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| Issue Date<br>February 2, 2010      |
| Audit Report Number<br>2010-NY-1007 |

TO: Kathleen Naymola, Director, Community Planning and Development, 2FD

//SIGNED//

FROM: Edgar Moore, Regional Inspector General for Audit, New York/New Jersey,  
2AGA

SUBJECT: The City of Jersey City, NJ, Needs To Strengthen Its Controls To Ensure That It  
Will Be Able To Effectively Administer CDBG-R Funds

## **HIGHLIGHTS**

### **What We Audited and Why**

We selected the City of Jersey City (City) for audit because it received \$1.7 million in Community Development Block Grant (CDBG) funding provided under the American Recovery and Reinvestment Act of 2009 (Recovery Act), and based on a fiscal year 2008 risk analysis conducted by the U.S. Department of Housing and Urban Development's (HUD) New Jersey Office of Community Planning and Development.

Our objectives were to evaluate the City's capacity in the areas of internal controls, eligibility, financial controls, procurement, and output/outcomes in administering CDBG funds.

### **What We Found**

The City generally had adequate financial controls and staff capacity to administer its CDBG funds; however, it needs to strengthen its controls to ensure that it will be able to effectively administer CDBG funds provided under the Recovery Act (CDBG-R) and comply with applicable requirements. Specifically, the City did not ensure that costs charged to

CDBG planning and administration by its subgrantee were reasonable and necessary, and have adequate procedures to ensure compliance with procurement requirements. As a result, ineligible costs of \$61,718 and unsupported costs of \$117,721 were charged to CDBG planning and administration, and procurement contracts lacked a description of the work to be performed and a budget and schedule for completing the work. In addition, the subgrantee did not rebid a construction contract, although there was a substantial increase in the contact amount. Accordingly, we are concerned that these deficiencies will affect the City's capacity to administer CDBG-R funds.

### **What We Recommend**

We recommend that the Director of HUD's New Jersey Office of Community Planning and Development instruct the City to strengthen its controls by (1) repaying \$61,718 in ineligible costs charged to CDBG planning and administration, (2) supporting the allocability of \$117,721 in planning and administration costs charged to the CDBG program, and (3) ensuring that procurements are conducted in accordance with all Federal requirements.

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

### **Auditee's Response**

We discussed the results of our review with HUD and City officials during the audit and at an exit conference held on January 12, 2009. City officials provided their written comments to our draft report at the exit conference, which generally disagreed with the findings.

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

# TABLE OF CONTENTS

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|  |    |
|--|----|
| Background and Objectives  | 4  |
| Results of Audit   |    |
| Finding: The City’s Controls Did Not Ensure That It Would Be Able To Effectively Administer CDBG-R Funds | 5  |
| Scope and Methodology  | 10 |
| Internal Controls  | 12 |
| Appendixes   |    |
| A. Schedule of Questioned Costs  | 14 |
| B. Auditee Comments and OIG’s Evaluation   | 15 |

## **BACKGROUND AND OBJECTIVES**

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The American Recovery and Reinvestment Act of 2009 (Recovery Act) became Public Law 111-5 on February 17, 2009. It established supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, State and local fiscal stabilization for fiscal year ending September 30, 2009, and other purposes.

Authorized under Title XII of the Recovery Act, HUD allocated \$1 billion in Community Development Block Grant (CDBG) funds to State and local governments to carry out, on an expedited basis, eligible activities under the CDBG program.

The City of Jersey City (City) administers its community planning and development programs through its Division of Community Development; this division will also be responsible for Recovery Act funds. HUD awarded \$6.7 million in CDBG funds to the City during program year 2007 (April 1, 2007, to March 31, 2008). In addition, on July 31, 2009, HUD awarded \$1.7 million in CDBG funding provided under the Recovery Act (CDBG-R). The City plans to undertake four additional CDBG-eligible activities and also allocated \$50,000 for administration and oversight of CDBG-R funds. At the time of our review, the City had not entered into an agreement with its subgrantees and had not disbursed any CDBG-R funding.

The City is governed by a mayor and a nine-member council. The council serves a 4-year term during the same period as the mayor's term.

In support of our goal to conduct capacity reviews of the entities receiving Recovery Act funds, we selected the City's CDBG program for review. The City received the fourth highest total of CDBG-R funding in the State of New Jersey.

Our objectives were to evaluate the City's capacity in the areas of internal controls, eligibility, financial controls, procurement, and output/outcomes in administering CDBG funds.

## RESULTS OF AUDIT

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### Finding: The City's Controls Did Not Ensure That It Would Be Able To Effectively Administer CDBG-R Funds

The City generally had adequate financial controls and staff capacity to administer its CDBG funds; however, it needs to strengthen its controls to effectively administer CDBG funds and to provide assurance that CDBG-R funds will comply with applicable requirements. Specifically, the City did not ensure that costs charged to CDBG planning and administration by its subgrantee were reasonable and necessary, and have adequate procedures to ensure compliance with procurement requirements. As a result, ineligible costs of \$61,718 and unsupported costs of \$117,721 were charged to CDBG planning and administration, and procurement contracts lacked a description of the work to be performed and a budget and schedule for completing the work. In addition, its subgrantee did not rebid a construction contract, although there was a substantial increase in the contact amount. These deficiencies were caused by the City not developing and implementing adequate controls over its CDBG program. Accordingly, we are concerned that these deficiencies will affect the City's capacity to administer CDBG-R funds.

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#### **Costs Charged to CDBG Planning and Administration Were Not Reasonable and Necessary**

The Jersey City Redevelopment Agency (Agency), a subrecipient of the City, received CDBG funding for expenditures associated with the planning and execution of community development activities. The Agency allocated certain costs to the CDBG program that included employees' health, prescription, and dental benefits and monthly parking costs. Although only 4 of 14 employees were responsible for CDBG activities, all 14 employees' health, dental, and prescriptions benefits were charged to the CDBG program.

The Agency also charged its consultant, legal, mission statement, accounting program support (training), commercial auto and general liability insurance, auditing, office rent, and equipment rental costs to the CDBG program. An Agency official agreed that consultant, legal, and mission statement costs should not have been charged to the CDBG program. However, Agency officials did not provide adequate explanations as to why and how these costs were allocated to the program.

An Agency official further stated that these were standard costs charged to the CDBG program and since they did not exceed the funding amount, the Agency believed it was acceptable to charge the costs. City officials agreed that costs were shared by other programs (State and privately funded programs). However, contrary to requirements contained in Office of Management and Budget (OMB) Circular A-87, the City did not ensure that its subgrantee required its employees to track and allocate their time by activity or project, although its staff worked on multiple projects. Since costs were split between CDBG and other non-Federal programs, subgrantee officials should have had a cost allocation plan.

Federal Regulations at 24 CFR (Code of Federal Regulations) 85.20 (b) (5) require grantees to follow applicable OMB cost principles and HUD program regulations in determining the reasonableness, allowability, and allocability of costs. However, there was no assurance that costs charged to CDBG planning and administration were necessary and reasonable, as ineligible costs of \$61,718 associated with consultant, legal, and mission statement costs; employees' fringe benefits not related to CDBG activities; and unsupported costs of \$117,721 associated with employees' monthly parking, accounting program support, commercial auto and general liability insurance, auditing, office rent, and equipment rental costs were charged to the CDBG program.

City officials are planning to allocate \$50,000 in CDBG-R funds for administration; therefore, they need to ensure that expenditures associated with the planning and execution of community development activities are supported by source documentation, properly allocated, and properly justified before costs are charged to its CDBG program. This measure will ensure that CDBG funds provided under the Recovery Act will be properly expended.

### **Procurement Procedures Were Inadequate**

The City did not ensure that its subgrantee always followed appropriate procurement procedures. The City provided funding to a subgrantee, the Jersey City Department of Public Works, for the replacement of sidewalks and curbs and executed three agreements. The initial contract was executed between the City and the subgrantee, for the period November 1, 2005, to October 31, 2006, for \$459,285. City officials executed a second agreement with this subgrantee for the period December 1, 2006, to November 30, 2007, in the amount of \$112,755; and a third agreement for the period June 1, 2007, to May 31, 2008, in the amount of \$64,237. As such, a total of \$636,277 through three contracts was executed for this activity. However, contrary to requirements the subgrantee did not rebid the contracts for the second and third agreements even though the initial

contract was being extended and increased. Also, the two extended agreements did not include provisions regarding the statement of work, description of work to be performed, a schedule for completing the work, and a budget.

Regulations at 24 CFR 85.36(b) state, that “grantees and sub grantees will use their own procurement procedures, which reflect applicable State and local laws and regulations provided that the procedures conform to applicable Federal law and standards.” Regulations at 24 CFR 85.36(c) provide that “All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Sec. 85.36.” In addition, OMB Circular A-87, Attachment A, section C. 2, indicates that for costs to be allowable for Federal programs, they must be reasonable. Factors to be considered in determining the reasonableness of a cost are market prices for comparable goods and services and whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.

City officials indicated that competitive procurement was not required for the second or third extensions of the contract based on the Local Public Contracts Law. However, regulations at 24 CFR 85.36 (c)(1) require that all procurement transactions be conducted in a manner to promote full and open competition and 24 CFR 85.36 (b) requires that grantees and subgrantees may use their local laws and regulations if they conform to the applicable Federal requirements. City officials disbursed \$578,747 under the three contracts, however, since the second and third contracts were not rebid as required, the \$119,462, paid to the contractor in excess of the original contract (\$578,747 - \$459,285) is considered to be an unsupported cost pending an eligibility determination by HUD.

This issue is of concern because the City is planning to undertake similar activities with CDBG-R funds and \$600,000 will be provided to its subgrantee, the Jersey City Division of Engineering, and \$350,000 to the Jersey City Division of Parks and Forestry. Accordingly, the City needs to ensure that its subgrantees follow the appropriate procurement procedures, so that it can assure HUD that CDBG funds provided under the Recovery Act will be properly expended.

## **Conclusion**

The City generally had adequate financial controls and staff capacity to administer its CDBG funds; however, it needs to strengthen its controls to effectively administer CDBG funds and to provide assurance that CDBG-R funds will comply with applicable requirements. Specifically, the City

did not ensure that costs charged to CDBG planning and administration by its subgrantee were reasonable and necessary, and have adequate procedures to ensure compliance with procurement requirements. As a result, ineligible costs of \$61,718 and unsupported costs of \$117,721 were charged to CDBG planning and administration, and procurement contracts lacked a description of the work to be performed and a budget and schedule for completing the work. In addition, its subgrantee did not rebid a construction contract, although there was a substantial increase in the contact amount. These deficiencies were caused by the City not developing and implementing adequate controls over its CDBG program. Accordingly, since the activities reviewed were similar to those CDBG activities that will be funded under the Recovery Act, we are concerned that these deficiencies will affect the City's capacity to properly administer CDBG-R funds.

## Recommendations

We recommend that the Director of HUD's New Jersey Office of Community Planning and Development instruct the City to

- 1A. Repay from non-Federal funds \$61,718 in costs charged to CDBG planning and administration associated with the Agency's consultant, legal, mission statement, and employees' fringe benefit costs for individuals who were not responsible for CDBG activities.
- 1B. Develop a time distribution system and require the City and its subgrantees to track and allocate their employees' time by activity or project when costs are allocated between CDBG and non-Federal programs.
- 1C. Require the City to submit documentation to support the basis of its allocation and the reasonableness of the costs associated with employees' monthly parking, accounting program support, commercial auto and general liability insurance, auditing, office rent, and equipment rental costs that were charged to the CDBG program or reimburse \$117,721 from non-Federal funds.
- 1D. Require the City to provide supporting documents for the \$119,462 of costs paid in excess of the original contact for sidewalk and curb replacement, so that HUD can make an eligibility determination. Any amounts determined to be ineligible must be reimbursed to the CDBG program from non-Federal funds.



- 1E. Require the City to establish and implement controls to ensure that all procurements, including those conducted by subgrantees, are conducted in accordance with all Federal requirements.
- 1F. Implement adequate policies, procedures, and controls to ensure that CDBG-R funds are used effectively and efficiently and in accordance with all applicable requirements.

In addition, HUD's Office of Community Planning and Development staff should

- 1G. Perform additional monitoring and provide technical assistance to the City, as needed, to ensure that the City properly administers the CDBG-R funding in accordance with Federal requirements

## SCOPE AND METHODOLOGY

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The objectives of our review were to determine whether the City had the capacity to administer its CDBG funds, thus providing assurance that CDBG-R funding would be properly administered. At the time of our review, the City had not entered into an agreement with its subgrantees and had not disbursed any CDBG-R funding. Therefore, we reviewed the City's program year 2007 CDBG activities.

To accomplish our objectives, we

- Reviewed and obtained an understanding of the Recovery Act legislation, relevant program guidance and criteria, the City's grant agreements with HUD, and its proposed activities under CDBG-R funding.
- Reviewed applicable laws, regulations, and HUD program requirements at 24 CFR Parts 85 and 570; New Jersey State regulations for procurements; and the notice of program requirements for CDBG program funding under the Recovery Act.
- Conducted interviews with City officials to gain an understanding of the internal controls related to the administration of its CDBG and CDBG-R programs.
- Reviewed the City's program policies and procedures, action plans, HUD's monitoring report, independent accountants' audit reports, funding agreements, city council minutes, budgets, and general ledgers.
- We selected a sample of 20 CDBG activities from the City's program year 2007 consolidated annual performance and evaluation report and reviewed the related files to ensure compliance with program regulations and procedures. We selected these activities by grouping them into the following categories: acquisitions, public facilities and improvement (general and other), clearance and demolition, public service (general and other), relocation, rehabilitation, and planning and administration activities. The drawdowns for the sampled activities totaled \$4,503,191, which represents 58 percent of the total drawdowns of \$7,730,353 for 109 activities in the sample universe for the period. Our selection was based on significant drawdown amounts from each category.
- Reviewed the largest drawdown of funds that occurred in December 2008 for program year 2007 funding along with all of the supporting documents, reviewed program income receipts and disbursements for program year 2007, traced amounts to the supporting documents and bank statements, and compared program income reported to HUD with the City's books and records.

We performed our audit fieldwork from July to October 2009 at the City's offices located at Montgomery Street and Journal Square in Jersey City, NJ. Our audit generally covered the period April 1, 2007, through March 31, 2008, and was expanded as necessary.

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

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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:

- Program operations – Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Validity and reliability of data – Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.
- Compliance with laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.
- Safeguarding of resources – Policies and procedures that management has implemented to reasonably ensure that resources are safeguarded against waste, loss, and misuse.

We assessed the relevant controls identified above.

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

## Significant Weaknesses

Based on our review, we believe that the following item is a significant weakness:

- The City did not develop and implement adequate controls to ensure compliance with laws and regulations regarding its CDBG activities. Specifically, it did not (1) maintain documentation to support the basis of the allocation and the reasonableness of the costs charged to CDBG planning and administration by its subgrantee; and (2) ensure that its subgrantee followed appropriate procurement procedures (see finding).

## APPENDIXES

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### Appendix A

#### SCHEDULE OF QUESTIONED COSTS

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| <u>Recommendation<br/>number</u> | <u>Ineligible 1/</u> | <u>Unsupported 2/</u> |
|----------------------------------|----------------------|-----------------------|
| 1A                               | \$61,718             |                       |
| 1C                               |                      | \$117,721             |
| 1D                               |                      | \$119,462             |
| Total                            | <u>\$61,718</u>      | <u>\$237,183</u>      |

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

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

## Appendix B

# AUDITEE COMMENTS AND OIG'S EVALUATION

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### Ref to OIG Evaluation

### Auditee Comments

| Ref to OIG Evaluation  | Auditee Comments   |
|--|--|
| Jer Jerramiah T. Healy, Mayor<br>CITY OF JERSEY CITY<br>January 11, 2010 | <p style="text-align: right;">DEPARTMENT OF<br/>HOUSING, ECONOMIC DEVELOPMENT &amp; COMMERCE</p> <p style="text-align: center;"><b>Division of Community Development</b></p> <p style="text-align: right;">30 Montgomery Street, Suite 404, Jersey City, NJ 07302<br/>Phone: (201) 547-6910<br/>Fax: (201) 547-5104</p> <p>Edgar Moore<br/>Regional Inspector General for Audit<br/>U.S. Department of Housing and Urban Development<br/>Office of Inspector General<br/>26 Federal Plaza, Room 3430<br/>New York, NY 10278-0068</p> <p><b>Re: CDBG-R Capacity Audit</b></p> <p>Dear Mr. Moore:</p> <p>The City has reviewed the Office of the Inspector General's Draft report. Overall, the report indicates that "the City generally has adequate financial controls and staff capacity to administer its CDBG funds; however, it needs to strengthen its controls to ensure that it will be able to effectively administer CDBG funds provided under the Recovery Act (CDBG-R) and comply with applicable requirements." You further state the following:</p> <p style="padding-left: 40px;">Specifically, the City did not (1) ensure that costs charged to CDBG planning and administration by its subgrantee were reasonable and necessary, (2) have a system in place for tracking program income generated by its subgrantee, and (3) have adequate procedures to ensure compliance with procurement requirements. As a result, (1) ineligible costs of \$61,178 and unsupported costs of \$117,721 were charged to CDBG planning and administration, (2) \$99,785 in program income earned by its subgrantee was not returned to the CDBG line of credit, and (3) procurement contracts lacked a description of the work to be performed and a budget and schedule for completing the work. In addition, the subgrantee did not rebid a construction contract, although there was a substantial increase of \$176,992 in the contact amount. Accordingly, we are concerned that these deficiencies will affect the City's capacity to administer CDBG-R funds."</p> <p>The City strongly disagrees with your statement of finding. While we agree that controls need to be strengthened in a couple of areas to more effectively administer CDBG funds, the City does have adequate controls in place to administer CDBG funds. Your statement of finding is very broad and it leads one to think the City has not responsibly and effectively administered CDBG. During the past several years the City has put many systems in place to more effectively administer CDBG. In fiscal year 2009-2010, after March 2008 HUD monitoring visit, the City addressed deficiencies in how program income is tracked. The following provides additional information about each of the points in your draft report</p> |

**Program Income**

**Comment 1**

One system implemented in 2009 – 2010 (after a March 2008 HUD monitoring visit) pertained to program income. The City has modified language in our Subgrantee Agreements regarding program income (See Attachment 1 - Excerpts from the City's 2007-2008 and 2009 - 2010 Subgrantee Agreements). In addition, a program income reporting form has been created to capture information on program income (See Attachment 2).

Your report indicated that JCRA acquired properties for a total cost of more than \$2.9 million. Actually, JCRA acquired properties during the period of September 2007 through October 2008 for a total cost of \$3,785,085 (See Attachment 3-Deeds). JCRA sold their properties to a developer in December 2008 for \$3,875,024 (See Attachment 4-Deed). The difference in cost is \$89,939. Accordingly, JCRA should have paid the City \$12,771 in program income, not \$99,785. The Subgrantee in question is required to comply with the modified program income requirements. The City does acknowledge that we need to memorialize written procedures specific to project income.

**JCRA Planning and Administration**

**Comment 2**

As it relates to JCRA's planning and administrative costs, the City acknowledges that cost allocation records were not specifically maintained for staff involved with this activity. However, the City disagrees with the determination to disallow \$61,718 in cost and \$117,721 in cost as unsupported.

The JCRA has been awarded numerous CDBG allocations for various projects over the last several decades. For the period of 2007/2008, the JCRA was awarded \$955,837 for the MLK Drive Thomas Jackson Estates Project and \$200,000 for the Morris Canal Berry Lane Park Project in addition to the administrative award of \$199,240 through the Community Development Block Grant Program.

Prior to that for the period of 4-1-06 through 3-31-07, the JCRA was awarded \$325,000 for Morris Canal, \$250,500 for Secaucus Road, \$243,000 for 202 MLK Drive and \$50,000 for 448-450 MLK Drive. During the period in question, the JCRA staff did not track its individual time worked on CDBG eligible activities. However, Agency staff spent numerous hours working on these projects as well as maintaining others that had received previous awards of CDBG monies.

It should also be noted that JCRA did not charge any of its staff time to its direct project awards. The Agency acquired properties for the Thomas Jackson Estates, Berry Lane Project and Summit Heights. The Agency also worked on other projects that were CDBG eligible such as Harriet Tubman Homes and Fred W. Martin Apartments.



**Comment 2**

The Agency completed the acquisition of 448-450 MLK Drive which allowed for the start of Webb Apartments by Genesis Partners, a forty (40) unit affordable housing project.

In addition, the Agency monitored and managed the MLK HUB project and continues to do so. The Agency's Executive Director, himself, routinely visits the MLK HUB to ensure the project is being maintained. Without having a record, it is easily conceivable that the entire Agency staff collectively spent up to 50% of its time working on CDBG eligible programs during the aforementioned period.

Below is a list of all Agency employees at the time in question and I am requesting this be considered part of the record. The total staff salary for the period was \$1,030,870. Even if the Agency used a conservative number of one-third (1/3) of its time spent on CDBG eligible activities, that would have resulted in administrative salary costs at \$340,187 far exceeding its \$199,240 award. While we agree that some costs (Consultant - \$2,176, Legal cost for MLK project - \$2,432.50 and JCRA Mission Statement - \$2,511) should not have been charged to CDBG, the fact remains that Agency staff had spent a considerable portion of time working on CDBG eligible projects during this period.

Although it was previously stated that only five of the fourteen employees were overseeing CDBG activities, the agency certifies that all employees on some level participated in the Agency's administration of CDBG eligible activities. However, if only the staff time as previously listed was applied, the following would be the breakdown:

| <b>Employee Name</b> | <b>Time Assigned to CDBG Projects</b> | <b>Applicable Salary</b> |
|----------------------|---------------------------------------|--------------------------|
| ██████████           | 100%                                  | \$60,000                 |
| ██████████           | 60%                                   | \$42,427                 |
| ██████████           | 60%                                   | \$33,813                 |
| ██████████           | 70%                                   | \$38,431                 |
| ██████████           | 40%                                   | <u>\$33,371</u>          |
| <b>Total</b>         |                                       | <b>\$208,042</b>         |

This illustrates that the Agency was involved in working on CDBG eligible activities and that if time had properly been tracked, it would have shown the same.

Re: **CDBG-R Capacity Audit**

January 11, 2010

Page 4

The City is maintaining time allocation records for all ARRA funds including CDBG-R. In addition, the City has carefully budgeted administrative cost to insure that costs are properly justified. Therefore, documentation of administrative costs for CDBG-R will be in full compliance with federal requirements.

**Department of Public Works – Sidewalk Replacement Project**

Pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. (the local procurement law), the City of Jersey (City) advertised for bids for a contract to replace curbs and sidewalks at various locations, Project No. 06-004. The City received three bids on June 1, 2006. On June 28, 2006, Resolution 06-511 awarded a contract in the amount of \$459,285.00 to the low bidder,

Pursuant to paragraph no. 20 of the Information to Bidders section of the contract, a change order for additional work could be issued for unforeseeable problems. Additionally, N.J.A.C. 5:30-11.8 authorizes change orders for construction contracts for:

Unforeseeable problems, which are defined as conditions or circumstances that could not be foreseen at the time the specifications were written and the contract awarded; provided that a substantial amount of the construction would be delayed, which would result in substantial increases in costs above the original contract amount or substantial inconvenience to the public if bidding were to be required; and

Minor modifications to effect economies, improve service or resolve minor problems with affected property owners.

For Project No. 06-004, the unforeseeable problem that arose related to the grade of the sidewalks. When a sidewalk was replaced in front of a building, it resulted in an uneven grade with the old sidewalks on either side of the building. In order to make the sidewalks safe for pedestrian use, the sidewalks on either side of the new sidewalk also had to be replaced. This was additional work that was performed. Change Order 30028 issued on September 6, 2007 in the amount of \$64,237.00 helped to cover cost for this additional work .

Because the original contract amount was \$459,285 and the City only awarded the Department of Public Works \$401,755, it was necessary to obligate additional funds for this project. As required by HUD, the City amended the Annual Action Plan to appropriate additional funds for the Sidewalk Replacement Project. According to Local Public Contracts Law, the City is allowed to increase the contract by up to 20% of the original contract amount without a resolution. Again, the original contract amount was \$459,285. An increase of up to \$91,857 was permissible without further authorization. The increases of \$112,755 + \$64,237 totals \$176,992.

**Comment 3**

**Comment 3**

Re: **CDBG-R Capacity Audit**

January 11, 2010

Page 5

Given that \$57,530 was needed to cover the full contract amount of \$459,285 and the City could increase the contract amount by \$91,857, the City was in compliance with the Local Public Contracts Law up to an increase of \$149,387. According to your correspondence, \$176,992 was unsupported. The actual amount that exceeded what would be an allowable increase is \$27,605.

The City did not intentionally breach what is permissible under procurement laws. However, due to unforeseen conditions, including an understatement of square footage of sidewalks (see attached letter) and acceptance of the lowest bid that exceeded the original CDBG award for this project, additional funds were needed to complete the project. This matter has been brought to the attention of the City's Business Administrator, Chief Financial Officer and Comptroller. We will make the necessary adjustments to insure that the City is in full compliance with procurement laws.

**Comment 4**

Finally the City respectfully request that you delineate why the City was deemed "High Risk.

The City appreciates the constructive feedback received as a result of this audit. We are committed to strengthening our controls to increase the effectiveness of administering CDBG funds.

Sincerely,

**Darice Toon**  
**Director**

## OIG Evaluation of Auditee Comments

- Comment 1** Auditee officials provided documentation at the exit conference that was not provided during the audit, which showed that the properties sold included additional parcels of land with additional costs of acquisition. Based on a review of the documents, we determined that no program income from the sale of the properties had to be repaid to the CDBG program, as such; we have removed the program income issue from the report.
- Comment 2** Auditee officials disagreed regarding the determination of unsupported and ineligible costs, but, acknowledged that cost allocation records were not specifically maintained for Jersey City Redevelopment Agency staff involved in the planning and administration activity. Although the auditee's comments contain a schedule listing the percentage of employees' time assigned to CDBG projects; auditee officials did not provide any evidence on how these percentages were computed. As such, auditee officials need to provide other documentation supporting their methodology for computing the percentages used to allocate costs to the CDBG program, so that HUD can make an eligibility determination during the audit resolution process.
- Comment 3** City officials' state that pursuant to the contract change orders were allowed to be claimed due to unforeseen problems. In this case they stated that unforeseen circumstances led to a need to conduct additional sidewalk work. In addition, they state that local public law allows them to increase the original contract amount by 20% without a resolution. Accordingly, they believe that they were allowed to increase their obligations by up to \$149,387 without breaking the law. The \$149,387 represents the portion of the original contract not obligated plus 20% of the original contract amount (\$57,530 + \$91,857 respectively). Finally, they stated that our report indicates that they exceeded the contract amount by \$176,992 when the real amount is only \$27,605 (\$176,992 - \$149,387).

A review of New Jersey Local Public Contract Law revealed that the law does not allow for contracts to be increased without a valid written change order or public bidding. Accordingly, although City officials state that they issued a change order for additional sidewalk work, they did not provide such documents during the audit or at the exit conference, nor did they solicit bids for the additional work. As such, we have revised the report to only question the amount drawn down and expended in excess of the original contract amount. We determined that a total of \$578,747 had been drawn down and expended on the three contracts, therefore, we consider \$119,462 (\$578,747 - \$459,285) the amount expended in excess of the original contract as unsupported,

Comment 4 Auditee officials requested a delineation of why the City was deemed “high risk.” Although we revised the highlights section of the report to reflect that we selected the City for audit because it received \$1.7 million in CDBG funding provided under the American Recovery and Reinvestment Act of 2009 (Recovery Act), and based on a fiscal year 2008 risk analysis conducted by HUD’s New Jersey Office of Community Planning and Development. The auditee was classified as high risk because of its high funding level and the fact that it was not recently monitored by HUD’s Office of Community Planning and Development.