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TO: Robert C. Paquin, Director, Office of Community Planning and Development,
Boston Regional Office, 1AD

FROM: 
John A. Dvorak, Regional Inspector General for Audit, Boston Region, AGA

SUBJECT: The City of Boston's Department of Neighborhood Development in Boston,
Massachusetts, Did Not Administer Its HOME Program in Compliance with
HUD Requirements

HIGHLIGHTS

What We Audited and Why

We audited the HOME Investment Partnerships Program (HOME) administered by the City of Boston's (City) Department of Neighborhood Development (Department) as part of our annual audit plan.

Our objective was to determine whether the Department administered its HOME program in compliance with HUD requirements. Specifically, we wanted to determine whether the Department used community housing development organization (CHDO) qualification requirements in designating its CHDOs and spent CHDO operating expenses on eligible activities. In addition, we wanted to determine if the Department complied with U.S. Department of Housing and Urban Development (HUD) procurement policies and procedures. We also wanted to determine if the Department's method of allocating salaries was adequate and supported.

What We Found

The Department awarded CHDO set-aside funding totaling more than \$4.7 million to 18 organizations that did not meet all legal and organizational characteristics of CHDOs or did not have the required capacity to operate as CHDOs. Additionally, the Department provided more than \$2.1 million in CHDO operating funds to the 18 ineligible organizations.

The Department also did not ensure that proper, fair, and equitable procurement practices were followed for more than \$5.1 million in HOME funding expended on construction and development work. Contractors were selected without solicitation of bids, bids were not formally (publicly) advertised, independent cost analyses were not performed before the bidding process, and supporting documentation related to the history of procurement actions was not maintained.

In addition, the Department could not ensure that payroll costs of more than \$1.7 million charged to the HOME program for fiscal years 2007 and 2008 were accurate because it did not have a reliable system/method to record the actual time spent on its various programs. The Department did not maintain a cost allocation plan and used an allocation method based, for the most part, on estimates or past experience. As a result, some of its programs may have incurred a disproportionate share of staffing costs, while some local City programs were not charged.

What We Recommend

We recommend that the Director of the Office of Community Planning and Development require the Department to cease spending set-aside and operating expense funding until it can be determined whether the organizations can achieve CHDO status in accordance with HUD regulations. The Department should be required to assist the organizations in achieving CHDO status as deemed necessary. We also recommend that the City: (1) deobligate unexpended set-aside funding of more than \$3.9 million and provide funding to organizations that are eligible to receive the funding or reimburse funds to the HOME program, (2) reimburse approximately \$800,000 expended from set-aside funds from nonfederal funds to the HOME program. (3) deobligate unexpended operating funds of approximately \$1 million and reimburse these funds to the HOME program, and (4) reimburse expended operating funds of more than \$1 million from nonfederal funds to the HOME program.

In addition, we recommend that the Director of the Office of Community Planning and Development require the Department to conduct an independent cost analysis for each of the procurements to ensure that more than \$5.1 million in HOME program expenditures were reasonable and supported. For amounts not supported, the Department should reimburse the HOME program from nonfederal funds. Also, the Department must monitor and provide technical assistance to ensure that developers follow HUD procurement regulations, including ensuring that (1) independent cost analyses are performed before bids are received, (2) bids are formally (publicly) advertised, (3) bids are solicited from an adequate number of contractors and awards are made to the lowest responsive bidder, and (4) supporting documentation is maintained for each procurement.

Finally, we recommend that the Director of the Office of Community Planning and Development require the Department to implement a cost allocation plan which adequately describes the process for personnel who work on multiple programs. The Department must also revise its job descriptions so that they are consistent with the allocation plan. We also recommend that the Department provide supporting documentation for payroll costs of more than \$1.7 million charged to the HOME program in fiscal years 2007 and 2008 and submit documentation to the HUD Office of Community Planning and Development for approval. If proper supporting documentation is not provided, the Department should reimburse the HOME program from nonfederal funds.

For each recommendation in the body of the report 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 Department officials with a draft audit report on July 14, 2009, and requested a response by July 28, 2009. We held an exit conference with Department officials on July 24, 2009, to discuss the draft report, and we received their written comments on July 28, 2009. The Department agreed with the facts, conclusions, and recommendations in Findings 3 and 5. However, the Department was not in total agreement with Findings 1, 2 and 4.

The complete text of the auditee's response, along with our evaluation of that response, can be found in appendix B of this report.

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BACKGROUND AND OBJECTIVES

The HOME Investment Partnerships Program (HOME) was created by Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990. Under the HOME program, the U.S. Department of Housing and Urban Development (HUD) allocates funds to eligible state and local governments for the purpose of (1) expanding the supply of decent, safe, and affordable housing for very low-income and low-income Americans and (2) strengthening public-private partnerships in the production and operation of such housing. The HOME program gives participating jurisdictions discretion over which housing activities to pursue. These activities may include acquisition, rehabilitation, new construction, and resident-based rental assistance. In addition, participating jurisdictions may provide assistance in a number of eligible forms, including loans, advances, equity investments, and interest subsidies. Up to 10 percent of the HOME funds received by a participating jurisdiction may be used to administer the program.

The City of Boston, Massachusetts (City), through its Department of Neighborhood Development (Department), receives HOME funds each year directly from HUD as a participating jurisdiction under the program. The Department received HOME funding of more than \$23.8 million for fiscal years 2007 to 2009 to administer five main activities, including (1) existing homeowner rehabilitation, (2) homeownership development, (3) home-buyer financial assistance, (4) housing preservation/production, and (5) community housing development organization (CHDO) assistance.

Under HOME program rules, at least 15 percent of the Department's annual HOME allocation must be set aside for eligible CHDO housing activities. Only nonprofit organizations that have been certified as CHDOs by participating jurisdictions can receive funds from the minimum 15 percent set-aside funds. To be certified as a CHDO, an organization must meet certain requirements described in the HOME regulations.

The HOME program establishes requirements for the organizational structure of CHDOs to ensure that the governing body of the organization is controlled by the community it serves. These requirements are designed to ensure that the CHDO is capable of making decisions and performing actions that address the community's needs without undue influence from external agendas.

Our audit objective was to determine whether the Department administered its HOME program in compliance with HUD requirements and whether HOME funds were efficiently and effectively used to expand the supply of decent, safe, and affordable housing for low- and very low-income households. Specifically we wanted to determine (1) whether the City used CHDO qualification requirements to designate its CHDOs and spent CHDO operating expenses on eligible activities, (2) whether the Department complied with HUD procurement policies and procedures, (3) whether the Department's method of allocating salaries was adequate and supported, and (4) the cause(s) for the Department's failure to submit its consolidated annual performance evaluation reports (evaluation reports) to HUD in a timely manner in recent years.

RESULTS OF AUDIT

Finding 1: The Department Did Not Ensure That Organizations Met CHDO Requirements

The Department certified 18 nonprofit organizations as CHDOs that did not meet the terms or requirements necessary for CHDO designation. This condition occurred because the Department was not fully aware of the HUD requirements and regulations regarding the designation and operation of CHDOs, including the use of CHDO operating funds and set-aside eligibility. As a result, these unqualified organizations improperly received CHDO set-aside and operating funds totaling \$6.8 million, and the CHDO operating and set-aside funds were overstated in HUD's Integrated Disbursements Information System (IDIS).

Unqualified Nonprofit Organizations Were Certified as CHDOs

The Department certified 18 unqualified nonprofit organizations as CHDOs. These certifications were improper because the organizations did not meet all requirements for designation as CHDOs. Specifically, the Department did not ensure that nonprofit organizations provided all of necessary documents and certifications that would have ensured that the organizations met all legal and organizational characteristics of CHDOs or that they had the required capacity to operate as CHDOs. HOME requirements for CHDO certification must be satisfied for an organization to become a certified CHDO. If the requirements (found in Subpart A of 24 CFR Part 92.2, and the "CHDO checklist" in Notice: CPD-97-11) are not met, the organization is not properly designated as a CHDO, and no funding can be expended. The City should not have certified these organizations as CHDOs before it received all the required information.

To be certified as a CHDO, an organization must meet certain requirements, including (1) legal status; (2) organizational structure; and (3) experience, capacity, and financial accountability. The 18 organizations failed to meet at least one of these characteristics (see appendixes C and D). For example,

- All 18 organizations did not have proper by-laws or articles of incorporation documents. These documents were missing a tenant participation plan or a formal process for low-income community input. Each project undertaken by the CHDO should allow potential program beneficiaries to be involved and provide input on the entire project from project concept and site selection to the property management phase.

- Fourteen organizations did not meet low-income accountability requirements. Specifically, the by-laws were missing required terms with regard to low-income board representation.
- Ten organizations did not provide sufficient documentation to show a history of serving the community within which housing to be assisted with HOME funds was to be located.
- Sixteen organizations did not provide documentation to show that they conformed to the financial accountability standards of 24 CFR 84.21 “Standards for Financial Management Systems.”

HOME Set-Aside Funds Were Provided to Unqualified Organizations

For fiscal years 2006 to 2008, the Department reserved more than \$4.7 million in set-aside funding for 3 of the 18 organizations improperly designated as CHDOs. None of the remaining 15 organizations received set-aside funding during fiscal years 2006 to 2008. The set-aside funding was to be used for rehabilitation or construction of five separate projects. As of March 27, 2009, more than \$4.1 million of the reserved funds had been committed, of which \$836,941 had been expended.

CHDO	Fiscal year	Reserved	Committed	Expended	Unexpended bal.
Nuestra Comunidad	2006	\$1,213,749	\$1,213,749	\$ 0	\$1,213,749
Dorchester Bay	2007	564,323	154,112	42,714	521,609
Jamaica Plain	2007	1,189,189	1,189,189	435,336	753,853
Jamaica Plain	2008	771,716	535,122	0	771,716
Nuestra Comunidad	2008	1,012,114	1,012,083	358,891	653,223
Total		\$4,751,091	\$4,104,255	\$836,941	\$3,914,150

CHDO Operating Funds Were Provided to Unqualified Organizations

From fiscal years 2004 to 2009, the City also provided more than \$2.1 million¹ in CHDO operating funds to the 18 nonprofit organizations that were not entitled to receive the funds because they were not qualified CHDOs. HUD regulations (HUD Notice 97-11) state that, if an organization is acting only as a subrecipient or as a contractor, the organization is not eligible to receive CHDO operating funding. In effect, the organizations were operating in the capacity of subrecipients or contractors because they did not meet the requirements for CHDO designation.

In addition, 12 of the 18 organizations would not have been eligible to receive the operating funding even if they met the requirements for CHDO designation. In accordance with regulations at 24 CFR 92.300(a)(e), a CHDO can be provided with operating funds if it is expected that it will be receiving CHDO project set-aside funds within 24 months of receiving the operating funding. The participating jurisdiction must enter into a written agreement with the CHDO specifying the terms and conditions upon which this expectation is based. The 12 organizations that received CHDO operating funds did not receive CHDO set-aside funding within 24 months of receiving the operating funding. Further, none of the 12 organizations had received CHDO set-aside funding since fiscal year 2000. In addition, the grant agreements between the City and the organizations did not stipulate that the organizations receiving operating expense funding were expected to receive set-aside funding within 24 months of receiving the operating expense funds. As of March 27, 2009, more than \$1.3 million of the authorized/reserved funds had been committed, of which more than \$1.1 million had been expended.

Fiscal year	Authorized	Reserved	Committed	Expended	Unexpended bal.
2004		\$375,750	\$375,750	\$375,750	\$0
2005		375,000	375,000	375,000	0
2006		375,000	375,000	375,000	0
2007		375,000	176,606	19,973	355,027
2008		\$322,875			322,875
2009	\$344,900				344,900
Totals	\$344,900	\$1,823,625	\$1,302,356	\$1,145,723	\$1,022,802

¹ Total funds of \$1,823,625 reserved from 2004 to 2008 plus \$344,900 authorized for 2009 equals \$2,168,525.

The Department's Compliance Manager Was Unfamiliar with HUD Regulations

The Department's compliance manager is responsible for determining whether nonprofit organizations can be designated as CHDOs. The compliance manager had a general knowledge of the requirements regarding CHDOs; however, the manager was not familiar with specific program requirements, especially the 15% set-aside requirements for CHDO funding. The compliance manager stated that during the course of working two years for the Department, the manager had relied on the instruction and guidance from on-the-job training received from the manager's predecessor.

The Department also did not always ensure that funding was applied properly. For example in 2006, the Department had reserved CHDO set-aside funding of more than \$1.2 million for an organization improperly designated as a CHDO, but the funding was not committed and disbursed. In lieu of using the set-aside funding as planned, the Department inadvertently used Community Development Block Grant funding for rehabilitation and construction of a CHDO project. The compliance manager was unsure how this error occurred but readily admitted that the Department was responsible.

Conclusion

The Department inappropriately reserved more than \$4.7 million in CHDO set-aside funding and \$2.1 million for operating funds when the organizations did not qualify for these funds. As a result, HOME set-aside spending did not meet the statutory 15 percent set-aside spending requirements. This condition occurred because the Department's staff was not fully aware of the HUD requirements and regulations pertaining to CHDOs.

Recommendations

We recommend that the Director of the Office of Community Planning and Development in Boston direct the Department to

- 1A. Improve its controls over the CHDO certification process to ensure that organizations designated as CHDOs meet HUD requirements.

- 1B. Ensure that its staff become more familiar with HUD regulations regarding the CHDO process.
- 1C. Cease spending set-aside and operating funding until it can be determined whether the 18 organizations can achieve CHDO status in accordance with HUD regulations.
- 1D. Assist the 18 organizations in achieving CHDO status as deemed necessary.
- 1E. Deobligate unexpended set-aside funding of \$3,914,150 and provide funding to organizations that are eligible to receive the funding or reimburse funds to the HOME program.
- 1F. Reimburse \$836,941 expended from set-aside funds from nonfederal funds to the HOME program.
- 1G. Deobligate unexpended operating funds of \$1,022,802 and reimburse funds to the HOME program.
- 1H. Reimburse \$1,145,723 expended in operating funds from nonfederal funds to the HOME program.

RESULTS OF AUDIT

Finding 2: The Department Did Not Always Ensure That Project Developers Followed Proper Procurement Procedures

The Department did not ensure that the project developers that were provided with HOME funding followed proper procurement practices and procedures. Project developers (1) did not perform independent cost analyses before soliciting bids, (2) selected contractors without properly soliciting bids, (3) did not formally advertise bids as required, and (4) did not maintain a detailed history of actions undertaken for each procurement. These deficiencies occurred because the Department did not adequately monitor the developers' procurement and contracting procedures. As a result, it could not provide HUD with adequate assurance that the procurement process used by developers was fair and equitable and that more than \$5.1 million in HOME funds provided to developers for construction/development work represented the most favorable contract prices that could have been obtained.

A Majority of Procurements Reviewed Had Deficiencies

We reviewed 10 of the Department's procurements/contracts relating to construction. For 9 of the 10, we identified at least one violation of HUD regulations and/or the Department's procurement policy as follows:

Project	IDIS number	Costs	Deficiencies
Humphrey Street ² – homeownership component	13569	\$518,615	1,3,4
Humphrey Street – rental component	13575	391,875	1,3,4
Imani House	13537	483,464	2
Leila Doe House	13568	789,749	2
1460 House	14224	384,750	1,4
Brookford, Dalin, Dean Homes	13597	855,000	1,2
Hope House	14381	900,000	2
270 Centre Street	13891	95,000	1,3
636 Dudley Street	14475	760,000	4
Totals		\$5,178,453 ³	

² The construction work on Humphrey St. included two components or projects: one rental and the other homeownership. The developer planned that the same contractor would work on both components. Homeownership units are located at 12-14 Humphrey St., Dorchester, and rental units are located at 38 Elder/69 Beldon Sts., Roxbury.

³ Amounts represent funds drawn down in IDIS as of December 12, 2008.

Deficiency Explanations:

1. Failure to perform independent cost analysis before soliciting bids
2. Contractors selected without solicitation of bids
3. Bids not formally advertised
4. Failure to maintain a detailed history of procurement action

Independent Cost Analysis Was Not Performed

For five procurement actions reviewed, there was lack of evidence that the Department conducted independent cost analyses for the procurements. An independent cost analysis prepared before receipt of bids or proposals ensures that the construction costs are reasonable. HUD regulations [24 CFR 82.36(f)(1)] require that a cost or price analysis be performed in connection with every procurement action before bids or proposals are received.

Contractors Were Selected without Adequate Competition

The developers contracted with four construction companies without using full and open competition. The construction work was performed at the following projects: (1) Brookford, Dalin, and Dean Homes (Brookford); (2) Hope House; (3) Imani House; and (4) Leila Doe House.

Brookford

The Department did not require the developer of the Brookford project to follow the standard three-bid process for the procurement because the developer (1) had already provided construction cost estimates and a budget and (2) had a contractor in place as part of its development team.

Hope House

According to a memorandum, dated October 3, 2007, prepared by a developer's consultant, the development team for the Hope House project chose not to solicit bids because of the increasing construction prices and complexity of the construction work. The owner and the development team for the project justified their selection of a construction company to perform the work based on that company's knowledge of construction and because the company's management team was comprised of professional structural engineers. The Department's Housing Policy (Section 3 on Bidding) dictates that a project must be competitively bid to achieve the lowest reasonable construction cost and to provide increased fair access to the economic opportunities created through the project.

Imani House

The developer for the Imani House project solicited bids, selected a contractor, and executed a written agreement with the contractor in 2003. Later, the contractor could not manage its costs and discontinued its work on the project in 2006. The developer then selected another contractor (not among the previous bidders) to perform the work without solicitation of bids. In lieu of rebidding the construction work, the developer awarded the contract based on recommendations from the lenders.

Leila Doe House

The developer for the Leila Doe House received bids submitted by three construction companies in December 2005. Two of these companies eventually dropped out of the bidding process. Another (fourth) construction contractor submitted a bid in June 2006 and was awarded the contract without competition. Since the construction company that was awarded the contract was not among the previous bidders, this procurement should have been rebid. HUD regulations [24 CFR 85.36(d)(4)(i)] dictate that: Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the 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.

Bids Were Not Formally Advertised

There was no evidence that the bids for the 270 Centre Street project, the Humphrey Street project (homeownership component), and the Humphrey Street project (rental component) were formally advertised. Therefore, the awarding of these contracts was not conducted in accordance with free and open competition. Based on documentation provided by the Department, the bidding was by invitation only, meaning that only certain contractors were given an opportunity to bid. HUD regulations [24 CFR 85.36(d)(2)] dictates that procurement by sealed bids (formal advertising) is the preferred method for procuring construction and invitations for bids will be publicly advertised.

Monitoring of the Developer's Procurement Activities Was Inadequate

Department staff did not demonstrate that they were fully aware of their responsibilities regarding the oversight and monitoring of developers' procurement activities. One staff member stated that the Department did not customarily make developers aware of procurement requirements. The developers would sometimes rely on contractors that they knew and trusted, based on past experience. A housing development officer representing the Department stated that the Department was unable to properly monitor procurement activities due to lack of sufficient staff.

The Department Lacked Adequate Procurement History

The Department maintained only minimal procurement documentation. For at least four of the procurement actions reviewed, we had to request documentation from the developer. The Department's Housing Policy (Section 3 on Bidding) require that copies of each contractor bid be submitted to the Department for review and maintained in the project files. We found four procurement actions in which procurement documentation, specifically invitations to bid, and bid proposals were missing from the Department's records. The projects included (1) Humphrey Street project (homeownership component), (2) Humphrey Street project (rental component), (3) 636 Dudley Street, and (4) 1460 House.

Procurement Policies Were Not Consistent with Federal Regulations

The Department's procurement policies and procedures are not always consistent with federal requirements. For example, the Department's written procurement procedures did not adequately explain the methods of procurement, specifically (1) procurement by sealed bid, (2) procurement by competitive proposal, and (3) procurement by noncompetitive proposal as covered in HUD regulations. Participating jurisdictions are required to follow procurement regulations at 24 CFR 85.36c(3). This condition occurred because the Department failed to update its own procurement regulations to ensure compliance with federal regulations.

Conclusion

The Department was required to promote full and open competition for all procurement actions to include preparation of cost or price analysis for each procurement before receiving bids or proposals. These deficiencies occurred because the Department did not adequately monitor the developer's procurement and contracting process. As a result, there was a lack of assurance that the procurement process was fair and equitable and that the most favorable contract prices were obtained for more than \$5.1 million in HOME funding spent for the construction/development work.

Recommendations

We recommend that the Director of the Office of Community Planning and Development in Boston direct the Department to

- 2A. Conduct an independent cost analysis for each of the procurements to ensure that \$5,178,453 is reasonable and supported. For any amounts not reasonable and supported, the Department should reimburse the HOME program from nonfederal funds.
- 2B. Monitor the developer's procurement process to ensure construction bids are formally (publicly) advertised, bids are solicited from an adequate number of contractors, and awards are made to the lowest responsive bidder.
- 2C. Provide technical assistance to the developers, as needed.
- 2D. Review and maintain supporting documentation for each procurement including a history of the procurement.
- 2E. Revise its written procurement regulations to ensure compliance with federal regulations.

RESULTS OF AUDIT

Finding 3: The Department's Method for Allocation of Salaries Was Inadequate

The Department did not use a reliable method to record the actual time employees spent on its various programs. It used a cost (salary) allocation plan method based on estimates, instead of requiring all employees to either record their actual hours worked by funding source/program or to use the results of an acceptable time study. However, Department management believed that its salary allocation method was appropriate and reasonable and was unaware that an improvement was needed. As a result, it could not ensure that the hours charged by its staff to HUD-funded programs were accurate and reasonable and that some of its various federal and local programs did not incur a disproportionate share of the payroll costs. We question more than \$1.7 million as unsupported, which represents the Department's payroll costs charged to the HOME program for fiscal years 2007 and 2008.

The Department Did Not Maintain an Adequate Cost Allocation Plan

The payroll costs for all employees of the City were paid from the City's general fund, and the individual City departments, including the Department, reimbursed the general fund on a monthly basis.

However, the Department did not maintain an adequate cost allocation plan to ensure that Department programs were charged for their fair share of payroll costs. Department employees who worked on only one or two programs recorded their time for each activity/program. However, the Department employees who worked on more than two activities/programs did not keep track of the time spent working on each activity/program. Unless employees spent an unusual amount of time on a funding source during a specific week, they did not make the necessary adjustment on the time sheet. The time sheets used by the Department showed preprinted percentage allocations, which were based entirely on estimates from past allocation experience and which were not revised and updated on a regular basis to reflect actual experience. In addition, none of the job descriptions for Department employees included the applicable funding sources for each position or identified the program(s) applicable to each position. As a result, the job descriptions were not consistent with the cost allocation plan and need to be revised accordingly. The Department management believed that its cost (salary) allocation method was reasonable and appropriate and that no improvement was needed.

Federal Funding Absorbed the Majority of Payroll Costs

The federal programs absorbed the majority of payroll costs. In addition to the HUD funding, the Department receives funding directly from the City through five sources: (1) Leading the Way program, (2) Neighborhood Development Fund program, (3) Home Preservation Fund program, 4) Inclusionary Development Fund program, 5) and the City operating budget. With the exception of funding received through the City's operating budget, the Department did not use any of the estimated \$9 million received annually to pay salaries of Department employees although they may have worked on the City programs. However, the share of payroll costs charged to the City's operating budget was not supported, and a determination of whether these charges were accurate could not be made, just as the payroll costs charged to the HOME program could not be determined to be accurate.

The Cost Allocation Plan Should Be Revised on a Regular Basis

OMB regulations [2 CFR Appendix B to Part 225(h)(4)] dictate that, when employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation. The Department's cost allocation plan did not comply with these regulations. In similar situations, agencies or grantees perform a time study for a three- or four-month period, keeping daily records of the time spent on each program, and then use the data to compare to the existing allocation plan as a basis for revising and updating payroll allocations.

We interviewed 11 Department employees whose salaries were charged to more than two programs to determine the basis for the time charged. Of these employees, seven stated that they did not know the basis for the allocation percentages reflected on their time sheets, and they also indicated that they never made changes or adjustments to their time sheets. These staff members signed their time sheets with preprinted allocation percentages already in place.

Conclusion

The Department did not use a reliable method to record the actual time employees spent on its various programs. It did not have an adequate cost (salary) allocation plan that clearly identified the actual hours worked by funding source/program for each employee. As a result, it could not ensure that the hours charged by its staff to HUD-funded programs were accurate and reasonable and that some of its various federal and local programs did not incur a disproportionate share of the payroll costs. The Department management believed that its salary allocation method was appropriate and reasonable and was unaware that an improvement was needed. We question more than \$1.7 million as unsupported, which represents the Department's payroll costs charged to the HOME program for fiscal years 2007 and 2008.

Recommendations

We recommend that the Director of the Office of Community Planning and Development in Boston direct the Department to

- 3A. Develop and implement a cost allocation plan for payroll costs, which adequately describes the process for personnel who work on multiple programs, and revise the related job descriptions for consistency with the allocation plan.
- 3B. Provide supporting documentation for \$1,786,395 in payroll costs and submit documentation to the HUD Office of Community Planning and Development for approval to ensure that federal programs were charged their fair share of the costs. If proper supporting documentation is not provided, the Department should reimburse the HOME program from nonfederal funds.

RESULTS OF AUDIT

Finding 4: The Department Provided HOME Funds to Developers for Costs That Were Ineligible or Unsupported

The Department awarded more than \$2.2 million in HOME funds in two loans for development of housing projects. Of the total awarded, more than \$1.2 million was designated for costs that were ineligible or unsupported expenses of the HOME program. This condition occurred because the Department did not properly follow up with the developer at the time the loans were issued to ensure that the costs to be charged to the loan were adequately supported. The Department needs to reimburse \$644,268 in ineligible costs (35 Creighton St. Project), and provide support for the \$11,752 in unsupported costs (35 Creighton St. Project), and provide support for the \$651,295 in unsupported costs (270 Centre St. project).

Predevelopment Funds Were Provided to Developers for 35 Creighton St. and 270 Centre St. Projects

The Department issued two loans directly to developers using HOME funds to pay for nonspecific predevelopment and preconstruction costs in both affordable housing and mixed use developments. The loans were issued to Church Square SRO LLC for the 35 Creighton St. project and CWL Housing LLC for the 270 Centre St. project.

35 Creighton Street

The initial part of this loan was a \$500,000 predevelopment loan, issued in October 2007 to Church Square Community Partners LLC, which was collateralized as a lien on the project development. This loan was later incorporated into a 30-year non-interest-bearing and non amortizing loan of \$885,366 in April 2009.

Project documentation showed that the property being acquired for the development was purchased for more than \$1.6 million. The initial loan of \$500,000 was collateralized as a lien on the project. However, the deed for the project recorded at the Suffolk County Registry of Deeds showed that the acquisition of land (consisting of three parcels) occurred almost two years earlier in December 2005.

A revised mortgage and security agreement that accompanied the loan revision indicated that the developer received \$885,366 in HOME funds to pay off the

initial \$500,000 loan and \$385,366 for other project costs. The other project costs were described as construction, overhead, and hard and soft costs. Therefore, the \$500,000 provided in the revised loan represented a refinance of the original \$500,000 loan. As noted, the original loan was for the acquisition of land and buildings; however, there is no record of the ownership of the land and buildings being transferred.

Project files show that \$100,000 in HOME funds has been charged to the project as developer overhead costs. The developer, in turn, loaned the \$100,000 to the Center Street Retail project. In effect, the City permitted these funds to be passed through to a project for a group of retail stores, which is not an eligible use of HOME funds.

When the loan was revised in April 2009, the previous mortgage was voided, and all available funds (except for 5 percent) became immediately available for requisition by the developer. The remaining 5 percent, or \$44,268, was retained and as stated in the agreement, “shall be available for requisition by the Borrower for payment of hard and soft costs related to the Project upon substantial completion of the Project.” The revised loan identified the \$44,268 in the renovation costs; in effect the loan hold back was refinanced. Since the project is not yet complete, the \$44,268 should not have been paid out. The \$44,268 is not an eligible expense, and it should not have been refinanced.

The revised loan also noted estimated soft costs of \$11,752, but did not provide further support for these items as eligible predevelopment costs.

270 Centre Street

The initial promissory note for this project was signed in June 2006 and was later incorporated into a revised loan amount for more than \$1.3 million in December 2008. The amended loan, under Section 41 [Special Provisions] contained provisions for an amount of \$651,295 (in HOME funds) for “requisition by the borrower for the preparation of the site and to help address existing conditions on the property.”

The loan documents for this project showed that development funding was provided from the following sources:

1. Massachusetts state low-income housing credits
2. Federal (HUD) HOME funds
3. Federal (HUD) Community Development Block Grant funds
4. Other public and private sources

The project documentation did not specify the amount of funding from each source, nor did it provide further information and clarification of “other public and private sources.” The “site preparation and existing property conditions” noted in the amended loan documents referred to project site work that should

have been applied or allocated to all of the available funding sources for the project. Since there was no evidence that these costs were allocated among all of the funding sources for the project, we consider the \$651,295 provided in HOME funds to be unsupported, as the HOME funds were the only source of funding charged for these costs.

Conclusion

The Department awarded more than \$2.2 million in HOME funds in two loans for predevelopment costs for housing projects. Of the total awarded, more than \$1.2 million was designated for costs that were ineligible or unsupported for the HOME program. This condition occurred because the Department did not properly follow up with the developer to ensure that the costs charged to the loan proceeds were adequately supported under the HOME program. In addition, these two projects are mixed-finance, mixed-use developments that lacked proper plans to allocate costs between their financing sources. Mixed-use development projects need proper allocation plans for project costs to distinguish between the use of HOME and other funding sources to ensure compliance with the regulations that govern each funding source. The Department needs to reimburse \$644,268 in ineligible costs (35 Creighton St. Project), provide support for the \$11,752 in unsupported costs (35 Creighton St. Project), and provide support for the \$651,295 in unsupported costs (270 Centre St. project).

Recommendations

We recommend that the Director of the Office of Community Planning and Development in Boston direct the Department to

- 4A. Reimburse the \$544,268 in ineligible costs to the HOME program for the 35 Creighton St. project (loan refinance and loan hold-back cost).
- 4B. Reimburse the \$100,000 in ineligible costs to the HOME program for the 35 Creighton St. project (developer overhead cost).
- 4C. Provide support for the \$11,752 in unsupported costs for the 35 Creighton St. project (soft costs) and if support cannot be provided, require the Department to reimburse the HOME program for the questioned amount.
- 4D. Provide support for the \$651,295 in unsupported costs for the 270 Centre St. project (soft costs), and if support cannot be provided, require the Department to reimburse the HOME program for the questioned amount.

- 4E. Develop procedures for the use of HOME funds in predevelopment loans that comply with HUD requirements and that ensure that HOME funds are properly allocated and expended for eligible purposes, and that costs are adequately supported.

RESULTS OF AUDIT

Finding 5: The Department Did Not Submit Its Evaluation Reports in a Timely Manner

The Department did not submit its evaluation reports⁴ to HUD in a timely manner. This condition occurred because the Department had reduced its staff in the past few years and because it allowed its program beneficiaries an excessive amount of time to submit data required for the report. As a result of not meeting the evaluation report submission deadlines, the Department is at risk of having its community planning and development funds (including HOME) either suspended or withdrawn by HUD until submission is accomplished.

Report Submissions Had Been Provided Late for the Past Three Years

The Department had been late in submitting its evaluation reports for the past three years. For example, the 2007 report was submitted five months late. The 2007 report was due no later than 90 days after the Department's fiscal year end (June 30) or on September 30, 2008. However, the 2007 evaluation report was not submitted until March 9, 2009, and the 2005 and 2006 reports were not submitted until November 11, 2006, and November 30, 2007, respectively.

Data Collection and Verification Process Was Inadequate

To prepare the evaluation report, the Department must collect, verify, and enter a large volume of data into IDIS. Projects cannot be closed until the amounts originally budgeted and expended for each are reconciled and the beneficiary (vendor) information is entered into IDIS for each activity. One of the primary sources of beneficiary information is human service vendors. The Department allowed these vendors 90 days to submit financial and beneficiary data. Department staff must verify the information and then forward the information to the compliance division for entry into IDIS.

⁴ These reports are known as the consolidated annual performance evaluation reports (CAPER).

The Department attributed its delay in submitting its evaluation reports to the departure of key staff who had not been replaced. These departures included staff from the Department's policy development and research division who were responsible for generating data from the Department's own tracking system and reconciling it with IDIS, as well as staff who assisted in compiling the evaluation reports and preparing the written narratives.

HUD requires (24 CFR 91.520) that evaluation reports be submitted to HUD within 90 days after the close of the jurisdiction's program year, and if a satisfactory report is not submitted in a timely manner, HUD may suspend or withdraw funding in a jurisdiction that does not submit a satisfactory report.

Conclusion

The Department had been late in submitting its evaluation report for the last three years. This condition occurred in part because the Department allowed program beneficiaries 90 days to submit data for the report and did not replace key staff who entered this information into IDIS. If the Department continues to submit its evaluation reports late, it is at risk of having its community planning and development funds (including HOME) either suspended or withdrawn by HUD.

Recommendations

We recommend that the Director of the Office of Community Planning and Development in Boston direct the Department to

- 5A. Consider assigning additional staff to its policy development and research division to lessen the workload.
- 5B. Consider changing the time requirements for data collection for IDIS submissions and submit its evaluation reports on time.

SCOPE AND METHODOLOGY

We performed an audit of the HOME program administered by the City's Department. Our fieldwork was completed at the Department's offices located at 26 Court Street, Boston, Massachusetts, from December 2008 to May 2009. Our audit generally covered the period July 2006 to December 2008 and was extended when necessary to meet our objective.

To accomplish our audit objective, we

- Reviewed applicable *Code of Federal Regulations* sources, Office of Management and Budget (OMB) circulars, HUD handbooks/guidebooks, and HUD notices pertaining to the HOME program.
- Reviewed media articles related to the Department, its staff, and its use of HOME funding via Lexis-Nexis and the Department's Web site.
- Reviewed the Department's policies and procedures and held discussions with Department officials to gain an understanding of the Department's accounting controls, procurement practices, and monitoring policies.
- Reviewed independent public auditors' reports as well as HUD monitoring reviews and risk assessments.
- Evaluated the internal controls and conducted sufficient tests to determine whether controls were functioning as intended.
- Evaluated computer systems to determine whether automated information could be readily downloaded, sorted, manipulated, and displayed. Verified that the Department was entering information into IDIS.
- Reviewed the latest evaluation report and identified activities that were slow to reach completion and/or did not meet goals and identified what corrective actions the Department took to complete activities. In addition, we compared accomplishments reported for various housing programs in the evaluation report to the data entered by the Department into IDIS.
- Evaluated the Department's administrative activities to ensure that administrative and planning costs did not exceed HUD funding limits and performed a cursory review of administrative costs for eligibility and reasonableness.
- Evaluated the Department's procurement practices through a review of procurements under the HOME loan program. We selected a nonrepresentative sample of six procurements based on the largest amounts of funds expended per contract/project with funding commitments of \$200,000 or greater and commitment dates between July 1, 2006, and November 30, 2008. The six procurements totaling \$2,771,578 were selected from a universe of 189 activities totaling \$7,135,684. In addition, we reviewed the Department's written procurement policies and procedures for compliance with HUD's regulations and state laws.
- Reviewed the Department's organizational chart and job descriptions to determine responsibilities of staff and whether job descriptions were consistent with federal programs. Also, we reviewed for any indications of overlap in job duties/responsibilities.

- Selected a nonrepresentative sample of 12 employees totaling \$56,074 based on largest salaries from a universe of 17 employee time sheets totaling \$79,140 for employees working on not more than two programs, with one of those programs being the HOME program. Our objective was to determine whether employees working on one or two activities/programs properly reported their time on timesheets and whether the allocations were in agreement with the Department's monthly personnel allocation spreadsheets.
- Using the December 2008 personnel allocation Excel worksheet (entitled "Payroll"); we isolated the employees working on more than two programs, with one of those programs being the HOME program. We sorted by division and employee earnings and excluded from review any employees making in excess of \$6,000 per pay period. We identified a total of 43 employees that represented the universe. The total dollar amount for the universe consisted of \$208,881 in employee earnings and represented four divisions, including Accounting/Finance, Homebuyers Services, Neighborhood Housing Development, and Homeowner Services. We identified a sample of 11 employees for review, consisting of employee earnings totaling \$44,342. Our selection included a fair representation of employees from each of the Department's four divisions. We used nonrepresentative sampling due to the large universe and selected employees in nonmanagement or nonsupervisory positions based on probability and/or our past experience, which has shown that there is a greater risk that employees in these less responsible types of positions are not as well versed on what their job duties entail. Therefore, to attain our sample, we selected the three employees with the lowest salaries from each of the Department's divisions. If there were three or fewer employees in a division, we selected all of the employees in that division. If there was more than one employee with an identical salary in the same division, we included all of those employees in our sample. Our objective was to determine whether funding sources, including allocation percentages reported on employee time sheets, were, for the most part, consistent with employee job duties and whether the staff's actual job duties were correct as reported on the written job descriptions.
- Reviewed all 18 CHDOs to determine whether the organizations were appropriately certified by the Department and met all requirements for designation as CHDOs.
- Determined and evaluated the reasons for the Department's failure to submit its evaluation reports to HUD in a timely manner.
- Evaluated the Department's progress in its use of HOME funds to develop/rehabilitate housing through its loan program.

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 an integral component of an organization's management that provides reasonable assurance that the following controls are achieved:

- Program operations,
- Relevance and reliability of information,
- Compliance with applicable laws and regulations, and
- Safeguarding of assets and resources.

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. They 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 objective:

- Controls for ensuring that organizations qualify as CHDOs (Finding 1).
- Controls for ensuring that CHDO operating expense funding is used in accordance with HUD regulations (Finding 1).
- Controls over procurement and contracting (Finding 2)
- Controls for implementing an effective system for allocation of salaries (Finding 3).
- Controls to ensure adequacy of reporting requirements (Finding 5).

We assessed the relevant controls identified above.

A significant weakness exists if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet the organization's objectives.

Significant Weaknesses

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

- The Department's failure to ensure its staff was knowledgeable of HUD's CHDO policies and procedures resulted in 18 organizations being improperly designated as CHDOs.

- The Department did not adequately monitor the use of CHDO operating funds.
- The Department did not adequately monitor its procurement and contracting process.
- The Department failed to implement an effective system for allocation of salaries.
- The Department did not design a system to ensure that it had the necessary data to submit its evaluation reports to HUD in a timely manner.

APPENDIXES

Appendix A

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

The audit identified questioned costs totaling \$15,191,869 as follows:

Recommendation number	Ineligible <u>1/</u>	Unsupported <u>2/</u>	Funds to be put to better use <u>3/</u>
1E			\$3,914,150
1F	\$836,941		
1G			\$1,022,802
1H	\$1,145,723		
2A		\$5,178,543	
3B		\$1,786,395	
4A	\$544,268		
4B	\$100,000		
4C		\$11,752	
4D		\$651,295	
Total	\$2,626,932	\$7,627,985	\$4,936,952

1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or federal, state, or local policies or regulations.

2/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

3/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. In this case, the set-aside funding of \$3,914,150 will be put to good use by organizations that meet the CHDO requirements; otherwise, funding can be used for eligible HOME activities. The unexpended operating funding of \$1,022,802 can also be used for eligible HOME activities.

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DEPARTMENT OF NEIGHBORHOOD DEVELOPMENT

THOMAS M. MENINO, MAYOR
EVELYN FRIEDMAN, CHIEF AND DIRECTOR

July 28, 2009

Mr. John A. Dvorak
Regional Inspector General for Audit
US Department of Housing and Urban Development
Office of Inspector General for Audit, Region 1
Thomas P. O'Neill Federal Building
10 Causeway Street, Room 370
Boston, MA 02222-1092

Dear Mr. Dvorak:

Enclosed please find the City of Boston's Department of Neighborhood Development formal written response to the Office of Inspector General for Audit's draft report of your recently completed audit of HOME grant funds dated July 14, 2009.

Thank you for your attention to this matter, should you have further questions regarding any of the above, please do not hesitate to call me.

Sincerely,

Evelyn Friedman
Chief and Director

Cc: Robert L. Paquin, Director, Boston HUD/CPD Office
Laura B. Schiffer, CPD Rep., Boston HUD/CPD Office
Kevin J. Smullen, Senior Auditor, HUD/OIG
Morgan McCarthy, Senior Auditor, HUD/OIG
Dave Montella, Senior Auditor, HUD/OIG
Ana Boyd, DND
John Carbone, DND
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**The City of Boston's Department of
Neighborhood Development in Boston,
Massachusetts**

July 28, 2009

Response to OIG's Draft Audit Report

**The Department did not Administer its HOME Program in
Compliance with HUD Requirements**

***Finding 1 – The Department did not ensure that organizations
met CHDO requirements:***

Recommendations:

Comment 1

- 1A. **Improve its controls over the CHDO certification process to ensure that organizations designated as CHDOs meet HUD requirements.**

DND – A: The Department is using the regulatory requirements outlined in "CHDO Survivor Kit" Issued by HUD in 2007. The Department had planned to use these requirements for the 2009 certifications and is now going back and re-evaluating the 2007 certifications. A copy of the checklist is attached.

Comment 2

- 1B. **Ensure that its staff becomes more familiar with HUD regulations regarding the CHDO process.**

DND – A: Departmental Staff attended the training provided by HUD in May 2008. Department's staff designated to process the CHDO certifications have been trained in the use of the checklist at the start of the 2009. CHDO Certification Review Process begun in July 2009.

Comment 3

- 1C. **Cease spending set-aside and operating funding until it can be determined whether the organizations can achieve CHDO status in accordance with HUD regulations.**

DND – A: Final payments for the contract year 2008-2009 will be held until a determination of CHDO status has been finalized. Documentation to assist with an update of the current determination will be forwarded to on or about August 5, 2009.

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Comment 4

- 1D. Assist the organizations in achieving CHDO status as deemed necessary.

DND – A: Technical assistance will be offered to any CHDOs who are not certified.

Comment 5

- 1E. Deobligate unexpended set-aside funding of \$3,914,150 and provide funding to organizations that are eligible to receive the funding or reimburse funds to the HOME program.

DND – A: Information will be provided to HUD to support the set-aside funding of CHDOs. Should any CHDO's lose their prior certification status, the Department will follow the OIG recommendation that the funds be provided only to organizations that are eligible to receive the funding.

- 1F. Reimburse \$836,941 expended from set-aside funds from nonfederal funds to the HOME program.

- 1G. Deobligate unexpended operating funds of \$1,022,802 and reimburse funds to the HOME program.

- 1H. Reimburse \$1,145,723 expended in operating funds from nonfederal funds to the HOME program.

DND – A: 1F to 1H

Comment 6

Once a determination has been made as to the eligibility of the CHDO's to receive funding, the Department will request a revision of the amount currently required to be repaid or re-obligated.

Comment 7

It should be noted that one factor in the OIG determination that the CHDO's were not eligible for certification was the failure on the part of the organizations to provide an A-110 letter. Because the regulations require that "the organization conforms to the financial accountability standards..." and one of the items that can be offered as evidence is "a HUD approved audit summary", the Department has always required submission of the A-133 Audit with the management letter from the CPA firm. We respectfully request revision of this finding since we believe that the A-133 Audit and Management letter from the CPA firm fully meets this requirement.

Comment 8

The other factor with which we disagree is that the CHDOs the Department certified did not have a history of serving the community. All Department certified CHDOs have either created a substantial number of affordable housing units and/or worked on other community activities including tenant and neighborhood organizing, youth programming, economic development activities,

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referral services to social service agencies, work with elderly in danger of loosing their home (rental unit), and provide foreclosure prevention counseling assistance to homeowners. We do recognize that there was no tangible evidence of this in the files. We will submit documentation to HUD for their review on or about August 5, 2009.

Finding 2: The Department did not always ensure that project developers followed proper procurement procedures.

Recommendations:

- 2A. **Conduct an independent cost analysis for each of the procurements to ensure that \$5,178,453 is reasonable and supported. For any amounts, not reasonable and supported, the Department should reimburse the HOME program from nonfederal funds.**
- 2B. **Monitor the developer's procurement process to ensure construction bids are formally (publicly) advertised, bids are solicited from an adequate number of contractors, and awards are made to the lowest responsive bidder.**
- 2C. **Provide technical assistance to the developers as needed.**
- 2D. **Review and maintain supporting documentation for each procurement including a history of the procurement.**
- 2E. **Revise its written procurement regulations to ensure compliance with federal regulations.**

Comment 9

DND – A: DND has drafted policies and procedures for bidding, we will send a copy of the final document to HUD on or before September 30, 2009.

Comment 10

DND – A: to 2A to 2D: As stated during our exit conference on Friday July 28, 2009, we believe that private developers are not required to comply with the procurement requirements cited by this Audit. We respectfully request removal of these findings/recommendations based on the following procurement policy currently on HUD's website.

Procurement

PJs, State recipients, sub-recipients, and contractors are subject to the procurement requirements of 24 CFR Parts 84 and 85, as well as state and local laws and regulations. Owners and developers (including CHDOs) are not subject to Federal procurement requirements. PJs and their partners must ensure that every purchase order or other contract executed for federally-assisted projects includes any clauses required by Federal statutes and Executive Orders and their implementing regulations. Some of the clauses that must be incorporated into

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Comment 11

contracts include acknowledgment that contractors must follow Federal labor requirements (when they apply) like the Copeland Anti-Kickback Act, promise to comply with the Equal Employment opportunity Executive Order, and recognition of conflict-of-interest provisions (see Administrative Requirements topic). View 24 CFR 85.36 for more information about procurement.

<http://www.hud.gov/offices/cpd/affordablehousing/training/web/crosscutting/employment/practices.cfm>

Your report mentions that staff did not demonstrate they were fully aware of their responsibilities regarding the oversight and monitoring of the developer's procurement activities and that DND did not customarily make developers aware of procurement requirements. NHD has had a written Bid Policy since September of 2001. Each Development Officer has a hard copy of all Policies, located in a Policy and Procedure Manual, as well as access to the Website where our development and underwriting policies are available to Developers, as well as the public. The Policies are referenced in each funding RFP that is issued by the Department and if a project receives an award of funds, compliance with the Bid Policy is specifically referenced as a standard condition in every Award. For each project that is presented for a commitment of funding, the Development Officer must complete a PRC Narrative; each section of that form contains questions, which prompt the Development Officer for information needed in order to secure a commitment of funds. Section 8 of the PRC Narrative is related to the analysis of the projects development budget; it specifically asks if the project was competitively bid, how many bids were received, etc. In addition, we have adopted a standard filing system for each project. Section 6 of the Standard File Checklist by which every development project is ultimately filed, which includes a check for Bid Documents, Sub-Contractor Bids, etc. Given the above, I can only surmise that the use of the term "procurement" as opposed to bidding may have confused matters.

As outlined in the chart I provided for the projects that were not subject to 30B, only Hope House requested a waiver from soliciting bids from General Contractors, but did obtain 3 bids for the various sub-trades. It was granted an exception under our policy.

Finding 3: The Department's method for allocation of salaries was inadequate

Recommendations:

- 3A. **Develop and implement a cost allocation plan for payroll costs, which adequately describes the process for personnel who work on multiple programs, and revise the related job descriptions for consistency with the allocation plan.**

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Comment 12

DND A: DND will work with a HOME Technical Assistance provider to develop and implement a cost allocation plan for payroll costs. A one month time study will be conducted in the month of October 2009 to provide DND with data to allocate to the various funding sources. The month of October was chosen as to not interfere with summer vacations and the completion of the CAPER. In addition, all job description will be reviewed and updated as needed to be consistent with the allocation plan and submitted to HUD with a copy of our time study on or before November 30, 2009.

- 3B. Provide supporting documentation for \$1,868,375 in payroll costs and submit documentation to the HUD Office of Community Planning and Development for approval to ensure that federal programs were charged their fair share of the costs. If proper supporting documentation is not provided, the Department should reimburse the HOME program from nonfederal funds.**

DND A: Payroll charges to HOME funding for FY 2007 and 2008 will be analyzed and supported with documentation as to the validity of the allocations amounting to \$1,868,375 in payroll costs. The Department will submit a response to OIG on or before September 30, 2009.

Finding 4: The Department provided HOME funds to developers for costs that were ineligible or unsupported

Recommendations:

- 4A.** Reimburse the HOME program for the \$544,268 in unsupported costs for the 35 Creighton Street project.
- 4B.** Provide support for the \$111,752 in unsupported costs for the 35 Creighton Street project and if support can not be provided, require the City to reimburse the HOME program for the questioned amount.
- 4C.** Provide support for the \$651,295 in unsupported costs for the 270 Centre Street project and if support cannot be provided, require the City to reimburse the HOME program for the questioned amount.
- 4D.** Develop procedures for the use of the HOME funds in predevelopment loans that comply with HUD requirements and that ensure that HOME funds are expended for eligible purposes and for costs that are adequately supported.

DND – A: Response to Recommendations 4A to 4D

We disagree with this ruling because HUD HOME rules allow for CHDO predevelopment loans under section 92.301. The two loans cited in the audit as pre-development were not made under this section. Internal Departmental terminology did refer to them as "pre-Development!" but the loans were for pre-

Comment 13

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Comment 13

construction costs such as attorney fees, architectural and engineering services and other soft costs.

Blessed Sacrament SRO – 35 Creighton IDIS 14009

Development Summary and Timeline:

JPNDC, a CHDO qualified non-profit developer partnered with New Atlantic, Inc., a for-profit developer of affordable housing. Together they formed the Church Square Community Partners LLC, to acquire and redevelop land from the Roman Catholic Archbishop of Boston, formerly known as Blessed Sacrament campus located at the corners of Centre, Creighton and Sunnyside Streets. The acquisition price for the land and buildings was \$6,025,000 and the transaction took place in December 2005. This was initially financed with a loan from the Boston Community Loan Fund Inc. (BCLF), which totaled \$7,297,250.00 and was secured by a mortgage on the property. (See copy Deed and Mortgage, from the Suffolk Registry of Deeds)

In the Summer of 2006, the Developer submitted applications for 3 separate affordable housing projects to be located on the former campus: 1) The Blessed Sacrament Mixed Use Building to be built on the corner of Centre and Creighton Streets, 2) the Creighton Condominium, involving the renovation of existing structures and the construction of new units to be sold to income qualified homebuyers and 3) the Blessed Sacrament SRO- 35 Creighton project which involved the full renovation of the former convent located on the site as 28 units of Single Room Occupancy units for homeless individuals.

As Evelyn Friedman explained during our exit conference, these type of deals are structured in a way that the LLC or in this case Church Square Community Partners LLC acquires the land/buildings from the seller, holds the property while the developer(s) aggregate the funding required for the rehabilitation/new construction or their projects and form new entities that will do the development as detailed in the second paragraph above.

In this case, the Church Square Community Partners LLC sells the land/building to the new entity formed to develop the SRO housing: Blessed Sacrament SRO-35 Creighton. As far as the entity named BS SRO-35 Creighton is concerned, please note that the acquisition of the land/building(s) will take place the day it acquires the property from Church Square Community Partners LLC and it is not on December 2005.

Deed and transfer of property

As noted earlier, Church Square Community Partners LLC acquired the entire site from the Roman Catholic Archbishop of Boston. On December 5, 2007 a Master Deed for the Church Square Master Condominium was filed at the Suffolk

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Comment 13

Registry of Deeds (Book 42822 Page 202) which provided details regarding the mutual interests and definition of the individual Units which comprise the development, including the "SRO Unit or Convent" or Blessed Sacrament SRO – 35 Creighton (IDIS 14009). On May 4, 2009 an Amended and Restated Master Deed was filed at the Registry (Book 44908 Page 133).

In July of 2006, DND issued an award letter to the development for \$750,000.00. (See Funding Proposal Review and Recommendations dated July 11, 2006)

Blessed Sacrament SRO- 35 Creighton project

In May of 2007, the Developer requested that DND commit a portion of its \$750,000 funding award to reimburse project costs associated with the acquisition of the property as a way to save the project on-going carrying cost. The budget for this phase of the 35 Creighton Development totaled \$2,408,529 which included the allocation of the \$1,680,000 as the acquisition price of the Convent Building along with other acquisition financing fees and expenses totaling \$495,472, a portion of the general development expenses for the development such as architectural and engineering fees, surveys, environmental assessments, article 80 and zoning consultants, legal expenses, reserves, and other pre-construction financing fees, totaling \$233,057 (\$2,408,529 = \$1,680,000+\$495,472+\$233,057) The sources for this phase of the development included funding from BCLF for \$1,908,529 and DND for \$500,000. This represented only a portion of the approved development budget.

In May of 2007, it was anticipated that the project would close and begin construction on the 28 SRO units for homeless household in the fall or early winter of 2007 the projected savings was anticipated to be over \$17,500 for the 3 month time period. Although PRC approved the early commitment, the closing and disbursement did not occur until October of 2007, at which point the construction closing was anticipated to be completed in December of that year. (See project narrative dated 5/31/07 and attached budget.) (See Predevelopment Loan Documents)

In April of 2008, due to delays in the project outside the developers control (Article 80 process and zoning approvals, changing underwriting standards by equity providers and construction lenders, etc.), the Developer requested that we increase our total award to the project from \$750,000 (which included the \$500,000 already expended) by \$146,168, which would have brought out total award to \$896,168. Although our early closing had potentially saved the project over \$41,000 in carrying costs, the Review Committee felt that there were legitimate increases in development costs to consider (See Off Round Gap Request dated April 2008). The Development Officer was charged with continuing to work with the Developer to review the budget, analyze the proposed increases and work towards a final commitment of funding for the project. The next month, May of 2008 the Development Officer returned to the Project Review committee and presented the project for a final commitment of funding for

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Comment 13

\$885,366.00 (see Project Narrative and the Agenda and PRC Decisions dated 5/2/08).

Due to protracted negotiations and severe changes occurring in the housing and financial markets, DND did not issue the commitment letter for many months. In February of 2009 the Development Officer brought the project back to PRC to review, yet again the final commitment amount and budget and consider an early closing and disbursement of funds in anticipation of the imminent construction loan closing for the project. This presentation of the development included a request to close on the full loan and further disburse against eligible project costs slightly in advance of the construction closing with all other lenders. The Total commitment amount included the \$500,000 that had already been disbursed against acquisition expenses in late 2007. The Developer had received all necessary subsidy commitments from DHCD, along with the allocations of sufficient tax credits, all the required due diligence had been submitted and the state's attorneys were drafting loan documents. They had signed a letter of intent from Alliant Capital and were negotiating terms of the partnership agreement and finalizing underwriting for the equity syndication of the tax credits, the construction closing appeared to be on track to happen within a month or two.

On April 13, 2009 we executed Loan Documents for the full \$885,366. The front page of the Promissory Note included a typographical error. The numerical representation of the amount of the loan located in the upper left hand corner of the note, \$872,875 was typographical error, the correct amount of \$885,366 was included in the body of the note and all other closing documents and the Loan Agreement stated in the first paragraph that \$500,000 of the loan had already been disbursed under the earlier loan documents.

Disbursement:

All disbursements were made as reimbursement of legitimate and eligible development project costs.

Deed and transfer of property

As noted earlier, Church Square Community Partners LLC acquired the entire site from the Roman Catholic Archbishop of Boston. On December 5, 2007 a Master Deed for the Church Square Master Condominium was filed at the Suffolk Registry of Deeds (Book 42822 Page 202) which provided details regarding the mutual interests and definition of the individual Units which comprise the development, including the "SRO Unit or Convent" or Blessed Sacrament SRO – 35 Creighton (IDIS 14009). On May 4, 2009 an Amended and Restated Master Deed was filed at the Registry (Book 44908 Page 133).

\$500,000 Note dated May 2007:

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 13

As part of the overall commitment to the development DND closed on a portion of the funds awarded to the project to reimburse acquisition expenses incurred and previously paid for with funding from the BCLF Loan. In funding this cost DND helped to reduce project carrying cost by an estimated \$17,500 per quarter.

\$885,366 Note dated April 2009:

\$500,000 disbursed as described above

Requisition 2: \$194,449 disbursed May 2009 – Copy enclosed
\$94,449 payment of hard costs for Bilt-Rite Construction contract to build the portion of the parking garage for the 35 Creighton SRO development.
\$100,000 payment as reimbursement of Developer Overhead. The total amount of Developer Overhead in the approved project development budget was \$234,000. Allowing the developer to draw down \$100,000 of the developer overhead represents 43% of the total OH for the development, in compliance with the DND Policy.

Requisition 3: \$56,443 disbursed June 2009 – Copy Enclosed
\$55,201 payment of hard costs and contingency for Bilt-Rite Construction contract to build the portion of the parking garage for the 35 Creighton SRO development.
\$1,242 reimbursement of a portion of the bond premium

\$134, 444 Unexpended balance of the loan.

\$44,266 represents the DND Loan Hold Back, 5% of the total loan amount. The Loan Hold Back will not be disbursed to reimburse project costs until the project is complete and all required project reporting documentation is on file with DND.

Finding 4: 270 Centre Street IDIS 13891

The City of Boston closed on the project loan for \$1,350,000 on March 16, 2009 in anticipation of a full construction loan closing to occur shortly thereafter. The loan included \$150,000 of funding (\$100,000 of HOME Funds and \$50,000 City of Boston LTW funds previously disbursed under a predevelopment note) of which \$142,500 had been disbursed against eligible costs (See attached requisitions). The Developer had received all necessary subsidy commitments from DHCD, along with the allocations of sufficient tax credits, all the required due diligence had been submitted and the state's attorneys were drafting loan documents. They were finalizing negotiations and underwriting with Red Capital to be equity syndication of the tax credits.

DND agreed to the early closing and agreed to disburse against additional project costs up to \$691,295 specifically related to the site preparation and remediation work required as part of the development.

Comment 13

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

The \$1,350,000 Note dated March 2009
\$142,500 (previously disbursed as stated above)
\$477,840 (copy of requisitions will be forwarded on August 5, 2009)
\$. 20,939.89 (copy of requisition will be forwarded on August 5, 2009)

Unexpended balance: \$708,720, which includes \$2,500 of LTW funds and
\$706,220 of HOME

The full project budget including sources from all funders is enclosed. Due to the collapse of the LIHTC Equity Market has prevented the project from completing the construction closing as anticipated.

Finding 5: The Department did not submit its evaluation reports in a timely manner

Recommendations:

- 5A.** Consider assigning additional staff to its policy development and research division to lessen the workload.

DND-A: The timeliness of the CAPER submissions was previously identified as a problem in HUD's letter of May 14th, 2009 approving our 2007 CAPER. The Department has already reassigned Diane Marchioni to the Policy Development and Research Division effective as of 5/18/2009.

- 5B.** Consider changing the time requirements for data collection for IDIS submissions and submit its evaluation reports on time.

DND-A: The Department has already significantly shortened the timeline for program divisions and sub-recipients to submit their year-end financial and program beneficiary data for entry into IDIS as detailed in the following schedule:

IDIS Schedule for Year End 2009 (HUD 2008)

DND's objective is to have IDIS as complete and clean as possible by August 10-conversion date.

May 26	IDIS Download and reports run
May 27	Reports Distributed
June 10	Updates due to Compliance, including HOPWA, ESG and JCS.
June 29	Reports run including preliminary reports for CAPER

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AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

July 30: Last day to submit invoices for payment out of FY 2009 funds. Applies to all programs except HOPWA, ESG, and JCS.

July 27- August 7: Compliance staff enters data and passes invoices on for final payment

August 10-17 IDIS Conversion

August 18: Final HOPWA, ESG, and JCS Updates due

August 17: Final Payment Requests Due for HOPWA, ESG, and JCS.

August 18-25: Compliance enters HOPWA, ESG, and JCS information

August 25-28: Check for payments and complete projects

September 2: IDIS download and reports run including PR03 assuming the new IDIS report function is operational by then.

The Policy Development & Research Division has already begun to prepare CAPER narratives and plans to issue the draft CAPER for a 15-day comment period no later than September 9, 2009. Barring major problems with the Conversion from legacy IDIS to IDIS Online we fully expect to be able to submit the final CAPER to HUD no later than September 30, 2009. (HUD has indicated that we will be locked out of IDIS from 9pm on Monday, 8/10 through 7am on Friday, 8/14).

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 1 The Department is required under 24 CFR Part 92.300 (b) to make reasonable efforts to identify CHDOs "that are capable, or can reasonably be expected to become capable," of carrying out elements of the Department's approved Consolidated Plan. The use of the one-page CHDO checklist from the CHDO Survivor Kit would not be considered a reasonable effort because the Survivor Kit does not adequately describe all the applicable requirements identified in the laws and regulations governing the administration of the HOME program. It states in the Kit that this guide provides general information on the HOME program and CHDOs; and this guide is not an introduction to CHDOs, the qualification criteria and process, or HOME program rules. Readers are then referred to various HUD websites for further information.

HUD regulations in the HOME Final Rule, 24 CFR 92.2 *Community housing development organization*, (of April 1, 2009), and HUD Notice CPD-97-11, provide official guidance and requirements relative to determining an organizations' qualifications for CHDO status. By contrast to the Kit's CHDO checklist, HUD Notice CPD-97-11 includes a recommended 3-page CHDO Checklist that provides greater detail and allows for a more comprehensive review of organizations' qualifications for CHDO status. 24 CFR 92.2 and HUD Notice CPD-97-11 thoroughly describe the CHDO eligibility criteria and the supporting documentation that must be submitted by organizations that are applying as CHDOs. The Department should certify the 18 nonprofit organizations as CHDOs using 24 CFR 92.2 and HUD Notice CPD-97-11 to ensure that the nonprofit organizations effectively meet the terms or requirements necessary for CHDO designation.

Comment 2 As noted in Comment 1, the CHDO Survivor Kit is not an effective means of ensuring that nonprofit organizations meet the qualifications to be designated as a CHDO. The CHDO Checklist referred to in HUD Notice CPD-97-11 is a more effective means to use in determining an organization's qualifications for CHDO designation. In addition, the CHDO requirements in 24 CFR 92.2 are designed to ensure that CHDOs are capable of making decisions and performing actions that address the community's needs without undue influence from external agendas. If the Department's staff are to be adequately trained to ensure that organizations qualify for the CHDO designation, the staff needs training on using the requirements of 24 CFR 92.2 and HUD Notice CPD-97-11 which thoroughly

describe the CHDO eligibility criteria and the supporting documentation that must be submitted by organizations that are applying as CHDOs.

- Comment 3** The documentation must be provided to the HUD Director of the Office of Community Planning and Development in Boston to verify that the organizations met all the requirements for the CHDO designation before resuming program expenditures.
- Comment 4** It is not clear from the Department's response whether they accurately interpreted Recommendation 1D. The recommendation in requiring the Department to assist organizations in achieving CHDO status, if feasible, was addressing the 18 unqualified organizations previously certified as CHDOs. The intent of the recommendation was clarified with the Department's compliance manager on July 31, 2009. The compliance manager stated that the Department intends to assist the 18 unqualified organizations to ensure that these organizations meet the terms or requirements necessary for CHDO designation.
- Comment 5** We disagree with the Department's comments addressing Recommendation 1E, and the response indicates that the Department incorrectly views the issues being addressed as not being serious violations of the laws and regulation governing the administration of the HOME program. The first step in the corrective action for this recommendation is for the Department to deobligate the unexpended CHDO set-aside funding of \$3,914,150 because the obligations are not legally supported since the basis of this support are ineligible organizations. The Department did not have a definite commitment that created a legal liability. The organizations identified in the finding did not qualify as CHDOs at the time funds were obligated and there is no certainty that any of the current organizations will achieve proper CHDO status. If some of the organizations become eligible CHDO organizations at some later point in time, they could then seek funding at that time. Therefore, we repeat the intent of the recommendation that the Department must first deobligate unexpended CHDO set-aside funding of \$3,914,150, and when it identifies eligible CHDO organizations it then can provide funding to organizations that are eligible to receive the funding, as appropriate. The documentation showing the deobligation of the \$3,914,150 must be provided to the HUD Director of the Office of Community Planning and Development in Boston for verification.
- Comment 6** We disagree with the Department's comments in addressing Recommendations 1F, 1G and 1H, and the response indicates that the Department incorrectly views the issues being addressed as not being serious violations of the laws and regulations governing the administration of the HOME program. The Department must repay the \$836,941 it expended and deobligate the unexpended \$1,022,802 in CHDO set-aside funding because the expenditures and obligations were not legally supported at the time of the expenditure or obligation since the basis of this support are ineligible organizations. The Department did not have a definite commitment that created a legal liability. The Department's efforts to determine

whether or not these organizations can meet the requirements for a CHDO designation are secondary to the reimbursement or deobligation of its illegal expenditure or obligation of set-aside funds. The audit work described in Finding 1 shows that the organizations identified were not eligible to receive funding as CHDOs, therefore the repayment and deobligation must occur immediately. Also, the Department's efforts to re-determine whether the nonprofit organizations can meet or has met the requirement for a CHDO designation must be reviewed by the HUD Director of the Office of Community Planning and Development in Boston to verify and confirm the determination. The Department must provide sufficient information to show that the designation was proper and meets the requirements of 24 CFR 92.2 and HUD Notice CPD-97-11 for CHDO eligibility, and that the appropriate supporting documentation was submitted by organizations that applied for the CHDO designation.

Comment 7 The report did not conclude that the Department failed to conform to the financial accountability standards of 24 CFR 84.21 "Standards for Financial Management Systems" because there was no evidence of a notarized statement by the president or chief financial officer of the organization, or a certification from a Certified Public Accountant. Appendix D of the report identifies the criteria for conforming to financial accountability standards. In following the criteria cited in Appendix D, the Department should provide the audit summary to the HUD Director of the Office of Community Planning and Development in Boston to make a determination of whether they can accept the A-133 Audit report with a management letter from the CPA firm as fully meeting the requirement for certification under OMB Circular A-110.

Comment 8 During the audit, the Department did not have any evidence to support the determination that the organizations certified as CHDOs had a history of serving the community. The Department readily acknowledged that there was no tangible evidence of a history of CHDOs serving the community in their files. The Department's comment that they would subsequently submit documentation to HUD for review supports the conclusion that that they did not have evidence in their files. HUD requirements for this history are clearly identified in the laws and regulations governing the administration of the HOME program. The Department was required to show in its certification of the nonprofit organization that the organizations designated as CHDOs had a history of serving the community within which housing to be assisted with HOME funds is to be located. As such, HUD requires that the CHDO must be able to show one year of serving the community prior to the date the participating jurisdiction provides HOME funds to the organization, as evidenced by a statement that documents at least one year of experience serving the community. In the statement, the organization must detail its history of serving the community by describing activities which it provided such as, developing new housing, rehabilitating existing stock and managing housing stock, or delivering non-housing services that have had lasting benefits for the community, such as counseling, food relief, or childcare facilities. The statement must be signed by the president or other

official of the organization. During the audit, the CHDO files did not have the required evidence and the Department could not provide documented evidence that they accomplished any of the above tasks.

Comment 9 In Recommendation 2E, the report advised the Department to revise its written procurement regulations to ensure compliance with the applicable federal requirements and regulations at 24 CFR 85.36. In its response, the Department stated that it has drafted policies and procedures for bidding, but it did not specifically state that its procurement regulations were in compliance with the applicable federal requirements and regulations. The Department needs to revise its response and stipulate that its revised procurement regulations will comply with the applicable federal requirements and regulations found at 24 CFR 85.36. The revised procurement regulation must be provided to the HUD Director of the Office of Community Planning and Development in Boston to verify that it included the requirements of 24 CFR 85.36.

Comment 10 The Department's noncompliance with the requirements of 24 CFR 85.36 is a valid discrepancy and cannot be removed as a reportable condition. Also, there were no private developers included in this review, only nonprofit organizations. Regulations at 24 CFR 92.505 "Applicability of Uniform Administrative Requirements" on governmental entities provide that procurement requirements of 24 CFR 85.36 apply to a participating jurisdiction receiving HOME funds, including subgrantees. Therefore, the Department's comments that these developers were not required to comply with the procurement requirements are incorrect. In addition, the general information on the referenced website cannot be construed as governing guidance and instructions relative to HUD funded programs.

Grantees are required to understand and follow the applicable regulations and laws that govern the administration of the HOME program. The reliance on a website, which provides only informational guidance, is a failure on the part of the Department to fulfill its responsibilities of ensuring that the HOME funds are used in accordance with all program requirements. HUD regulations at 24 CFR 92.504(a) provide that the participating jurisdiction (the Department) is responsible for (1) managing the day-to-day operations of its HOME program, (2) ensuring that HOME funds are used in accordance with all program requirements and written agreements, and (3) taking appropriate action when performance problems arise. The use of state recipients, subrecipients, or contractors does not relieve the participating jurisdiction (the Department) of this responsibility. Regulations at 24 CFR 92.505 "Applicability of Uniform Administrative Requirements" on governmental entities provide that procurement requirements of 24 CFR 85.36 apply to a participating jurisdiction and subrecipient receiving HOME funds (i.e., *Governmental entities*. The requirements of OMB Circular No. A-87 and the following requirements of 24 CFR part 85 apply to the participating jurisdiction, State recipients, and any governmental subrecipient receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.22, 85.26, 85.32-85.34, **85.36**, 85.44, 85.51, and 85.52.)

In addition, the Department's position that developers are not required to follow HUD procurement requirements is not consistent with the actions taken by some developers, nor was it consistent with the Department's own procurement policy. For example, some developers procured contracts without soliciting bids, and others followed HUD policy and procured contracts using full and open competition. Even though the Department's procurement policy was not always consistent with HUD's policy, some of the Department's rules and regulations are consistent with HUD's written procurement policy. For example, the Department's blanket statement that developers are not required to comply with procurement requirements cited in 24 CFR 85.36 is not consistent with the Department's written Housing Policy on Bidding quoted as follows: "*Projects must be competitively bid in order to achieve the lowest reasonable construction cost and to provide increased fair access to the economic opportunities created through the project. Developers must solicit and receive at least three bids, at least two of which are from general contractors that have not previously contracted with the developer.*" As noted, the Department was not adhering to its own regulations.

Comment 11 The results of the audit show that the Department's staff were not fully aware of their responsibilities for oversight and monitoring of the developer's procurement activities. Also, the Department is confusing the process of issuing requests for proposals of the city-owned land/projects to potential developers who want to develop the properties with HUD's requirements that general construction contracts be procured properly by using full and open competition. Note that the developers identified in the audit were not general contractors, they were non-profit entities. Therefore, the developers had to hire contractors to perform the rehabilitation or construction work on the projects.

Comment 12 Payroll charges to the HOME program for FYs 2007 and 2008 are \$1,786,395, which is a correction to the total of \$1,828,375 cited in the draft report. In the draft report, we inadvertently included indirect costs in the total payroll charges. Therefore, we deducted indirect costs of \$42,130 and \$39,858 for fiscal years 2007 and 2008, respectively, and have corrected the total shown in the report, accordingly. The Department must submit all the documentation to support the payroll allocation of \$1,786,395 to HUD's Director of the Office of Community Planning and Development in Boston and HUD will make a determination of whether it can accept the \$1,786,395 allocation of payroll costs as valid program expenditures.

Comment 13 The documentation included as part of the Department's response did not correct the discrepancies identified in the report. We determined that whether the loan for Creighton Street was termed pre-development or pre-construction, the funds provided were not for eligible expenses under the HOME Program. The \$500,000 loan awarded to Church Square Community Partners LLC, on Oct. 12, 2007, was for the purpose of acquisition. The loan was for carrying costs on three parcels of

property acquired on December 8, 2005, from the Archdiocese of Boston for \$6,025,000. This \$500,000 loan to Church Square Community Partners LLC was subsequently paid off by a different LLC (Church Square SRO LLC) in April 2009.

In this case, the Church Square Community Partners, LLC acquired land and building, and held the property allowing developers sufficient time to obtain funding for rehabilitation and new construction of the projects. When the \$500,000 loan was paid off (refinanced) in April 2009, there was no subsequent record of the ownership of the land being transferred. In addition, the \$500,000 investment of HOME funds has been used in a mixed use development to reimburse project costs associated with the property without establishing an adequate method to ensure that this investment was only used for eligible purposes under the HOME program. All the recommendations (recommendation 4A to 4D) remain valid.

Documentation obtained for \$100,000 in developer's overhead shows this amount to be ineligible. This \$100,000 in developer's overhead was used in a loan to finance work in the Centre Street Retail Development. Funding for retail/commercial stores does not represent an eligible use of HOME funds. The \$11,752 in soft costs remains unsupported. Based upon our review of the documents submitted by the Department in response to the draft report, we have re-categorized the \$100,000 from unsupported costs to ineligible costs in Recommendation 4B.

The Department stated that projects costs of \$691,295 were incurred for site preparation related to the 270 Centre Street project. The Department has not yet provided sufficient documentation to support the \$651,295 in costs.

The Department must reimburse the \$644,268 in ineligible costs, submit all the documentation showing support for the \$11,752 and the \$651,295 in project costs or show it reimbursed these amounts. Also, the Department must provide a copy of the procedures it developed for predevelopment loans to HUD's Director of the Office of Community Planning and Development in Boston for approval.

Appendix C

REQUIRED CHDO DOCUMENTS AND CERTIFICATIONS NOT RECEIVED FROM NONPROFIT ORGANIZATIONS

Organization	I A	I B	I C	I D	II A	II B	II C	III A	III B	III C	III D	IV A	IV B(1)	IV B(2)
Jamaica Plain CDC	Yes	Yes	Yes	Yes	No	No	No	No	No	N/A	No	No	No	No
Lena Park CDC	Yes	Yes	No	Yes	No	No	No	No	No	N/A	No	No	No	No
Urban Edge Corporation	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	N/A	No	No	No	No
Viet Aid	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	N/A	No	No	No	No
Allston Brighton CDC	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	N/A	No	No	No	No
Casa Esperanza	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	N/A	No	No	No	No
Codman Square EDC	Yes	Yes	Yes	Yes	No	Yes	No	No	No	N/A	No	No	No	No
Dorchester Bay EDC	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	N/A	No	No	No	No
Fenway CDC	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	N/A	No	No	No	No
Grove Hall	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	N/A	No	No	No	No
Mattapan	Yes	Yes	Yes	Yes	No	Yes	No	No	No	N/A	No	No	No	No
Madison Park	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	N/A	No	No	No	No
Nuestra Comunidad	Yes	Yes	Yes	Yes	No	Yes	No	No	No	N/A	No	No	No	No
Neighborhood Affordable	Yes	Yes	Yes	Yes	No	Yes	No	Yes	No	N/A	No	No	No	No
South Boston CDC	Yes	Yes	Yes	Yes	No	No	No	No	No	N/A	No	No	No	No
Southwest Boston CDC	Yes	Yes	Yes	Yes	No	Yes	No	Yes	No	N/A	No	No	No	No
Dudley, Inc.	No	No	No	No	No	No	No	No	No	N/A	No	No	No	No
Asian CDC	No	No	No	No	No	No	No	No	No	N/A	No	No	No	No

NOTE: A “yes” or “no” indicates whether specific item was found in City’s records.

NOTE: N/A represents “not applicable.”

NOTE: See appendix D, Criteria, under finding 1 for a detailed description of IA through IVB(2) above.

Appendix D

CRITERIA

Finding 1

CHDO Checklist

The information contained in this checklist refers to the definition of CHDOs in subpart A, 24 CFR 92.2, of the HOME Rule. The checklist is a tool for participating jurisdictions concerning the documents they must receive from a nonprofit before it may be certified or recertified as a CHDO.

I. Legal Status

- A. The nonprofit organization is organized under State or local laws, as evidenced by a (1) Charter or (2) Articles of Incorporation.
- B. No part of its net earnings inure to the benefit of any member, founder, contributor, or individual, as evidenced by a (1) Charter or (2) Articles of Incorporation.
- C. Has a tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c)(3) or (4) of the Internal Revenue Code of 1986, as evidenced by a 501(c)(3) or (4) Certificate from the IRS or Is classified as a subordinate of a central organization non-profit under section 905 of the Internal Revenue code, as evidenced by a group exemption letter from the IRS that includes the CHDO.
- D. Has among its purposes the provision of decent housing that is affordable to low- and moderate-income people, as evidenced by a statement in the organization's: (1) Charter, (2) Articles of Incorporation, (3) By-laws, or (4) Resolutions.

II. Capacity

- A. Conforms to the financial accountability standards of 24 CFR 84.21, "Standards for Financial Management Systems," as evidenced by: (1) a notarized statement by the president or chief financial officer of the organization; or (2) a certification from a Certified Public Accountant; or (3) a HUD approved audit summary.
- B. Has a demonstrated capacity for carrying out activities assisted with HOME funds, as evidenced by: (1) resumes and/or statements that describe the experience of key staff members who have successfully completed projects similar to those to be assisted with HOME funds, or (2) contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with HOME funds, to train appropriate key staff of the organization
- C. Has a history of serving the community within which housing to be assisted with HOME funds is to be located, as evidenced by: (1) a statement that documents at least one year of experience in serving the community; or (2) for newly created organizations formed by local churches, service or community organizations, a statement that documents that its parent organization has at least one year of experience in serving the community.

The CHDO or its parent organization must be able to show one year of serving the community prior to the date the participating jurisdiction provides HOME funds to the organization. In the statement, the organization must describe its history (or its parent organization's history) of serving the community by describing activities which it provided (or its parent organization

provided), such as, developing new housing, rehabilitating existing stock and managing housing stock, or delivering non-housing services that have had lasting benefits for the community, such as counseling, food relief, or childcare facilities. The statement must be signed by the president or other official of the organization.

III. Organizational Structure

A. Maintains at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations as evidenced by the organization's: (1) By-Laws; (2) Charter; or (3) Articles of Incorporation.

Under the HOME program, for urban areas, the term "community" is defined as one or several neighborhoods, a city, county, or metropolitan area. For rural areas, "community" is defined as one or several neighborhoods, a town, village, county, or multi-county area (but not the whole state).

B. Provides a formal process for low-income, program beneficiaries to advise the organization in all of its decisions regarding the design, siting, development, and management of affordable housing projects, as evidenced by: (1) By-Laws; (2) Resolutions; or (3) a written statement of operating procedures approved by the governing body.

C. A CHDO may be chartered by a State or local government, but the following restrictions apply: (1) the State or local government may not appoint more than one-third of the membership of the organization's governing body; (2) the board members appointed by the State or local government may not, in turn, appoint the remaining two-thirds of the board members; and (3) no more than one-third of the governing of the governing board members are public officials (including any employees of the PJ), as evidenced by the organization's: (1) By-Laws; (2) Charter; or (3) Articles of Incorporation.

D. If the CHDO is sponsored or created by a for-profit entity, the for-profit entity may not appoint more than one-third of the membership of the CHDO's governing body, and the board members appointed by the for-profit entity may not, in turn, appoint the remaining two-thirds of the board members, as evidenced by the CHDO's: (1) By-Laws; (2) Charter; or (3) Articles of Incorporation.

IV. Relationship with For-Profit Entities

A. The CHDO is not controlled, nor receives directions from individuals, or entities seeking profit from the organization, as evidenced by: (1) By-Laws; or (2) a Memorandum of Understanding.

B. A Community Housing Development Organization may be sponsored or created by a for-profit entity, however: (1) the for-profit entity's primary purpose does not include the development or management of housing, as evidenced in the for-profit organization's By-Laws, and (2) the CHDO is free to contract for goods and services from vendor(s) of its own choosing, as evidenced in the CHDO's: (1) By-laws; (2) Charter; or (3) Articles of Incorporation.

Set-aside for CHDOs

Regulations at 24 CFR 92.300(a)(e) state that "within 24 months of HUD notifying the participating jurisdiction of the execution of the HOME contract, the participating jurisdiction must reserve not less than 15% of the HOME allocation for investment only in housing to be developed, sponsored, or owned by the CHDOs. The funds are reserved when a participating jurisdiction enters into a written agreement with the CHDO. HUD Notice CPD-91-11 states that

if a CHDO is acting only as a subrecipient or contractor, the CHDO is not eligible to receive any of the 5 percent available to participating jurisdictions for the payment of CHDO operating expenses. The CHDO can be provided with CHDO operating expense funds if it is expected that it will be receiving CHDO project set-aside funds within 24 months of receiving the operating expense funds. The participating jurisdiction must enter into a written agreement with the CHDO specifying the terms and conditions upon which this expectation is based.”

Finding 2

24 CFR 92.504(a)

(a) the participating jurisdiction is responsible for managing the day-to-day operations of its HOME program, ensuring that HOME funds are used in accordance with all program requirements and written agreements and taking appropriate action when performance problems arise. The use of state recipients, subrecipients, or contractors does not relieve the participating jurisdiction of this responsibility. The performance of each contractor and subrecipient must be reviewed at least annually.

92.505 Applicability of Uniform Administrative Requirements.

(a) Governmental entities. The requirements of OMB Circular No. A-87 and the following requirements of 24 CFR part 85 apply to the participating jurisdiction, State recipients, and any governmental subrecipient receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.22, 85.26, 85.32 through 85.34, 85.36, 85.44, 85.51, and 85.52.

Sec. 85.36: Procurement.

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) Procurement standards. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

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

24 CFR 85.36(c)(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. (d) Methods of procurement to be followed. (1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition

threshold fixed at 41 U.S.C. [*United States Code*] 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in Sec. 85.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

24 CFR 85.36(d)(3), Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used

to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(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 City authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(f) Contract cost and price. (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals.

Department of Neighborhood Development Housing Policy (DND) - Section 3 on Bidding

Projects must be competitively bid in order to achieve the lowest reasonable construction cost and to provide increased fair access to the economic opportunities created through the project. Developers must solicit and receive at least three bids, at least two of which are from general contractors that have not previously contracted with the developer. Bids shall be solicited after the project has received DND Final Design Approval, i.e. plans and specifications are 95% complete, and following DND approval of the bid package. Developers are not required to select the contractor with the lowest bid, but must demonstrate there is sufficient justification if a contractor with a higher cost is selected. Developers that are general contractors are not required to bid the general construction contract but must competitively bid all sub-trades. Copies of each contractor bid and/or sub-trade bids must be submitted to DND for review and maintained in the project files.

Finding 3

2 CFR Appendix B to Part 225(h)(4)(5)(6)

4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection 8.h.(5) of this appendix unless a statistical sampling system (see subsection 8.h.(6) of this appendix) or other substitute system has been approved by the cognizant Federal agency. Such documentary support will be required where employees work on: (a) more than one Federal award, (b) a Federal award and a non-Federal award, (c) an indirect cost activity and a direct cost activity, (d) two or more indirect activities which are allocated using different allocation bases, or (e) an unallowable activity and a direct or indirect cost activity. (5) Personnel activity reports or equivalent documentation must meet the following standards: (a) they must reflect an after-the-fact distribution of the actual activity of each employee, (b) they must account for the total activity for which each employee

is compensated, (c) they must be prepared at least monthly and must coincide with one or more pay periods, and (d) they must be signed by the employee. (e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes, provided that: (i) the governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed; (ii) at least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and (iii) the budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances. (6) Substitute systems for allocating salaries and wages to Federal awards may be used in place of activity reports. These systems are subject to approval if required by the cognizant agency. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort.

Finding 5

24 CFR 91.520, Performance Reports.

(a) General. Each jurisdiction that has an approved consolidated plan shall annually review and report, in a form prescribed by HUD, on the progress made in carrying out its strategic plan and its action plan. The performance report must include a description of the resources made available, the investment of available resources, the geographic distribution and location of investments, the families and persons assisted (including the racial and ethnic status of persons assisted), actions taken to affirmatively further fair housing, and other actions indicated in the strategic plan and the action plan. This performance report shall be submitted to HUD within 90 days after the close of the jurisdiction's program year. (f) Evaluation by HUD. HUD shall review the performance report and determine whether it is satisfactory. If a satisfactory report is not submitted in a timely manner, HUD may suspend funding until a satisfactory report is submitted, or may withdraw and reallocate funding if HUD determines, after notice and opportunity for a hearing, that the jurisdiction will not submit a satisfactory report.