



Issue Date	December 15, 2009
Audit Report Number	2010-AO-1001

TO: Nelson Bregon, General Deputy Assistant Secretary, D

FROM: Sonya D. Lucas, Acting Regional Inspector General, GAH

SUBJECT: Mississippi Development Authority, Jackson, Mississippi, Did Not Always Ensure Compliance under Its Public Housing Program

HIGHLIGHTS

What We Audited and Why

We conducted a review of the State of Mississippi (State), a \$5.5 billion Community Development Block Grant (CDBG) disaster recovery grantee. We initiated the review as part of the Office of Inspector General (OIG) Gulf Coast Region’s audit plan and examination of relief efforts provided by the federal government in the aftermath of Hurricanes Katrina and Rita. Our objectives were to determine whether the State ensured that (1) public housing authorities (authorities) provided quarterly progress reports (reports) in compliance with their subrecipient agreements (agreements) and (2) the agreements for its authorities complied with the U.S. Department of Housing and Urban Development’s (HUD) minimum requirements.

What We Found

Although the State generally ensured that the agreements complied with HUD’s minimum requirements, it did not always ensure that authorities complied with their agreements. Of 22 reports reviewed, none complied with the agreement. In addition, the State did not always ensure that the reports were complete and submitted by the established due dates.

These conditions occurred because the State (1) did not develop adequate written policies and procedures for its staff to use during the review and verification of the data submitted in the reports, (2) believed that compliance was not necessary since the required information was included within the authorities' project files or construction contracts, and (3) did not have a system or process for tracking submission of the reports. This lack of sufficient detail could prevent the State from having a sound basis for (1) requiring the authorities to comply, (2) adequately documenting and effectively monitoring the program's progress, and (3) ensuring that program goals are met and deliverables are provided as required.

What We Recommend

We recommend that HUD's General Deputy Assistant Secretary for Community Planning and Development require the State to (1) develop and implement written policies and procedures for the review and verification of information in the reports; (2) ensure that subrecipients fully comply with their agreements by including all information required in the reports; and (3) implement a system or process for tracking the submission of the reports to ensure compliance with the agreements.

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

During the review, we provided the results of our review to the State's management staff and HUD. We conducted an exit conference with the State and HUD on November 13, 2009.

We asked the State to provide comments on our draft audit report by November 20, 2009, and it provided written comments on November 19, 2009. The State generally disagreed with our results and recommendations. The complete text of the auditee's response, along with our evaluation of that response, can be found in appendix A of this report. The attachments provided by the State are available upon request.

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BACKGROUND AND OBJECTIVES

Between December 2005 and June 2006, Congress approved a total of \$16.7 billion in supplemental Community Development Block Grant (CDBG) Disaster Recovery Assistance funds for Gulf Coast hurricane relief. Of that amount, the U.S. Department of Housing and Urban Development (HUD) awarded \$5.5 billion to the State of Mississippi (State) for its recovery efforts. The Mississippi Development Authority, the State's designated agency, administers the use of the supplemental CDBG funds.

Of the \$5.5 billion, the State allocated \$110 million to its public housing program (program), the purpose of which is to provide long-term recovery assistance by replacing critical public housing that existed before the hurricane.¹ At least 51 percent of the residents of each residential structure must earn less than 80 percent of the area median income. If the project intends to provide assistance to individuals earning greater than 80 percent of the area median income, the public housing authority (authority) must obtain a waiver from HUD before it can provide the assistance.

Of the \$110 million, the State allocated \$100.9² million among four authorities. The State allocated funding for each authority based upon estimates that reflected the costs needed to repair, rehabilitate, and/or rebuild the public housing units. To ensure compliance, the State executed subrecipient agreements (agreement)³ with the authorities. The table below shows the funding allocated to each authority.

<i>Name of authority</i>	<i>Grant funding allocation amount</i>
Bay-Waveland	\$19,887,235
Biloxi	\$41,164,438
Long Beach	\$ 3,814,594
Region VIII	\$36,033,733
Total	\$100,900,000

As of June 15, 2009, the State had disbursed more than \$44.7 million to the authorities.

Our objectives were to determine whether the State ensured that (1) authorities provided quarterly progress reports (report) in compliance with their agreements and (2) the agreements for its authorities complied with HUD's minimum requirements.

¹ Hurricane Katrina made landfall in Mississippi on August 29, 2005.

² Of the remaining \$9.1 million, the State allocated \$5 million for administrative costs and had not allocated the other \$4.1 million as of August 10, 2009.

³ The State executed 16 agreements.

RESULTS OF AUDIT

Finding: The State Did Not Always Ensure Compliance under Its Program

Although the State generally ensured that the agreements complied with HUD's minimum requirements, it did not always ensure that authorities complied with their agreements. Of 22 reports reviewed, none complied with the agreements. Specifically, the State did not ensure that the reports included (1) proof of insurance, (2) a summary of income classifications for affordable housing tenants, and (3) the number of residents who were or would be given the first right to reoccupy. In addition, the State did not ensure that the reports were complete or submitted by the established due dates. These conditions occurred because the State (1) did not develop adequate written policies and procedures for the review and verification of data in the reports, (2) did not believe compliance with the agreements was necessary since the required information was included within the authorities' project files and construction contracts, and (3) did not have a system or process for tracking the submission of the reports. This lack of sufficient detail could prevent the State from having a sound basis for (1) requiring the authorities to comply, (2) adequately documenting and effectively monitoring the program's progress, and (3) ensuring that program goals are met and deliverables are provided as required.

State's Requirements

As HUD's grantee, the State is responsible for administering and monitoring its CDBG disaster recovery programs. To aid in its efforts, the State executed agreements with the authorities for the purpose of repairing, rehabilitating, and rebuilding public housing units. As part of the agreements and one of its deliverables, the State required authorities to provide reports by the 15th of the month after the end of each quarter.⁴ In those reports, the State required that the authorities include

- The number of units compared to the total that existed before the storm.
- The number of residents present before the storm that were given the first right to reoccupy.
- Proof of 100 percent insurance coverage on replacement values of the property for all hazard types.
- Certification that 100 percent of the affordable housing units available before the storm were still available at affordable housing rates.
- A summary of income classifications for affordable housing tenants (e.g., number of low, very low, moderate).

⁴ The due dates were April 15, July 15, October 15, and January 15.

In addition, the State required that authorities provide information related to (1) milestones completed during the reporting period; (2) roadblocks or delays, including an amended task-based schedule for completing work, as necessary; and (3) funds planned versus actual for the reporting period.

HUD's Requirements

HUD's regulations at 24 CFR (*Code of Federal Regulations*) 570.503 required the State to execute written agreements with the authorities before disbursing any CDBG funds. The regulations also required that, at minimum, those written agreements include a complete statement of work, which includes a description of the work to be performed, a schedule for completing the work, and a budget. The regulations further stated that these items should be in sufficient detail to provide a sound basis for the State to effectively monitor performance under the agreements.

Reports Missing Information or Incomplete

Of 22 reports reviewed, none complied with the agreements. Specifically, the reports lacked information such as

- The number of units compared to the total that existed before the storm,
- The number of residents present before the storm that were or would be given the first right to reoccupy,
- Proof of 100 percent property insurance coverage on replacement values,
- Certification that 100 percent of the affordable housing units available before the storm were still available at affordable rates, or
- A summary of current or projected income classifications for affordable housing tenants.

In addition, the reports were not complete because some authorities did not provide sufficient detail for milestones completed, explanations for roadblocks or delays, or an amended task-based schedule for completing work. For example,

- One authority identified a roadblock related to tax credit syndication, preventing finalization of application documents and the beginning of construction for the funded project. However, the authority did not provide an amended task-based schedule for completing the work or an adjusted schedule for completion as required by the agreement.
- One authority reported three adjustments to the proposed completion date of the project, delaying the project for five months. However, the

authority did not identify any roadblocks or provide an explanation for the delay as required by the agreement.

- One authority showed that its project was in predevelopment for more than a year, noting it as a milestone. However, the authority did not identify any roadblocks or provide an explanation for the delay. Further, the authority did not provide an amended task-based schedule for completing the work or an adjusted schedule for completion as required by the agreement.

Further, the State did not ensure that authorities submitted their reports by the established due dates, since it did not document or track when authorities submitted the reports. Therefore, the State could not determine whether the authorities submitted the reports by the established due date as required by the agreement.

The State must ensure that authorities submit reports by the established due date and with sufficient detail for all activities to ensure that authorities (1) follow the scope of work, (2) report the level of accomplishment, (3) follow the established timetables, and (4) collect and correlate all subrecipient data for each project.

Processes and Procedures Not Adequate

The State did not develop adequate written policies and procedures for its staff to use for the submission of the reports and the review and verification of the data submitted in the reports, thereby preventing the proper review of the reports. According to the State, it used the agreements and the program's implementation manual as guidance for reviewing information submitted in the reports. However, the program's implementation manual did not include a step-by-step process for the review and verification of the information included in each section of the reports.

Regarding information included within the reports, the State did not believe it was necessary for the authorities to report all of the required information in the reports. The State noted that since some of the reports' information required by the agreement was included elsewhere within the authorities' project files, it was not necessary for the authorities to repeatedly provide the information in the reports. However, each authority's project files were maintained in one to three large binders, making it difficult to readily locate and access information. Further, because the State did not require the authorities to include the information in the reports, it violated the terms of the agreements.

In addition, although information related to the milestones completed during the reporting period and roadblocks or delays, including an amended task-based schedule for completing work, was required, the State did not believe it was

necessary for the authorities to include this information in the reports. According to the State, it remained in constant communication with the authorities. The State also noted that it was always informed beforehand of any roadblocks or delays that prevented or would have prevented milestones from being completed. However, the State did not document its communication with the authorities, preventing verification of this communication. Further, although the State received periodic turn schedules, which documented the anticipated completion dates, the periodic turn schedules did not document the reasons for roadblocks or delays.

This lack of information in the reports could prevent the State from having a sound basis for requiring the authorities to comply with their agreements and adequately document and effectively monitor the program's progress to ensure that program goals were met. Therefore, the State must develop and implement written policies and procedures for the review and verification of data submitted in the reports. The State must also ensure that authorities fully comply with their agreements.

No System or Process for Tracking Report Submission

Regarding the tracking the submission of the reports, the State explained that it did not need to track the submission and receipt of the reports since the reports were only used for updating HUD's system.⁵ The State further explained that it could determine whether the authorities had submitted their reports when updating HUD's system. The State noted that if the authorities failed to provide the reports, it would contact them and remind them to submit their reports. However, the State could not provide documentation reflecting the submission dates, its contact with the authorities, or efforts made for the purpose of obtaining the reports. As a result, the State had no way of determining whether the authorities submitted the reports by the 15th and, therefore, could not ensure compliance with the agreements. Consequently, the State must implement a system or process for tracking submission of the reports.

Agreements Complied with HUD's Requirements

Reviews of 16 agreements determined that 12 agreements included a complete statement of work in accordance with HUD's minimum requirements. A complete statement of work was not necessary for the remaining four agreements. Specifically, three agreements were for the acquisition of constructed properties, and one agreement was for a project that was in predevelopment and did not have

⁵ The State must update HUD's Disaster Recovery Grant Reporting System on a quarterly basis.

a construction contractor in place at the time of our review. Therefore, the State generally ensured that agreements for its authorities complied with HUD's minimum requirements.

Conclusion

Without tracking the submission of reports and ensuring that the agreements and reports include sufficient detail, the State may not have a sound basis for (1) requiring the authorities to comply, (2) adequately documenting and effectively monitoring the program's progress, and (3) ensuring that program goals are met and that deliverables are provided as required by the agreements. Therefore, the State must ensure that (1) it develops and implements adequate written policies and procedures for reviewing the reports, (2) subrecipients fully comply with their agreements, and (3) it implements a system or process for tracking the submission of reports.

Recommendations

We recommend that HUD's General Deputy Assistant Secretary for Community Planning and Development require the State to

- 1A. Develop and implement written policies and procedures for the review and verification of information in the reports to ensure that the reports are complete.
- 1B. Implement adequate policies and procedures for tracking the submission of the reports to ensure that authorities submit the reports by the established due dates.
- 1C. Ensure that subrecipients fully comply with their agreements by including all information required in the reports.

SCOPE AND METHODOLOGY

We conducted our review at the local HUD OIG field office, the State's Disaster Recovery Division, and other sites as deemed appropriate. We performed our work between May and September 2009.

To accomplish our first objective, we used nonrepresentative sampling to select 22 reports for four housing projects, from a universe of 65 reports for 16 housing projects, for review. We used this sampling method since we knew enough about the universe to identify a relatively small number of items of interest. We reviewed the hard-copy files to determine whether the reports included the required information as outlined in the agreements. We also reviewed the hard-copy files to determine whether the information in the reports was complete.

To accomplish our second objective, we used 100 percent sampling to review 16 agreements and later modifications for 16 approved program projects. We used this sampling methodology due to the relatively small universe. We reviewed the hard-copy files to determine whether the agreements included a (1) statement of work or scope of services, (2) schedule of completion, and (3) budget.

In addition to the file reviews, we

- Reviewed the HUD-approved action plan and later technical modifications and amendments, HUD/State grant agreements, State written policies and procedures, applicable contracts executed related to the administration of the program, the *Code of Federal Regulations*, public laws, and other legal authorities relevant to the CDBG disaster recovery grants;
- Reviewed reports issued by the Mississippi Office of State Auditor, HUD, and the State; and
- Interviewed key HUD/State officials and contractors' staff involved in the administration of the program.

Our review covered the period August 1, 2007, through April 30, 2009. 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 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:

- Program operations – Policies and procedures that management has implemented to provide reasonable assurance that authorities comply with their subrecipient agreements.
- Relevance and reliability of information – Policies, procedures, and practices that management has implemented to provide reasonable assurance that relevant and reliable information is maintained and fairly disclosed in subrecipient reports.
- Compliance with laws and regulations – Policies and procedures that management has implemented to provide reasonable assurance that CDBG disaster fund use is consistent with HUD's laws, regulations, and provisions of the grant agreement.
- Safeguarding of assets and resources – Policies and procedures that management has implemented to provide reasonable assurance that CDBG disaster funds are safeguarded against waste, loss, and abuse.

We assessed the relevant controls identified above.

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

Significant Weaknesses

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

- The State did not have adequate written policies and procedures to ensure sufficient review and verification of information in reports. (See finding).



APPENDIXES

Appendix A

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

 STATE OF MISSISSIPPI HALEY BARBOUR, GOVERNOR MISSISSIPPI DEVELOPMENT AUTHORITY GRAY SWOOPF EXECUTIVE DIRECTOR	
November 19, 2009	
Ms. Sonya D. Lucas Acting Regional Inspector General for Audit HUD's Office of Inspector General Hale Boggs Federal Building 500 Poydras Street New Orleans, LA 70130	<u>via Fed Ex</u>
Re: Mississippi Disaster Recovery HUD OIG Audit 2010-AO-100x Public Housing Program Compliance Response, November 2009	
Dear Ms. Lucas:	
Attached is the response of the Mississippi Development Authority to the above captioned Draft Audit. The original is being transmitted via FedEx.	
If you have any questions please do not hesitate to contact me at (601) 359 9177.	
Sincerely yours,  William B. Thompson, Jr. Deputy Compliance Officer	
WBT:by	
<small>POST OFFICE BOX 849 · JACKSON, MISSISSIPPI 39205-0849 TELEPHONE (601) 359-3449 · FAX (601) 359-2832 · www.mississippi.org</small>	

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Once Congress appropriated the CDBG funds to the State of Mississippi, the Mississippi Development Authority's ("MDA") immediate focus was on the development, creation and implementation of novel programs of an unprecedented scale necessary to deliver vital aid in an extreme emergency situation directly to the communities and citizens impacted by Hurricane Katrina, the most devastating natural disaster in the history of the United States. The delivery of this support so desperately needed and so essential to the recovery and restoration of the Mississippi Gulf Coast was, in 2006, and continues to be the primary focus of MDA. Katrina's devastation touched every sector of the Coast, including the total destruction or substantial damage to 1,981 public housing units operated by five (5) Public Housing Authorities ("PHAs"). In response to this critical loss, MDA submitted on August 6, 2006, the Public Housing Partial Action Plan ("the Action Plan") to HUD, which approved it on August 31, 2006. With this in place, MDA immediately reached out to the eligible PHAs to submit a letter of intention as required by the Action Plan and subsequently to make application. Since that time, ten (10) major public housing projects have been completed, restoring 1,210 units of desperately needed public housing. Furthermore, by the end of 2010, eight (8) more projects representing 888 additional units for a total of 2,098 units will be completed and ready for occupancy. Therefore, within five years after Katrina struck, the Coast will not only have restored all of its devastated public housing but will have significantly increased the total number of public and other affordable housing managed by the PHA's to a total of 2,415 units.

Comment 1

Accordingly, while with this Audit Report HUD's Office of Inspector General ("OIG") has taken an extremely myopic view of MDA's efforts in this regard and elevated minor omissions and deficiencies to a finding of non-compliance, MDA asserts that it has complied with all statutory and regulatory requirements, as well as meeting and exceeding the Action Plan's objectives and criteria, and generally "ensured compliance under its Program" by its subrecipients and the terms of each subrecipient's individual award. Therefore, the MDA takes strong exception to the finding asserted by OIG that it "*did not always ensure compliance under its Program.*"

Comment 2

MDA emphatically states that its contracts with the PHAs meet the requirements of both state law and HUD regulations. Indeed, MDA asserts the contracts – which include supporting

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documentation incorporated by reference – are legal and binding documents that meet all CDBG program requirements and are clearly enforceable against the subrecipients. Moreover, while MDA concedes that the quarterly reporting required of the PHAs is incomplete when measured against the requirements of the contract, this omission of certain data on a quarterly basis is clearly justifiable as it is either (1) data required prior to signing the contract or the release of funds or (2) data to be reported upon completion or occupancy. All of these matters are addressed in detail below:

Finding: The State Did Not Always Ensure Compliance under Its Program

The State did not always ensure that authorities complied with their agreements. Of 22 reports reviewed, none complied with the agreements. Specifically, the State did not ensure that the reports included (1) proof of insurance, (2) a summary of income classifications for affordable housing tenants, and (3) the number of residents who were or would be given the first right to reoccupy.

Comment 4

The agreements with the PHAs contained a schedule of Special Conditions that included paragraph E, which, among other things, required quarterly reports that covered items (1) through (3) cited in the OIG Draft Audit and listed above. MDA admits that it did not require the PHAs to report quarterly on these matters. Notably, these items are not included by MDA in the Quarterly Report Template referenced in paragraph E (2) of the Agreement. However, reporting on these items was unnecessary and burdensome on a quarterly basis for the following reasons:

- (1) ***Proof of Insurance:*** The agreement requires various types of insurance to be in place during the construction of the project and upon completion. The necessary proof of insurance was required to be submitted with the application and further reporting would have been redundant. Likewise, additional insurance to cover buildings and premises where construction has not been completed or the building occupied is impossible to obtain and would not be applicable until completion of the project.
- (2) ***A summary of income classifications for affordable housing tenants:*** Reporting on this item is a post construction and post occupancy matter and inapplicable at this time.
- (3) ***The number of residents who were or would be given the first right to reoccupy:*** The initial number of residents required to be given the right to reoccupy was reported in the application. Again additional reporting on this item is unnecessary until after the completion of construction and occupancy.

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In addition, the State did not ensure that the reports were complete or submitted by the established due dates.

MDA admits that it did not require redundant and unnecessary quarterly reporting by the PHAs of information that had been previously submitted to MDA or was inapplicable at the particular stage of the process. MDA disputes the assertion by OIG that reports were not required by the due date, but admits that some PHAs were tardy with their reports, no doubt in no small measure because of the enormity of the disaster everyone on the Coast has been dealing with.

Further, the State did not ensure that the agreements complied with HUD's minimum requirements. Specifically, of 16 agreements reviewed, none included a complete statement of work. Although the agreements included a budget and a description of the work performed, they did not include a schedule for completing the work.

Comment 6

MDA categorically rejects this assertion by OIG.¹ Each of the 16 PHA agreements reviewed contains a complete statement of work and all HUD required clauses and provisions. Specifically, each and every contract with a PHA contains the following two clauses:

This contract is subject to all applicable rules, regulations, conditions, and assurances as prescribed by the Mississippi Development Authority's (MDA) Community Development's Block Grant Program, as well as the U.S. Department of Housing and Urban Development's Community Development Block Grants: State's Program Final Rule (24 CFR Part 570), and to each and every Federal and State Statute and guideline affecting the application for, receipt of, and expenditure of Community Development Block Grant Funds. It is also subject to such further rules, regulations, and policies as may be reasonably prescribed by the State or Federal Government consistent with the purposes and authorization of P.L. 97-35 and P.L. 98-8.

This contract is also made subject to any and all conditions, special conditions, and assurances attached hereto and made a part hereof at the time of the award of these funds. **The application submitted for these funds is incorporated by reference herein and made a part hereof**, including any changes, modifications, deletions, or amendments contained therein. (PHA Grant Agreement 9/5/2007 Page 3, emphasis added).

The highlighted language clearly incorporates by reference the applicable HUD required conditions from 24 CFR Part 570 as well as the PHA's entire application as part of the agreement. Moreover, each application included the HUD conditions as pages 3-18 of the

¹ Via e-mail dated November 18, 2009, OIG Auditor in Charge Kim Sandifer advised MDA Chief Compliance Officer Chuck Bearman that this section of the finding will be removed in the Final Audit as a result of discussions held at the exit conference and the review of additional information by OIG. However, OIG has advised that it will not provide an updated draft reflecting the removal. MDA is, therefore, responding to this section to ensure the records on this Audit reflects its position.

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application. In addition, the application included a very detailed scope of work, budget and statement of work. Accordingly, OIG's assertion that these items are not covered by the contract is totally in error, both legally and factually.²

These conditions occurred because the State (1) did not develop adequate written policies and procedures for the review and verification of data in the reports, (2) did not believe compliance with the agreements was necessary since the required information was included within the authorities' project files and construction contracts, (3) did not have a system or process for tracking the submission of the reports, and (4) was not familiar with HUD's requirements for subrecipient agreements.

Comment 7

(1) MDA again totally rejects any assertion by OIG that it does not have adequate written policies and procedures for the review and verification of data in the reports. MDA's policies and procedures covering the reporting process are attached hereto as Exhibit "A."

Comment 8

(2) MDA asserts that it requires its subrecipients to comply with its agreements, where necessary, to achieve its mission – in this case to rebuild desperately needed public housing units. MDA does not require its subrecipients to comply with unnecessary and redundant reporting of information that has been previously reported.

Comment 9

(3) MDA asserts that it does, in fact, have a system and process for tracking the submission of reports from its subrecipients. Again OIG is categorically mistaken in this assertion. A copy of the Public Housing report tracking spreadsheet is attached as Exhibit "B".

Comment 10

(4) MDA totally disagrees with and disputes this assertion by OIG. As indicated above, MDA's subrecipient agreements fully meet the requirements of state law as well as HUD CDBG Regulations. While the OIG may dislike the form of the agreements, all of the required elements are contained in the agreements or incorporated by reference.

This lack of sufficient detail could prevent the State from having a sound basis for (1) requiring the authorities to comply, (2) adequately documenting and effectively monitoring the program's progress, and (3) ensuring that program goals are met and deliverables are provided as required.

² It is a well established principle of both federal and state law that incorporation by reference is legally sufficient in all respects to bind the parties to a contract and, in fact, becomes part of the contract. See *O.J. Stanton and Company, Inc. v. Mississippi State Highway Comm'n*, 370 So.2d 909, 911-912 (Miss. 1979); *Migerobe, Inc. v. Certina USA, Inc.*, 924 F.2d 1330, 1333 (5th Cir. 1991); *Rimkus Consulting Group, Inc. v. Rault Resources, Inc.*, 2008 WL 901483,*5 (S.D.Tex. 1991); *Hunter Automotive, Inc. v. Volkswagen United States, Inc.*, 1995 WL 1975396, *4 (N.D. Miss.); *Ray Gains, Inc. v. Essential Construction Co.*, 261 F.Supp. 715 (D.C.Md. 1966).

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Again MDA stands by the validity and completeness of its PHA agreements and asserts that the agreements – when viewed in their totality, including the regulations, clauses and provisions as well as the application that is incorporated by reference – does in fact give MDA a sound basis:

- (1) to require the PHAs to comply with program requirements,
- (2) to enable MDA to adequately document and effectively monitor the program's progress, and
- (3) to enable MDA to ensure that the program goals are met and the deliverables are provided as required.

Comment 12

OIG's assertions are without merit and based on a misunderstanding of the contracts between MDA and the PHAs. For whatever reason and basic contract law notwithstanding, OIG refuses to acknowledge that a contract can include and incorporate provisions by reference outside the four corners of the document. While OIG may perceive that the contracts lack clarity, they are clear both to MDA and the PHAs. We find no HUD regulation that would prohibit such an agreement. Furthermore, MDA is in fact effectively monitoring the PHAs, both at the program level and at the monitoring level. The best evidence is performance in achieving the program goals. MDA has successfully ensured that the PHAs have rebuilt to date the vast majority of the public housing units lost to Katrina. The Action Plan's goals and objectives, as well as those set forth in the agreements, have in fact been met and public housing units have been delivered.

Comment 13

Recommendations

In its Recommendations section, OIG concludes that the HUD General Deputy Assistant Secretary for Community Planning and Development require MDA to:

Comment 14

1A. Develop and implement written policies and procedures for the review and verification of information in the reports to ensure that the reports are complete.

As previously discussed above MDA has in place adequate policies and procedures for the review of reports from its subrecipients and MDA ensures that the reports are sufficiently complete to monitor individual projects as they progress. MDA's written policies and procedures are attached.

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1B. Implement adequate policies and procedures for tracking the submission of the reports to ensure that authorities submit the reports by the established due dates.

As previously discussed above, MDA has in place adequate policies and procedures for tracking of the submission of reports to enable MDA to ensure the timely submission of reports. Again a copy of the tracking report system is attached.

Comment 16

1C. Ensure that subrecipients fully comply with their agreements by including all information required in the reports.

As discussed above MDA has in place adequate policies and procedures to ensure that subrecipients fully comply with their agreements, the intention of the project and the missions of both MDA and the PHAs to restore the destroyed and damaged public housing units.

The reporting and progress on public housing projects are tracked by MDA management with bi-weekly reports and monitoring meetings as are all of MDA's Disaster Recovery Programs. The Public Housing Project Manager is in constant contact with the PHAs and MDA. Moreover, MDA's monitoring team is monitoring the projects in accordance with the Public Housing Monitoring Plan.

Comment 17

1D. Amend the 16 agreements for its authorities, including later modifications, to include a schedule for completing the work, either within the body of the agreement or as an appendix, as required by 24 CFR 570.503.

Again, MDA asserts that its subrecipient agreements with the PHAs are legal, binding and enforceable documents that legally include all of the HUD specific clauses required by 24 CFR 570.503. The fact is that the contract incorporates the PHA's application by reference, which specifically includes a schedule for completion of the work.

MDA, therefore, rejects OIG's conclusions and recommendations contained in the Draft Audit.

OIG Evaluation of Auditee Comments

Comment 1

The State asserted that the HUD's Office of Inspector General has taken an extremely myopic view of MDA's efforts and elevated minor omissions and deficiencies to a finding of non-compliance. The State also asserted that it has complied with all statutory and regulatory requirements, as well as meeting and exceeding the Action Plan's objectives and criteria and, and generally ensured compliance under its Program. Therefore, takes strong exception to the finding asserted by OIG that it did not always ensure compliance under its Program.

As discussed with State officials, the scope of our audit did not include a review of (1) the State's compliance with all statutory and regulatory requirements; or (2) whether or not the State met its Action Plan objectives and criteria. In addition, we obtained sufficient and appropriate evidence, which provided a reasonable basis for our findings and conclusions. As such, we stand by our final conclusions and recommendations related to the State not ensuring that authorities complied with their agreements.

Comment 2

The State emphatically stated that its contracts with the authorities meet the requirements of both state law and HUD regulations. The State also asserted that the contracts, which include supporting documentation incorporated by reference, are legal and binding documents that meet all CDBG program requirements and are clearly enforceable against the subrecipients.

After we completed our fieldwork, the State provided additional documentation which supported its compliance with HUD's minimum requirements for the subrecipient agreements. As such, we removed all reference related to the State's noncompliance with HUD's minimum requirements from the final report. However, we must note that during our fieldwork, we requested documentation supporting the State's compliance with HUD's minimum requirements. The State informed us that we had all of the documentation available. In addition, the State neither took issue when we presented and discussed the draft findings nor provided additional documentation at that point. Further, before the State provided its written comments to the draft report, we provided written notification to the State that the references in the finding related to this issue was removed from the final report.

Comment 3

The State conceded that the quarterly reporting required of the authorities is incomplete when measured against the requirements of the agreement, this omission of certain data on a quarterly basis is clearly justifiable as it is either (1) data required prior to signing the contract or the release of funds or (2) data to be reported upon completion or occupancy.

We based our conclusions on the requirements established by the State in its written agreements, which did not include the justifications above. Based upon those requirements and the lack of clarity in the agreements, we determined that the reports were incomplete and the State violated the terms of the agreements by not requiring the authorities to provide the information in its reports. As such, we stand by our conclusion that the State did not always ensure that authorities complied with their agreements.

Comment 4

The State acknowledged that although the agreements required quarterly reports that included (1) proof of insurance, (2) a summary of income classifications for affordable housing tenants, and (3) the number of residents who were or would be given the first right to reoccupy, it did not require the authorities to report quarterly on these matters. The State stated that reporting on these items was unnecessary and burdensome on a quarterly basis because (1) the necessary proof of insurance was required to be submitted with the application and further reporting would have been redundant, (2) reporting on income classifications for affordable housing tenants was a post construction and post occupancy matter and inapplicable at the time, and (3) the number of residents who were or would be given the first right to reoccupy was reported in the application.

As discussed in Comment 3, since the State established the requirement for the authorities to report this information and did not ensure that authorities provided the required information in the reports, we stand by our conclusion that the State did not always ensure that authorities complied with their agreements. Further, because the State did not require the authorities to include the required information in the reports, it violated the terms of the agreements.

Comment 5

The State admitted that it did not require the authorities to report quarterly on information that had been previously submitted or was inapplicable at a particular stage in the process. However, the State disputed the assertion by the OIG that reports were not required by the due date but admitted that some authorities were tardy with their reports.

The State did not provide documentation showing that it ensured that the reports were submitted by the established due dates. Further, the Public Housing Program Manager stated that the submission of the quarterly reports was not documented or tracked. As such, we stand by our original conclusion that the State did not track the submission of the reports.

Comment 6

The State disagreed with the assertion by the OIG that the agreements did not comply with HUD's minimum requirements. The State asserted that the 16 agreements included a complete statement of work and all HUD required clauses and provisions.

As discussed in Comment 2, we reviewed additional documentation that was provided by the State after we completed our fieldwork. We determined that the additional documentation supported its compliance with HUD's minimum requirements for the agreements. As such, all reference to this section of the finding was removed from the final report.

Comment 7

The State disagreed with the assertion by the OIG that it does not have adequate written policies and procedures for the review and verification of data in the reports. The State provided its Disaster Recovery Division Finance Group Policies and Procedures, revised March 03, 2009.

We disagree with the State's assertion. The purpose of the finance policies and procedures was to establish and communicate guidelines for the finance group related to cash management, reporting, budgeting and internal controls. However, the policies and procedures did not provide guidance on the review and verification of data submitted in the reports. Therefore, we stand by our original conclusion that the State did not develop adequate written policies and procedures to review and verify that all required data was included in the reports.

Comment 8

The State asserted that it required the authorities to comply with their agreements, where necessary, to achieve its mission. The State stated that it did not require the authorities to comply with unnecessary and redundant reporting of information that had been previously reported.

We disagree with the State's assertion. The State was responsible for ensuring that the authorities complied with their agreements. Since the State did not require the authorities to comply with the reporting requirements, it violated the terms of the agreements. Therefore, we stand by our original conclusion that the State did not believe compliance with the agreements was necessary because the information was included within the authorities' project files and construction contracts.

Comment 9

The State asserted that it had a system and process for tracking the submission of authorities' reports.

We disagree with the State's assertion. The State provided a copy of the Public Housing Program report tracking spreadsheet. However, the spreadsheet provided the status of the public housing projects and did not track the submission of the authorities' reports. Since the spreadsheet did not provide submission dates, we stand by our initial conclusion that the State did not have a system or process for tracking the submission of the reports.

Comment 10

The State disagreed with the assertion by the OIG. The State stated that it fully met the requirements of state law as well as HUD CDBG Regulations and that all of the required elements were contained in the agreements or incorporated by reference.

As discussed in Comment 3, the State provided additional documentation, after we completed our fieldwork, to support its compliance with HUD's minimum requirements for agreements. Based on our review of the additional documentation, we agree with the State. As such, all reference to this section of the finding was removed from the final report.

Comment 11

The State asserted that the agreements were valid and complete when viewed in their totality which provides the State with a sound basis (1) to require the authorities to comply with program requirements, (2) to adequately document and effectively monitor the program's progress, and (3) to ensure that the program goals were met and the deliverables were provided as required.

We agree with the State's assertion. The agreements were generally valid and complete in that they complied with HUD's minimum requirements. Thus, as discussed in Comment 2 we removed all reference to the agreements not complying with HUD's requirements from the final report. However, we stand by our initial conclusions that the State did not always ensure (1) that the authorities complied with their agreements and (2) that the reports were complete and submitted by the established due dates. We believe that the State's failure to require the authorities to comply with the agreements could prevent it from having a sound basis for (1) requiring the authorities to comply, (2) adequately documenting and effectively monitoring the program's progress, and (3) ensuring that program goals were met and deliverables were provided as required.

Comment 12

The State asserted that OIG's assertions are without merit and based on a misunderstanding of the agreements and that OIG refused to acknowledge that a contract can include and incorporate provisions by reference.

We disagree that the OIG has not acknowledged that a contract can include and incorporate provisions by reference. As discussed in Comment 2, although previously requested, the State did not provide supporting documentation showing its compliance with HUD's minimum requirements until after we completed our fieldwork. In addition, during the exit conference, we agreed to review the additional documentation provided by the State and to remove all references to this part of the finding, if warranted. Further, we notified the State, in writing and before it provided its written comments to the draft report that the references in the finding related to this issue was removed from the final report.

Comment 13

The State asserted that it has effectively monitored the authorities, both at the program and monitoring levels. The State also asserted that it has successfully ensured that the authorities have rebuilt to date the vast majority of the public housing units lost to Hurricane Katrina; and the Action Plan's goals and objectives, as well as those set forth in the agreements, have in fact been met and public housing units have been delivered.

We acknowledge the State's stated efforts. However, as discussed with State officials, the finding was not based on the effectiveness of the State's monitoring and the scope of our audit did not include a review of the progress of individual projects under the State's Public Housing program.

Comment 14

In response to recommendation 1A, the State asserted that it had adequate policies and procedures for the review of reports from its authorities and that it ensured that the reports were sufficiently complete to monitor individual projects as they progressed.

Based on our review of the documentation provided, we disagree. Therefore, we did not change our recommendation for the State to develop and implement written policies and procedures for the review and verification of information in the reports to ensure that the reports are complete.

Comment 15

In response to recommendation 1B, the State asserted that it had adequate policies and procedures for tracking the submission of the reports to ensure timely submission.

Based on our review of the documentation provided, we disagree. Therefore, we did not change our recommendation for the State to implement adequate policies and procedures for tracking the submission of the reports to ensure that authorities submit the reports by the established due dates.

Comment 16

In response to recommendation 1C, the State asserted that it had adequate policies and procedures to ensure that authorities fully complied with their agreements. The State stated that the reporting and progress of the public housing projects were tracked by its management with biweekly reports and monitoring meeting. Further, the State stated that its Public Housing Project Manager was in constant contact with the authorities.

The State stated that it remained in constant communication with the authorities. However, it did not document its communication, thus preventing verification of this information. Therefore, we did not change our recommendation for the State to ensure that authorities fully comply with their agreements by including all information required in the reports.

Comment 17

In response to recommendation 1D, the State stated that the agreements included all required HUD clauses and incorporated the applications, by reference, which included the schedule for completion of work.

Based upon additional documentation provided by the State, after we completed our fieldwork, we removed all reference to the agreements not complying with HUD's requirements from the report. As such, we removed this recommendation from the final report.