



Issue Date	September 24, 2008
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Audit Report Number	2008-AT-1015
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TO: Gary Dimmick, Director, Office of Community Planning and Development, 4FD

James D. McKay

FROM: James D. McKay, Regional Inspector General for Audit, 4AGA

SUBJECT: The City of Durham, North Carolina, Did Not Comply with All Federal Procurement Requirements

HIGHLIGHTS

What We Audited and Why

We audited the City of Durham (City), North Carolina's HOME Investment Partnerships (HOME) program. Our audit objective was to determine whether the City complied with applicable federal procurement requirements with respect to its homeowner rehabilitation activity. This is the second of two audits of the City's program.

What We Found

The City did not advertise for homeowner rehabilitation contractors as required. Also, it did not take necessary affirmative steps to ensure that minority firms, women's business enterprises, and labor surplus area firms were used when possible. This condition occurred because the City lacked adequate procedures to ensure compliance with all applicable federal procurement regulations. As a result, it could not support that the program activities were subject to full and open competition. In addition, it could not ensure that minority firms, women's business enterprises, and labor surplus area firms were given proper consideration.

What We Recommend

We recommend that the U.S. Department of Housing and Urban Development (HUD) require the City to provide documentation to support that the HOME program homeowner rehabilitation activities, totaling \$790,364 for fiscal years 2006 and 2007, were awarded to the most responsible firm with a proposal that was most advantageous to the program, considering price and other factors. We also recommend that HUD require the City to develop and implement procedures to ensure that future services for homeowner rehabilitation are procured in accordance with applicable federal procurement 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 provided the draft report to the City on August 28, 2008, and discussed the findings with City officials at an exit conference on September 4, 2008. The City provided its written comments on September 11, 2008. It generally expressed agreement with the finding.

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

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BACKGROUND AND OBJECTIVES

The U.S. Department of Housing and Urban Development (HUD) has designated the City of Durham (City) as a participating jurisdiction eligible to receive annual Office of Community Planning and Development funding. HUD awarded the City's HOME Investment Partnerships (HOME) program \$1.3 million in funding for fiscal year 2006 and \$1.2 million for fiscal year 2007. The City is governed by a mayor and a seven-member city council. A city manager appointed by the city council oversees the day-to-day functions of the City. The City administers the HOME program through its Department of Community Development. A director manages the daily operations of the department, which maintains its records at 401 Lakewood Avenue, Durham, North Carolina.

The HOME program was created by Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, and is regulated by 24 CFR [*Code of Federal Regulations*] Part 92. HOME funds are awarded annually as formula grants to participating jurisdictions. Eligible uses of these funds include homeownership downpayment, tenant-based assistance, housing rehabilitation, assistance to homebuyers, and new construction of housing. HOME funding may also be used for site acquisition, site improvements, demolition, relocation, and other necessary and reasonable activities related to the development of nonluxury housing. All housing developed with HOME funds must serve low- and very low-income families.

Our audit objective was to determine whether the City complied with all applicable federal procurement requirements with respect to its HOME homeowner rehabilitation program.

RESULTS OF AUDIT

Finding 1: The City Did Not Procure Homeowner Rehabilitation Services in Accordance with All Federal Requirements

The City did not advertise for homeowner rehabilitation contractors as required. Also, it did not take necessary affirmative steps to ensure that minority firms, women's business enterprises, and labor surplus area firms were used when possible. This condition occurred because the City lacked adequate procedures to ensure compliance with all federal procurement requirements. As a result, it could not ensure that it procured \$790,364 in homeowner rehabilitation services via full and open competition. It also could not ensure that minority firms, women's business enterprises, and labor surplus area firms were used when possible.

Rehabilitation Services Not Procured as Required

As part of its HOME program, the City administers a homeowner rehabilitation program. The program allows the City to enter into deferred, forgivable loans amortized for up to 10 years for elderly and disabled owner-occupants with incomes at or below 50 percent of the area median income. The City procures contractors to rehabilitate the housing units, which must have at least three severe conditions to qualify. The maximum loan per unit is \$35,000 except for residences that meet prescribed special conditions.

The City uses the competitive proposal method of procurement for its homeowner rehabilitation activities. Procurement regulations (24 CFR 85.36(d)(3)(i)) require that construction type contracts be advertised when the competitive proposal method is used.

The City is also required (24 CFR 85.36(e)) to take all necessary affirmative steps to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps include (1) placing qualified small and minority businesses and women's business enterprises on solicitation lists and (2) ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources.

The City's procurement policy stated that purchases and contracts would follow federal law. However, the City's policy did not mirror the federal procurement requirements, including those cited above. As a result, the City's staff did not

have adequate written procurement procedures to ensure compliance with all applicable federal requirements.

The City planned to use \$777,085, or about 30 percent of its 2006 and 2007 HOME allocation, for its homeowner rehabilitation program. It carried out a total of 20 homeowner rehabilitation activities during this period. The original contract amounts of the activities totaled \$731,337, and as of September 4, 2008, including all change orders, the City had expended \$790,364 from its HOME allocation (see appendix B).

We reviewed 13 of the 20 homeowner rehabilitation activities and found that none were advertised as required. As a result, the City could not support that the homeowner rehabilitation activities carried out were subject to full and open competition. In addition, it did not document its efforts to solicit participation of minority and women-owned businesses or labor surplus area firms in its homeowner rehabilitation program. Thus, the City did not ensure that minority firms, women's business enterprises, and labor surplus area firms were used when possible as required. Both cited conditions occurred because the City lacked adequate internal controls to ensure compliance with all applicable federal procurement requirements.

Recommendations

We recommend that the Director of Community Planning and Development, HUD North Carolina State Office, require the City to

- 1A. Provide adequate documentation to support that the \$790,364 in HOME funds for homeowner rehabilitation activities for fiscal years 2006 and 2007 were awarded to the most responsible firm with a proposal that was most advantageous to the program, considering price and other factors.
- 1B. Develop and implement procedures to ensure that future services for homeowner rehabilitation are procured in accordance with requirements as they relate to both advertising and adequately documenting all necessary affirmative steps to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

SCOPE AND METHODOLOGY

The audit objective was to determine whether the City complied with all federal procurement procedures with respect to its HOME homeowner rehabilitation program services. To accomplish our objective, we

- Obtained and reviewed relevant HUD regulations and City guidelines,
- Interviewed HUD and City officials, and
- Reviewed HOME project/activity files.

To achieve our audit objective, we planned to review all of the City's fiscal year 2006 and 2007 homeowner rehabilitation projects. After reviewing 13 of 20 fiscal year 2006 and 2007 project files, we cut off the review due to the consistency in procurement deficiencies noted. The finding contains \$790,364 in unsupported costs. We calculated the amount by totaling the HOME funds expended for the City's fiscal year 2006 and 2007 homeowner rehabilitation activities.

The audit generally covered the period July 1, 2003, through June 30, 2007, but we extended the audit period when necessary to accomplish our objectives. We conducted our field work from May through July 2008 at the City's offices in Durham, North Carolina.

We performed our review in accordance with generally accepted government auditing standards.

INTERNAL CONTROLS

Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved:

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

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined the following internal controls were relevant to our audit objectives:

- Compliance with laws and regulations - Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.
- Safeguarding 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 the following item is a significant weakness:

- The City did not follow applicable procurement procedures when procuring homeowner rehabilitation services (finding 1).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

<u>Recommendation number</u>	<u>Unsupported 1/</u>
1A	<u>\$790,364</u>
Total	<u>\$790,364</u>

1/ 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 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

HOME HOMEOWNER REHABILITATION ACTIVITIES FOR FISCAL YEARS 2006 AND 2007

Contract number	Original contract amount	Total amount paid(*)	HOME funds expended
7677	\$27,735	\$30,509	\$30,509
76378	\$41,225	\$41,225	\$45,410
76279	\$38,845	\$45,870	\$45,870
76376	\$44,295	\$56,400	\$56,400
76835	\$46,653	\$46,653	\$58,928
76834	\$35,395	\$38,935	\$38,935
76859	\$21,780	\$23,958	\$23,958
76897	\$34,857	\$34,857	\$39,662
76939	\$34,700	\$38,170	\$38,170
76898	\$24,830	\$27,313	\$27,313
76942	\$17,765	\$19,465	\$19,465
76981	\$37,155	\$40,871	\$40,871
323	\$37,625	\$41,388	\$41,388
724	\$32,335	\$36,918	\$36,918
1603	\$52,665	\$59,099	\$52,655
1577	\$42,116	\$53,608	\$53,608
3047	\$40,673	\$42,295	\$42,295
3573	\$38,511	\$41,470	\$38,511
3591	\$40,679	\$36,000	\$18,000
3572	<u>\$41,498</u>	<u>\$41,498</u>	<u>\$41,498</u>
Total	<u>\$731,337</u>	<u>\$796,502</u>	<u>\$790,364</u>

(*) – City funds are used for the rehabilitation costs, and HOME funds are used to reimburse the City for those costs. Total amounts paid often exceed original contract amounts due to change orders.

Appendix C

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments



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September 8, 2008

Mr. James D. McKay
Regional Inspector General for Audit
U.S. Department of Housing and Urban Development
Office of Audit, Box 42
Richard B. Russell Federal Building
75 Spring Street, SW, Room 330
Atlanta, GA 30303-3388

Re: Comments – Draft Audit Report on HOME Program Procurement

Dear Mr. McKay:

On September 4th, representatives of this office and the City's Department of Community Development participated in an exit conference with Mr. Charles Pagano to review and discuss the draft audit report on HOME program procurement.

The City does not dispute the finding that it did not advertise in the solicitation of bids for homeowner rehabilitation. However, we do believe that the process used resulted in open competition and the awarding of contracts in a manner most advantageous to the program. The recommendations outlined in the draft audit report and our proposed responses to them are outlined below.

Recommendation 1: That the U.S. Department of Housing and Urban Development (HUD) require the City to provide documentation to support that the HOME program rehabilitation activities, totaling \$817,307 for fiscal years 2006 and 2007, were awarded to the most responsible firm with a proposal that was most advantageous to the program, considering price and other factors.

Response: The City of Durham currently obtains competitive sealed bids from a pool of approved contractors on a bidders list, but does not advertise each bid package. Minority contractors are well represented on the bidders list and any contractor can apply to be placed on the list. When a bid package is ready, all contractors on the list

Comment 1

Comment 2

Good Things are Happening in Durham

are notified. Contractors sign a bid package pickup sheet and those contractors that attend the bid walkthrough also sign an attendance sheet. Sealed bids are opened and read aloud on the specified date and time and a bid tabulation sheet is completed, signed and witnessed at that time. Copies of all three sheets for each address listed in the draft audit report are being forwarded to Mr. Gary Dimmick, Director, Office of Community Planning and Development in HUD's Greensboro office.

Recommendation 2: That HUD require the City to develop and implement procedures to ensure that future services for homeownership rehabilitation are procured in accordance with applicable federal procurement requirements.

Response: Attached is an advertisement being placed in the Herald Sun and Carolina Times newspapers to inform interested contractors of the opportunity to be placed on the approved bidders list. The Department of Community Development proposes to publish this advertisement not less than twice annually. Additional steps proposed by the Department to ensure that services are procured in accordance with applicable steps include the following:

- The Notice to Contractors will be posted on the Department's website.
- The City's Office of Equal Opportunity and Equity Assurance will be notified of bid package availability.
- All approved bidders will be notified in writing or by email of the availability of bid packages.

Should you have any questions or need additional information, please do not hesitate to let us know.

Sincerely,



Thomas J. Bonfield
City Manager

C: Mr. Gary A. Dimmick
Ms. Sharlene Abbott
Ms. Donna Anderson

OIG Evaluation of Auditee Comments

- Comment 1 The regulations require that requests for proposals be publicized when using the competitive proposal method of procurement. This requirement, if followed, helps ensure full and open competition.
- Comment 2 Although the City believes minority contractors are well represented on its bidders list, the requirement is much more encompassing. The regulations require that grantees and subgrantees take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.