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Audit Report Number 2011-PH-1014

TO: Jacqueline A. Molinaro-Thompson, Director, Office of Public Housing,
Pittsburgh Field Office, 3EPH
//signed//

FROM: John P. Buck, Regional Inspector General for Audit, Philadelphia Region,
3AGA

SUBJECT: The Allegheny County Housing Authority, Pittsburgh, PA, Did Not Always
Procure Goods and Services or Obligate Funds According to Recovery Act and
Applicable HUD Requirements

HIGHLIGHTS

What We Audited and Why

We audited the Allegheny County Housing Authority's administration of its Public Housing Capital Fund grants that it received under the American Recovery and Reinvestment Act of 2009. We selected the Authority for audit because it received a \$7.7 million formula grant and three competitive grants totaling \$5.8 million,¹ which was the third largest formula grant and the second largest amount of capital fund competitive grants awarded in Pennsylvania. Our objective was to determine whether the Authority properly procured goods and services and obligated its Recovery Act capital funds according to Recovery Act and applicable U.S. Department of Housing and Urban Development (HUD) requirements.

¹ \$5.8 million = a \$4.4 million grant under the category of Green Communities, option 2, creation of energy-efficient and green communities, moderate rehabilitation, and two grants totaling \$1.4 million under the category of improvements addressing the needs of the elderly or persons with disabilities.

What We Found

The Authority did not always procure goods and services and obligate its Recovery Act capital funds properly according to Recovery Act and applicable HUD requirements. It did not have a written contract to support \$1.3 million that it paid to a contractor. It did not always comply with the “buy American” requirement of the Recovery Act, improperly obligated grant funds, erroneously drew grant funds from HUD, did not amend its procurement policy for competitive grants as required, and allowed an apparent conflict of interest to occur.

What We Recommend

We recommend that HUD require the Authority to provide documentation to support expenditures totaling \$1.8 million identified in this report or reimburse HUD from non-Federal funds for any amount that it cannot support. We also recommend that HUD require the Authority to (1) reimburse \$102,000 from non-Federal funds for ineligible expenditures, (2) develop and implement controls to demonstrate that funds it obligated for inspection services were related to Recovery Act-funded work items, (3) stop erroneously drawing grant funds, and (4) ensure that it complies with applicable conflict-of-interest requirements and seek exceptions on a case-by-case basis if applicable.

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

Auditee’s Response

We provided a discussion draft audit report to the Authority on June 23, 2011, and discussed it with the Authority at an exit conference on July 6, 2011. Following the exit conference, we provided an updated draft report to the Authority on July 15, 2011. The Authority provided written comments to the draft audit report on July 19, 2011. The Authority disagreed with the conclusions in the report. The complete text of the Authority’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

The Allegheny County Housing Authority was established in 1938 under the laws of the Commonwealth of Pennsylvania to effectuate State and national housing laws designed to alleviate housing conditions in low-income groups. Its purpose is to increase the number of decent, safe, and sanitary dwellings available to low-income families. The Authority is governed by a five-member board of commissioners who are appointed for 5-year terms by the county chief executive with the approval of the County Council of Allegheny County. The Authority's operations are subsidized primarily by the Federal Government, and it is not considered a component unit of the County. The Authority's executive director is Frank Aggazio. The Authority's offices are located at 625 Stanwix Street, Pittsburgh, PA.

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009. This legislation included a \$4 billion appropriation of capital funds to carry out capital and management activities for public housing agencies as authorized under Section 9 of the United States Housing Act of 1937. The Recovery Act requires that \$3 billion of these funds be distributed as formula grants and the remaining \$1 billion be distributed through a competitive grant process. On March 18, 2009, the U.S. Department of Housing and Urban Development (HUD) awarded the Authority a \$7.7 million formula grant. On September 24 and September 28, 2009, HUD awarded the Authority three competitive grants totaling \$5.8 million.

The Recovery Act imposed additional reporting requirements and more stringent obligation and expenditure requirements on the grant recipients beyond those applicable to the ongoing Public Housing Capital Fund program grants. For example, the Authority was required to obligate 100 percent of its formula grant funds within 1 year of the effective date of the grant or by March 17, 2010, and its competitive grant funds by September 23 and 27, 2010. If the Authority failed to comply with the obligation deadline, the Recovery Act required HUD to recapture all remaining unobligated funds and reallocate them to agencies that complied with those requirements.² The Recovery Act also required public housing agencies to expend 60 percent of the grant funds within 2 years and 100 percent within 3 years of the effective date of the grant. Transparency and accountability were critical priorities in the funding and implementation of the Recovery Act.

Our objective was to determine whether the Authority properly procured goods and services and obligated its Recovery Act capital funds according to Recovery Act and applicable HUD requirements.

² The Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203) amended the Recovery Act, requiring recaptured funds to be returned to the U.S. Treasury and dedicated for the sole purpose of deficit reduction.

RESULTS OF AUDIT

Finding: The Authority Did Not Always Procure Goods and Services or Obligate Funds According to Recovery Act and Applicable HUD Requirements

The Authority did not always procure goods and services and obligate its Recovery Act capital funds properly according to Recovery Act and applicable HUD requirements. It did not have a written contract to support \$1.3 million that it paid to a contractor. It did not always comply with the “buy American” requirement of the Recovery Act, improperly obligated grant funds, erroneously drew grant funds from HUD, did not amend its procurement policy for competitive grants as required, and allowed an apparent conflict of interest to occur. This condition occurred because of clerical error and a lack of controls to prevent these problems from occurring. As a result, the Authority could not support expenditures totaling \$1.8 million, made ineligible expenditures of \$102,000, and allowed an apparent conflict of interest to exist regarding its awarding of Recovery Act contracts.

The Authority Did Not Have a Written Contract To Support \$1.3 Million in Expenditures

The Authority paid \$1.3 million for asbestos abatement and demolition services at a mixed-finance development with Recovery Act formula grant funds without having a written contract with either the entity it paid or the contractor that did the work. The Authority had a mixed-finance agreement from 2008, but it did not pay the developer for these services. Instead, the Authority paid a third party, and the third party contracted with a fourth party to do the work. The Authority believed its procurement responsibility ended when it selected the developer. The mixed-finance development regulations at 24 CFR (Code of Federal Regulations) 941.606 require that proposals include an identification of the participating parties and a description of the activities to be undertaken by each of the participating parties and the public housing agency and the legal and business relationships between the public housing agency and each of the participating parties. The Authority could not demonstrate that it had a contractual relationship with the third and fourth parties. As a result, the expenditures totaling \$1.3 million were unsupported.

The Authority Could Not Demonstrate That Obligations for Inspection Services Related to Recovery Act Work

The Authority did not have a sufficient process in place to demonstrate that \$319,001, which it obligated for construction inspection services performed by its employees, was related to Recovery Act formula grant-funded work items. The Authority's construction managers completed daily construction reports. They did not complete timesheets. The daily construction reports were not sufficient to demonstrate that the employees worked on Recovery Act-funded work items. Although the daily construction reports included a space for the employees to record the number of hours they worked on a project, the employees did not record the number of hours on the report. The Authority provided no other documentation to show how daily construction reports were related to the amounts it obligated for Recovery Act inspections. The Recovery Act required unprecedented levels of accountability and transparency in government spending. The Authority needs to demonstrate that the \$319,001 in funds it obligated for inspection services was related to Recovery Act-funded work items.

The Authority Did Not Always Obligate Funds Properly

The Authority did not always obligate its Recovery Act formula grant funds properly. It reported to HUD that it had obligated all of its formula grant funds by the March 17, 2010, deadline; however, it did not properly obligate \$295,208 of those funds. The following paragraphs provide details.

- The Authority did not fully execute five purchase orders for \$253,208 worth of energy-saving appliances before the obligation deadline. The purchase orders did not constitute valid contracts because they were not signed by the contractor to demonstrate acceptance. None of the appliances were delivered before the obligation deadline. HUD Handbook 7460.8, REV-2, Procurement Handbook for Public Housing Agencies, states that the issuance of a purchase order by a housing authority and its acceptance by the contractor, either through performance or signature on the purchase order, constitute a contract. We view this matter as a technical deficiency since more than 70 percent of the appliances (based on dollar value) had been delivered as of May 2011. It is clear that the contractor accepted the purchase orders as contracts.
- The Authority also amended an agreement for architectural and engineering services after the obligation deadline had passed. The Authority amended the agreement and increased the contractor's fees by

\$42,000 on March 29, 2010. The obligation deadline for formula grant funds was March 17, 2010. We view this matter as a technical deficiency since the Authority provided documentation to show that the amendment to the agreement was in process and approved by its board before the deadline.

The Authority Did Not Always Comply With the “Buy American” Requirement

As explained in the section above, the Authority ordered \$253,208 worth of energy-saving appliances before the obligation deadline. However, it ordered the appliances against a basic ordering agreement that it created with a contractor in April 2008. Therefore, the basic ordering agreement did not address the “buy American” requirement of the Recovery Act. The purchase orders that the Authority used also did not address this requirement. The Authority created the five purchase orders and supporting requisitions on the same day. Thus, the five orders should be considered as one order because the only difference between the purchase orders was the “ship-to” location. We inspected the units that had been delivered to the Authority and found that the gas ranges were made in Mexico. We contacted the manufacturer and confirmed that the model numbers for the gas ranges the Authority received were manufactured in Mexico. The photograph below shows the product label on one of the gas ranges.



Section 1605 of the Recovery Act imposes a “buy American” requirement on Recovery Act funding. HUD’s Office of Public and Indian Housing (PIH) Notice PIH 2009-31 provides guidance for implementing this requirement. The “buy American” requirement states that manufactured goods must be manufactured in the United States. Therefore, \$102,000 in purchases for gas ranges was ineligible because the purchases did not comply with this Recovery Act requirement.

The Authority Erroneously Drew Down Grant Funds

The Authority erroneously drew down \$524,189 in Recovery Act funds. It erroneously drew \$346,079 from its competitive grant and \$178,110 from its formula grant. This error occurred because a development planner incorrectly coded invoices for payment. The Authority identified and corrected the error in the competitive grant and reduced a later draw of grant funds to compensate for the funds it had overdrawn. The Authority also identified and corrected the error in the formula grant and reduced a later draw of grant funds to compensate for the funds it had overdrawn earlier; however, we could not verify that the offset was made to legitimate formula grant expenses due to the large number of transactions (183), including journal entries, that the Authority processed on the draw. The Authority needs to show that it made the \$178,110 offset to eligible formula grant

expenses. The Recovery Act required unprecedented levels of accountability and transparency in government spending. The Authority stated that it had changed its invoice coding procedures. However, it did not provide a copy of the changed procedures.

The Authority Did Not Amend Its Procurement Policy as Required for Its Competitive Grants

Contrary to section VI.B.3.a of the notice of funding availability³ and Notice PIH 2010-34, the Authority did not amend its procurement policy to expedite and facilitate the use of competitive grant funds. It amended its procurement policy in November 2009 for its formula grant, and that amendment expired on March 31, 2010. The Authority created no other amendments to its procurement policy. As a result, it did not have an amended procurement policy in place for its competitive grants. The Authority was not aware of this problem. It needs to amend its procurement policy when required.

The Authority Allowed an Apparent Conflict of Interest to Occur

The Authority violated conflict-of-interest rules when it solicited contractors, to which it later provided Recovery Act capital funds, to donate gifts and cosponsor a golf tournament that it sponsored. It provided nearly \$2 million in Recovery Act funds to contractors that sponsored or cosponsored the golf tournament or donated gifts and money to the event. The Authority did not believe that a conflict had occurred because neither it nor its employees, officers, or agents received any item of monetary value in connection with the event. The regulations at 24 CFR 85.36(b) state that the grantee's or subgrantee's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. Accordingly, the Authority should not have solicited and accepted donated gifts and sponsorships from these contractors. Although the regulations allow HUD to make exceptions on a case-by-case basis, the Authority did not seek an exception from HUD.

³ Notice of Funding Availability, FR-5311-N-02.

Conclusion

The Authority did not always procure goods and services or obligate funds according to Recovery Act and applicable HUD requirements. As a result, it could not support its use of \$1.8 million in Recovery Act funds, made ineligible expenditures of \$102,000, and allowed an apparent conflict-of-interest situation to exist.

Recommendations

We recommend that the Director of HUD's Office of Public Housing, Pittsburgh field office, direct the Authority to

- 1A. Provide documentation to support payments totaling \$1,274,144 for asbestos abatement and demolition or reimburse HUD from non-Federal funds for any amount that it cannot support.
- 1B. Provide documentation to support that inspection services totaling \$319,001 relate to Recovery Act-funded work items or reimburse HUD from non-Federal funds for any amount that it cannot support.
- 1C. Reimburse HUD \$102,024 from non-Federal funds for the ineligible expenditures for energy-saving appliances.
- 1D. Provide documentation to demonstrate that it offset \$178,110 in funds improperly drawn from its formula grant against eligible formula grant expenses or reimburse HUD from non-Federal funds for any amount that it cannot support.
- 1E. Develop and implement controls to demonstrate that funds it obligated for inspection services were related to Recovery Act-funded work items.
- 1F. Develop and implement controls to prevent it from erroneously drawing grant funds.
- 1G. Amend its procurement policy when required.
- 1H. Develop and implement controls to ensure that it complies with applicable conflict-of-interest requirements and, if applicable, seek exceptions on a case-by-case basis.

SCOPE AND METHODOLOGY

We conducted the audit from January through May 2011 at the Authority's office located at 625 Stanwix Street, Pittsburgh, PA, and at our office located in Pittsburgh, PA. The audit covered the period March 2009 through December 2010 but was expanded when necessary to include other periods. We relied in part on computer-processed data in the Authority's computer system. Although we did not perform a detailed assessment of the reliability of the data, we did perform a minimal level of testing and found the data to be adequate for our purposes.

To achieve our audit objective, we

- Obtained relevant background information.
- Reviewed the Recovery Act, Office of Management and Budget implementation guidance, and applicable HUD regulations and guidance.
- Reviewed the Authority's fiscal years 2008 and 2009 audited financial statements.
- Reviewed minutes from the meetings of the Authority's board of commissioners.
- Reviewed the report from HUD's remote monitoring of the Authority's Recovery Act formula capital fund grant and the Authority's response.
- Selected and reviewed 3 contracts valued at \$1.8 million from the list of 43 contracts totaling \$13.5 million. One of the contracts was a formula grant contract valued at \$1.3 million, and the other two contracts were competitive grant contracts with a combined value of \$582,000.
- Reviewed the Authority's obligations of the \$13.5 million in formula and competitive grants it received.
- Obtained a legal opinion from the Office of Inspector General's Office of General Counsel regarding an apparent conflict-of-interest situation involving contractors donating gifts and cosponsoring a golf tournament sponsored by the Authority and later receiving Recovery Act capital funds from the Authority. Counsel opined that a conflict of interest existed.
- Interviewed officials from HUD's Pittsburgh Office of Public Housing and members of the Authority's staff.
- Physically verified that demolition was completed at a mixed-finance location and that the Authority received energy-saving appliances.

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. The audit included tests of internal controls that we considered necessary under the circumstances.

INTERNAL CONTROLS

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls 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:

- Policies and procedures that management has implemented to reasonably ensure that the Authority complies with obligation and procurement requirements.
- Policies and procedures that management has implemented to reasonably ensure accountability and transparency for expenditures.
- Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiency

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

- The Authority did not have controls in place to ensure that it: executed all necessary contracts; always complied with the “buy American” requirement of the Recovery Act; properly obligated grant funds; did not draw grant funds erroneously; amended its procurement policy for its competitive grants as required; and prevented an apparent conflict of interest from occurring.

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Ineligible 1/	Unsupported 2/
1A		\$1,274,144
1B		319,001
1C	\$102,024	
1D		178,110
Total	\$102,024	\$1,771,255




- 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

Ref to OIG Evaluation

Auditee Comments

<p>ALLEGHENY COUNTY HOUSING AUTHORITY </p> <p>YOU'LL BE GLAD TO CALL IT HOME.</p> <p>625 Stanwix Street 12th Floor Pittsburgh, PA 15222</p> <p>Phone 412.355.8940 FAX 412.355.8954 TDD 412.402.2671</p> <p>www.achsng.com</p> <p>EXECUTIVE DIRECTOR Frank Aggazio</p> <p>BOARD MEMBERS Michelle Pagano Heck <i>Chairperson</i> Deborah Booker Evelyn Benzo Derek E. Uber Vera Kelly</p>	<p>July 19, 2011</p> <p><u>VIA E-MAIL AND FIRST CLASS MAIL</u></p> <p>Mr. John P. Buck Regional Inspector General for Audit, Philadelphia Region 3AGA U.S. Department of Housing and Urban Development The Wanamaker Building, Room 10205 100 Penn Square, East Philadelphia, PA 19107-3380</p> <p>RE: Management Comments to Discussion Draft Audit Report Regarding American Recovery and Reinvestment Act of 2009</p> <p>Dear Mr. Buck:</p> <p>On behalf of the Allegheny County Housing Authority (the "Authority"), I am writing to provide the Authority's response and comments to the Discussion Draft Audit Report ("Draft Report") provided by the Office of Inspector General ("OIG") relating to the Authority's administration of its Public Housing Capital Fund Grants received under the American Recovery and Reinvestment Act of 2009 (the "Recovery Act"). The Draft Report was provided to the Authority on June 23, 2011 and revised draft was provided to the Authority on July 15, 2011.</p> <p><u>Executive Summary</u></p> <p>This 10 page response fully sets forth the Authority's comments on each allegation made in the Draft Report. As the Authority's response makes clear, the allegations are factually and legally without basis. In fact, the Draft Report, among other things, (a) cites an incorrect regulation; (b) ignores an existing contract; and (c) ignores the U.S. Department of Housing and Urban Development's ("HUD") own general counsel. This section provides a summation of the Authority's response.</p> <ul style="list-style-type: none">The Authority properly procured the Developer for the Development (as defined on page 3) in compliance with all HUD requirements. (See pages 3-4).
<p> </p>	<p>1672060_5</p>

Comment 1

Comment 2

Comment 3

- HUD's Office of General Counsel provided an opinion which acknowledged that the Authority had all necessary contractual support. (See page 5).

Comment 4

- The Draft Report relies upon an inapplicable regulation to support its allegations on lack of contractual support. (See page 5).

Comment 5

- Authority inspectors provided daily construction reports setting forth the employee, the date, and work done in compliance with the Recovery Act. The Draft Report improperly creates a new requirement that inspectors provide hourly breakdowns of their work. There is no such requirement in the Recovery Act or any applicable regulation. (See page 6).

Comment 6

- The Authority had an existing contract to purchase appliances. The Authority could only comply with the "Buy American" requirements of the Recovery Act by breaching that preexisting contract. The Recovery Act specifically exempts such contracts. (See pages 6-7).

Comment 6

- The Draft Report improperly ignores the preexisting contract and instead considers the subsequent purchase orders issued under the contract to be separate contracts. To do so ignores the facts. (See page 8).

Comment 7

- If the Draft Report is correct and the purchase orders are separate contracts then the threshold amounts of the Recovery Act are not met. (See page 7).

Comment 8

- The Authority carefully reviewed all of its journal entries, made corrections and ultimately provided books and records properly accounting for all Recovery Act funds. The Draft Report acknowledges that the Authority "identified and corrected" all errors. The Draft Report should commend the Authority's work rather than criticize such practices. (See pages 7-8).

Comment 9

- The Authority did not amend its procurement policy to liberalize its procurement practices as permitted by the Recovery Act. The Authority instead followed the more stringent guidelines of 24 CFR Part 85. (See page 8.)

Comment 10

- The Authority supports a non-profit fundraising event benefiting The First Tee of Pittsburgh. The event is publicized, and the Authority openly supports the outing by soliciting contributions for The First Tee of Pittsburgh. (See pages 8-10).

Comment 10

- Authority employees participating in The First Tee of Pittsburgh golf outing must pay the associated fee and take a vacation day. Thus, there is no conflict especially where, as here, no employee receives a benefit. (See pages 8-10).

In summary, the Authority proactively policed itself in order to ensure a completely transparent and accountable use of Recovery Act funds. In fact, the Authority's books and records accounted for every dime received—a fact not disputed by the OIG. Rather than find fault where none exists, the Draft Report should commend the Authority for its fiscal responsibility.

While the Draft Report had only one finding, that finding was comprised of seven separate allegations. The following sets forth the Authority's comments on each of these seven allegations, as well as the OIG's recommendations:

1. **The Authority Did Not Have a Written Contract to Support \$1.3 Million in Expenditures.**

Provide documentation to support payments totaling \$1,274,144 for asbestos abatement and demolition or reimburse HUD from non-federal funds for any amount that it cannot support.

The Authority strongly disagrees with this finding. Not only will the following discussion clearly illustrate that the Authority had all necessary contracts and approvals from the U.S. Department of Housing and Urban Development ("HUD") for the questioned expenditures, but HUD's own Office of General Counsel ("OGC") provided an opinion on June 7, 2011 which acknowledged that the Authority had done nothing improper and that it had the necessary contractual support. A copy of the memorandum from the OGC is attached.

A. The Authority Properly Procured the Developer.

On June 18, 2007, the Authority issued a Request for Qualifications for Burns Heights and Truman Towers Public Housing Re-Development (the "**RFQ**"), seeking statements of qualifications from qualified individuals and/or firms interested in redeveloping public housing developments in the City of Duquesne, Allegheny County, Pennsylvania, known as Burns Heights ("**Burns Heights**") and Truman Towers ("**Truman Towers**") and together with Burns Heights, the "**Development**"). Section II of the RFQ included among the scope of services to be provided by the prospective developer:

negotiat[ing] contracts for subcontractors/consultants, and subject to the approval of the Authority and HUD. Examples of such may be geotechnical services for sub-surface soil investigations, property surveying, architectural services for conceptual real estate development plans, handicap accessibility studies and hazardous materials testing services.

After the close of the RFQ response period, the Authority's evaluation committee reviewed the responses to the RFQ according to the "Evaluation Criteria and Selection Procedures" set forth in Section V of the RFQ. The proposal submitted by the Falbo-Pennrose Joint Venture, a collaboration among Ralph A. Falbo, Inc., a Pennsylvania corporation ("**Falbo**"), and Pennrose Properties, LLC, a Pennsylvania limited liability company ("**Pennrose**" and together with Falbo, the "**Developer**"), received the highest score of the submissions received.

The Authority and the Developer entered into a Development Services Agreement dated as of July 1, 2008, as subsequently amended (the "**Development Agreement**"). The Development Agreement required the Developer to provide, or arrange for the provision of, all site preparation activities and services, including:

Comment 3

Comment 2

1. Undertaking all necessary site preparation, environmental studies, and abatement of hazards on the Development sites [...]
3. Clearing and otherwise preparing the Development sites as necessary to perform its obligations [under the Development Agreement] [...]
6. Performing all such other Site Preparation Services which are necessary in connection with the Project.

Asbestos abatement and demolition are conducted in the normal course of site clearance, and therefore clearly fall within the scope of the Site Preparation Services for which the Developer is responsible. Thus, the Developer was properly procured pursuant to 24 CFR §85.36 to develop the Development and to arrange for the provision of asbestos abatement and demolition services to clear the Development site.

B. Duquesne Infrastructure, Inc. Was Formed by the Developer and Contracted for Site Preparation Services as Anticipated by the Development Agreement.

The Development Agreement states that the Authority and the Developer intend to develop the Development:

[The Authority] intends to convey the real property for each Phase of the [Development] by deed or ground lease to an entity formed by Developer to own and to operate such Phase (each such entity is referred to as an "**Ownership Entity**") [...] Developer and/or the Ownership Entity will demolish, develop, construct, own, and operate mixed-income housing to be created at the [Development].

As anticipated in the Development Agreement, the Developer formed Duquesne Infrastructure, Inc. (the "**Corporation**") to perform the functions described in the Development Agreement, including asbestos abatement, demolition services, and other Site Preparation Services. One hundred shares of the Corporation have been authorized and the Developer, acting through its principals, owns those shares. Specifically, the Corporation's shareholders, who also comprise all of the members of the Corporation's board of directors, are:

- 12.5% - Michael Polite (President of Falbo, President and Secretary of the Corporation)
- 37.5% - Mark Dambly (President of Pennrose, Vice President and Assistant Secretary of the Corporation)
- 12.5% - Ralph A. Falbo (Chairman and Chief Executive Officer of Falbo, Vice President of the Corporation)
- 37.5% - Richard K. Barnhart (Chairman and Chief Executive Officer of Pennrose, Assistant Vice President and Treasurer of the Corporation)

Comment 11

The Corporation is clearly controlled by the Developer. As previously noted, the Development Agreement obligates the Developer to provide, or arrange for the provision of, Site Preparation Services including clearing and otherwise preparing the Development sites. The Developer arranged for the provision of such services at the Burns Heights site by directing the Corporation to negotiate and execute AIA A101-2007 and AIA A201-2007 Standard Form of Agreement between Owner and Contractor dated as of October 19, 2009 (the "**Demolition and Abatement Contract**") with Mistick Construction Company (the "**Contractor**") for asbestos abatement and demolition at Burns Heights.

Thus, the Authority procured the Developer, the Developer formed the Corporation to perform the work, and the Developer-controlled Corporation entered into the Demolition and Abatement Contract pursuant to the terms and obligations of the Development Agreement. This arrangement is not only contemplated by the Development Agreement, it is also the standard through which mixed-finance developments are structured.

C. HUD's OGC Concurrs with the Authority's Actions.

Comment 3

HUD's OGC was asked to provide an opinion as to Finding No. 1. By memorandum dated June 7, 2011, the OGC determined that the work done was properly authorized by the Authority and the Developer. In addition to the Development Agreement and the Demolition and Abatement Contract, the OGC cited the License Agreement between the Authority and the Developer acknowledging the use of the Ownership Entity as well as the payment vouchers submitted for approval. Thus, the OGC was able to confirm that the necessary authorizations were in place.

Comment 12

D. The Draft Report Improperly Cites 24 CFR Section 941.606.

Comment 4

The Draft Report states that "mixed-finance development regulations at 24 CFR (Code of Federal Regulations) 941.606 require that proposals include an identification of the participating parties and a description of the activities to be undertaken by each of the participating parties and the public housing agency and the legal and business relationships between the public housing agency and each of the participating parties". Section 941.606 deals with mixed-finance development. The particular quote refers to the initial submission wherein a housing authority provides HUD with a description of how it intends to proceed on a new development. In this instance, the Authority was proceeding with demolition, not a new development and Section 941.606 was not applicable.

Comment 13

The demolition and abatement work were considered a separate project from the Development itself. The Authority applied for and received demolition approval from HUD's Special Applications Center. It then proceeded with the demolition and abatement as a standalone project. This is evidenced by the HOPE VI application relied upon in the Draft Report. The HOPE VI application does not show any costs for demolition because they were not considered part of the Development.

Comment 4

Once the demolition and abatement work are complete and the Development itself is ready to proceed the Authority will submit a Mixed Finance Proposal. At that time the Authority will comply with Section 941.606. To do so prior to that time is not appropriate.

Comment 13

The fact that the Authority proceeded correctly is evidenced by the fact that its application for demolition was approved by HUD. The Draft Report incorrectly confuses demolition with development.

2. The Authority Could Not Demonstrate That Obligations for Inspection Services Related to Recovery Act Work.

Provide documentation to support that inspection services totaling \$319,001 related to Recovery Act-funded items or reimburse HUD from non-federal funds for non-federal funds for any amount it cannot support.

Develop and implement controls to demonstrate that funds it obligated for inspection services were related to Recovery Act funded work items.

Comment 5

The Authority disagrees with this finding. The OIG alleges that the Authority did not have a process in place to demonstrate the \$319,001 was related to Recovery Act formula-funded work items. The Draft Report itself rebuts this allegation. The Draft Report clearly states that the Authority's construction managers completed daily construction reports. These reports set forth the project worked by the employee, the date, and the work done. Nothing more is required by the Recovery Act.

The OIG, however, believes that the construction managers should have also completed time sheets showing the exact hours worked on Recovery Act formula grant-funded work items each day. This is not required by the Recovery Act or in any other HUD regulation or notice. It is instead the OIG's own imposition of a new standard not required under any statute or regulation.

The Authority provided daily construction reports showing where each inspector was and the work done that day. This information is more than sufficient to determine that the inspectors were working on Recovery Act formula grant-funded work. To require additional information above and beyond that required by law is not something within the OIG's purview. Moreover, it is inappropriate to require this Authority or any other public housing authority to be held to an unrequired standard.

Comment 5

3. The Authority Did Not Always Obligate Funds Properly.

The Authority does not disagree with this finding. The Authority acknowledges that it obligated a vast majority of its funds properly and in compliance with all deadlines. It also realizes that, despite its efforts, certain amendments for architectural and engineering services should have been entered into weeks before they were. These technical deficiencies will be addressed by the Authority and the Pittsburgh Field Office.

4. The Authority Did Not Always Comply With the "Buy American" Requirement.

Reimburse HUD \$102,024 from non-federal funds for the ineligible expenditures for energy-saving appliances.

The Authority disagrees with this finding. In fact, based on the OIG's own description, the finding is improper.

Comment 6

a. Facts. The Authority ordered \$253,208 worth of energy-savings appliances against a basic ordering agreement executed in April 2008. Because the agreement was created prior to the Recovery Act, it did not address the "Buy American" requirements of the Recovery Act. Subsequently, when the Authority ordered ranges and refrigerators, it utilized five separate purchase orders and supporting requisitions. These were done as required by HUD requirements because each order was for a different asset management project ("AMP").

Comment 7

b. OIG Theory One. The Draft Report espouses two conflicting theories in order to impose the "Buy American" requirement. In the first theory, the OIG lumps all of the purchase orders together because the only difference was a "ship to" address. While that ignores the fact that separate purchase orders were required for different AMP's, it brings the total to more than \$100,000. Pursuant to a national exception described by HUD most recently in PIH Notice 2011-12, the "Buy American" requirement of the Recovery Act only applies to purchases of over \$100,000.

Comment 6

If the 2008 contract is one contract, as claimed in theory one, it is a preexisting contract. The Authority acknowledges this fact that the contract was a performance contract entered into between the Authority and an approved vendor. The Authority was required by contract to utilize this vendor exclusively for all purchases of refrigerators and ranges. Accordingly, by the terms of the Recovery Act, the Authority was in compliance with a preexisting contract.

Comment 7

c. OIG Theory Two. After getting over the threshold amount, the Draft Report then tries to argue that the five purchase orders were separate contracts and thus not "preexisting". If that were the case, none of the purchase orders reached the \$100,000 threshold to require "Buy American" compliance.

In conclusion, the Draft Report uses two different, conflicting theories in order to create a finding of \$102,024 in spending in violation of the Recovery Act. If the facts are viewed honestly, it is clear that the Authority had an existing contract to purchase ranges and refrigerators and did so in compliance with the Recovery Act. In the event that each of the five purchase orders is seen as a separate contract entered into following the passage of the Recovery Act, then none reaches the \$100,000 threshold. The OIG cannot lump the contracts together in order to reach that threshold and then utilize the later date to state that the "Buy American" requirement was violated.

5. The Authority Erroneously Drew Down Grant Funds.

Develop and implement controls to prevent it from erroneously drawing grants funds.

Provide documentation to demonstrate that it offset \$178,110 in funds improperly drawn from its formula grant against eligible formula grant expenses or reimburse HUD from non-federal funds for any amount that it cannot support.

The Authority does not disagree with the finding that it erroneously drew down \$524,189 in Recovery Act funding. It also does not disagree with the OIG's statement that "the Authority identified and corrected the error in the competitive grant and reduced a later draw from grant funds to compensate for the funds it had overdrawn. The Authority also identified and corrected the error in the formula grant and reduced a later draw of grant funds to compensate for the funds it had overdrawn earlier...."

By the OIG's admission, the Authority carefully reviewed all of its journal entries and made corrective entries whenever and wherever a mistake may have occurred. These journal entries and the corrections were all done in accordance with generally accepted accounting principles in an effort to ensure that the Authority's books and records were impeccably maintained. In fact, the Authority far exceeded the unprecedented levels of accountability and transparency in government spending required by the Recovery Act in reviewing and re-reviewing all entries and making corresponding journal entries.

Comment 8

In sum, the finding that the Authority erroneously drew down grant funds has no place in the Draft Report. In fact, the Authority should be commended for its efforts in discovering and correcting any errors promptly and efficiently well before any audit.

6. The Authority Did Not Amend its Procurement Policy as Required for its Competitive Grant.

Amend its procurement policy when required.

Comment 9

The Authority disagrees with this finding. In fact, the Authority amended its procurement policy for the Recovery Act Formula Grant funds to ensure that the funds were obligated and spent by the required deadline. The changes to the procurement policy were made in compliance with Notice PIH 2010-34 in order to relax procurement requirements and expedite the use of the Recovery Act funds. The amendment was made in November 2009 and, by its terms, expired on March 31, 2010. While the Authority did not extend these modifications beyond March 31, 2010, it still obligated and spent all of the competitive grant funds in the timeframe required. In fact, by not extending the Procurement Policy, the Authority followed the more stringent guidelines of 24 CFR Part 85.

While the OIG is technically correct that the Authority failed to liberalize its Procurement Policy as permitted under Notice 2010-34, the failure to liberalize procurement practices did not in any way slow the Authority's expenditure of funds or result in anything except proper procurement.

7. The Authority Allowed an Apparent Conflict of Interest to Occur.

Develop and implement controls to ensure that it complies with applicable conflict-of-interest requirements and, if applicable, seek exceptions on a case-by-case basis.

Comment 10

The Authority strongly disagrees with this finding. The Authority did not allow any conflict of interest real, apparent or as imagined by the OIG.

Comment 10

The Draft Report has misstated the facts and drawn false conclusions despite a plethora of information provided by the Authority. For example, the Draft Report states that the Authority should not have solicited and accepted donated gifts and sponsorships from any contractors receiving Recovery Act funds. Unstated in the Draft Report is the fact that the Authority never solicited or accepted any gratuities, favors or anything of value from any contractor, potential contractor or parties to sub-agreements. On the contrary, neither the Authority nor any of its employees, officers or agents receives nor has every received any item of monetary value in connection with the ACHA Golf Classic. The ACHA Golf Classic (the "Event") is an event that benefits the First Tee of Pittsburgh ("First Tee"). The Event provides numerous sponsorship and golfing opportunities for local individuals and businesses including those that have partnered or currently partner with the Authority on various developments. The OIG apparently believes that the Authority's coordination of the Event violates HUD conflict of interest rules with respect to procurement. However, a review of the relevant facts and legal authorities suggest otherwise.

Neither the Authority nor any of its employees, officers or agents receives any item of monetary value in connection with the Event—in fact, quite the opposite is true. All monies donated by sponsors or participants in the Event go directly to the First Tee, a nonprofit, 501(c)(3) charitable organization and United Way Donor Choice Agency. First Tee is a chapter of the World Golf Foundation's nationwide initiative dedicated to influencing young people through the teaching of the game of golf and the life lessons that sport (and golf specifically) impart. Its core values are: responsibility, sportsmanship, perseverance, confidence, judgment, honesty, respect, courtesy and integrity, all to help young individuals become better students, friends and citizens for the benefit of their communities.

The Authority partnered with First Tee to develop and operate a First Tee facility at the Authority's Pleasant Ridge housing development in Stowe Township, PA (AMP Nos. 805 and 806). The development of the facility was included in HUD's approved HOPE VI revitalization of Ohioview Acres. The program is open to all children at Pleasant Ridge between the ages of 7 and 18 as well as children that reside in the surrounding Stowe Township/West Hills area.

Rather than benefiting the Authority or any Authority officer, employee or agent, the sponsorship and participation funds received through each Event go directly to benefit First Tee. In fact, the Authority employees that wish to participate in an Event must pay their own fees associated with the Event. Additionally, Events are typically on work days and employees must take vacation time in order to participate. To the extent anyone is receiving an item of monetary value out of an Event, it is certainly not the Authority officers, employees or agents, but rather First Tee and the families that benefit from First Tee's services.

Not only do the Events not benefit the Authority officers, employees or agents as required under the regulations, no evidence exists to suggest participation in the Event affects the awarding of federally-funded contract. In fact, the Authority development partners that have donated to Event during the period audited was properly procured prior to the Event. Given this timing, the awarding of any contracts to such recipients could not have been a *quid pro quo* at the time of award because nobody had received anything of value at or prior

Mr. John P. Buck
July 19, 2011
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to such award. Additionally, it is worth stressing that Event sponsors themselves benefit in many ways through donation. As indicated previously, First Tee is a tax-exempt organization and such donations are tax deductible to the extent provided under applicable laws and regulations. Sponsors also benefit from the numerous advertising and networking opportunities provided by each Event, not to mention the reputational benefits to an individual or business of supporting economically disadvantaged children to participate in First Tee golf and life skill clinics. In short, there are many reasons why a development partner might determine it is advantageous to donate to an Event that are in no way connected to any contractual relationship with the Authority.

It is also telling that many public housing authorities utilize annual events—including annual golf outings—to raise funds for social services and scholarships through sponsorship and participation fees. For OIG to suggest that such charitable activities rise to the level of prohibited conflicts of interest under HUD regulations would undermine events held by numerous housing authorities across the United States, not to mention the ultimate resident programs and families themselves that stand to benefit.

In summary, applicable HUD regulations do not precisely define the boundaries of a prohibited conflict of interest, but they describe a standard that appears to require at a minimum receipt of something of value and a causal connection to the awarding of a federally-funded contract. Neither aspect of that test is met by the facts attributable to the Authority in connection with its coordination of the Event. Additionally, the value of the Event to the Authority project residents and the proclivity of such events sponsored by public housing authorities around the country seriously cut against any suggestion by OIG that such events are categorically prohibited when local development partners desire to sponsor or participate in such events.

CONCLUSION

As clearly set forth in this letter, the Authority has been proactive in its efforts to be completely transparent and accountable for the use of Recovery Act funds. In fact, the Authority has adopted best practices and self-corrected any mistakes promptly and openly. Our hope is that you will reconsider the findings and recommendations in light of the foregoing.

Very truly yours,


Frank Aggazio
Executive Director

cc: Jaqueline Molinaro-Thompson, Acting Division Director
Office of Public and Indian Housing
Pittsburgh Field Office, 3EPHI

Comment 10

Comment 3



U. S. Department of Housing and Urban Development
Pittsburgh Field Office
William S. Moorhead Federal Building
1000 Liberty Avenue, Suite 1000
Pittsburgh, PA 15222-4004

June 7, 2011

MEMORANDUM FOR: Jaqueline Molinaro-Thompson, Acting Division Director, Office of Public and Indian Housing, Pittsburgh Field Office, 3EPHI

THROUGH: John C. Bates, Chief Counsel, Office of Chief Counsel, Pittsburgh Field Office, 3EC

FROM: John D. Grant, Law Clerk, Office of Chief Counsel, Pittsburgh Field Office, 3EC
Sean R. Keegan, Law Clerk, Office of Chief Counsel, Pittsburgh Field Office, 3EC

SUBJECT: Allegheny County Housing Authority
Draft OIG Finding
Burns Heights and Truman Towers Redevelopment

This memorandum is in response to your request to review contractual documents in relation to the Burns Heights and Truman Towers Redevelopment. The Burns Heights portion of this redevelopment consisted of the demolition of 26 two-story buildings containing a total of 174 units of traditional public housing, and is to be replaced by mixed-income housing. In order to achieve this, the Allegheny County Housing Authority ("ACHA") advertised for and procured proposals for which Pennrose Properties, L.L.C. ("Pennrose"), and Ralph A. Falbo, Inc., (collectively referred to as "Developer.") were selected to complete the Mixed Finance Redevelopment. The ACHA entered into the Development Services Agreement with the Developer, on July 1, 2008. The Developer subsequently created the business entity Duquesne Infrastructure, Inc. ("Duquesne") on July 8, 2008, which shares the same address as Pennrose and a combination of officers from both Developer entities. This affiliate of the Developer contracted with Mistick Constuction Company ("Mistick") in order to complete the demolition (site preparation) for the redevelopment. The ACHA then issued three checks as payment to Duquesne, totaling the amount of \$1,258,184.

The Office of the Inspector General ("OIG") created a draft finding stating that the payment from ACHA to Duquesne for demolition in the amount of \$1,258,184 was not supported by a direct contract with the ACHA or by the creation of a second-tier contract between the Developer and Duquesne. In preparation for an audit by OIG, you arranged a meeting with us on June 3, 2011, which also included HUD Chief Counsel John Bates, and your staffers Paul Michalka, and Lee Asad.

At the aforementioned meeting we received the following documents:

1. Finding Outline Worksheet #1

2. Copy of Email from Kathleen Tallarico to Paul Michalka: Subject: "ACHA-OIG Audit," dated May 31, 2011
3. Copy of Email from Kathleen Tallarico to Richard Humphrey: Subject: "Mixed Finance and Burns Heights," dated May 25, 2011
4. Initial Response of Finding Outline Worksheet #1 (Labeled "Finding #1")
5. First Amendment to Amended and Restated Development Services Agreement, dated March 23, 2011
6. License Agreement, dated April 3, 2009
7. Allegheny County Housing Authority Development Services Agreement for Burns Heights & Truman Towers Redevelopment, dated July 1, 2007 (later amended to be dated July 1, 2008)
8. AIA Agreement Between Duquesne Infrastructure, Inc., and Mistick Construction Company, dated October 19, 2009
9. HUD Approval of Demolition, dated October 23, 2009
10. Duquesne Infrastructure, Inc. Articles of Incorporation, dated July 8, 2008
11. Checks from the Allegheny County Housing Authority to Duquesne Infrastructure totaling the amount of \$1,258,184.
 - a. Check 1: Dated December 3, 2009, in the amount of \$322,791.81,
 - b. Check 2: Dated February 4, 2010 in the amount of \$762,442.59, and
 - c. Check 3: Dated March 10, 2010 in the amount of \$188,909.60
12. Penrose Properties, LLC; Organizational Documents
 - a. Consent to Use of Similar Name, dated December 16, 2003
 - b. Certificate of Organization, dated December 22, 2003
 - c. Operating Agreement, dated March 15, 2004
 - i. First Amendment to the Operating Agreement, dated April 3, 2004
 - ii. Second Amendment to the Operating Agreement, dated September 2, 2004
 - d. LLC Registration, dated May 4, 2004
 - e. Public Records Filing for New Business Entity (NJ), filed May 4, 2004
 - f. Consent to Use of Name (NJ), dated April 30, 2004
 - g. Department of Treasury Certificate of Authority (NJ), dated May 4, 2004
13. Ralph A. Falbo, Inc. Certificate of Incorporation, dated December 7, 1973.

On June 6, 2011 we received the following documents from Paul Michalka:

1. The Allegheny County Housing Authority Voucher Payable to Duquesne Infrastructure, Inc., dated December 1, 2009
2. The Allegheny County Housing Authority Voucher Payable to Duquesne Infrastructure, Inc., dated January 25, 2010
3. Letter From Controller of Pennrose Properties, LLC to Mr. Edward Primm of the Allegheny Housing Authority, dated February 24, 2010
4. The Allegheny County Housing Authority Voucher Payable to Duquesne Infrastructure, Inc., dated March 5, 2010.

On June 7, 2011 we received the following document from Paul Michalka:

1. Copy of Email from Rich Stephenson to Jaqueline Molinaro-Thompson and Paul Michalka: Subject: "Two Party Check Policy," dated June 7, 2011.

On June 7, 2011 we received the following documents from you:

1. Allegheny County Housing Authority Amended and Restated Development Services Agreement for Burns Heights and Truman Towers Redevelopment, dated July 6, 2009
2. Demolition Note for \$20,049, dated November __, 2008 [sic], executed by Duquesne in favor of ACHA.

Based on our discussion and your request for a prompt response on the core issue, we have not researched nor are we addressing procurement. Our initial review of the documents is directed towards the threshold issue of whether there is a contractual relationship between the Developer and Duquesne. The documents discussed below are those most pertinent to that primary issue.

The Amended and Restated Development Services Agreement ("DSA"), dated July 6, 2009, between the ACHA and the Developer, is not substantively altered by the Amendment, dated March 23, 2011. The DSA, Page 10, Article VI, Paragraph 6.01(c) allows for the Developer to contract project services out to affiliates that are under the control of the Developer, such as Duquesne, so long as it is approved by the ACHA in writing.

The AIA Agreement Between Duquesne Infrastructure and Mistick Construction Company ("AIA"), dated October 19, 2009, contractually connects Duquesne and Mistick, and obligates Duquesne to pay Mistick \$1,258,184 in return for their demolition services.

Although neither of the previously mentioned contracts explicitly connect the Developer and Duquesne, there is a link based in other agreements. The License Agreement, dated April 3, 2009, between the ACHA and Duquesne, states that Duquesne has a license to come onto the land and do the work stated in DSA Exhibit D on behalf of Developer, including the demolition for which Duquesne was paid. The License Agreement satisfies the aforementioned written approval requirement stated in the DSA 6.01(c). Since the ACHA acknowledged that the Developer had "engaged" Duquesne, a contractual link between the Developer and Duquesne for site preparation does exist.

Specifically, Page 1, Paragraph E of the License Agreement states "[t]he Licensee [Duquesne] has been engaged by the Developer to perform the Services [more fully described in Exhibit D of the DSA]." DSA Exhibit D is a list of site preparation services including "[u]ndertaking all necessary site preparation, environmental studies, and abatement of hazards on the Development site," "[c]learing and otherwise preparing the Development site as necessary" and "all other Site Preparation Services which are necessary in connection with the Project." Exhibit D also calls for the ACHA to review and approve demolition, further inferring that demolition is a site preparation service.

The three voucher letters from Daniel C. Hodakowski, Controller of Pennrose Properties, LLC., to Edward Primm of the ACHA, and copied to Vanessa Murphy-Zur, Controller of Ralph A. Falbo, Inc., represent the Developer's authorization to the ACHA to pay directly to Duquesne.

Mr. Hodakowski enclosed a voucher with each letter naming the payee as "Duquesne Infrastructure, Inc. C/O Pennrose Management Co." As the Developer suggested, the ACHA issued the check to Duquesne, consistent with the License Agreement. These vouchers include the entire amount of \$1,258,184 that is at issue. Each voucher was authorized and executed by the ACHA indicating that this transaction from the ACHA to Duquesne was not improper, but consistent with the contract agreements.

There had been further discussion that when the ACHA issued checks as payment for the demolition services, that the checks should have listed both the Developer and Duquesne. However, the email from Rich Stephenson to you, dated June 7, 2011, states that it is not ACHA policy or practice to produce "Two Party Checks."

In sum, the contracts between the ACHA and the Developer, and separately between Duquesne Infrastructure and Mistick, do not provide a direct contractual connection between the Developer and Duquesne Infrastructure. However, the License Agreement evidences that the ACHA gave written acknowledgement and approval for Duquesne Infrastructure to complete the site preparation services of the Developer as listed in the DSA. Furthermore, the three vouchers show that the payment of \$1,258,184 to Duquesne Infrastructure was authorized by both the Developer and the ACHA.

OIG Evaluation of Auditee Comments

- Comment 1** The general statements made by the Authority are addressed below where more specific details are provided. It is important to note again however that we conducted this performance 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. Our objective was to determine whether the Authority properly procured goods and services and obligated its Recovery Act capital funds according to Recovery Act and applicable HUD requirements.
- Comment 2** We did not question the Authority’s selection of the developer.
- Comment 3** The HUD legal opinion that the Authority has provided did not resolve the specific issues the OIG audit identified or conclude that the Authority provided all necessary contractual support to the OIG. Rather, the opinion stated, the “initial review of the documents is directed towards the threshold issue of whether there is a contractual relationship between the developer and Duquesne⁴.” The opinion further states that, “neither of the previously mentioned contracts explicitly connect the developer and Duquesne” and “the contracts between the Authority and the developer, and separately between Duquesne Infrastructure and Mistick, do not provide a direct contractual connection between the developer and Duquesne Infrastructure.”
- Comment 4** The regulation cited in the audit report applies because the Authority listed the project as a mixed-finance development activity in its 2009 annual plan. The regulations at 24 CFR 941.600 set forth the requirements that must be met by the Authority and its partners before HUD can approve a mixed-finance proposal and continuing requirements. Moreover, 24 CFR 941.602(b) states that in the event of a conflict between the requirements for a mixed-finance project and other public housing development requirements, the mixed-finance requirements shall apply, unless HUD determines otherwise in writing.
- Comment 5** As stated in the audit report, the Authority did not have a sufficient process in place to demonstrate that construction inspection services performed by its employees were related to Recovery Act formula grant-funded work items. Although the daily construction reports included a space for the employees to record the number of hours they worked on a project, the employees did not record the number of hours on the report. The Authority provided no other documentation to show how daily construction reports were related to the amounts it obligated for Recovery Act inspections. Moreover, the supplement to HUD Handbook 7475.1 REV., CHG-1, Financial Management Handbook, provides guidance on financial management and reporting for public housing

⁴ Duquesne Infrastructure, Inc.

agencies. The document does not impose new requirements, but rather reflects statutory or regulatory requirements or common accounting industry practices. Section 5.3 states that construction supervisory and inspection costs incurred during construction are considered front-line costs of the project. These expenses consist of documented costs incurred during the construction phase of the project. For those agencies that use their own personnel to carry out this function, a time sheet will be required to substantiate the construction supervisor's time. The Recovery Act required unprecedented levels of accountability and transparency in government spending.

- Comment 6** As stated in the audit report, the Authority ordered appliances against a basic ordering agreement by executing purchase orders. The agreement did not contain unit quantities that the Authority was "required" to purchase or a total contract dollar amount, or a not-to-exceed amount. HUD Handbook 7460.8, REV-2, states that the issuance of a purchase order by a housing authority and its acceptance by the contractor constitute a contract, which is what the Authority did. Moreover, the Authority made the decision to expend Recovery Act funds for these appliances although it could have used these funds for other eligible work items.
- Comment 7** As stated in the audit report, the Authority executed five purchase orders for appliances. The Authority created the five purchase orders and supporting requisitions on the same day. Thus, the five orders should be considered as one order because the only difference between the purchase orders was the "ship-to" location. These actions could be tantamount to an OIG finding of purchase splitting. A split purchase occurs when a purchase from a single vendor is broken down into two or more purchases to avoid requirements. Consequently, the \$253,208 value of the items purchased on the five orders exceeded HUD's \$100,000 "buy American" national exception threshold.
- Comment 8** The Authority stated in its response that it does not disagree with the finding. As stated in the audit report, the Authority erroneously drew down \$524,189 in Recovery Act funds because a development planner incorrectly coded invoices for payment. We could not verify that a \$178,110 offset was made to legitimate formula grant expenses due to the large number of transactions (183), including journal entries, that the Authority processed on the draw, thus we considered that amount unsupported.
- Comment 9** Contrary to its assertion, the Authority was required by Notice of Funding Availability, FR-5311-N-02, to amend its procurement policy for its competitive grants as it did in November 2009 for its formula grant. The Authority's assertion that it changed its procurement policy in compliance with Notice PIH 2010-34 is inaccurate. Notice PIH 2010-34 was issued on August 10, 2010. The Authority admits in its response that it failed to amend its procurement policy.
- Comment 10** As stated in the audit report, despite the Authority's belief that a conflict had not occurred, the regulations at 24 CFR 85.36(b) state that the grantee's or

subgrantee's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements to support even the most beneficial of causes (including a public housing youth program). Accordingly, the Authority should not have solicited and accepted donated gifts and sponsorships from these contractors. To do so created an appearance of impropriety. As stated in the report, the Authority provided nearly \$2 million in Recovery Act funds to contractors that sponsored or cosponsored the golf tournament or donated gifts and money to the event. Of that, the Authority made a \$1.3 million payment to an entity for asbestos abatement and demolition services without having a written contract with either the entity or the contractor that did the work. The regulations at 24 CFR 85.36(b) state that no employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. The regulations allow HUD to make exceptions on a case-by-case basis. To comply with the regulations, the Authority should have attempted to obtain an exception or a waiver from HUD. Although the audit showed the Authority improperly solicited and accepted donated gifts and sponsorships from these contractors, the Authority could provide proof of its claim that its employees take a vacation day and pay to participate in this event. Although this would not change the fact that it solicited and accepted donated gifts and sponsorships from its contractors, it could be relevant to HUD's decision on whether or not it grants a waiver.

Comment 11 The Authority did not have a contract with Duquesne Infrastructure, Inc., the entity to whom it paid \$1.3 million in Recovery Act funds. The Authority provided no documentation that identified the participating parties and a description of the activities to be undertaken by each of the participating parties and the public housing agency and the legal and business relationships between the public housing agency and the participating parties for this project. Section 6.01(c) of the July 2009 amended and restated development services agreement states that the developer shall not enter into any contract, lease, purchase order or other arrangement in connection with the project with any party controlling, controlled by or under common control with the developer unless the arrangement has been approved in writing by the Authority, after full disclosure in writing by the developer to the Authority of such affiliation or relationship and all details relating to the proposed arrangement. The terms of any such arrangement must conform to the requirements of the Authority, HUD, the annual contributions contract and the development services agreement. Further, Duquesne Infrastructure, Inc., is not an affiliate of the developer. A corporation is a legal entity that is created under the laws of a State designed to establish the entity as a separate legal entity having its own privileges and liabilities distinct from those of its members. An affiliated corporation is a corporation of which another company owns a significant percentage, but not a majority, of its shares. This gives the company a great deal of influence, but not outright control, of the affiliated corporation. In this case, the developer (Pennrose Properties, LLC and Ralph A

Falbo, Inc.) does not own a significant percentage of Duquesne Infrastructure, Inc.

Comment 12 The licensee agreement permitted the licensee, Duquesne Infrastructure, Inc., access to the project site for the sole purpose of performing environmental testing and other pre-construction preparation services as outlined in the developer's agreement. However, neither the licensee agreement nor the developer's agreement included a scope of work addressing asbestos abatement and demolition services for an agreed upon amount. Moreover, by resolution #09-05, the Authority's board of directors approved the Authority's demolition/disposition application naming Duquesne Housing Initiative, LLC, as the ownership entity. HUD approved the Authority's application and in its approval letter also identified Duquesne Housing Initiative, LLC, as the ownership entity.

Comment 13 HUD has not approved the Authority's HOPE VI application. We did not rely on it in our audit work. As stated in the audit report, the Authority did not have a written contract to support payments totaling \$1.3 million for asbestos abatement and demolition services.

The July 2009 amended and restated development services agreement states that the developer is responsible for undertaking all necessary site preparation, environmental studies, and abatement of hazards on the development sites; clearing and otherwise preparing the development sites as necessary to perform its obligations; and performing all such other site preparation services which are necessary in connection with the project; among others. HUD's Mixed-Finance Guidebook states that environmental remediation and demolition activities require a long lead-time. Costs for these activities and certain others can be funded prior to the construction closing with front-end predevelopment assistance, subject to HUD approval of the public housing agency's request and budget. For mixed-finance developments a preliminary mixed-finance proposal must be submitted, and if approved, HUD and the public housing agency execute an amendment to its annual contributions contract for front end assistance. The guidebook also raises the issue of interim development agreements. An interim development agreement provides the developer with the confidence to proceed with pre-development activities knowing that there is a contractual relationship with the public housing agency. Otherwise, there is no legally enforceable contract and therefore no funding or enforcement vehicle. HUD must approve both the development agreement and/or the interim development agreement prior to the drawdown of HUD funds. The Authority provided neither an amendment to its annual contributions contract for front end assistance nor an interim development agreement.