



Issue Date	June 29, 2009
Audit Report Number	2009-KC-1006

TO: Theresa M. Porter, Director, Office of Community Planning and Development,  
Kansas City, Kansas, 7AD

//signed//

FROM: Ronald J. Hosking, Regional Inspector General for Audit, 7AGA

SUBJECT: The City of Kansas City, Kansas, Did Not Comply with the Home Investment Partnerships Program Regulations

**HIGHLIGHTS**

**What We Audited and Why**

We audited the HOME Investment Partnerships (HOME) program of the City of Kansas City, Kansas (City). We conducted the audit based on our risk assessment of U.S. Department of Housing and Urban Development (HUD) HOME recipients in Region VII. Also, HUD’s 2005 review identified problems with the City’s monitoring of HOME projects and concerns about its community housing development organizations (CHDO) that help to administer its HOME program.

The objective of this audit was to determine whether the City followed HUD requirements when establishing and managing HOME projects.

**What We Found**

The City did not obtain adequate environmental reviews, improperly awarded HOME construction projects, improperly charged employee costs to the HOME program, and allowed contracts that did not include required provisions. In addition, the City did not verify the eligibility of CHDOs before awarding them HOME funds, nor did it spend program income and recaptured funds before drawing down additional funds.

## **What We Recommend**

We recommend that HUD require the City to properly support or repay to its HOME program more than \$400,000 in unsupported costs; repay more than \$17,500 in ineligible costs; and obtain environmental review, procurement, contract content, and CHDO eligibility training.

## **Auditee's Response**

The City generally disagreed with most of our findings, particularly regarding the causes of the reported deficiencies. We provided the draft report to the City on June 3, 2009, and requested a response by June 8, 2009. It provided written comments on June 8, 2009.

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 OBJECTIVE

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The U.S. Department of Housing and Urban Development's (HUD) HOME Investment Partnerships (HOME) program is authorized under Title II of the Cranston-Gonzales National Affordable Housing Act, as amended, and is funded for the exclusive purpose of creating affordable housing for low-income households.

The Unified Government of Wyandotte County is the government for Wyandotte County and the City of Kansas City, Kansas (City). HUD designated the City as a participating jurisdiction, defined by the HOME regulations as a unit of general local government eligible to participate in the HOME program. One of the departments in the Unified Government is the Department of Community Development. It administers the HOME funds for the City. HUD allocated more than \$1.75 million in HOME funds to the City during fiscal years 2007 and 2008.

The City's HOME program funds the following programs:

- Community housing development organizations (CHDO). A CHDO is a private, nonprofit community service organization that develops affordable housing for the community it serves. The City has three active CHDOs. One of the CHDOs serves as a pass-through for a local nonprofit organization's HOME projects. The other two CHDOs directly develop HOME projects.
- Housing rehabilitation. Housing rehabilitation allows HOME funds to be used to assist existing homeowners with the repair, rehabilitation, and reconstruction of owner-occupied units.
- Community housing investment program. This program helps homebuyers by providing a second mortgage, which can be forgiven after a period of time if the homebuyer meets certain stipulations.
- New construction projects. This program involves using HOME funds for new construction of single-family homes.

The objective of our review was to determine whether the City followed HUD requirements when establishing and managing HOME projects.

## RESULTS OF AUDIT

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### Finding 1: The City Did Not Obtain Adequate Environmental Reviews

The City did not obtain adequate environmental reviews. This condition occurred because City staff did not understand all HUD environmental review requirements and managers did not provide sufficient oversight of the environmental review process. As a result, HUD lacked assurance that the City spent nearly \$172,000 in HOME funds on projects that met HUD environmental requirements. Further, HUD and the City could not ensure that the persons living in the homes were reasonably protected against environmental hazards.

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#### **Environmental Reviews Not Adequate**

The City did not obtain adequate environmental reviews on two HOME-funded properties in our audit sample. According to 24 CFR [*Code of Federal Regulations*] 58.38, the responsible entity must maintain a written record of the environmental review undertaken for each project. In addition, 24 CFR 58.5 and 58.6 outline the 14 statutory requirements (checklist) that the City must address and certify in the environmental review record. See appendix C for details of applicable environmental rules and regulations.

The City spent about \$42,500 in HOME funds on one property for which it could not provide a complete statutory checklist. The checklist contained only 5 of the 14 required items and was missing determinations and supporting documentation in key environmental areas such as historic preservation, water and air quality, and environmental justice decisions for minority populations and low-income populations.

For another property, the City spent about \$129,300 in HOME funds but could not provide the statutory checklist or overall environmental determinations. It was able to provide only a few supporting documents for individual items required by the checklist.

#### **Staff Unsure of All HUD Requirements and Insufficient Management Oversight**

City staff did not understand all HUD environmental review requirements. One staff member stated that the City's interpretations of the environmental regulations were different from HUD's. In addition, a City manager stated that

HUD took a more conservative approach to the regulations than the City believed was necessary.

In addition, managers did not provide sufficient oversight of the environmental review process. The housing department director told us that he monitored environmental reviews only on a random basis. Although the director may have performed some monitoring, the project records did not indicate a secondary evaluation of environmental reviews to ensure that the reviews were accurate and met HUD requirements.

### **No Assurance Funds Spent on Environmentally Safe Homes**

The City spent nearly \$172,000 in HOME funds on projects that HUD could not be assured met HUD environmental requirements, and neither entity could ensure that the persons living in the homes were reasonably protected against environmental hazards.

HUD requires environmental reviews as a means to provide decision makers with sufficient information to make wise choices about federally funded HOME projects. HUD has strict environmental requirements and emphasizes environmental responsibility so that participating jurisdictions do not use federal funds on projects that will adversely affect the project site or the persons who will live at the site. Therefore, it is very important that HOME projects receive adequate environmental reviews.

### **Recommendations**

We recommend that the Director of the Kansas City, Kansas, Office of Community Planning and Development

- 1A. Require the City to provide documentation supporting that \$171,779 was spent on HOME projects that met environmental requirements or repay any unsupported costs from nonfederal funds.
- 1B. Conduct a review of the City's HOME program to ensure that projects underway and planned meet HUD's environmental requirements.
- 1C. Ensure that City staff receive training, technical assistance, and sufficient oversight (or secondary reviews) to ensure that the City complies with environmental review requirements.

## Finding 2: The City Improperly Awarded HOME Construction Projects

The City improperly awarded HOME construction projects. This condition occurred because City staff did not sufficiently understand noncompetitive procurement requirements. As a result, HUD lacked assurance that it received the best value for the nearly \$230,000 in HOME funds spent on the projects.

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### **Improper Awarding of HOME Construction Projects**

The City improperly awarded two HOME construction projects. According to 24 CFR 85.36, procurement by noncompetitive proposals may be used, but only under certain circumstances, such as when the item is only available from a single source, a public emergency exists, or there was not sufficient competition. See appendix C for detailed federal procurement requirements.

In addition, the City's procurement policies require its staff to use the City's formal bid process for construction projects in excess of \$50,000. The policies also require the City's purchasing director to review and authorize recommendations for award for all construction bids and competitive proposals exceeding \$50,000. The policies allow for noncompetitive contracts, but only the purchasing director may award these types of contracts, and staff must properly document noncompetitive awards. See appendix C for details of the City's policies.

For one project, the City hired a nonprofit to construct a new home using HOME funds. However, the City did not seek other bids or competitive proposals. The City hired the nonprofit as the contractor and the City remained the project owner. The City ultimately spent more than \$100,000 on the project. After completion, the City deeded the property to the nonprofit and the nonprofit subsequently sold the house. Therefore, the City remained the owner and the nonprofit remained a contractor for the entire construction process, making the project subject to federal and City bidding requirements.

The City told us that it had used noncompetitive procurement for the nonprofit project because it believed that the nonprofit would have offered the best possible price because it would incur no labor costs. Also, the City had successfully worked with the entity in the past. However, the City could not support that it had documented its determinations to justify the contract at the time of selection.

For another project, the City hired a for-profit construction company to build a house without obtaining bids from other contractors. The City ultimately spent nearly \$130,000 on the project. It stated that it had used the company to build other houses in the same subdivision and the company had done good work. The City also

believed that it would be difficult to get other contractors to work in the subdivision and it was more efficient to use a proven contractor. In addition, a City manager stated that he had met with other contractors on this project and received no interest. However, the City could not support that it had documented its conclusions to justify the contract at the time of selection.

Further, the City's housing department could not support that it followed the City's procurement policies when it awarded the two contracts for more than \$50,000. The purchasing staff confirmed to us that although the housing department had delegated authority to conduct its own procurement processes, it was required to process contracts for more than \$50,000 or noncompetitive award selections through the purchasing director. The City stated that the former purchasing director had approved the noncompetitive awards; however, the City could not provide documentation of the approval.

### **Insufficient Understanding of Procurement Requirements**

City staff did not sufficiently understand procurement requirements governing noncompetitive solicitations and awards. HUD's and the City's procurement regulations allow procurement by noncompetitive proposals. However, the City did not understand that it needed to adequately document its justifications for noncompetitive contract awards and related approvals from the City's purchasing director.

### **Best Value for HOME Projects Not Ensured**

Although the City believed that it completed the two construction projects by the most economical and efficient means, this may not have been the case. As a result of the City's actions, HUD may not have received the best value for the nearly \$230,000 in HOME funds spent on the projects.

### **Recommendations**

We recommend that the Director of the Kansas City, Kansas, Office of Community Planning and Development

- 2A. Require the City to adequately support that it spent \$229,475 on HOME projects that met noncompetitive procurement requirements or repay unsupported costs from nonfederal funds. (One property and its related questioned costs of \$129,279 were also questioned in finding 1. While the City should repay or support these costs, we did not include \$129,279 in



appendix A for this recommendation. We questioned only the remainder of \$100,196.)

- 2B. Ensure that City staff receive procurement training and implement proper procurement policies and procedures.

## Finding 3: The City Improperly Charged Employee Costs to the HOME Program

The City improperly charged employee costs to the HOME program. This condition occurred because the City did not believe that incorrect data in the payroll system were significant enough to warrant making corrections and it did not use employee timesheets to allocate payroll and benefits costs. As a result, the City overcharged its HOME fund by more than \$17,500 and, therefore, did not have those funds available for other HOME program efforts.

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### Payroll Expenses Improperly Charged to HOME Program

The City improperly charged employee costs to the HOME program. Regulations at 24 CFR 92.207 state that reasonable administrative and planning costs include salaries, wages, and related costs of the participating jurisdiction's staff. In charging costs to this category, the participating jurisdiction may either include (1) the entire salary, wages, and related costs allocable to the program of each person whose primary responsibilities with regard to the program involve program administration assignments or (2) the prorated share of the salary, wages, and related costs of each person whose job includes any program administration assignments. The participating jurisdiction may use only one of these methods. In addition, 2 CFR 225 states that when employees work on multiple activities, the employer must support salary distributions with personnel activity reports or equivalent documentation.

The City allocated payroll and benefits expenses to the HOME administrative fund for an employee (employee 1) who did not perform duties related to the HOME program. Conversely, the City did not allocate payroll and benefits expenses to the program for an employee (employee 2) who did perform HOME-related duties. City staff stated that they had inadvertently switched the employees' personnel numbers in the payroll system.

According to her timesheets, employee 2 spent the majority of her time on the HOME program in 2007. The two employees had similar salaries in 2007. If the City had charged employee 2's costs to the program instead of employee 1's costs, the overall effect on the HOME program funds would have been insignificant. However, this was not the case in 2008. Employee 2's timesheets showed that from January through September 2008 (the end of our audit period), she spent only 56 percent of her time on HOME activities. Therefore, the City could not justify that her primary responsibilities involved administration of the HOME program. In addition, employee 2's salary increased by more than employee 1's in 2008 and was, therefore, no longer equivalent to that of employee 1.

If the City had correctly charged employee 2's costs to the HOME program, it could have justified only about \$24,800, excluding benefits. However, it instead charged the program about \$42,300 (excluding benefits) for employee 1. As a result, it overcharged the HOME program by more than \$17,500 (excluding benefits) for the nine-month period.

### **Payroll Data Not Corrected and Timesheets Not Used to Allocate Payroll Costs**

The City did not believe that incorrect data in the payroll system were significant enough to warrant making corrections. City staff stated that the payroll error had not been fixed because it would be difficult to correct. Staff also told us that the employees earned about the same salary; therefore, the incorrect payroll data were insignificant. However, as previously noted, employee 2's salary increased by more than employee 1's in 2008, and, therefore, the employees' costs were not equivalent in 2008. Further, although City employees completed timesheets that identified the programs that they worked on daily, the City did not use the timesheets to allocate payroll and benefits costs.

The City also stated that several other employees worked on HOME activities but did not charge the HOME program. Therefore, the City believes that staff costs not charged would have offset the overcharges. However, the City did not provide sufficient evidence of its claim. It provided total staff hours of other employees identified as having worked on HOME activities but did not provide adequate documentation, such as detailed activity reports or timesheets, to support its claim of offsetting staff costs.

In February 2009, the City changed its timekeeping and cost allocation procedures. If followed, these procedures should help the City to more accurately record costs against the appropriate federal grants.

### **HOME Program Overcharged**

The City overcharged its HOME program by more than \$17,500 and, therefore, did not have those funds available for other HOME program efforts.

### **Recommendations**

We recommend that the Director of the Kansas City, Kansas, Office of Community Planning and Development require the City to

- 3A. Reimburse its HOME funds account \$17,517, plus any related benefits costs, from nonfederal funds for improper employee costs charged to the HOME program.
- 3B. Correct all payroll errors involving HOME funds and implement an acceptable method for allocating future salary and benefit costs.

## Finding 4: The City Allowed Contracts That Did Not Include Required Provisions

The City allowed contracts that did not include required provisions. This condition occurred because the City did not fully understand what provisions were required in HOME contracts or its responsibilities to monitor and ensure contract compliance for all HOME contracts. As a result, HUD lacked assurance that the City's contracts adequately protected HUD's investment in HOME activities.

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### Required Provisions Not Included in HOME Contracts

The City allowed four contracts that did not include provisions required by federal regulations. According to 24 CFR 92.504, the agreement between the participating jurisdiction and a nonprofit or for-profit owner must provide a detailed description of the use of funds. It should also address affordability, property standards, enforcement of the agreement, requests for disbursements of funds, duration of the agreement, and any record-keeping and reporting requirements.

For two projects, a CHDO executed contracts with a nonprofit to develop new homes using HOME funds. The CHDO acted merely as a pass-through organization for the City. Therefore, the federal contract requirements applied to these projects, and the City remained responsible for the appropriateness of the contracts. However, the contracts between the CHDO and the nonprofit were limited and did not include the required provisions. The contracts did not address such things as affordability, property standards, enforcement of the agreement, and requests for disbursement of funds.

In addition, 24 CFR 85.36 outlines the provisions required in construction contracts, including access to the contractor's records which are directly pertinent to the specific contract, records retention, termination for cause, equal employment opportunity, and compliance with the "Anti-Kickback" Act (18 *United States Code* 874).

On a third project, the City directly hired a nonprofit as a contractor to build a new home with HOME funds. The contract between the City and the nonprofit did not contain many required provisions. On a fourth project, the City executed a contract with a for-profit contractor that also lacked required provisions. The two contracts did not address such things as access to the contractor's records, records retention, equal employment opportunity, and compliance with the "Anti-Kickback" Act.

### **Contract Requirements and Monitoring Responsibilities Not Understood**

The City did not fully understand what provisions were required in HOME contracts or its responsibilities to monitor and ensure contract compliance for all HOME contracts.

City staff told us that for contracts between the CHDOs and the CHDO-hired nonprofits, the CHDOs drafted the contracts, and the City reviewed them only to ensure that there were no ineligible activities or costs. The City did not review these contracts to ensure that they included all required federal provisions.

### **HUD's Investment Not Protected**

HUD lacked assurance that the City's contracts adequately protected HUD's investment in HOME activities. In addition, the City could not ensure that its own interests were protected.

HUD requires properly developed and executed contracts as a method of protecting its investment and enforcing program requirements. Contracts also serve as a valuable management tool in verifying compliance and monitoring performance.

### **Recommendations**

We recommend that the Director of the Kansas City, Kansas, Office of Community Planning and Development

- 4A. Require City staff to receive training to ensure that they understand federal procurement requirements for the HOME program and their responsibilities for HOME contracts.
- 4B. Conduct a review of the City's HOME program contracts to ensure that they meet HUD's requirements and require changes to current contracts as needed to meet requirements.

## Finding 5: The City Did Not Verify the Eligibility of CHDOs before Awarding Them HOME Funds

The City did not verify the eligibility of CHDOs before awarding them HOME funds. This condition occurred because the City experienced turnover of staff managing the HOME program and current staff did not fully understand the eligibility requirements. As a result, HUD and the City lacked assurance that the CHDOs were financially stable and had the experience and capacity to use HOME funds effectively.

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### **CHDO Eligibility Not Verified From 2006 Through 2008**

The City did not verify the eligibility of three CHDOs before awarding them HOME funds for HUD's fiscal years 2006 through 2008. Regulations at 24 CFR 92.2 outline various eligibility requirements for organizations to qualify as CHDOs and participate in the HOME program. Also, Community Planning and Development (CPD) Notice 97-11, "Guidance on CHDOs under the HOME Program," contains a checklist that describes eligibility criteria and the supporting documentation recommended for use by participating jurisdictions to certify or recertify CHDOs. The participating jurisdiction should maintain the completed checklist to document compliance with the regulations. In addition, a HUD HOMEfires notice states that HUD strongly recommends annual recertification. However, at a minimum, a participating jurisdiction must requalify an organization as a CHDO each time it receives additional set-aside or operating funds. See appendix C for details of applicable HOME rules and regulations.

During the audit period, the City provided more than \$191,000 in HOME funds to three CHDOs but did not confirm their eligibility to receive the funds. The City did not verify any eligibility requirements for fiscal year 2006. It also did not fully verify the CHDOs' eligibility in fiscal years 2007 and 2008. Specifically, the following information was either out of date or missing:

- Audited financial statements and/or notarized statements by the president or chief financial officer verifying that the CHDO conformed to applicable financial accountability standards.
- Resumes and/or other documentation to verify key staff members' experience with successfully completing projects similar to HOME projects.
- CHDO board composition information.
- Documents stating that the CHDO was not controlled by or did not receive directions from individuals or entities seeking profit from the organization.

### **Personnel Turnover and Requirements Not Fully Understood**

The City experienced turnover in staff managing the HOME program, and current staff did not fully understand the CHDO eligibility requirements. From 2005 through 2008, the City had three different staff members managing the program. The current coordinator followed the procedures of previous coordinators; however, previous efforts were not sufficient to meet HUD requirements.

As a result of our review, the City developed new procedures to verify that the CHDOs provided proper and complete eligibility documentation. The City told us that it had begun implementing these new procedures, which should enhance the City's eligibility determination process.

### **CHDOs' Financial Stability and Capacity Not Assured**

HUD and the City lacked assurance that the CHDOs were financially stable and had the experience and capacity to use HOME funds effectively. From October 2006 through September 2008, the three CHDOs received more than \$191,000 for HOME activities without having provided sufficient evidence that they were qualified to manage the funds.

### **Recommendation**

We recommend that the Director of the Kansas City, Kansas, Office of Community Planning and Development

- 5A. Ensure that City staff managing the HOME program receive sufficient training and fully understand and implement the CHDO eligibility requirements.



## Finding 6: The City Did Not Spend Its Program Income and Recaptured Funds before Drawing Down Additional HOME Funds

The City did not spend its program income and recaptured funds before drawing down additional HOME funds. This condition occurred because the City had not established adequate formal policies and procedures. As a result, HUD lacked assurance that the City would properly spend its program income and recaptured funds in the future.

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### **Program Income and Recaptured Funds Not Spent before Using HOME Funds**

The City did not spend more than \$94,000 in program income and \$50,000 in recaptured funds before drawing down additional HOME entitlement funds. Regulations at 24 CFR 92.503 require participating jurisdictions to deposit program income and recaptured funds into their HOME Investment Trust Fund local account. Regulations at 24 CFR 92.502 require participating jurisdictions to disburse funds held in the HOME Investment Trust Fund local account before making requests for additional HOME entitlement funds.

HUD's Integrated Disbursement and Information System showed that the City received more than \$94,000 in program income in 2007. The City's records showed receipt and expenditure of the funds. According to its records, the City funded or partially funded nine HOME activities using the 2007 program income. HUD's system confirmed this information but also showed that the City funded seven HOME activities with entitlement funds before it spent the program income.

In addition, the City's records showed that it received more than \$50,000 in recaptured funds in 2007 and 2008.

- In September 2007, the City received \$19,000 in recaptured funds. HUD's Integrated Disbursement Information System showed four HOME activities funded with entitlement funds before the City spent the 2007 recaptured funds.
- In July 2008, the City received another \$19,000 in recaptured funds. It then funded 11 HOME activities with entitlement funds before it started to spend the recaptured funds.
- In September 2008, the City received more than \$12,000, adding to the recaptured funds balance. The City funded three additional HOME activities with entitlement funds while a recaptured funds balance remained.

The City finally spent the recaptured funds balance in October 2008.

### **No Adequate Formal Policies and Procedures**

The City did not have adequate formal policies and procedures to ensure that program income and recaptured funds were spent before it drew down additional HOME funds. City staff stated that they knew about the requirement but did not follow the proper procedures.

As a result of our review, the City took action to improve its internal processes involving program income and recaptured funds. On January 26, 2009, the City revised its policy on the use of HOME program income and recaptured funds. The policy includes steps to ensure that staff is aware of when the City receives these funds. It also requires staff to meet to identify spending timeframes and use of the funds. In addition, it requires that staff maintain adequate documentation of program income and recaptured funds received and spent. If fully implemented, this procedure should help the City to consistently use program income and recaptured funds before requesting additional HOME entitlement funds.

### **No Assurance City Would Properly Spend Program Income and Recaptured Funds**

HUD lacked assurance that the City would properly spend its program income and recaptured funds in the future. In addition, HUD is required to recapture any funds not spent within five years of receiving each HOME entitlement grant. If the City were to receive significant program income or recaptured funds in future years and did not effectively plan its HOME activities to use these funds before its entitlement funds, it could be in jeopardy of losing HOME-related funds not spent within five years.

### **Recommendation**

We recommend that the Director of the Kansas City, Kansas, Office of Community Planning and Development

- 6A. Ensure that the City implements formal policies and procedures to make certain that it uses program income and recaptured funds before drawing down additional HOME funds.

## SCOPE AND METHODOLOGY

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Our review covered the period October 1, 2006, to September 30, 2008, and was expanded as necessary. Our review was limited to HOME activities.

To achieve our objectives, we reviewed HUD's and the City's rules, regulations, policies, and procedures and interviewed HUD and City staff. We also reviewed the City's HOME project files and related documentation. In addition, we reviewed a 2005 HUD monitoring review of the City's HOME program, the City's Office of Management and Budget Circular A-133 audits for fiscal years ending 2006 and 2007, and its audited financial statements for fiscal years ending 2006 and 2007. We also reviewed documentation related to the eligibility of three CHDOs. Finally, we reviewed the City's payroll records, timesheets, and time-keeping certifications.

We used the City's HOME activity reports obtained from HUD's Integrated Disbursement and Information System to determine that the City spent \$1,006,425 in HOME funds on 47 activities during our audit period. We reviewed a sample of 10 of the 47 activities. We based our sample on the activities with the highest HOME funding amounts and highest amount of drawdowns during the audit period, including at least one activity from each of the City's CHDOs.

For the 10 activities, we reviewed each project file for pertinent documentation such as contract agreements, bid proposals, loan documents, owner and property eligibility determinations, contract approvals, HOME fund drawdowns, project monitoring performed by the City, and project closeout.

We relied on computer-processed data contained in HUD's Integrated Disbursement and Information System and the City's financial system used for payroll. We performed sufficient tests of the data, and based on the assessment and testing, we concluded that the data were sufficiently reliable to be used in meeting our objectives.

We performed audit work from November 2008 to April 2009 at the City's office located at 701 North 7th Street, Kansas City, Kansas.

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

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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.

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## Relevant Internal Controls

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

- Verifying that CHDOs met eligibility requirements;
- Allocating employee costs to the appropriate programs;
- Spending program income and recaptured funds;
- Completing and monitoring environmental reviews;
- Developing, awarding, and monitoring contracts;
- Obligating funds within two years and spending funds within five years;
- Ensuring that projects were eligible activities;
- Ensuring that project costs were allowable and properly supported;
- Verifying that families met income requirements; and
- Monitoring CHDOs, recipients, subrecipients, developers, contractors, and the projects overall.

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:

- City staff did not sufficiently understand federal regulations governing environmental reviews, procurement bidding procedures, contract provisions and monitoring, and CHDO eligibility to ensure that it complied with federal rules (findings 1, 2, 4, and 5).
- The City did not use employee timesheets to ensure that it accurately allocated employee costs to the appropriate programs (finding 4).
- The City had not established adequate policies and procedures to ensure proper use of program income and recaptured funds (finding 6).

## APPENDIXES

### Appendix A

#### SCHEDULE OF QUESTIONED COSTS

Recommendation number	Ineligible 1/	Unsupported 2/
1A		\$171,779
2A		\$100,196*
3A	\$17,517	

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.


\* To avoid duplication, we did not include \$129,279 in unsupported costs for one project questioned in finding 2 that we also questioned in finding 1. We questioned the costs for this project only as part of recommendation 1A.

## Appendix B

# AUDITEE COMMENTS AND OIG'S EVALUATION

### Ref to OIG Evaluation

### Auditee Comments

	<p>Community Development LaVert A. Murray, Director</p>
<p>701 North 7th Street, Room 823 Kansas City, Kansas 66101</p>	<p>Phone: (913) 573-5111 Fax: (913) 573-5111</p>
<p>June 8, 2009</p>	
<p>Mr. Ronald J. Hosking Regional Inspector General for Audit U.S. Department for Housing and Urban Development Office of the Inspector General Region 7 Office of Audit Gateway Tower II - 5<sup>th</sup> Floor 430 State Avenue Kansas City, Kansas 66101-2406</p>	
<p>Dear Mr. Hosking,</p>	
<p>Through this correspondence I will provide comment and share concerns about your draft audit report representing a review of the Kansas City, Kansas HOME Investment Partnership Program, mailed to me on June 3, 2009.</p>	
<p>Throughout your staff team's review we have attempted to be most accommodating during a very challenging time, and we have attempted to provide all documents required to conduct a thorough, productive and objective audit.</p>	
<p>I very much appreciate the sharing of the draft report and I very much appreciate your staff's open discussion regarding this matter during the exit conferences held on May 14, 2009 and June 4, 2009.</p>	
<p>Below, I will provide general concerns and comments and later discuss the specifics of each audit finding as they appear in the draft report. Permit me to start by addressing the summary in the <i>HIGHLIGHTS</i> section and moving forward from that point.</p>	
<p>The report indicates that the audit was conducted because of HUD's risk assessment, and problems and concerns about various CHDO's identified in EUD's 2005 HOME monitoring. In response I must point out that very few findings have been issued against the City's HOME program in recent times. In our last HOME monitoring we were cited for not promptly sharing and correcting findings found in one of our sub-grantee's audit report, but the matter was immediately addressed and procedures were set in place to guard against such occurrences. We were led to believe that HUD agreed with and had accepted those actions taken to more closely monitor our CHDOs and sub-recipients. <u>Exhibit A</u> discusses the successful close-out of the A-133 audit review and HUD's 2006 monitoring of the City's HOME program.</p>	
<p>The second highlight represents what we believe to be a misunderstanding of the facts regarding the environmental reviews for several projects and the HOME construction projects reviewed.</p>	

### Comment 1

\*\*We provided HUD officials with the exhibits that the City included with its written response. Due to the sensitive nature and volume of the exhibits, we have not included them in the report but can provide them upon request. In addition, we redacted names and addresses from the auditee comments for privacy reasons.

**Comment 2**

The conclusions drawn and presented in the Inspector General's draft report represents an unfair characterization of the City's Housing and Community Development Division. It appears that exaggerated minor weights of data causes conclusions that there exists willful mismanagement instead of giving careful consideration to the management imperatives presented by regulations and the fund use requirements. For example, HOME funds can be used to support housing construction and down-payment assistance for homebuyers. In each instance inspection services are required to make certain that housing purchased meets the HOME rules which are designed to ensure that housing purchased meets the decent, safe and sanitary test, and that housing constructed meets local building codes and program regulatory requirements. Funding for HOME programming compared to the high level of accomplishments achieved is woefully inadequate. To meet the regulatory requirements related to the use of HOME funds and to continue to achieve the high level of production in our community renewal efforts, it is required that we utilize inspection staff whose primary areas of responsibility were listed as CDEG because there was no funding available within the HOME allocation. In terms of capturing and reporting time within the proper funding category, there exist a point where HOME funding is not available, but inspection requirements remain. We have attempted to achieve a balance and meet program national objectives and also address all regulatory requirements albeit on the progressive side.

**Comment 3**

The report is written in a manner to suggest that all activity reviewed was for program years 2006-2008. There is within the report a statement that indicates the scope was expanded when necessary, however, the report fails to mention that major findings contained therein are in reference to programs and initiatives started in 1993, and was closed out in 2002. This is important in terms of how we pursue a single lot development in a closed out project area.

**Comment 4**

Reference is made in Finding No.1 to the ██████████ redevelopment initiative. However, the single lot project started in 2003 and the partial environmental checklist noted was completed in advance of that date. It is my contention, as I have pointed out, that the ██████████ initiative had been closed out and complete records are yet to be found because we are well beyond five years of the close-out date for this project. Again, as noted, there exist no IDIS data and reporting on this project currently and there has been no reporting for more than five years because the project was closed out.

**Comment 5**

Because of some staff turnover, there was a minor lapse in annually re-certifying each CHDO. However, records show no material change in the CHDOs funded, with key management staff of these CHDOs remaining qualified and constant.

**Auditee's Response**

**Finding 1: The City Did Not Obtain Adequate Environmental Reviews**

**Comment 6**

Two HOME-funded properties are cited as not having adequate and proper environmental reviews. The report indicates that the City "did not understand HUD environmental review requirements and staff did not provide sufficient oversight to the environmental review process". Such a statement is reflected throughout the report which does not consider the fact that staff was following HUD's requirements outlined in past HUD training under HUD's last environmental review officer.

**Comment 7**

The conclusion that the City could not ensure that the subject homes were not reasonably protected from environmental hazard is unfounded in view of the documentation submitted along with this response.



Letter to Mr. Ronald J. Hosking (cont'd)

Page 3

Documentation contained in Exhibit A-I presents a clear case that the property located at [REDACTED] is environmentally safe and falls under the environmental clearance summary for Categorically Excluded projects as identified. In addition, the Department of Wildlife and Parks have cleared all in-fill and redevelopment sites east of I-635 as reflected in the attached October 18, 2002 letter.

The attached documentation shows the project as a Categorically Excluded site, subject to 24CFR58.5 and 58.6 meets all regulatory requirements. The attached environmental report shows the site and area to be safe for human habitation.

**Comment 8**

**[REDACTED] (New Construction on vacant property by a CDC)**

In summary, it is true that the completed items could not be located; however, information was provided that indicated that the property is reasonably protected from environmental hazard.

**Comment 9**

The Environmental Assessment addressed the residential properties in the vicinity of [REDACTED] and [REDACTED]. The assessment would have included the property at [REDACTED]. The project is located in the [REDACTED] Redevelopment area and assumed by the Inspector General team to be a part of the original redevelopment initiative. The major infill housing project was completed in 2000. An older home existed on the property at [REDACTED] during the [REDACTED] Redevelopment initiative era. However, it was demolished in 2002.

The information below outlines the actions taken to develop the subject property after the home was demolished in 2002.

1. The subject vacant lot was offered to [REDACTED].
2. A CHDO was used as a pass through for the HOME funds.
3. The [REDACTED] Redevelopment area had been completed for several years.
4. The CHDO was informed, based on the information submitted, that an environmental assessment would have to be performed on [REDACTED].
5. The project was considered a scattered site, CEST, for purposes of this review. An environmental assessment was performed; however, the back page was missing.
6. The Inspector General audit team informed us that they had been informed that the development could not be considered a scattered site.
7. A copy of the 1996 Environmental Assessment that was performed for the vicinity of [REDACTED] and [REDACTED] streets was then provided and it was used as the basis for the review.
8. The review does not indicate the site to be problematic.
9. Dollars spent in these efforts becomes muted with a resolution of the environmental findings.

Reference is made to [REDACTED] as though it was a part of the original [REDACTED] project. However, this address was identified after the project had closed as a redevelopment opportunity and the environmental review was pursued as a Categorical Exclusion when the activity took place in 2006. This is no different than a structure being rebuilt after being destroyed by a fire several years after the close-out of a major project.

In response to questions on [REDACTED] staff reported that the overall [REDACTED] project initiative had been closed out and that the redevelopment of a single lot met the requirement of projects that are Categorically Excluded under 24CFR58.35(a). However, because the Inspector General Audit team rejected the response, staff continued in its efforts to retrieve data showing that the project met both requirements (see report on [REDACTED]). There was considerable effort put into locating the full EA checklist for the project to prove that it was done. However, while I am certain it was done properly, the fact remains that after fifteen years, the full report has not been located. For the Inspector General team to take the position that the City could not assure that residents in the area were protected against environmental hazard is an overstatement in light of the submitted documentation. Attached documentation shows the area to be environmentally safe.

**[REDACTED] (New Construction – Energy Star)**

Attached documentation for [REDACTED] (Exhibit B) shows that the project met the requirements of a Categorical Exclusion under 24CFR58.35(a) and records from Kansas Department of Housing and Environment reflects that the area added to the site with a past history of commercial use had been reviewed with “no further action” required.

In summary, it is true that the original environmental review could not be located; however, the City has provided assurance and has documented the fact that all homes constructed are protected from environmental hazard.

The below listed items addresses concerns sufficient to show that the subject property is protected from environmental hazard.

1. Data provided to the Inspector General Audit team included information indicating that Kansas Department of Health and Environment had tested the area, and there was no contamination and the site was assigned a “CLOSED STATUS”. If the other requirements were met, then there is every indication that the properties are protected from environmental hazard.
2. The home was built in a subdivision that is approximately ten years old.
3. The house is not within the environs of an historic landmark or a historic district per the map prepared by the Landmark Commission.
4. Noise attenuation was addressed during the construction as part of the Energy Star construction and additional attention was paid to insulation as well.
5. Although the review could not be located, along with the determination, the most important issue was proven to be addressed.

**Comment 10**

6. A copy of a completed environmental is attached.
7. Dollars spent in these efforts becomes muted with a resolution of the environmental findings.

The facts concerning the [REDACTED] property have either been overlooked or misunderstood resulting in a faulty conclusion stated in the Inspector General's report.

**Comment 11**

Project files show that the single home project started out as a Dollar House project in partnership with [REDACTED]. After the property was acquired, two things occurred that required a change of plan and program emphasis. First, [REDACTED] declined in capacity and it was eventually realized that they did not have the ability at the time to deliver a product that met local codes and HOME requirements. Secondly, due to a fire and deterioration of the structure, it became obvious that the only reasonable activity for the site was to demolish the structure and rebuild the site. [REDACTED] stepped forward and volunteered to undertake the project and partner with the Unified Government and the neighborhood to achieve this objective. A partnership was forged and [REDACTED] worked as the contractor to build the unit. Later, as we attempted to market the property for sale, [REDACTED] identified a potential buyer and requested that the unit be turned over to them to sell. The transfer was agreed upon to accommodate the placement of a low-to-moderate income family into the home, with proceeds from the sale facilitating the construction of more [REDACTED] housing units for low-to-moderate income families. This is the same arrangement initially pursued with [REDACTED], but with a different partner even though [REDACTED] served in a trainer capacity for [REDACTED].

**Comment 12**

It should be noted that the City is working to strengthen its environmental capacity. Several staff recently completed Environmental training held at the HUD Regional office from March 31 through April 2, 2009.

In addition, qualified and approved consultants have been identified to assist in future environmental assessments.

**Finding 2: The City Improperly Awarded HOME Construction Projects**

**Comment 13**

The Inspector General audit report concludes that the City awarded two HOME construction projects improperly because sealed bids were not a part of the selection methodology and a single or sole source process was not documented. Additionally, the report cites deficiencies in meeting the City's procurement requirements because documentation was lacking showing the Purchasing Director's sign-off.

**Comment 14**

Exhibit C provides summary information and documentation shared with the Purchasing Director in an effort to document the need for a sole source procurement for [REDACTED]. Additionally, the information documents the difficulty experienced in soliciting for and getting contractors to bid jobs in the area.

The Purchasing Director at the time [REDACTED] authorized the Director of Development to proceed with the project although this could not be verified through the Inspector General inquiry because the Purchasing Director is no longer employed by the Unified Government. The new Purchasing Director could not locate files related to the matter.

Comment 15

Related to [REDACTED], the attached documentation clearly shows that this process had to be followed in order to complete a project started by a CHDO that had no chance of success without intervention by the PJ. The subject CHDO was later decertified because of problems related to its construction methodology. However, the nature of the non-competitive award is clearly documented along with cost comparisons with other contractors working for not-for-profits in urban neighborhoods.

Documentation and justification is presented above and in Exhibit B justifying the selection process for the contractor selected to build [REDACTED]

Exhibit D documents the "sole source" nature of the procurement to hire a not-for-profit to fulfill our construction obligation for a HOME-assisted development located at [REDACTED]. The initial project involved rehabbing a Dollar house to address the blighting influence the structure had upon its respective neighborhood and to use the rehab activity as a training exercise to train [REDACTED] workers in an effort to better meet Section 3 requirements. At the time, [REDACTED] was the only contractor interested in pursuing a rehab project with a training component.

As stated earlier, a number of factors, including a fire and property deterioration contributed to our conclusion that the subject property could not be rehabbed in a cost effective manner. Exhibit D clearly documents the challenges for the subject Dollar house project which includes a historical recap by the agencies involved. Similar documentation was provided to the then Purchasing Agent for the City who advised and authorized the project to move forward. The subject property was later deeded to [REDACTED] to facilitate the sale of the property to a low-to-moderate income family. This was required at the time of sale because of the manner in which Habitat finances the sale of [REDACTED] homes.

Comment 16

City staff fully understands both federal and local procurement requirements and the attached documentation evidences efforts to comply with those requirements. Additionally, I am convinced, as evidenced by the attached documentation showing costs comparisons that HUD received the best value for the dollars spent in all of these instances.

### **Finding 3: The City Improperly Charged Employee Costs to the HOME Program**

Comment 17

In this Finding section, the Inspector General Auditors recognized and acknowledged the PJ's efforts to overcome challenges related to staff turnover. As a result of staff turnover, new staff were hired and during the training process covering all CDBG-funded areas including HOME and ESG, two staff people were given primary responsibility for the HOME Program even though they alternated into other CDBG-supported program areas. Further, as acknowledged in the draft audit report, little attention was given to the work area differences since both staff were hired in at the same pay rate and it was intended for the two staff to remain at the same pay rate. The plan at the time was to assign one of these staff people the responsibility for HOME management after their training was completed. Because of the City's personnel policies, one staff person was allowed to advance her salary over the other because of the date hired. Eventually, this led to an approximate four percent difference in salary. However, because of the need to keep HOME activity flowing as summarized earlier, given the requirements for inspections, etc., much more work efforts related to HOME can be documented as shown below to more than offset the costs cited in the draft audit report.

Exhibit E documents the facts surrounding this matter and also calculates the number of hours that should have been charged to the HOME Program had staff used cost accounting numbers to differentiate

between HOME and CD projects. As a result of this review, policies have been changed requiring all staff to monitor their work activities and funded activities and report their activities on their timesheets in quarter intervals. While this is most time consuming, it would guard against failure to document the difference in time spent within a given program area. The new policy and cost accounting information is also contained in Exhibit E, as well as a calculation of the salary differentials between the two cited employees.

**Finding 4: The City Allowed Contracts That Did not Include Provisions**

**Comment 18**

The City understands HUD-required provisions that must go into contracts that govern the activities of our sub-grantees including our CHDOs. The draft audit report acknowledges that the contract between the City or PJ and the CHDOs cited in this Finding accurately contained all required provisions. Through oversight, the PJ did not discover timely that these provisions were not included in contracts between the CHDO and the not-for-profits they were contracting with. Steps have been taken to make sure that contracts between sub-grantees and their not-for-profit partners conforms to the same provisions contained in the contract between the PJ and the sub-grantee. In addition, the City has taken a more aggressive approach to HOME training and a contingent of staff already enrolled and completed the HOME training workshop held at the Crown Center in Kansas City, Missouri on May 19-21, 2009. In addition, several staff attended the NeighborWorks training session held in Phoenix, Arizona from May 4 through May 8, 2009. This training included a session on managing CHDOs as well as covering foreclosure recovery programming.

**Finding 5: The City Did Not Verify The Eligibility of CHDOs Before Awarding Them HOME Funds**

**Comment 19**

City staff fully understands the requirements for CHDO eligibility, certification and re-certification. As noted in the Inspector General's audit report, staff turnover contributed to an oversight during a three-month period between the certification lapse of our CHDOs and the awarding of funds to three of the CHDOs.

A number of our CHDO partners have been operating for a great number of years with the same management team and key personnel. Resumes' on these key personnel were not found in current files, but exists in other earlier day files. This oversight occurred because staff, having historical familiarity with the management team, knew that there had not been any material change in the operating make-up of these CHDO's. In addition, diligent monitoring of CHDO board composition has historically taken place. If there becomes a change in board composition immediately following review and re-certification, the CHDO is required to advise us immediately.

**Comment 20**

In our review of our CHDOs for re-certification, issues related to capacity and financial stability are reviewed and taken into account. However, our current world economy suggests that capacity and financial issues can change overnight.

Letter to Mr. Ronald J. Hosking (cont'd)  
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**Finding 6: The City Did Not Spend Its Program Income and Re-Captured Funds Before Drawing Down Additional HOME Funds**

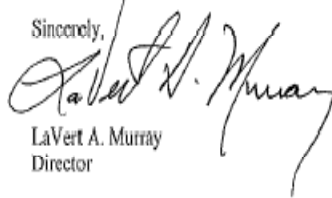
Occasionally, the City receives program income and re-captured funds. However, the receipt of these funds is very infrequent especially when compared to the incidence of expenditure of HOME funds. Because there are generally weekly expenditures of HOME funds, oftentimes bills are being processed without some Fiscal staff knowing that additional program income is being received. Steps have been taken and policies have been set in place to ensure that program income and re-captured funds are spent before additional funds are drawn.

Exhibit F reflects the new policy that is designed to ensure that program income and re-captured funds are spent immediately.

It is my hope that the above information adequately addresses the concerns and findings contained in the draft audit.

If you have additional concerns or questions, please do not hesitate to call on me.

Sincerely,



LaVert A. Murray  
Director

LAM/slm

cc:



## Evaluation of Auditee Comments

- Comment 1** As stated in the report, we selected the City for review based on our risk assessment. HUD's 2008 and 2009 risk assessments for the City's HOME program were only two factors of several that we considered. As noted in the report, we also considered HUD's 2005 HOME program monitoring review (HUD did not conduct a review in 2006), which indicated deficiencies in the City's HOME program. During the audit, we reviewed the City's fiscal years 2006 and 2007 A-133 audits. The 2006 audit contained a finding that the City did not perform on-site monitoring of subrecipients and did not have procedures in place to follow up on subrecipient audit findings in a timely manner. The 2007 audit had no findings related to the HOME program.
- Comment 2** We believe that our report fairly depicts our conclusions and we reached those conclusions based on a reasonable sample, not minor weights of data. Our sample consisted of 10 of 47 HOME activities on which the City spent more than \$1 million in HOME funds between October 2006 and September 2008.
- Comment 3** As noted in comment 2, we audited the City's program using a reasonable sample. HOME initiatives related to the questioned HOME projects may have begun in the early 1990s and been closed out in 2002; however, we reviewed HOME projects on which the City spent HOME funds in more recent years. Regardless of the closeout, the City was required to follow HUD environmental requirements on the sampled properties.
- Comment 4** We do not disagree that the questioned property may qualify as a categorically excluded project according to the HUD rules and relevant circumstances. Therefore, we did not cite the City for not having an overall environmental review available for the main site on which the property was located. However, even as a categorically excluded project, the City was required to complete the statutory checklist of 14 environmental concerns. The City did not have an adequate and proper environmental review because the statutory checklist contained only 5 of the 14 required items and was missing determinations and supporting documentation. Although the project was located in a redevelopment area, this did not excuse the City from having a proper environmental review.
- Comment 5** We maintain that this was a material issue. HUD regulations outline the various eligibility requirements for organizations to qualify as CHDOs and participate in the HOME program. The City did not verify any CHDO eligibility requirements for fiscal year 2006, and did not fully verify CHDO eligibility in fiscal years 2007 and 2008. While the City may have familiarity with the CHDOs due to its using these CHDOs for a number of years, the City was to evaluate various aspects of each CHDO every year and be able to provide evidence that it had completed this task. The City was not able to provide such evidence during our audit.

**Comment 6** We maintain that the City did not understand HUD environmental review requirements. The current HUD environmental officer has been in Kansas City for more than five years. Throughout that time, which encompasses our audit period, he provided consistent environmental training and technical assistance to City staff.

**Comment 7** We maintain the City could not ensure that the subject homes were reasonably protected from environmental hazards. Because the City could not provide documentation to show that it had conducted adequate and proper environmental reviews, HUD could not be sure that the homes were reasonably protected from environmental hazards. In addition, the documentation that the City provided with its comments was provided to us during the audit and we considered it in reaching our reported conclusions. The City had recently reconstructed the statutory checklists for the questioned properties and provided some evidence to support the environmental determinations reached on the reconstructed documents. However, we did not accept the reconstructed checklists as evidence of proper environmental reviews conducted at the time that the City spent HOME funds on the subject properties.

Further, the October 2002 letter from the Department of Wildlife and Parks gave environmental clearance on only 1 of the 14 checklist items. This does not constitute a complete clearance of environmental issues that HUD required the City to review.

**Comment 8** As explained in comment 7, the City provided some documentation on the subject property. However, the City had reconstructed the environmental review record and the statutory checklist when asked for supporting documentation during our audit. The City was required to complete the checklist before beginning the new construction project. As explained in comment 7, we did not accept the reconstructed information.

**Comment 9** We do not disagree with the City considering the subject property as categorically excluded from the larger redevelopment site. However, the City was still required to evaluate and provide proper evidence to support its conclusions on the 14 statutory checklist requirements. This was not accomplished as the checklist contained only 5 of the 14 required items and was missing determinations and supporting documentation in key environmental areas.

**Comment 10** We do not disagree with the City considering the subject property as categorically excluded from the larger redevelopment site. However, the Kansas Department of Health and Environment records provided addressed only the removal of underground storage tanks and that they did not present any human health or environmental threats. The records did not address all of the HUD-required checklist items. Further, the City agreed that it could not locate the original environmental review record and the statutory checklist. The City had provided



only a few supporting documents for individual items required by the checklist. This did not constitute a proper environmental review.

**Comment 11** This paragraph provides a history of one of the questioned projects in finding 2. This information was not relevant to finding 1; however, we considered it in evaluating the City's response to finding 2.

**Comment 12** We commend the City for taking steps to train its staff about HUD's environmental review requirements.

**Comment 13** We did not conclude or report that the City had awarded two HOME construction projects improperly because sealed bids were not a part of the selection methodology. We initially noted that sealed bids are preferred but our conclusion was that the City could not support that it had properly awarded two noncompetitive contracts. To avoid confusion, we removed the sentence referring to sealed bids from the report.

**Comment 14** We did not contend that sole sourcing the contracts was wrong. We concluded only that the City could not provide documentation that it had properly evaluated the circumstances and reached a supportable conclusion to noncompetitively award the contracts at the time that it selected the contractors. The documentation that the City provided with its comments was provided to us during the audit. However, we did not accept the information as evidence of the City properly evaluating and supporting noncompetitive awards because the City had reconstructed its recollection of the events that ensued and did provide evidence to support the information in the reconstructed documents.

Further, the City could not provide any documentation showing that it had provided the indicated information to the City's purchasing director or received his approval.

**Comment 15** As mentioned above, we did not contend that the City erred in sole sourcing of the contracts, only that the City could not provide the proper documentation for this process.

**Comment 16** Based on interviews of City staff members and the staff having to recreate documents justifying the sole source selections, we maintain that the City did not understand procurement requirements to properly evaluate and document noncompetitive awards.

**Comment 17** The City stated that several other employees worked on HOME activities but did not charge their employee costs to the HOME program. The City provided a narrative of estimated hours that other City staff claimed to have worked on HOME projects but provided no support to prove the legitimacy of estimated hours or that the persons did the work. Therefore, we did not accept this

additional information as sufficient to offset the improper overcharges detailed in the report.

- Comment 18** We maintain that the City did not fully understand what provisions were required in HOME contracts. In our sample, we reviewed two contracts between a CHDO and a nonprofit and neither contained the required provisions. In addition, we reviewed three contracts between the City and a contractor and two of the three did not include the required provisions. Therefore, given that the City did not include required provisions in four of five contracts reviewed, we maintain that the City did not fully understand the requirements.
- Comment 19** We maintain that City staff did not fully understand the CHDO eligibility requirements. The City had not verified any CHDO eligibility requirements for fiscal year 2006, and it had not fully verified CHDO eligibility in fiscal years 2007 and 2008. We discussed the eligibility requirements outlined in CPD Notice 97-11 with the staff member most recently responsible for CHDO eligibility. She confirmed to us that she was not aware of all requirements.
- Comment 20** The City stated that it had reviewed and evaluated capacity and financial stability requirements when recertifying the CHDOs. However, it did not provide evidence of its efforts in this regard during the audit. In addition, we agree that capacity and financial elements of an entity can change quickly and this makes it all the more important that the City diligently monitor its CHDOs' eligibility to participate in the HOME program.

## Appendix C

### CRITERIA

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#### **Criterion 1**

Regulations at 24 CFR 58.38 state that the responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document is designated the environmental review record and shall be available for public review. The responsible entity must use the current HUD-recommended formats or develop equivalent formats.

#### **Criterion 2**

Regulations at 24 CFR 58.38(a) state that the environmental review record should contain all of the environmental review documents, public notices, and written determinations or environmental findings required by this part as evidence of review, decision making, and actions pertaining to a particular project of a recipient.

#### **Criterion 3**

Regulations at 24 CFR 58.38(b) state that the environmental review record should contain verifiable source documents and relevant base data used or cited in environmental assessments, environmental impact statements, or other project review documents. These documents may be incorporated by reference into the environmental review record, provided each source document is identified and available for inspection by interested parties.

#### **Criterion 4**

Regulations at 24 CFR 58.5 state that the responsible entity must assume responsibilities for environmental review, decision making, and action that would apply to HUD under the following specified laws and authorities. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws, and authorities and must consider the criteria, standards, policies, and regulations of these laws and authorities. Regulations at 24 CFR 58.6 state that the responsible entity also remains responsible for addressing requirements in its environmental review record and meeting these requirements, where applicable, regardless of whether the activity is exempt or categorically excluded.

The statutory requirements (checklist) for categorically excluded projects subject to 24 CFR 58.5 and 58.6 include

- Air quality,
- Airport hazards,
- Coastal zone management,
- Contamination and toxic substances,
- Endangered species,
- Environmental justice,
- Explosive and flammable operations,

- Farmland protection,
- Floodplain management,
- Historic preservation,
- Noise control,
- Water quality (sole source aquifers),
- Wetland protection, and
- Wild and scenic rivers.

### **Criterion 5**

CPD Notice 01-11, “Environmental Review and the HOME Investment Partnerships Program,” paragraph 1B, states that completion of the environmental review process is mandatory before taking a physical action on a site or making a commitment or expenditure of HUD or non-HUD funds for property acquisition, rehabilitation, conversion, lease, repair, or construction activities. Contractors, owners, and developers (including CHDOs) may not commit or expend funds on HOME projects until the participating jurisdiction or state recipient completes the environmental review process.

### **Criterion 6**

Regulations at 24 CFR 85.36(d)(2) state that with procurement by sealed bids, the 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 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.

### **Criterion 7**

Regulations at 24 CFR 85.36(d)(4)(i) state 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 and one of the following circumstances applies:

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

Cost analysis, (i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits), is required.

### **Criterion 8**

The City’s Procurement and Contract Compliance Department Memorandum, dated November 17, 2005, “Construction Thresholds,” states that effective January 1, 2006, construction projects with a cost of less than \$50,000 will require three quotes. Of those three quotes, one will need to be from a local firm and one from a minority or a woman-owned firm. Construction projects in excess of \$50,000 will be required to engage in the formal bidding process.

### **Criterion 9**

The City's Procurement and Contract Compliance policies, article 3, section 3-102, states that contracts shall be awarded by competitive sealed bidding except as otherwise provided and competitive sealed bidding is the preferred method for procurement. The sealed bidding process is also outlined in this section.

### **Criterion 10**

The City's Procurement and Contract Compliance, article 3, section 3-105, states that a contract may be awarded for a supply, service, or construction item without competition when the purchasing director, after conducting a good review of available sources, determines in writing that there is only one source for the required supply, service, or construction item.

### **Criterion 11**

Regulations at 24 CFR 92.2 define a community housing development organization (CHDO) as a private nonprofit organization that

- Is organized under state or local laws;
- Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
- Is neither controlled by or under the direction of individuals or entities seeking to derive profit or gain from the organization;
- Has a tax exemption ruling from the Internal Revenue Service;
- Does not include a public body (including the participating jurisdiction);
- Has standards of financial accountability that conform to 24 CFR 84.21, "Standards for Financial Management Systems";
- Has among its purposes the provision of decent housing that is affordable to low-income and moderate income persons, as evidenced in its charter, article of incorporation, resolutions, or bylaws;
- Maintains accountability to low-income residents by having at least one-third of its board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations and, also, provides a formal process for low-income program beneficiaries to advise the organization;
- Has demonstrated capacity for carrying out activities assisted with HOME funds; and
- Has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show one year of serving the community before HOME funds are reserved for the organization.

### **Criterion 12**

CPD Notice 97-11, "Guidance on CHDOs under the HOME Program," contains an eligibility checklist in attachment A that is a tool for participating jurisdictions. Attachment A describes eligibility criteria and the supporting documentation recommended for use by participating jurisdictions to certify or recertify CHDOs. The participating jurisdiction should maintain the completed checklist to document compliance with the regulations. The checklists contain different categories and include such areas as

- Legal status,
- Capacity,
- Organizational structure, and
- Relationship with for profit entities. .

**Criterion 13**

HUD HOMEfires Notice, April 2002 states that HUD strongly recommends recertification of CHDOs annually. However, at a minimum, a participating jurisdiction must requalify an organization as a CHDO each time it receives additional set aside or operating funds.