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Audit Report Number	2009-FW-1003
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TO: Justin R. Ormsby
Director, Office of Public and Indian Housing, 6APH

FROM: *Gerald R. Kirkland*

Gerald R. Kirkland
Regional Inspector General for Audit, Fort Worth Region, 6AGA

SUBJECT: Housing Authority of the City of El Paso, El Paso Texas, Did Not Follow Procurement and Other Requirements

HIGHLIGHTS

What We Audited and Why

Based on a congressional request, we performed an audit of the Housing Authority City of El Paso's (Authority) procurement process and board of commissioners (board) activities. Our objectives were to determine whether the Authority properly followed procurement requirements and whether the executive director was selected in accordance with applicable procedures.

What We Found

The Authority did not follow its procurement policies or the U. S. Department of Housing and Urban Development's (HUD) procurement requirements. Specifically, it inappropriately paid more than \$700,000 because it did not properly administer its procurements. Also, a former board member and a former employee created conflicts of interest. Further, the Authority did not establish

written procedures for the selection of its executive director, and its board members did not always file ethics questionnaires in a timely manner.

What We Recommend

Our recommendations include requiring the Authority to

- Repay from nonfederal funds \$661,580¹ to its restricted operating reserve for locally owned properties account, \$12,697 to HUD, and \$31,640 to its capital fund account.
- Implement procedures to ensure that it complies with its procurement policies and HUD regulations and requirements.
- Ensure that its executive director and its contracting department employees attend HUD-approved procurement training.
- Seek filing of ethics questionnaires from all board members in a timely manner.

We also recommend that the Director, Office of Public and Indian Housing, Fort Worth, take administrative or other actions regarding the conflicts of interest created by a former board vice-chair and a former employee.

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

Auditee's Response

We provided a draft to the Authority on November 18, 2008, and held an exit conference on December 3, 2008. The Authority provided written comments on December 12, 2008. The complete text of the auditee's response, along with our evaluation of that response, can be found in appendix B of this report. The Authority also provided documents as attachments to the response that are not included in appendix B but are available upon request.

¹ \$647,252 in excess of contract limits, plus \$13,717 in ineligible expenses and \$611 in late fees.

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BACKGROUND AND OBJECTIVES

The Housing Authority of the City of El Paso (Authority), Texas, was created in February 1938. The Authority's mission is to provide safe, decent, sanitary housing for assisted families at or below 80 percent of median income. The Authority owns and operates approximately 6,028 units and provides rent subsidies for another 4,000 families through the U. S. Department of Housing and Development's (HUD) Housing Choice Voucher rental assistance programs and 495 Section 8 new construction units.

The Authority also provides a variety of other programs, including education, recreation, antidrug, job training, small business development, and community organization, that are designed to help the residents of public housing achieve self-sufficiency and economic independence.

Based on information on the Authority's Web site, it has a workforce of approximately 488 regular, temporary, and part-time employees in 18 sections/departments.

The Authority is located at 5300 East Paisano, El Paso, Texas. An executive director² administers the Authority's programs and is responsible for its day-to-day operations. The executive director is overseen by a board of commissioners (board) comprised of five individuals appointed by the mayor of the City of El Paso (mayor). On March 14, 2008, the mayor appointed several members of the Authority's board including the board chair, who has since resigned, and the board vice-chair.

Based on a congressional request, we performed an audit of the Authority. Our objectives were to determine whether the Authority properly followed procurement requirements and whether the executive director was selected in accordance with applicable procedures.

² Before the current executive director, the Authority used the title, "president," rather than "executive director."

RESULTS OF AUDIT

Finding 1: The Authority Inappropriately Paid More Than \$700,000 Because It Did Not Properly Administer Its Procurements

The Authority did not follow its procurement policies or HUD's procurement requirements. For example, it exceeded contractual amounts, made ineligible payments, evaluated proposals on criteria not known to all contractors, and used a contractor's price list as a statement of work. This condition occurred because the Authority did not adequately monitor contracts, abide by its contracting authority, or follow contract award requirements. Further, it lacked the necessary expertise to properly administer its contracting activities. As a result, the Authority inappropriately paid \$705,917³ from HUD funds.

The Authority Inappropriately Paid More Than \$700,000

In violation of its procurement policies and HUD requirements, the Authority inappropriately paid \$859,072, of which \$705,917 was from HUD funds. Of the 47 contracts reviewed, the Authority did not follow requirements for 19. Violations included payments without valid contracts, payments for employees of the Authority's affiliate, duplicate payments, and other ineligible payments. Further, in violation of requirements, the Authority modified the scope of several contracts after the contracts expired.⁴ It also did not properly monitor one contractor's work, which resulted in shoddy workmanship. This condition occurred because the Authority lacked the expertise or did not understand the importance of properly administering contracts.

Inappropriate Payments for a Resident Employee Training Program

One example of the Authority's violation of contracting requirements involved a resident employee training program. Two months after the program began, the Authority determined that continuing the program under the contractor would result in higher costs than it expected; thus, it terminated the contract. However, the Authority did not want to terminate the employee training program, so in November 2006, it transferred the costs to an existing temporary services contract with a firm that provided temporary employees to the Authority. Although the Authority charged the costs of the resident employee training program to the temporary services contract, it did not properly increase the contract total or revise the contract scope.

³ \$661,580 in operating subsidies/rent receipts funds, \$12,697 in expired capital grant funds, and \$31,640 in current capital grant funds.

⁴ HUD Handbook 7460.8, section 1.9.

Inappropriate Increase in a Contract Amount

In October 2006, two weeks before a temporary services contract expired, the former president increased the contract by \$297,231. At the time of the contract increase, the president only had authority to approve contract modifications up to \$25,000 without board approval.⁵ The contract increase created a cardinal change⁶ to the contract because it increased the cost of the contract by 158 percent. Later the Authority executed another contract with the contractor discussed above. In total, from November 2005 to April 2008, the Authority paid \$364,561 in excess of contract amounts from operating subsidies/rent receipts funds for the temporary services contracts.⁷

Payments Made after a Contract Expired

The Authority also paid \$11,189 from operating subsidies/rent receipts funds on a contract for pager services after the contract expired. The initial contract period was from March 1, 2004, through February 28, 2005. The Authority extended the contract annually through February 28, 2007. However, it continued to pay the contractor through March 2008, one year after the contract expired.

Other Ineligible Payments

The Authority paid \$13,717 from operating subsidies/rent receipts funds under a temporary services contract for employees that were employed by its non-HUD property or its tax credit property. It also paid \$2,296 in duplicate payments to a contractor that provided support services to families. Further, without HUD approval,⁸ the Authority paid \$611 in late fees.

The Authority Did Not Properly Evaluate Proposals for One Contract

Contrary to requirements, for one contract award, the Authority did not properly document the files and evaluated proposals using criteria that were not known to all bidders. The Authority's risk manager evaluated the proposed fee schedules before awarding a contract for indemnity claims. Although the proposal submitted by the firm that was awarded the contract included a higher fee for indemnity claims than the other proposals, the risk manager determined that the higher fee would be offset by a lower annual administration fee. However, the contract file did not contain evidence that a comparison of the bids occurred.

⁵ According to a board resolution, the executive director had the authority to authorize expenditures on goods and services and enter into contracts valued at up to \$25,000 without approval by the board.

⁶ A cardinal contract change is defined as a change that is beyond the scope of the contract.

⁷ The previously discussed addition of the resident employees to the temporary services contract contributed to these excess costs.

⁸ HUD Handbook 7460.8, section 3.4.

In addition, although the statement of work did not include a local preference, a letter prepared by the Authority's risk manager stated that the winning contractor "... is the only vendor that submitted a fee schedule that has a local presence which would enhance communication and make meeting much easier to organize and less costly." Procurement requirements⁹ stated that the evaluation of proposals was to be based on the evaluation factors set forth in the request for proposal. Factors not specified in the request for proposal were not to be considered. Further, the records were required to document the complete history of the procurement.¹⁰ Also, the Authority's contracting manual¹¹ states, "If non-price factors are used, they shall be made known to all those solicited."

Since a local preference was not in the scope of work provided to prospective bidders, the Authority should not have used a local preference as a factor in awarding the contract.

The Authority Used a Contractor's Price List to Develop the Statement of Work

On a small contract, the Authority's public information officer requested procurement of a professional photographer to take pictures of Authority events on December 16, 2003. The contract was not to exceed \$5,000. Before the contract was awarded, the public information officer requested that the winning contractor be considered "... as this vendor performed work for the Authority well in the past."

The Authority's contracting department used a price list faxed from the selected contractor to establish the scope of work. The contract was a one-year firm-fixed-price contract not to exceed \$4,995. However, the contract stated: "... unless extended/renewed or modified in writing by both parties." The contract file contained a memorandum, dated April 7, 2005, stating that the contract would be extended for 12 months until April 11, 2006. The contract was reawarded to the contractor on November 15, 2006, for the period November 22, 2006, through November 22, 2007. The Authority renewed the contract again to November 21, 2008.

⁹ 24 CFR (*Code of Federal Regulations*) 85.36(d)(3).

¹⁰ 24 CFR 85.36(b)(9).

¹¹ The Authority's procurement manual, D.1.d.

The Authority Modified Contracts after They Expired

The Authority also modified several contracts after the contract terms had expired or after the contract amounts had been exceeded. For example, two months after a cell phone contract expired, the Authority modified the contract to extend the expiration date and increase the contract amount. HUD regulations required that changes to contracts occur within the contract scope. Additionally, less than two weeks before the expiration of a temporary services contract, the Authority increased the contract amount by more than 158 percent to cover contract overages as previously discussed.

The Authority Did Not Oversee a Sprinkler System Installation Contract

The Authority did not properly oversee a contract for the installation of a sprinkler system. It paid a contractor \$29,344 from its capital grant funds to install the sprinkler system and connect it to the water supply. However, as demonstrated by the following photograph, the contractor's work was shoddy. The picture shows that the water lines for the sprinkler system protruded above the ground.



If the Authority had properly monitored the contractor's work, it would have known that the workmanship was unacceptable. The Authority concluded that it would not be cost beneficial to try to correct the work. Thus, the Authority unnecessarily spent \$29,344. Further, since the system was unusable, the Authority's maintenance staff watered the area with a water hose.

Conclusion

Because the Authority lacked the necessary expertise to properly administer its contracting activities, it inappropriately paid \$705,917 from HUD funds. This amount included \$661,580 in operating subsidies/rent receipts funds and \$44,337 in capital grant funds that should be repaid. Further, payments from capital grant funds included \$42,041¹² paid from grants that are now closed. Thus, the \$42,041 must be repaid to HUD.

Recommendations

We recommend that the Director, Office of Public and Indian Housing, Fort Worth, require the Authority to

- 1A. Repay \$661,580 from nonfederal funds to its restricted operating reserve for locally owned properties account.
- 1B. Repay \$12,697 from nonfederal funds to HUD for ineligible payments from capital grants that are closed.
- 1C. Repay \$2,296 from nonfederal funds to its 2006 capital fund grant account.
- 1D. Repay \$29,344 from nonfederal funds to HUD for unnecessary costs paid from capital grants that are closed.
- 1E. Implement procedures to ensure that it complies with its procurement policies and HUD regulations and requirements.
- 1F. Provide HUD-approved procurement training to Authority's executive director and its contracting department employees.

¹² \$12,697 + \$29,344 = \$42,041.

Finding 2: A Former Board Vice-Chair and a Former Employee Created Conflicts of Interest

A former board vice-chair obtained an employment position with New Beginnings of Texas, Inc. (New Beginnings), before the owner of New Beginnings received a contract award from the Authority. Also, a former director of the Authority's technical services division accepted an employment position with an Authority contractor after terminating his employment with the Authority. Neither the former board vice-chair nor the former director of technical services believed they had done anything wrong by accepting the positions. As a result of accepting the position with New Beginnings, the vice-chair created a conflict of interest that violated HUD rules. Also, HUD regulations require a one-year moratorium between the employment of an Authority employee actively involved in procurement and the employment of that employee with a contractor.

A Former Board Vice-Chair Had a Conflict of Interest

A former board vice-chair obtained a paid employment position with New Beginnings, a company owned by the president of Aliviane, Inc. (Aliviane). At the time the former board vice-chair obtained the position, the owner of New Beginnings and president of the nonprofit Aliviane was in the process of obtaining a contract to provide services to Authority residents. The former board vice-chair did not notify the Authority board of his position with New Beginnings. Section 19 of the annual contributions contract and HUD Handbook 7460.8 preclude the Authority, its officers, and employees from entering into a contract with a real or apparent conflict of interest.

Further, the former board vice-chair pushed for the Authority to award the contract noncompetitively to Aliviane because no other vendors in the El Paso area provided the parenting services using the Dando de la Familia program that Aliviane provided. The Authority's president and its director of public housing expressed concern about the services Aliviane wanted to provide because the concept was new and experimental. However, in October 2006, the former board vice-chair made a motion and voted to award Aliviane a \$300,000 contract over the objections of Authority staff. In December 2006, he sent a statement of work for Aliviane's contract to the Authority's legal counsel for review. The Authority awarded the contract to Aliviane on May 7, 2007. Between May 2007 and February 2008, the Authority paid Aliviane \$240,000 for services under this contract.

New Beginnings hired the former board vice-chair on April 16, 2007, about three weeks before the Authority awarded Aliviane the contract. The employment continued until August 8, 2007. New Beginnings paid the former board

vice-chair \$10,407 during the employment period. He repeatedly denied to HUD and the Authority that he worked for Aliviane. Finally, during a December 2007 Authority board meeting, he admitted to his employment with New Beginnings.

On February 19, 2008, Aliviane terminated its contract with the Authority due to the “unforeseen, unexpected, and unusual circumstances” of a drop in parenting session attendance by Authority residents.

A Former Authority Employee Worked for an Authority Contractor

A former director of technical services resigned from the Authority and immediately began working as an architect for the architecture and engineering contractor for the Authority’s HOPE VI project. The former Authority employee developed the scope of work and sat on the committee that reviewed and scored the contractors’ proposals for architectural and engineering services on the HOPE VI project. The acceptance of the position with the architectural and engineering contractor violated both the federal conflict-of-interest requirements and the HOPE VI grant agreement.

After the Office of Inspector General (OIG) brought this matter to the executive director’s attention on May 21, 2008, he requested that the contractor remove the former employee from all Authority work.

Recommendation

We recommend that the Director, Office of Public and Indian Housing, Fort Worth,

- 2A. Take administrative or other appropriate actions regarding the former board vice-chair and former Authority employee involved in the potential conflicts of interest.

Finding 3: The Authority Did Not Have Written Procedures for Selecting an Executive Director

Although the Authority has had eight executive directors/presidents since 2000, it did not have written procedures governing its selection process. The Authority did not believe it was necessary to have written procedures because its outside legal counsel had used the same procedures for recommending past candidates to the board. Given the recent history of turnover of key personnel and questionable activities by some board members, the Authority, as a matter of good business practice and to improve transparency in the selection process, should establish written procedures for selecting key personnel. Without written procedures, the Authority cannot ensure that it will consistently apply established procedures.

The Authority Did Not Have Written Procedures Governing its Selection Process

According to the Authority's outside legal counsel, the Authority has had eight executive directors/presidents since 2000. Despite the frequent turnover of executive directors/presidents, the Authority did not have written procedures governing its selection process. Rather, at the board's instruction, its outside legal counsel designed and oversaw the search process.

In seeking qualified candidates for the most recent hiring, the Authority used the same process that it had used in the past. Its outside legal counsel received the applications and determined which candidates were qualified. The board members then selected the finalists and interviewed them.

Although the selection of the executive director was placed on the board agenda several times in November 2007, without discussion or a vote, the board voted to hire the present executive director after the board chair left the November 28, 2007, general board meeting. The board chair, knowing that she would not be able to attend the entire board meeting, asked that all important matters be moved to the beginning of the meeting so that they could be attended to before her departure. However, after the board chair left the meeting, the board vice-chair¹³ introduced a motion to hire the present executive director. The board did not go into executive session to discuss the matter before voting.

Although HUD allowed local governing bodies to determine their criteria for selecting an executive director, the Authority should have formalized its process by developing written procedures as a matter of good management practices,

¹³ The same board vice-chair discussed in finding 2.

especially given the recent history of turnover of key personnel and questionable activities by some board members.

Recommendation

We recommend that the Director, Office of Public and Indian Housing, Fort Worth,

- 3A. Require the Authority to develop and implement written procedures for the selection of key personnel.

Finding 4: Board Members Did Not Always Complete Ethics Questionnaires in a Timely Manner

Three former board members and one current board member did not complete their ethics questionnaires in a timely manner. Board members did not understand the importance of the timely completion of the ethics questionnaire, and Authority staff was reluctant to pursue the issue with the board members. The Authority's code of ethics required that board members complete the ethics questionnaire within 30 days of their appointment. As a result of the board members' not completing the ethics questionnaire, the Authority could not determine whether conflicts of interest existed.

Staff Was Reluctant to Push Compliance

The Authority's code of ethics for the board stated that within 30 days of appointment to the board or taking office, a signed ethics questionnaire was to be filed with the executive director. According to Authority staff, although the executive director's office informed board members of their responsibility to complete the form, they sometimes did not complete the form in a timely manner. Staff members also said that due to their position as staff, they found it difficult to push the board to comply. As a result, potential financial or other conflicts of interest may have not been readily disclosed.

Recommendation

We recommend that the Director, Office of Public and Indian Housing, Fort Worth,

- 4A. Require the executive director to obtain the ethics questionnaires from the board members.

SCOPE AND METHODOLOGY

Our objectives were to determine whether the Authority properly followed procurement requirements and whether the executive director was selected in accordance with applicable procedures.

To accomplish our objectives, we

- Reviewed applicable HUD regulations and the Authority's procurement manual.
- Reviewed the Authority board minutes and transcripts.
- Reviewed 47 contracts.
- Conducted an impromptu inventory count.
- Attended a bid opening.
- Conducted an impromptu cash count.
- Interviewed the Authority's current and former employees, former board members, and a contractor.

We conducted our audit from March through September 2008 at the Authority's office located at 5300 East Paisano, El Paso, Texas, and our office in Fort Worth, Texas. Our audit period was January 2006 to March 2008. We expanded our scope as necessary to accomplish our objectives. We performed our review 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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 objectives:

- Compliance with laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.
- Safeguarding resources – Policies and procedures that management has implemented to reasonably ensure that resources are safeguarded against waste, loss, and misuse.

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:

- Controls over compliance with applicable procurement laws and regulations were ineffective.
- Policies and procedures regarding safeguarding of resources were ineffective.

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Ineligible <u>1/</u>	Unreasonable/ unnecessary <u>2/</u>
1A	\$661,580	
1B	12,697	
1C	2,296	
1D		<u>\$29,344</u>
Totals	<u>\$676,573</u>	<u>\$29,344</u>

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

2/ Unreasonable/unnecessary costs are those costs not generally recognized as ordinary, prudent, relevant, and/or necessary within established practices. Unreasonable costs exceed the costs that would be incurred by a prudent person in conducting a competitive business.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments



December 12, 2008

Mr. Gerald R. Kirkland
Regional Inspector General for Audit
Office of Inspector General ("OIG"), Region VI
U.S. Department of Housing and Urban Development ("HUD")
819 Taylor Street, Suite 13A09
Forth Worth, Texas 762101

Re: November 18, 2008 Draft Audit Report ("Draft Audit Report") on Procurement Activities by the Housing Authority of the City of El Paso, Texas ("HACEP")

Dear Mr. Kirkland:

This letter is written to provide with you the response by HACEP to the Draft Audit Report. The HACEP response consists of two components, a written response and eight tabs with exhibits that support the response. We are confident that this response will assist you in concluding your review of HACEP's operations.

On behalf of HACEP and its Board of Commissioners, we want to express our appreciation for the thoroughness and professionalism of your staff in conducting the audit. While we may disagree with aspects of the Draft Audit Report, we do recognize the diligence and effort shown by your staff.

Under my administration, HACEP has already instituted a number of improvements to its procurement and contracting functions and, with the additional insight provided by your audit staff and other experts retained by HACEP, we are sure to continue to improve in this area. We also want to state our appreciation for your willingness to come to meet with us personally to review the Draft Audit Report.

If you or your staff need additional information or documentation regarding this matter, please do not hesitate to contact me directly.

Sincerely,


Gerald W. Cichon
Executive Director

5300 E. Paisano Dr., El Paso, Texas 79905-2931
P.O. Box 9895 • El Paso, Texas 79995-2895 • (915) 849-3742 VOICE/TDD

Memorandum

TO: Mr. Gerald R. Kirkland
Regional Inspector General for Audit
Office of Inspector General
U.S. Department of Housing and Urban Development

CC: [REDACTED] Senior Auditor
Office of Inspector General ("OIG")
U.S. Department of Housing and Urban Development ("HUD")

DATE: December 12, 2008

RE: November 18, 2008 Draft Audit Report ("Draft Audit Report") on Procurement Activities by the Housing Authority of the City of El Paso ("HACEP")

Thank you for coming to El Paso to hold the exit conference for the procurement audit recently completed by your office. The HACEP Board Chairperson Joe Fernandez and Commissioner Lynn Coyle, as well as Executive Director Gerald Cichon valued the opportunity to discuss the issues raised in the draft report directly with you and Senior Auditor [REDACTED] who conducted the audit. We know that you made changes in your schedule to accommodate Mr. Cichon's request for an in-person exit conference and we appreciate that you were able to oblige us with a face-to-face meeting. The exit conference was extremely productive from HACEP's perspective. We hope that you came away from that meeting with a palpable sense of how serious HACEP is about improving agency operations so that it can deliver the best possible services to the residents of its programs and for the benefit of the entire City of El Paso ("City").

As we discussed in the exit conference, both the City and HACEP are committed to the betterment of the agency and have taken concrete actions to revamp HACEP governance to address criticism surrounding the functioning of the previous board. In January of 2008 before making appointments for three expiring board positions, Mayor John Cook convened a five-person "Blue Ribbon Panel" to make recommendations to the Mayor on:

1. What qualifications and skill sets HACEP board members should possess;
2. Whether HACEP board members should receive formal training in any areas;
3. Whether the size of the HACEP board of commissioners was appropriate to the tasks before the agency; and
4. How to improve the board governance at HACEP.

Comment 1

By the end of February, the Blue Ribbon Panel issued its report, which consisted of local professionals with vast expertise in public and nonprofit board management, which made specific suggestions for strengthening governance at HACEP. A full copy of the Blue Ribbon Panel Report is at Tab 1.

The Blue Ribbon Panel:

- Created “Standard Operating Procedures” designed to “control and manage the business of HACEP and information reviewed by the board during public and closed sessions;
- Urged HACEP to adopt a committee structure to reflect the Board’s role as a policy setting body and to enable the staff to carry out day to day activities without micro-management;
- Developed a “Board Member Profile and Qualification” checklist that was then used to select new board members; and
- Recommended that the board members of HACEP receive mandatory training on the operations and functions of the housing authority, as well as on the role of a board in policy setting as opposed to implementation.

HACEP and Mayor Cook subsequently implemented the improvements suggested by the Blue Ribbon Panel. First, three new board members were appointed in March based on the new “Board Member Profile and Qualifications” and pursuant to a transparent appointment process managed by the Blue Ribbon Panel members. Twelve applicants from the greater El Paso community applied for the three open seats on the board. The Blue Ribbon Panel recommended three people to the Mayor out of the twelve applicants - a well-respected civil rights attorney, an official with the United Bank of El Paso, and an assistant professor of political science from El Paso Community College. The Mayor accepted the Blue Ribbon Panel’s suggestions. The three new board members selected by the Blue Ribbon Panel began their service in April of 2008. Each new board member has the skill sets identified as important by the Blue Ribbon Panel and each new board member has prior experience serving as a board member with sophisticated governmental, nonprofit or private organizations.

The new board has adopted the committee structure suggested by the Blue Ribbon Panel. The board now has a Finance Committee, a Compliance Committee, and a Resident and Regional Relations Committee. The new board as a whole and through the individual committees has had extensive training on the role of a board versus the role of staff at a housing agency, as well as on specific management items such as procurement and compliance. See Tab 2 for a list of completed trainings. In addition, the new board recently passed a resolution that strengthened the process for dealing with ethics disclosure filings. The new policy has procedures to prevent a board member from participating in board meetings if that member does not have an up-to-date conflict of interest form on file at HACEP. See Tab 3 for a copy of the updated ethics policy.

At the same time, significant changes have been made at the HACEP staff level to ensure that competent professionals are running the agency and have adequate training and support for their work. The Executive Director is a lawyer by training and a licensed realtor who has assembled a team of professionals, including an in-house counsel with extensive experience working with public boards and governmental entities, to enable the agency to meet its performance goals. For example, HACEP has a new director of Contract Compliance and Procurement Administration who comes to the agency with over 12 years of experience in public sector procurement management, has already drafted a strategic management plan for that department, and is in the process of updating all of the agency's procurement procedures.

It is against this background of demonstrated improvement that we present HACEP's written response to the Draft Audit Report. As we discussed at the exit conference, if this response addresses matters that your office has determined to change as a result of our meeting, HACEP requests that the portions of this letter that address those items not be included in the published final audit. It is important to note that the audit focused on HACEP activities from January 2006 to March of 2008, which, for almost the entire period of time under review, pre-dates the vast majority of current board members and management staff, including the Executive Director. In general, HACEP agrees with many of the broad concerns raised in the Draft Audit Report – that HACEP's procurement administration needed improvement and that HACEP should closely monitor potential conflicts of interest of board members and staff. As previously discussed, HACEP has already begun to implement and in many cases has completed the implementation of updated procedures to ensure compliance with its procurement policies and HUD regulations and with ethics questionnaires. Keeping the issues in perspective, however, it should be recognized that throughout this period, HACEP has been deemed both a high-performing agency according to HUD standards and operates in a fiscally sound manner. It should also be recognized that, since the arrival of the new board and management team, there has been no board turmoil whatsoever and a massive reduction in management staff turnover and problems, all issues that have plagued HACEP in the past. The agency is currently in a period of stability and there is a positive trend in the improvement its operations.

HACEP's responses are presented below in the same order as presented in the Draft Audit Report.

Response to Finding 1: The Authority Paid More Than \$700,000 Without Following Procurement Requirements.

The OIG Auditors found HACEP's contract administration to be lacking. While the OIG audit did not identify any instances where HACEP made payments for work or items not received, the auditor determined that the administration of certain contracts was not adequate. HACEP has reviewed the contract files selected by the auditor and agrees that HACEP could and should have done a better job with contract administration. HACEP has instituted new procedures to avoid similar problems in the future. Below is a

Comment 2

review of the individually listed elements to Finding 1. The headings for the elements match those used in the Draft Audit Report, but are not meant to agree with the characterization in the Draft Audit Report.

a. Inappropriate payments for a resident employee training program and former president increased contract amount. We are responding to these two sub-headings together since the sub-findings related to the same contract. As described in the Draft Audit Report, HACEP staff determined that it would be less costly for the agency to subsume a resident training program meant to implement HUD Section 3 regulations ("Resident Employment Program") into an existing requirements contract with a temporary services company, rather than continuing with a separate contract in place for the Resident Employment Program. According to the OIG review, at the time the decision was made to switch contracting vehicles, the HACEP staff neither (i) increased the dollar amount of the contract limit nor (ii) adapted the scope of work to reflect the increased scope necessitated by the Resident Employment Program. Further, the OIG alleges that the "former President inappropriately increased a contract amount" when he approved a "contract modification" of \$297,231 for the same temporary services contract. The Draft Audit Report characterizes amounts spent under these contracts as "overpayments" and includes costs associated with the temporary service contracts within the tally of funds the OIG recommend HUD compel HACEP to repay its restricted account.

There are a few observations that need to be made on HACEP's behalf with respect to this sub-finding and some changes HACEP requests in the final audit report in light of these observations (some of which we discussed in the exit conference and which we discussed would be considered for possible clarification).

First, HACEP objects to the term "overpayment" as it is used in this context and requests that it be changed. The term can be read to imply that HACEP paid for services that it did not receive under the contract, which we understand from the exit conference was not the OIG's finding. It seems that the use of the word "overpayment" stems from exceeding a self-imposed limit in a "requirements contract" in order to save money.

Comment 3

According to the Procurement Handbook for Public Housing Agencies ("Procurement Handbook")¹ and the Federal Acquisition Regulation² ("FAR"), a "requirements contract"³ enables an agency to fill all actual purchase needs for supplies or services during a specified contract period. Deliveries of supplies or performance of

¹ HUD Handbook 7460.8 REV 2 (February 2007).

² The FAR applies to the procurement activities of federal agencies, such as HUD, and does not directly apply to HACEP. However, the HACEP is governed by the same principles that are articulated in the FAR – the promotion of free and open competition in contracting, getting value for the public dollar, and responsible contract administration – underlie the rules applicable to public housing authorities through 24 CFR Part 85.36 ("Part 85) and the Procurement Handbook. Because the HUD Handbook is guidance for public housing agencies ("PHA"s) and is not binding on PHAs in the same manner a regulation is, the FAR can be a useful tool for interpreting procurement options where Part 85 is silent or where the Handbook lacks detail.

³ See HUD Handbook 7460.8 REV 2 (February 2007) at 10-6.C.3(ii) and the FAR at 16.503.

services under requirements contracts are scheduled when the contracting agency places an order with a contractor. The Procurement Handbook in Chapter 10 also recognizes a related form of contract the “indefinite-quantity contract” under which a public housing agency (“PHA”) may contract with a supplier or service provider when it does not know the precise quantity of the supply or service the PHA will need. With indefinite-quantity contracts, the Procurement Handbook says that PHAs must include a minimum quantity to be ordered under the contract,⁴ but the Procurement Handbook is permissive as to whether a PHA includes a maximum amount in the contract.⁵

The temporary services contract is a good example of a requirements contract. A contractor would compete for the award based on its hourly rates for certain job categories. The agency would then review the rates, the contractor selected based on the best price, and then HACEP would request secretarial services or janitorial services to augment its staff for a specific period or purpose.

The FAR has more detail on requirements contracting than does the Procurement Handbook and provides a useful context for understanding the contract vehicle. Under the FAR, the contracting officer is to “state a realistic estimated total quantity in the solicitation and resulting contract.” The estimate is “for the information of the contractor” and it is not a firm fixed price.⁶ The FAR points out that “the estimate is not a representation to ...the contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal.” The estimate is to be based on the agency’s historical need for similar services and by other methods. The FAR advises that the contract document “shall state, if feasible, the maximum limit of the contractor’s obligation to deliver and the Government’s obligation to order.” In addition, the FAR counsels that the contract “may [emphasis added] specify maximum or minimum quantities” that the agency may order under each order and the maximum that it “may [emphasis added] order during a specified period of time.”⁷ The Procurement Handbook contains similar language with respect to indefinite-quantity contracts and notes that the purpose of the minimum and maximum is to allow the provider to prepare for the needs of the PHA.⁸ Therefore, the proper way to administer a requirements contract is either to (a) not state an overall contract limit and let the procured pricing or rates stand or (b) state “minimum” and “maximum” quantities in the contract, but not to use them as floors or ceilings for the ultimate contract amount since they are estimates only meant to guide contractor expectation.

Based on our review of the procurement files for the temporary services contract and other requirements contracts reviewed by the OIG (such as the pager services), we believe that the staff that handled the temporary service contract, who were being supervised by a former director of procurement who is no longer with HACEP, did not

⁴ See HUD Handbook 7460.8 REV 2 (February 2007) 10-6.C.3(iii)(B).

⁵ See HUD Handbook 7460.8 REV 2 (February 2007) 10-6.C.3(iii)(C).

⁶ In the contract solicitation, HACEP used the term “firm fixed-price,” which was an error that reflected the lack of expertise of the then contracting staff.

⁷ FAR 16.503

⁸ See HUD Handbook 7460.8 REV 2 (February 2007) 10-6.C.3(iii)(C).

fully understand how to administer a requirements contract, which created an administrative problem for HACEP but did not violate any federal regulations. This well intentioned effort to demonstrate seriousness about cost containment created an administrative burden for HACEP by creating "contract limits" that were not based on historical data or known additional service needs, which in turn required repeated "contract modifications." As illustrated in the previous paragraph, the requirements contract form does not require the inclusion of a "contract limit" so HACEP did not violate Part 85, for example, when it exceeded the "contract limits."

In addition, the finding states that "former President inappropriately increased a contract amount" when he approved a "contract modification" of \$297,231. According to the Draft Audit Report, this is a violation of HACEP's own internal procurement policies (as opposed to HUD rules) because the former president⁹ lacked authority to approve modifications above \$25,000. This statement of the policy is inaccurate as the HACEP policies do not specify that board action is needed for contract modifications of this nature. Accordingly, HACEP did not violate its own policy when the former president increased the cap on an existing approved contract for staffing services.

While HACEP agrees that the administration of the requirements contracts should have been better and the agency has already instituted steps to avoid similar issues in the future, we disagree with the Draft Audit Report HACEP to repay \$661,580.00 from nonfederal funds to its restricted operating reserve relating to these contracts. The funds were used for an eligible and laudable purpose, the employment of residents in a training program which could improve their skills and hopefully eliminate their need for publicly-assisted housing. However, the procurement department at the time and under a former procurement director lacked the experience to properly plan for requirements contracts, which means contract limits were set artificially low and then required constant contract modifications to keep up with demand. Because no federal regulations were violated and given that HACEP recognizes the administrative problems and has taken steps to rectify them, no purpose would be served by requiring the repayment. HACEP requests that your office reconsider this recommendation. In addition, HACEP wants the OIG to know that in reviewing these matters, the new management at HACEP (a) terminated the Resident Training Program that had been added to the contract for reasons totally unrelated to this audit and (b) has dramatically reduced the need for temporary staffing services in general. Moreover, these costs were necessary and proper costs of the federal grant to which they were charged. In the absence of a violation of any laws, regulations or internal procurement policies, and where the funds were spent on an appropriate program expense, HACEP respectfully requests that this sub-finding be withdrawn from the final report.

Comment 4

b. Payments made after a contract expired – The OIG questioned \$11,679 in payments made for pager services after the contract for the services expired. This contract has since been cancelled by HACEP. We think it is important to note that HACEP did receive the pagers and services covered by the contract so that it did not "overpay" under the plain meaning of that word. While HACEP agrees that its procurement administration

⁹ This function has been renamed to "executive director."

Comment 5

could have been more effective in this case, we think a more accurate finding would be that the funds could have been put to a better use had administrative procedures been in place to stop payment on these types of contracts. There is now a more effective system in place between contracting and financing to catch these issues in advance.

c. Other ineligible payments. HACEP does not dispute with the questioned late fees, apparent duplicate payments, or payments related to a non-public housing property described in this sub-funding.

Comment 6

d. The Authority Did Not Properly Evaluate Proposals for One Contract. The OIG auditor reviewed a contract for services related to workers compensation benefits administration. There is a memo to the file from the risk manager that posits that the selected contractor had a local presence that would make communication easier.

If a local preference was a factor in the decision-making, HACEP agrees that it would not comply with Part 85's prohibition on local preferences. In our review, we do not believe it is accurate to conclude that the decision was made based on a local preference. We do believe, however, that it is not clear from the file why the particular contractor was selected and how the rates quoted by each applicant compared to each other. Given the lack of clarity in the file, HACEP does not dispute this sub-finding.

It is important to understand that under the old procurement system at HACEP, staff outside of the procurement department performed the bulk of the procurement and contracting functions so that each department made its own contracting decisions and drafted its own contracts. Often these staff people had no experience with public procurement rules or in drafting contracts. HACEP has completely updated and restructured the procurement and contracting functions at the agency so that trained procurement professionals oversee and direct each procurement, draft the resulting contracts based on their expertise and with the help of in-house or outside counsel, and work with the HACEP program staff to monitor compliance with the contracts once executed. In addition, the Contracts Compliance Department now reports to one of the newly established board committees that oversees the procurement functions to ensure that the procurement policies and procedures at HACEP are both transparent and in step with contemporary standards.

Comment 7

e. The Authority Used a Contractor's Price List to Develop the Statement of Work. Although HACEP indicated that it would accept this finding during the exit conference, we ask that the following comments be considered. The contract referred to here was for services from a photographer. The auditor quotes the former public information officer asking that the winning contractor be considered because he had performed well in the past. Prior performance of a contractor seeking an additional contract or a renewal is information that should be known before a contract is awarded, is a normal part of the qualification process for contractors, and its required by applicable HUD regulation.¹⁰ The HUD regulations state that agencies may only make awards to:

¹⁰ See 24 CFR 85.36(b)(8).

“...responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance [emphasis added], and financial and technical resources.”¹¹

The auditor additionally noted that the contracting department used a price list from the selected contractor to develop the scope of work. The price list was based on work the contractor had previously done for HACEP, and reflected the work that was likely to be needed in the future. The use of the list to establish a scope of work did not give any competitive advantage. Others could perform the same work.

Although the Draft Audit Report does not cite a regulation, “Contractor Developed Specifications” are addressed in Procurement Handbook Section 9.3.E. This section provides that contractors who are *funded* to draft requirements are to be excluded from competing in the procurement. The photographer was not paid to develop anything; he merely provided his price list as examples of the type of work that was required. This section of the Handbook is intended to implement the requirement for “full and open competition found at 24 CFR 85.36 (c). HACEP’s actions did not affect competition. Since there was no violation of the federal regulation or the procedures of the handbook, HACEP requests that this finding be deleted.

f. The Authority Modified Contracts After They Expired. As previously discussed at 1a above, the bulk of the contracts cited by the OIG were requirements contracts that should not have had true “contract limits.” We agree with the OIG that the procurement functions of the agency require significant revisions and better staffing, which has been addressed.

g. The Authority Did Not Oversee a Sprinkler System Installation Contract. In this sub-finding the OIG auditor questioned the installation of a sprinkler system for \$29,344 and concluded that the sprinkler system was installed incorrectly due to the agency’s failure to oversee the work. The current management is not in a position to comment on what happened in this situation, but policies are in place to ensure similar cases do not present themselves in the future. In the exit conference, the auditor who conducted the review stated that her biggest concern with this sub-finding was that the Authority chose to spend money on this sprinkler system that would have questionable impact, while other common areas at HACEP properties such as playgrounds did not seem to be a priority at the time. Toward that end, HACEP is engaged in bringing in resources to address HACEP common areas, particularly playgrounds. We should also remind HUD that El Paso is located in a high-desert and dry climate, where soil conditions and the weather make growing grass a problematic endeavor for even the most sophisticated landscaper. HACEP has had discussions about xeriscaping whenever possible and will certainly explore this type of low-water use landscaping for the area cited by the OIG in connection with this issue.

Comment 4

Comment 8

¹¹ See 24 CFR 85.36(b)(8).

h. Response to Recommendations for Finding 1. Below we present in table format, the recommendations relating to this finding in Draft Audit Report and our responses side-by-side.

	<i>OIG Recommendation</i>	<i>HACEP Response</i>
<i>IA</i>	Repay \$661, 580 from nonfederal funds to its restricted operating reserve for locally owned properties	We disagree with this recommendation. At least \$513,000 of these funds deal with the requirements contract limits discussed at 1a above. All the cited contracts were for eligible costs. Because no federal or state law, HUD regulation, or internal HACEP policy was violated, we believe the remedy for this sub-finding is to make changes to how HACEP administers its procurement, which HACEP has already substantially completed and will continue to do so in the future.
<i>IB</i>	Repay \$12, 697 from nonfederal funds to HUD for ineligible payments from capital grants that are closed.	HACEP does not object to this recommendation.
<i>IC</i>	Repay \$2,296 from non-federal funds to its 2006 capital fund grant account.	HACEP does not object to this recommendation.
<i>ID</i>	Repay \$29,344 from non-federal funds to HUD for unnecessary cost paid from capital grants that are closed.	HACEP does not object to this recommendation.
<i>IE</i>	Implement procedures that ensure it complies with its procurement policies and HUD requirements.	HACEP agrees with this recommendation and has taken comprehensive steps to improve in this area.
<i>IF</i>	Provide HUD-approved procurement training to Executive Director and contracting department employees.	HACEP agrees with this recommendation and has already conducted the needed training. See Tab 2 for further details.

Response to Finding 2: Former Board Vice-Chair and Former Employee Created Conflicts of Interest

The second finding concerns to possible conflicts of interest – one dealing with a former board member who may have had an undisclosed business relationship with a vendor and the other concerns a former employee who apparently left HACEP to work with a vendor. Given that the current management was not in place when the issue dealing with the board member arose, we cannot effectively comment on the issue

Comment 9

dealing with the board member. The former board member has, however, issued a public explanation and provided information to OIG which explains his position that there was neither a conflict nor appearance of a conflict of interest in connection with the vendor who had a contractual relationship with HACEP. We would respectfully ask that you note in the final report that the former commissioner made a public statement and met with you to discuss this matter, and that you summarize the former board member's explanation that he did not have a conflict of interest, even if you disagree with his position in your final report.

With respect to the former employee hired by a vendor he supervised as a HACEP employee, it seems that finding is accurate. HACEP notes that when the Executive Director learned of the conflict, he requested that the former employee be removed from HACEP matters and reminded the vendor of its obligation to avoid conflicts of interest. HACEP will: (1) conduct a training with all management staff to remind them of this obligation, (2) institute a written procedure and form to be used during the exit process at the conclusion of the employment relationship for all salaried management staff's that reminds all departing management employees of their limitations on employment with HACEP vendors, and (3) issue a written notification to HACEP vendors at the commencement of the relationship reminding the vendor of the need to avoid employing certain departing HACEP employees. The recommendation relating to this finding does not relate to HACEP activities. Therefore, HACEP has no comment on the recommendation.

Response to Finding 3: The Authority Did Not Have Written Procedures for Selecting an Executive Director

HACEP strongly disagrees with this finding and requests its removal from the report. The Draft Audit Report acknowledges that there are no applicable HUD regulations that require written procedures to guide the selection of an executive director. In addition, there are no federal or state laws, and no internal policies, that apply to this finding. Further, the Draft Audit Report cites no other standard to call the decision-making pertaining to the Executive Director into question. In fact, the process used to seek applicants and select a candidate for the position met all standard and generally accepted practices for a search and selection process for an executive director of a governmental entity of HACEP's nature. This finding is simply not supported by the facts and is not consistent with government auditing standards that require auditors to apply generally accepted business principles. Nothing indicates that the selection process was either in violation of a law or otherwise deviated substantially from the most-commonly utilized methods used by other public agencies faced with finding a new executive director.

HACEP followed a very public and transparent process in selecting its Executive Director. The job was advertised both locally and nationally – netting 73 applications. While all 73 applications were shared with the board, the board tasked its outside counsel, who is board certified in Labor and Employment Law by the Texas Board of Legal Specialization and had assisted HACEP and other entities in similar searches, to

Comment 10

review the applications to identify which candidates were most qualified. The selection was then taken to the board who whittled the number down to the eight most qualified candidates.¹² Those eight finalists were asked to submit written responses to ten specific questions from the board. All candidates were asked the same questions. The board then interviewed seven candidates on November 7th and 8th.¹³ At the completion of individual interviews each day, the board introduced the finalists interviewed that day to a group of HACEP management staff, residents of HACEP properties, and other stakeholders. For a detailed chronology and description of the process for the selection of the Executive Director see Tab 4. See Tab 5 for the application form and Tab 6 for the job announcement.

Contrary to the allegation in the Draft Audit Report, there was a clear procedure and process for the selection of the Executive Director. The finding implies that there was something wrong with the process because the vote was held after a board member left the meeting early due to an illness. The meeting was, however, duly noticed, the board vote was on the agenda, and there was a quorum after the ill board member left. The vote took place two weeks after the board completed its interviews of the seven finalists and introduced them to the public. It is important to note that the board's vote to select the current executive director vote did not violate any HUD requirements, and did not violate the Texas Open Meetings Act. An action by the board that took place after a comprehensive search and review of candidates and did not violate any objective standard should not be included in an audit finding. Again, while HACEP is not opposed to considering ways to improve its approach to all types of administrative issues including future Executive Director searches, this particular section of the Draft Audit Report erroneously presents the auditor's opinion about how a past board lawfully handled a vote on one matter as a "finding." Inclusion of this "finding" in the final audit report would be tantamount to one federal government official offering an opinion that second-guessed how a difficult, legal, and important personnel decision was made at a local level. The inclusion of this item would also unnecessarily undermine the City of El Paso and HACEP's efforts to professionalize board functioning because it would legitimize and fuel undocumented allegations of disgruntled participants and observers, rather than redirecting detractors to participate in constructive governance processes.

The concerns the auditor expressed in the exit conference are very different from whether there were written evaluation procedures to make the selection. The OIG expressed its concern with how the board was functioning at the time. HACEP and Mayor Cook agree that the board was not functioning at an adequate level and have made substantial efforts to improve in that regard. It does not follow, however, that a decision made at a duly noticed meeting with adequate attendance that explicitly complied with HACEP's bylaws is questionable in any way. In fact, it was agreed at the exit conference that even had the commissioner who left early stayed through the end of the meeting, the result would have been the same. Since the selection of the new Executive Director, the new board has conducted his six-month evaluation, which is required by his contract. The new board is pleased with the performance of the Executive Director and the progress the

¹² The board reserved the right to reject its counsel assessment of the qualifications of the candidates.

¹³ One of the finalists withdrew from consideration.

Comment 10

Executive Director has made with the agency. Further, the commissioners have no reason to believe that the Executive Director is not the best person to lead the agency right now.

Response to Finding 4: Board Commissioners Did Not Always Complete Ethics Questionnaires in a Timely Manner.

In response to the final finding with respect to the ethics filing by the past board members and under the prior management team, we agree with the Draft Audit Report. As previously discussed, under the leadership of the new board and Executive Director, HACEP instituted procedures to monitor the completion of the ethics questionnaire. This was completed prior to the issuance of the Draft Report. Moreover, the new board, which has received training through HACEP and also served on other boards, has been extremely careful about conflicts of interest and any appearance of conflict. Each has recused themselves from specific decisions in an effort to be attentive to these concerns.

Thank you very much for giving HACEP the opportunity to respond formally to the Draft Audit Report. HACEP compliments you and your staff on your professionalism and commitment to the public good.

Attachments

- Tab 1 – Blue Ribbon Panel Report
- Tab 2 – List of Board Trainings
- Tab 3 – Updated HACEP Ethics Policy
- Tab 4 – Chronology and Process for Executive Director Search
- Tab 5 – Application Form for HACEP Executive Director
- Tab 6 – HACEP Executive Director Job Announcement

OIG Evaluation of Auditee Comments

- Comment 1** We acknowledge the actions of the present board, including implementing the “Blue Ribbon Committee’s” recommendations to correct past deficiencies with the Authority.
- Comment 2** As agreed to at the exit conference, we revised the finding heading to include procurement administration and changed the term “overpayment” to the phrase “paid in excess of contract terms.”
- Comment 3** We disagree with the Authority that it simply used the wrong “contract vehicle.” The contract that the Authority entered into for temporary services contained a not to exceed amount of \$115,000.¹⁴ The primary purpose of the contract was to provide temporary services in the area of administrative, office support, handlers, and inspectors. The Authority president modified the contract amount by \$297,231, or 158 percent, when the Authority expanded the scope to include the resident employee trainees. Thus, the Authority exceeded the scope and created a cardinal change.¹⁵ Further, the Authority’s argument leads to irresponsible conclusions that could allow the executive director to enter into a contract of less than \$25,000 without board consent and then modify the cost and contract scope to any extent without board approval. HUD regulations require that any contract change order/modification be within the contract scope and a cost or price analysis be performed.¹⁶ As the Authority did not anticipate the inclusion of the resident employee trainees in the original contract, its argument regarding the “contract vehicle” appears invalid. We maintain that the Authority paid \$297,231 in excess of the contract terms.¹⁷ The Authority should have procured these services rather than adding the cost to another contract. We added clarifying language to the body of the finding.
- Comment 4** We appreciate the changes made to prevent future occurrences of this error. However, for one year after the pager contract ended, the Authority continued to make payments. The Authority should repay to its programs amounts spent in excess of contractual amounts.
- Comment 5** The Authority agreed with the recommendation.

¹⁴ The Authority modified this contract on October 20, 2005, to add \$65,000, increasing the original contract price of \$50,000 to \$115,000.

¹⁵ A cardinal contract change is defined as a change that is beyond the scope of the contract.

¹⁶ 24 CFR 84.36(f).

¹⁷ Before July 26, 2007, with board resolution 1451, the Authority president did not have the authority to approve contracts above \$25,000.

- Comment 6** We acknowledge the Authority’s efforts to improve its contracting department and procedures.
- Comment 7** We considered the Authority’s comments but did not change our conclusions. In addition to the conditions cited in the report, an internal electronic message listed the photographer as the contractor in the solicitation before being sent to others. We maintain our conclusion that the Authority’s action gave the appearance that the photographer was preselected.
- Comment 8** We appreciate the Authority’s willingness to consider “low-water use landscaping” in its projects and its acknowledgment of lack of workmanship.
- Comment 9** We included a statement in the body of the finding that the former board member admitted to his involvement at a December 2007 board meeting.
- Comment 10** We disagree with many of the inferences in the Authority’s response. The process used to hire the present executive director was also the process used to hire previous people to that position. These former presidents were not at the Authority for a significant period and were part of the history of turmoil at the Authority that necessitated the Blue Ribbon Committee referred to in the Authority’s response. We did not conclude whether the current executive director was the best candidate or how well he performed. The current executive director was not in charge during the majority of our audit scope. Our finding noted the process as determined by the various documentation reviewed. We concluded that the Authority did not have and was not required to have a written process for selecting its key personnel. We recommended that the Authority establish a written procedure before selecting key personnel. The Blue Ribbon Committee report stated in part:
- The committee drafted a template of suggested Standard Operating Procedures for use by the Board of Commissioners and made recommendations regarding overall governance and operational procedures for use by the Board.
- Our finding and recommendation are consistent with this report. The Authority should have standard procedures for selecting key personnel.
- We revised the finding to stress the importance of written policies and procedures as a matter of good business practice to help ensure consistency and improve the transparency of the selection.