agencies, 7460.8, REV-2, Section 1.9.

Glossary. Change Order – A unilateral modification made to the contract by the Contracting Officer under the authority of the contract’s Changes clause. Only the specific changes permitted by the particular Changes clause may be made under a change order (e.g., modify the drawings, design, specifications, method of shipping or packaging, place of inspection, delivery, acceptance, or other such contractual requirement; see form HUD-5370). All change orders must be within the scope of the contract.

Major Change – Modification to an existing contract that is beyond the general scope of the contract or a change to a substantive element of the contract that is so extensive that a new procurement should be used.

HUD Procurement Handbook for Public Housing Agencies, 7460.8, REV-2, Section 10.8

C. Limitations.

- 1) Price. The option to extend the term of the contract or to order additional quantities may only be exercised if the contract contained an options clause and if a price for the additional supplies or services was included. An unpriced option is considered a new procurement and, therefore, may not be used.
- 2) Time and Quantity. 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.
- 3) Option to Extend.
 - a. Any contract containing options must specify the timeframe within which the option to extend the term of the contract must be exercised.
 - b. If the PHA decides to include options in a solicitation, the pricing of the options should be evaluated as part of the overall contract award.

HUD Procurement Handbook for Public Housing Agencies, 7460.8, REV-2, Section 10.1

Contract pricing and types.

C. Contract Types

3) Indefinite-delivery contracts

iii. Indefinite-quantity contracts provide for delivery of an indefinite quantity, within stated limits (a minimum and maximum quantity), of supplies or services during a fixed period. Quantity limits may be stated in the contract as number of units or as dollar values. PHAs may use an indefinite-quantity contract when they cannot predetermine, above a specified minimum, the precise quantities of supplies or services that they will require during the contract period, and it is inadvisable to commit itself for more than a minimum quantity. PHAs should use an indefinite-quantity contract only when a recurring need is anticipated.

HUD Procurement Handbook for Public Housing Agencies, 7460.8, REV-2, Section 10.10.

Federal labor standards and wage rates – maintenance.

F. Compliance. The contractor and any/all subcontractors are responsible, on no less than a semi-monthly basis, for paying not less than the applicable wage rates to all maintenance laborers and mechanics in their employ and engaged in work under the contract. The contractor is responsible for its own full compliance, and for the full compliance of any/all subcontractors, with all wage, overtime and record keeping requirements included in the contract.

G. Enforcement. The PHA [public housing agency] is responsible for the administration and enforcement of labor standards requirements as provided in Labor Relations Letter LR-2004-01. These activities include:

2. On-site Interviews. The PHA is responsible for conducting interviews with the laborers and mechanics on the jobsite to determine if the work performed and wages received are consistent with the job classifications and wage rates contained in the applicable wage determination and the classifications and wages reported by the employer on certified payrolls. On-site interviews are documented on form HUD-11, Record of Employee Interview, which can be found at HUDClips.

3. Enforcement. The PHA must perform contractor compliance monitoring with such frequency and depth as appropriate (based upon the scope and duration of the contract involved) to ensure that all laborers and mechanics are paid no less than the HUD prevailing wage rate for the type of work they perform.

H. Recordkeeping. The PHA shall retain all compliance monitoring records, including employee interview records, for three years from the date of contract completion and acceptance by the PHA, or from the date of resolution of any labor standards issues outstanding at contract completion.

HUD Procurement Handbook for Public Housing Agencies, 7460.8, REV-2, Section 11.4.
Contract Modifications.

C. Limitations on Change Orders. The Changes clause contained in forms HUD-5370, 5370-C, and 5370-EZ, prescribes the specific circumstances in which a change order may be issued. For example, adding the construction of a new building to a modernization contract would not be considered within the scope of the contract or within the authority of the Changes clause but should be considered a new contract (and subject to competition).

E. HUD Approval of Modifications. PHAs must submit to HUD for prior approval any proposed contract modifications changing the scope of the contract in accordance with the Changes clause in the contract, or that increases the contract by more than the Federal small purchase threshold, unless exempted under paragraph 12.5 of this handbook.

HUD Procurement Handbook for Public Housing Agencies, 7460.8, REV-2, Section 14.1.
General.

PHAs can choose to coordinate, collaborate, partner, or contract with various types of public or private entities to administer or manage any or all of their programs or to handle procurement matters. This chapter assists PHAs in recognizing the benefits of these relationships and explains how the Federal procurement regulations apply. Please note that, for PHAs to access various interagency purchasing agreements, the underlying contract(s) must have been procured in accordance with 24 CFR 85.36. Use of cooperative and interagency agreements can often greatly simplify and expedite the procurement process by relieving the PHA of developing specifications or issuing solicitations. These cooperative arrangements can also offer substantial discounts over what a PHA might be required to pay if it purchased the items on its own.

HUD Procurement Handbook for Public Housing Agencies, 7460.8, REV-2, Section 14.2.

Intergovernmental Agreements for Procurement Activity.

Requirements. A PHA may enter into intergovernmental or interagency purchasing agreements without competitive procurement provided the following conditions are met:

1. The agreement provides for greater economy and efficiency and results in cost savings to the PHA. Before utilizing an interagency agreement for procurement, the PHA should compare the cost and availability of the identified supplies or services on the open market with the cost of purchasing them through another unit of government to determine if it is the most economical and efficient method;

2. The agreement is used for common supplies and services that are of a routine nature only. In deciding whether it is appropriate for the PHA to obtain supplies or services through an intergovernmental agreement rather than through a competitive procurement, the nature of the required supplies or services will be a determining factor. Intergovernmental agreements may be used only for the procurement and use of common supplies and services. If services, required by the PHA, are provided by the State or locality and are part of that government's normal duties and responsibilities, it is permissible for the PHA to share the services and cost of staff under an agreement. For example, a PHA could enter into an intergovernmental agreement, without competitive procurement, to use the services of a local government's accounting office to conduct an annual audit of its books or to use the services of a city health agency to provide advice about drug abuse prevention strategies. A PHA could not, however, without competitive procurement, enter into an intergovernmental agreement with a local police department to purchase cabinets manufactured by the police department (the manufacturing of cabinets is not a normal function of a law enforcement agency);
3. PHAs must take steps to ensure that any supplies or services obtained using another agency's contract are purchased in compliance with 24 CFR 85.36;
4. A PHA's procurement files should contain a copy of the Intergovernmental Agreement and documentation showing that cost and availability were evaluated before the agreement was executed, and these factors are reviewed and compared at least annually with those contained in the agreement; and
5. The agreement must be between the PHA and a state or local governmental agency, which may be another PHA.

The Authority's Policy, "Policies Pertaining to Federal Awards."

Monitoring of Subrecipients

7. The Housing Authority shall assign one of its employees the responsibility of monitoring each subrecipient on an ongoing basis, during the period of performance by the subrecipient. This employee will establish and document, based on her/his understanding of the requirements that have been delegated to the subrecipient, a system for the ongoing monitoring of the subrecipient.

8. Ongoing monitoring of subrecipients by the Housing Authority will inherently vary from subrecipient to subrecipient, based on the nature of work assigned to each subrecipient. However, ongoing monitoring activities may involve any or all of the following:

- a. Regular contacts with subrecipients and appropriate inquiries regarding the program.
- b. Reviewing programmatic and financial reports prepared and submitted by the subrecipient and following up on areas of concern.
- c. Monitoring subrecipient budgets.
- d. Performing site visits to the subrecipient to review financial and programmatic records and assess compliance with applicable laws, regulations, and provisions of the subaward.
- e. Offering subrecipients technical assistance where needed.

- f. Maintaining a system to track and follow up on deficiencies noted at the subrecipient in order to assure that appropriate corrective action is taken.
- g. Establishing and maintaining a tracking system to assure timely submission of all reports required of the subrecipient.

9. Documentation shall be maintained in support of all efforts associated with the Housing Authority's monitoring of subrecipients.

The Authority's Procurement Policy.

I. Cooperative purchasing. HACLA [the Authority] may enter into Federal, State or local inter-governmental agreements to purchase or use common goods and services. The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the intergovernmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment and other relevant terms and conditions. HACLA is encouraged to use Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

V. A. Contract Types. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties.

V. B. Options. Options for additional quantities or performance periods may be included in contracts provided that:

- The option is contained in the solicitation.
- The option is a unilateral right of HACLA.
- The contract states a limit on the additional quantities and the overall term of the contract.
- The options are evaluated as part of the initial competition.
- The contract states the period within which the options may be exercised.
- The options may be exercised only at a price specified in, or reasonably determined from, the contract; and
- The options may be exercised only if determined to be more advantageous to HACLA than conducting a new procurement.

V.C. Contract Clauses. In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by federal statutes, executive orders, and their implementing regulations, as provided in 24 CFR 85.36(i), such as the following:

Termination for convenience, termination for default, equal employment opportunity, anti kickback act, Davis-Bacon provisions of the United States Housing Act of 1937, contract work hours and safety standards act, reporting requirements, patent rights, rights in data, examination of records by comptroller general, retention of records for three years after closeout, clear air and water, energy efficiency standards, bid protests and contract

claims, value engineering, payment of funds to influence certain federal transactions, section 3 clause, pursuant to 24 CFR 135.38, and insurance requirements.

The operational procedures required by section II.A. of this policy shall contain the text of all clauses and required certifications (such as required non-collusive affidavits and lobbying disclosures) used by HACLA. Any required HUD forms which contain all HUD-required clauses and certifications for contracts of more than \$100,000, as well as any forms/clauses as required by HUD for small purchases, shall be used in all solicitations and contracts issued by HACLA.

OMB Circular A-122.

a. Support of salaries and wages.

- (1) Charges to awards for salaries and wages, whether treated as direct costs or indirect costs, will be based on documented payrolls approved by a responsible official(s) of the organization. The distribution of salaries and wages to awards must be supported by personnel activity reports, as prescribed in subparagraph (2), except when a substitute
- (2) system has been approved in writing by the cognizant agency. (See subparagraph E.2 of Attachment A.)
- (2) Reports reflecting the distribution of activity of each employee must be maintained for all staff members (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate(s) (e.g., an employee engaged part-time in indirect cost activities and part-time in a direct function). Reports maintained by non-profit organizations to satisfy these requirements must meet the following standards:
 - (a) The reports must reflect an after-the-fact determination of the actual activity of each employee. Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to awards.
 - (b) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.
 - (c) The reports must be signed by the individual employee, or by a responsible supervisory official having firsthand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.
 - (d) The reports must be prepared at least monthly and must coincide with one or more pay periods.