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TO: Michael A. Williams, Director, Office of Public Housing, Greensboro, NC,
4FPH
Dominique Blom, Deputy Assistant Secretary for Public Housing Investments,
PI

//signed//

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

SUBJECT: The Housing Authority, City of Wilson, NC, Lacked the Capacity To Effectively
Administer Recovery Act Funds

HIGHLIGHTS

What We Audited and Why

We reviewed the Housing Authority of the City of Wilson (Authority) because it was granted \$9.2 million for Public Housing Capital Fund (capital fund) projects under the American Recovery and Reinvestment Act of 2009 (Recovery Act). In addition, the U. S. Department of Housing and Urban Development (HUD), Office of the Inspector General (OIG), hotline received a citizen's complaint alleging that the Authority used unethical procurement practices and did not plan to use Recovery Act funds effectively.

Our objectives were to (1) evaluate the Authority's capacity to administer additional capital funds received under the Recovery Act and (2) determine whether the Authority followed Federal procurement regulations. We expanded our objectives to include an assessment of the eligibility of the Authority's planned green renovation of 68 senior housing units using a \$7.6 million Public Housing Capital Fund Competitive (Recovery Act Funded) grant.

What We Found

The Authority lacked sufficient capacity to administer the additional \$9.2 million in capital funds it received under the Recovery Act. It failed to comply with procurement and financial management requirements in its administration of other capital and operating funds. These deficiencies occurred because the Authority lacked sufficient controls, such as adequately trained personnel and adequate written procedures, to ensure full compliance with the requirements. As a result, it could not provide assurance that it properly awarded more than \$2.4 million for contracts or that it had the capacity to administer Recovery Act funds in accordance with the requirements.

The Authority's plan to substantially rehabilitate 68 senior housing units into an energy-efficient, green community using a \$7.6 million Recovery Act competitive capital fund grant was ineligible. The plan the Authority submitted as part of its grant application exceeded HUD's total development cost limits and required the premature replacement of a number of recent improvements paid for with Federal funds. This condition occurred because the Authority failed to ensure that it submitted an accurate and well-planned application in accordance with the requirements of the HUD notice of funding availability. As a result, the true cost of renovating this development as planned would result in the inefficient and wasteful use of Federal funds and the unnecessary displacement of elderly tenants.

What We Recommend

We recommend that the Director of the Greensboro Office of Public Housing continue increased oversight and monitoring of the Authority and require it to develop, implement, and enforce written policies and procedures for its procurement and financial management functions. The Authority must provide acceptable support for unsupported costs and either provide support or repay unsupported capital fund reimbursements.

We also recommend that the Deputy Assistant Secretary for Public Housing Investments rescind the Authority's \$7.6 million Recovery Act competitive grant.

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 Authority on June 8, 2010, and discussed the findings with Authority officials at an exit conference on June 18, 2010. The Authority provided its written comments on June 16. The Authority expressed general disagreement with the findings.

The complete text of the Authority's response, along with our evaluation of that response, can be found in appendix B of this report. Attachments to the Authority's comments were not included in the report but are available for review upon request.

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BACKGROUND AND OBJECTIVES

The Housing Authority of the City of Wilson (Authority) was established in 1953 pursuant to the North Carolina Housing Authorities Law. Its primary objective is to maintain a stock of good affordable housing to meet the needs of its citizens while providing an environment in which families can live, raise their children, and feel safe. It is governed by a five-member board of commissioners appointed by the mayor of Wilson. The Authority's records are located at 213 Broad Street, Wilson, NC.

In addition to its regular 2009 Public Housing Capital Fund (capital fund) allocation of \$1.3 million, the U.S. Department of Housing and Urban Development (HUD) allocated the Authority \$1.6 million in formula-based capital funds under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Enacted as Public Law 111-5 on February 17, 2009, Division A, Title XII, of the Recovery Act provides \$3 billion in formula-based and \$1 billion in competitive capital funds to public housing authorities to carry out capital and management activities as authorized under Section 9 of the United States Housing Act of 1937. On March 18, 2009, HUD amended the annual contributions contract with the Authority to include the formula-based capital funds to ensure that public housing developments continue to be available to serve low-income families. HUD approved the Authority's planned use of the funds to include renovating and converting 26 public housing units into homeownership units under Section 32 (\$645,645), constructing a new administrative facility (\$693,992), and planning and administration costs (\$289,200). As of May 19, 2010, the Authority had obligated 100 percent of the Recovery Act formula funds and spent about 13 percent.

In addition, on September 23, 2009, HUD awarded the Authority a \$7.6 million Public Housing Capital Fund Competitive (Recovery Act Funded) grant. This award is for the substantial rehabilitation of 68 public housing units to provide an energy-efficient, green community. Some of the more substantial planned work includes roof areas with photovoltaic panels and geothermal heating and cooling. As of May 19, 2010, the Authority had obligated 100 percent of these funds and spent about 3 percent.

Our objectives were to (1) evaluate the Authority's capacity to administer additional capital funds received under the Recovery Act and (2) determine whether the Authority followed Federal procurement regulations. We expanded our objectives to include an assessment of the eligibility of the Authority's planned green renovation of 68 elderly public housing units using a \$7.6 million Recovery Act competitive capital fund grant.

RESULTS OF AUDIT

Finding 1: The Authority Lacked the Capacity To Effectively Administer Recovery Act Funds

The Authority lacked sufficient capacity to administer the additional \$9.2 million in capital funds it received under the Recovery Act. It failed to comply with procurement and financial management requirements in its administration of other capital and operating funds. These deficiencies occurred because the Authority lacked sufficient controls such as adequately trained personnel and adequate written procedures to ensure full compliance with the requirements. As a result, the Authority could not provide assurance that it properly awarded more than \$2.4 million for contracts or that it had the capacity to administer Recovery Act funds in accordance with the requirements.

Procurement Requirements Not Followed

Although the Authority's procurement policy generally complied with Federal requirements, the Authority did not consistently follow the procedures designed to ensure that it efficiently administered Federal funds.

We evaluated 18 procurements¹ valued at about \$2.6 million² and found that the Authority failed to follow Federal requirements and its own procurement policies for 16 of them. The Authority did not comply with regulations at 24 CFR (Code of Federal Regulations) 85.36 that required it to estimate and analyze costs, develop clear statements of work, purchase through full and open competition, and maintain records to document the significant history of each procurement. The table in appendix D shows the results for the procurements reviewed.

Cost Estimates Not Prepared

The Authority awarded contracts without first estimating costs. Procurement regulations required the Authority to prepare independent cost estimates before every procurement action. Estimating the cost establishes what the Authority expects to pay for the goods or services and can be used as a basis for evaluating and negotiating prices to better ensure fair and reasonable costs. The Authority could not provide cost estimates for 13 of the 18 contracts reviewed. Thus, the

¹ Of the 18 procurements, 14 were procured with capital funds—13 from prior years' formula funds and 1 funded under the Recovery Act. The other four were funded with public housing operating funds.

² Due to open indefinite quantity contracts without a not-to-exceed amount, we are unable to determine the exact total amount for the contracts reviewed.

Authority had no basis for ensuring that the contract costs were fair and reasonable for \$595,479 that it spent for goods and services or for another \$7,021 that it planned to spend for a Recovery Act consulting contract. For example, the Authority awarded an architect and engineering contract based on qualifications. The Authority planned to negotiate the prices for the services when it issued delivery orders. However, it did not estimate the costs for the services either before awarding the contract or before issuing \$320,064 in delivery orders.

Statements of Work Unclear

The Authority did not develop clear statements of work for a housing inspection contract and a file assessment contract. A clear statement of work forms the basis for a successful procurement action. It provides everyone involved a clear understanding of the requirements, results in more competitive bids, and minimizes the need for future changes. The descriptions of needed services for these procurements were not specific. The costs quoted for the bids indicated that the scopes of work were probably misunderstood by the bidders. For the housing inspection contract, the Authority received two bids, with one priced five times higher than the other. Similarly, two of the four bids received for the file assessment contract proposed costs six to seven times higher than the lowest bid.

Full and Open Competition Not Provided

The Authority could not show that it awarded a \$1.96 million maintenance services contract through full and open competition. We reviewed the Authority's request for proposals, the submitted offers, and the offer evaluation forms. These documents indicated that the Authority did not follow its stated selection process. The request for proposals required offerors to describe company and employee qualifications and provide references. Offerors were required to submit supporting documents and were cautioned that failing to do so would result in their offer not being considered. The request for proposals indicated that the Authority would select the offeror most qualified in terms of demonstrable experience, knowledge, and perceived benefit.

The selected offeror did not submit the required documents, yet its offer was accepted. The four Authority staff members evaluating the offer awarded it scores of 58, 58, 59, and 60 out of a possible 60 points for the three criteria on experience despite the lack of required supporting documents. The Authority's facility director stated that the selected offeror was a company newly formed by an individual who worked for the Authority as a subcontractor. The company had no employees and did not exist as a North Carolina corporation until 27 days before it signed the contract.

Although the selected offeror submitted the lowest price, according to request for proposal requirements, it was not responsive and should have been eliminated from the competition. The Authority's selection process required it to choose the most qualified offeror and then enter into negotiations for a best and final price. If the Authority and the most qualified offeror could not reach a cost-effective

agreement, the Authority could choose the next best qualified offeror and negotiate terms. The Authority did not select an offeror with the most demonstrable experience, thus violating its selection process and the Federal requirement that procurements be awarded through full and open competition.

Unsupported Noncompetitive Award

The Authority did not justify why it noncompetitively awarded a \$33,569 energy performance consulting contract. Federal requirements and the Authority's procurement policy allowed noncompetitively awarding contracts only when other methods were infeasible. In addition, the Authority was required to prepare a cost estimate and a justification for a noncompetitive award. Acceptable justifications included (1) there was only a single supply source, (2) the service was needed for a public emergency, (3) HUD authorized the noncompetitive proposal, or (4) competition was attempted but sufficient sources could not be found. The Authority's files contained neither the cost estimate nor any justification for the noncompetitive procurement. We also could not locate either the request for proposals prepared by the Authority to locate potential offerors or the other offer that it claimed was received from its former assistant executive director. Without these supporting documents, the Authority could not show that it first attempted open competition and that the one submitted offer represented a fair and reasonable price.

Unsupported Capital Fund Reimbursements

The Authority could not support some reimbursement requests for capital fund program costs. Regulations at 24 CFR 85.20 required the Authority to maintain (1) accounting records that adequately identify the source and application of funds provided and include information pertaining to liabilities and expenditures and (2) effective control and accountability of cash and other assets to ensure that they are used solely for authorized purposes.

We reviewed reimbursement requests totaling \$724,000 and found that the Authority could not support draws for \$93,989.³ The Authority did not have payment documentation, miscoded expenses, drew down funds from the wrong budget line item, and improperly used capital funds for regular operating costs or expenses not approved in the Authority's annual plan. Also, \$40,210 included in the reimbursement requests was not for eligible capital fund program expenses. These deficiencies occurred because the Authority did not have adequate controls over the capital fund expense reimbursement process. At our request, the Authority provided additional documentation showing that several, but not all, deficiencies that we identified had been corrected.

³ The actual amount for unsupported drawdowns was \$95,690 and was adjusted to \$93,989 to avoid double counting \$1,701, which is included in procurement deficiencies.

Improperly Used Recovery Act Funds

The Authority improperly used \$95,114 in capital funds from the Recovery Act toward the purchase of a building. HUD approved the Authority's planned use of the formula-based Recovery Act capital funds to construct a new administrative building. During our review, we found that the Authority was buying and renovating an existing building and brought this ineligible use of Recovery Act funds to HUD's attention. The Greensboro HUD office worked with the Authority to correct the issue; however, it also placed the Authority on 100 percent review for Recovery Act transactions as well as all other transactions over \$25,000.

Other Control Weaknesses

In addition to not following existing control procedures, the Authority had excessive staff turnover at key positions. It had hired its fourth director of finance since January 2007 and in December 2009, hired a director of development to oversee the capital fund program. That position had been vacant since March 2009. The Authority's architect had been assigned to supervise the annual capital fund grants since the development director's position was vacant. In addition, the Authority had only recently hired a consultant to oversee the Recovery Act formula funds and a master developer to oversee the Recovery Act competitive funds.

The Authority also recently changed its method for requesting capital funds. In the past, the Authority would request reimbursement after paying the expenses, but in the future, it will draw down funds in advance. However, the Authority did not have adequate written policies to provide its staff guidance for carrying out the new process.

Conclusion

The Authority's past procurement record and internal control deficiencies showed a lack of sufficient capacity to administer Recovery Act funds. The Authority must improve its administration of Federal program funds by following its existing internal controls for procurement and financial management and by developing needed additional written procedures and addressing its staffing issues. Taking these measures will better ensure that it can provide the transparency and accountability required for the administration of Recovery Act funds.

Recommendations

We recommend that the Director of HUD's Greensboro, NC, Office of Public Housing

- 1A. Continue the 100 percent review for Recovery Act procurement transactions as well as other procurement transactions over \$25,000.
- 1B. Require the Authority to develop, implement, and enforce written procedures to ensure effective performance and compliance with Federal procurement regulations and proper use of all capital funds.
- 1C. Provide adequate documentation to support that the \$2,328,050 spent and the \$205,630 to be spent for contracts improperly procured between January 1, 2007, and September 30, 2009, were awarded to the lowest responsive and responsible bidders. Any amounts determined to be ineligible should be reimbursed to their respective programs from non-Federal funds. The actual amount for contracts improperly procured was \$2,368,260. To avoid double counting, the amount was reduced for the \$40,210 in recommendation 1E.
- 1D. Require the Authority to provide the supporting source documentation to show that the \$93,989 was for eligible and allowable capital fund expenses. The remaining amount (\$1,701) is included in recommendation 1C concerning procurement issues (see footnote 1).
- 1E. Require the Authority to either provide another \$40,210 in eligible capital fund expenses for the 2007 grant or reimburse the grant using non-Federal funds.

Finding 2: The Authority's Plan for Its Recovery Act Competitive Grant Was Ineligible

The Authority's plan to substantially rehabilitate 68 senior housing units into an energy-efficient, green community using a \$7.6 million Public Housing Capital Fund Competitive (Recovery Act Funded) grant was ineligible. The plan the Authority submitted as part of its grant application exceeded HUD's total development cost limits and required the premature replacement of a number of recent improvements paid for with Federal funds. This condition occurred because the Authority failed to ensure that it submitted an accurate and well-planned application in accordance with the requirements of the HUD notice of funding availability (NOFA). As a result, the true cost of renovating this development as planned would result in the inefficient and wasteful use of Federal funds and the unnecessary displacement of elderly or disabled tenants.

The Authority, with help from its master developer, applied for additional capital funds provided through the Recovery Act. In September 2009, HUD awarded the Authority more than \$7.6 million to substantially rehabilitate a portion of its Forrest Road development into an energy-efficient, green community. The 68 small senior housing units are made up of 30 efficiencies, 34 one-bedroom units, and 4 two-bedroom units. Some of the planned work included the use of geothermal heating and cooling to reduce energy use, providing roof areas with photovoltaic panels to produce electricity, and harvesting rainwater to conserve water. As submitted to HUD, the Authority's plan would result in an average of \$111,980 in renovation costs for each unit.

Proposed Costs Higher Than HUD's Limits

The budget the Authority provided as part of its application contained the wrong total development cost limits.⁴ The Authority used the higher development cost limits for Greensboro, NC, when it should have used those for Greenville, NC. The Authority is located about 35 miles from Greenville and about 120 miles from Greensboro. For the type of units in the Authority's plan, the total development cost limit was more than \$7.9 for Greensboro and less than \$7.2 million for Greenville. As a result, the projected cost of the Authority's plan was about \$440,000⁵ over the maximum allowed.

The Authority's master developer stated that he had intended to select Greenville and had inadvertently selected Greensboro. However, he contended that the

⁴ HUD's total development cost limit represents the maximum amount of public housing funds a housing authority may use in developing public housing. The total development cost for the modernization of existing units is 90 percent of the total development cost limit.

⁵ Calculated by subtracting the HUD total development cost limit for Greenville, NC, which the Authority should have used, from its requested amount: \$7,614,642 - \$7,174,438 = \$440,204.

planned cost was well within the total development cost limit for Raleigh, NC, and he considered Wilson to be part of the Raleigh housing market. The local HUD field office engineer stated that the Authority should have selected the cost limits for Greenville.

HUD's NOFA for the grant required that the applicants comply with specific threshold requirements to be considered for funding. Threshold requirements required the applicant's budget to propose reasonable costs in relation to anticipated results and comply with HUD's total development cost limits for the area. Thus, if the Authority had presented its planned cost of \$7.6 million along with the correct development cost limit of \$7.1 million, it would not have met the threshold requirement for the total development cost limit and would not have been considered for funding.

The Authority's requested developer's fee was also excessive. The Authority requested more than 13 percent of its planned development cost although the limit in HUD's NOFA was 12 percent. The Authority's requested fee of about \$1.1 million exceeded the NOFA maximum limit by \$143,253 using the Greensboro development cost limit, and \$196,077 using Greenville's limit.⁶

According to both the NOFA and the award notification HUD provided to the Authority, grant recipients had only limited ability to modify the plans they submitted. Specifically, they could not change the plans in ways that would cause them to be unable to comply with the commitments for which HUD awarded grading points. Therefore, the Authority's plan was ineligible due to the cost constraints, and HUD's rules prohibited it from being modified to render it eligible.

Premature Replacement of Recent Installations

Even if the Authority had used the correct development cost limits, its plan for renovating the units contained other flaws rendering it ineligible for funding. Although not disclosed in its application, the Authority had only recently completed energy-conserving improvements to the development using a HUD-approved energy performance contract. It had also made a number of other improvements using HUD-provided capital funds. Implementation of the Authority's plan would result in the wasteful destruction or removal of at least \$411,030 in such recently installed improvements.

⁶ Fees based on the NOFA requirement should have been calculated based on the Authority's requested grant amount multiplied by a maximum of 12 percent (NOFA allowed between 9 and 12 percent): $\$7,614,642 \times .12 = 913,757$ (Greensboro) and $\$7,174,438 \times .12 = 860,933$ (Greenville). The Authority requested \$1,057,010, which exceeds \$913,757 by \$143,253 for Greensboro limits and exceeds \$860,933 by \$196,077.

In October 2007, the Authority completed a \$6 million improvement project funded with a \$2.65 million energy performance contract and a \$3.7 million loan received through HUD's capital fund financing program. All Authority developments received improvements through this project.

The purpose of the energy performance contract was to provide an innovative financing technique that uses cost savings from reduced energy consumption to repay the cost of installing energy conservation measures. The Forrest Road development received water meters, low-flow toilets, shower heads, lavatory faucets, kitchen sink aerators, and new energy-efficient windows. The contract required annual payments of \$283,674 for 12 years. Since the Authority received the contract through HUD's add-on subsidy incentive, HUD provides the funds for the annual payment, and the Authority retains the energy savings.

Additional work performed under the capital fund loan or the annual capital fund grants at Forrest Road since 2007 included asbestos abatement, interior painting, new tile floors, bathroom renovations, new closet doors, new exterior deadbolts and strikes, new roofs, soffit and fascia, and new energy-efficient heating/cooling units. The Authority is making annual payments of \$400,532 for 10 years to repay the capital fund loan. HUD allows the Authority to set aside a portion of its future annual capital fund grants to repay the loan. The loan will not be fully repaid until 2016.

Although the loans funding the improvements will not be fully repaid for 6 years, many of the recent improvements, including the roofs, floors, and paintwork, would be destroyed in the green renovation process. In addition, the improvements made during the recent energy performance contract, including the low-flow toilets and other water fixtures, would be removed and replaced with still more "green" models. For example, as part of the energy performance contract, the Authority replaced all of the old toilets requiring 3.5 gallons of water with new low-flow toilets requiring only 1.6 gallons. It now plans to replace these with new models requiring only 1.1 gallons. The other new water-conserving fixtures in the bathrooms and kitchen would also be replaced with yet more "green" models.

Based on our review of invoices and payments, the Authority spent more than \$411,030 for work completed on the 68 units during 2007 and 2008. After we began inquiries regarding the need to destroy or replace such recent improvements, Authority management stated that any salvageable items would be disconnected and used at another project. However, the Authority's grant application did not disclose the cost of recent improvements it would destroy in the renovation process or the cost involved in removing serviceable equipment, storing it, and perhaps eventually installing it elsewhere. In addition, storage of this equipment would result in increasing the Authority's reserves which is not a permissible use of HUD capital funds, including Recovery Act funds.

The Housing Act of 1937 as amended, specific HUD requirements, and other Federal requirements generally prohibit housing authorities from using Federal funds to replace serviceable capital improvements and dwelling equipment. The Housing Act provides, in part, that the capital fund may be used to address deferred maintenance needs and replace obsolete utility systems and dwelling equipment. HUD's capital fund program regulations⁷ contain the same language. None of the Authority's improvements were obsolete; they had all been made within the last 4 years and should have many years of serviceable life remaining. HUD also specifically addressed the issue of premature replacement in its Modernization Standards Handbook (handbook) and provided guidance regarding green renovations in Office of Public and Indian Housing (PIH) Notice PIH 2009-09, issued in March 2009.

HUD's modernization handbook generally prohibits the premature replacement of serviceable building components and equipment. An exception is made for energy conservation improvements for which a cost-benefit analysis shows a 15-year or less payback period. The March 2009 notice encourages public housing authorities to purchase green products and equipment but stipulates that such purchases must be economically feasible. Generally, the additional costs involved must be recoverable from savings over the expected life of the equipment, and the equipment must be cost-effective to maintain. The notice further states that public housing agencies should use life-cycle costing analysis to calculate the effective cost of equipment when maintenance is reduced and savings are accrued over a specific amount of time.

In addition to the HUD-specific requirements, the Office of Management and Budget's (OMB) Circular A-87 requires that grantees' expenditure of Federal funds be both necessary and reasonable. The Authority's planned expenditures were neither necessary nor reasonable given the excellent condition of the development and the excessive costs. The unnecessary replacement of such recently purchased serviceable items would be both wasteful and contrary to long-standing Federal policy. If the Authority replaced these items prematurely, their depreciated cost would add to the total development cost of the renovations.

Development in Excellent Condition

The Forrest Road development consists of nice senior housing residences on tree-lined streets. They have been well maintained by the Authority and the residents both inside and out and, with the recent renovations, have no deferred maintenance needs.

⁷ The NOFA, section VI (J), Award Administration Information (page 117), requires grantees to comply with the applicable governing regulations, specifically 24 CFR Parts 905 (Capital Fund Program), 968 (Public Housing Modernization), and 941 (Public Housing Development).



Jefferson Street units



Forrest Road units – Note the new roofs, heating/cooling units, and windows installed in 2007 and 2008.



Bathroom renovations completed in 2007



New energy-efficient heating/cooling unit installed in 2008



Kitchen cabinets installed in 2007

Floor tile installed in 2007

The Authority's planned renovations are comprehensive and go far beyond the replacement of fixtures and equipment. An architect's rendering shows how the plan would transform the development's appearance.



Architect's rendering of Forrest Road green community

Inadequate Planning Incomplete

The Authority's planning appeared flawed from the outset. It elected to apply for funds to increase the energy efficiency and water conservation for the development although it had recently completed similar work. In addition, it had neither established a need for such comprehensive and costly renovations nor performed a cost benefit analysis to justify them. Although HUD requires housing authorities to perform a physical needs assessment every 5 years, the Authority had not completed one since December 2001. Without an analysis, the Authority had no basis for asserting that the planned costs were reasonable in relation to the anticipated results as required by the NOFA.

When we inquired about the lack of such an analysis, the master developer attempted to justify the plan based on an earlier analysis for a project in Little Rock, AR. He later provided an additional preliminary analysis to justify the geothermal system, but that analysis was based on energy consumption for a 1,000-square-foot house. The 68 Forrest Road units range in size from 394 to 737 square feet. Since the entire basis for the planned renovations was energy efficiency and water conservation, the only acceptable analysis would necessarily have compared the total renovation cost per Forrest Road unit with expected and supportable energy savings/water conservation outcomes.

Following the completion of the energy performance contract, the Forrest Road units appeared to be fairly energy efficient. The master developer calculated that the average utility consumption for the 68 units was only about \$90 per month based on actual consumption for 2009. Assuming that all of the planned

renovations were completed, the master developer opined that energy savings could range from 50 to 75 percent. Assuming that such efficiency would result, the \$111,980 cost to renovate each unit would take much longer than the HUD-specified 15 years to recover. It would take about 207 years to recover all of the costs, assuming the 50 percent savings rate, and 138 years to recover at 75 percent. Even if the renovated units required no utilities, it would take over 100 years to recover the renovation costs.

The Authority was in the process of developing firm renovation plans. As of April 23, 2010, it did not have a definite scope of work completed and had changed some plans based on our inquiries. For example, the original plans called for replacing recently installed energy-efficient windows with higher efficiency windows. After we questioned the necessity of replacing the windows, the developer stated that the Authority might reconsider and not replace the windows. When asked what would be done with the current windows if they were replaced, he stated that one idea was to use them as walls in a community greenhouse. Other material he provided indicated that the Authority was considering the installation of windmills to generate electricity. Windmills were not in the plan the Authority submitted to HUD.

Conclusion

The Authority's planned renovation of the Forrest Road development is unwise and should not be allowed to proceed. As a result of flawed planning, the Authority's grant application contained serious errors and omissions, rendering its plan ineligible for funding. Its plan did not represent a true need and did not propose reasonable costs in comparison to anticipated results as required by the NOFA. The Authority's projected development costs exceeded the maximum allowed for the area, and even those costs were understated because they failed to consider the cost of recent improvements the Authority planned to destroy or remove in the renovation process.

The unnecessary destruction or replacement of such recently purchased, serviceable improvements would be both wasteful and contrary to long-standing Federal policies. The Authority should have used more care in its planning process. It should have submitted an accurate application proposing necessary and reasonable renovations to this development or selected a development with deferred maintenance needs with more potential for energy savings.

Recommendations

We recommend that the Deputy Assistant Secretary for Public Housing Investments

2A. Rescind the Authority's \$7.6 million Recovery Act competitive grant.

SCOPE AND METHODOLOGY

Our objectives were to (1) evaluate the Authority's capacity to administer additional capital funds received under the Recovery Act and (2) determine whether the Authority followed Federal procurement regulations. We expanded our objectives to include an assessment of the eligibility of the Authority's planned green renovation of 68 elderly public housing units using a \$7.6 million Public Housing Capital Fund Competitive (Recovery Act Funded) grant when we learned that the Authority planned to prematurely replace recently installed improvements.

To accomplish our objectives, we reviewed

- The Recovery Act; Federal financial management and procurement regulations at 24 CFR 85.20, 85.36, 905, and 968; OMB Circular A-87; pertinent sections of the Housing Act of 1937 as amended; HUD Handbook 7485.2; Notice PIH 2009-09; the NOFA for the capital fund recovery competition grants; Comprehensive Grant Guidebook on capital fund grants; HUD guidance on use of capital funds authorized by the Recovery Act; HUD's amended annual contributions contract with the Authority; and HUD's Greensboro Office of Public Housing's correspondence and files pertaining to the Authority.
- The Authority's policies and procedures manuals; planned use of the capital funds authorized by the Recovery Act; previous capital fund budgets and reimbursements from HUD's Line of Credit Control System; all contracts the Authority identified as awarded for 2007, 2008, 2009, and Recovery Act capital funds grants; check registers; staffing assignments; job descriptions; and organizational charts.

We selected a sample of 16 contracts from a universe of 45 occurring during the audit period. We included six contracts in the sample because they were included in the citizen's complaint. We selected the remaining 10 contracts nonrandomly to ensure that the sample included capital fund contracts, non-capital fund contracts, and Recovery Act contracts as well as the various procurement methods employed by the Authority. We added two contracts during the review because the vendor files contained additional contracts not in our original universe. Thus, our final sample consisted of 18 contracts from a universe of 47. We also interviewed the Authority's employees and HUD's Greensboro staff involved with oversight of the Authority.

We performed our onsite work from October 2009 through May 2010 at the Authority's office located at 213 Broad Street, Wilson, NC. The audit covered the period January 1, 2007, through September 30, 2009, and was expanded as determined 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

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

- Program operations,
- Relevance and reliability of information,
- Compliance with applicable laws and regulations, and
- Safeguarding of assets and resources.

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

Relevant Internal Controls

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

- Controls over the safeguarding of resources against waste, loss, and misuse
- Controls over compliance with laws and regulations

We assessed the relevant controls identified above.

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

Significant Weaknesses

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

- The Authority lacked the capacity to effectively administer Recovery Act funds (finding 1).
- The Authority's plan for its Recovery Act competitive grant was ineligible (finding 2).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS AND FUNDS TO BE PUT TO BETTER USE

<u>Recommendation number</u>	<u>Ineligible 1/</u>	<u>Unsupported 2/</u>	<u>Funds to be put to better use 3/</u>
1C		\$2,328,050	\$205,630
1D		93,989	
1E	\$40,210		
1G			
2A			<u>7,614,642</u>
Total	<u>\$40,210</u>	<u>\$2,422,039</u>	<u>\$7,820,272</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.

3/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. Implementation of recommendation 1C to require the Authority to provide support for the eligibility of its contracts will ensure that the remaining funds are applied to eligible activities and thus ensure that these funds are put to better use. Implementation of recommendation 2A to recapture the Recovery Act competitive grant will allow HUD to reallocate the funds to other entities for eligible activities and thus ensure that these funds are put to better use.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments



EXECUTIVE DIRECTOR
Edward R. Jagnandan

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June 16, 2010

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

RE: Wilson Housing Authority – June 8, 2010 Draft Audit Report

Dear Mr. McKay:

This is in reply to your June 8, 2010, letter providing a draft audit report of the Wilson Housing Authority's (WHA) capacity to administer additional capital funds under the American Recovery and Reinvestment Act (ARRA). You requested that we provide our response by June 16, 2010.

We appreciate the opportunity to comment on the draft report. This agency does not agree with the overall finding that this agency lacks the capacity to administer the Capital Fund or that the entire ARRA grant should be recaptured. We also disagree with several other issues and have noted a good number of inaccuracies, which we intend to delineate.

We note that this review has been under way for a period of approximately nine months. During this period, WHA has fully and promptly complied with all requests made by OIG staff to cooperate with this investigation. Your letter arrived with one day advance notice by telephone, no forecasting of the findings contained therein, and allowed this agency only seven (7) days to respond. We believe this was very unreasonable, considering the serious allegations that were leveled at WHA – many of which appear to be inaccurate. Several of our key personnel were travelling at this time, and it created an extreme hardship on them. This agency should have been provided with adequate time to prepare a response given the nature and severity of your recommendations. Nevertheless, we have made our best efforts to correct the inaccuracies and provide all requested documentation.

Comment 1

Similarly, the timing of this audit report - following the termination of two employees directly responsible for many of the allegations, and right before a lawsuit being litigated against WHA by those same employees - seems more than coincidental. It appears that disgruntled ex-employees went to OIG to leverage fabricated and exaggerated allegations of mismanagement, as well as cite missing documentation that was under their direct control and may have been removed by them, in an attempt to exact revenge and to bolster their case for a personal monetary award.

Despite these difficult circumstances, the WHA has timely prepared its initial response to you which is enclosed. If necessary, this response may be supplemented in the future. We respectfully request that OIG carefully review the attached response and reconsider and amend its findings to reflect the correct information and legal interpretations contained herein.

Sincerely,



Edward R. Jagnandan
Executive Director

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Wilson Housing Authority Response

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**HUD Office of Inspector General (OIG) Draft Report
Lacked Capacity to Efficiently Administer Recovery Act Funds**

Wilson Housing Authority Response

Overview.

The public housing program began over 70 years ago. It has consistently suffered from serious underfunding since its inception. HUD commissioned a study of the public housing inventory in 1998, conducted by Abt Associates Inc. The study showed a backlog of unmet modernization needs for the nation's public housing inventory of **\$20 billion**. Annual accrual of additional capital needs was reported to be **\$2 billion** nationally. Appropriations for the Operating Fund have consistently fallen below the amounts public housing agencies (PHAs) are eligible for under HUD's own regulations. This historical lack of funding has seriously compromised the ability of PHAs to adequately maintain public housing for the 40-year term of the public housing ACC and subsequent extension of 20 years when Capital Funds are accepted and 10 years when Operating Funds are accepted. The need for additional funding for long-term viability is well documented.

Congress and HUD, through the ARRA Notification of Funding Availability (NOFA), have given PHAs around the country a unique and probably a once in a lifetime opportunity to carry out some additional upgrades to further address the long-term viability issue discussed above by not only making physical improvements, but also to further national goals to increase energy conservation and to implement green and sustainable/renewable product improvements in public housing. This opportunity came unexpectedly and imposed significantly stricter time frames than is otherwise required in the Public Housing Capital Fund.

In order to sustain the public housing program, WHA has been assertive in securing additional funding through the Capital Fund Financing Program (CFFP), and the Energy Performance Contracting Program (EPC) as the Office of Inspector General (OIG) points out. Our Capital Fund programs as well as these more sophisticated financing techniques along with the millions of dollars worth of construction work have been extremely successful. The WHA plans to take advantage of the ARRA funding to enhance the long-term viability of its public housing units.

The WHA owns and operates 781 public housing units in three asset management projects (AMPs). In the operation of public housing, we must perform a host of property management functions including, but not limited to:

Comment 2

- Develop and maintain waiting lists for prospective residents, interview and determine eligibility of prospective residents, and prepare leases for new residents.
- Conduct move-in inspections and admit the residents to their units.
- Assess resident surcharges, enforce the lease provisions and perform evictions as necessary.
- Pay utility bills.
- Maintain these units through general, routine and extraordinary maintenance activities over the course of any given year.
- Conduct annual unit and system inspections, preventive maintenance inspections and housekeeping inspections as well as complete associated work orders to maintain units.
- Administer a multimillion-dollar Capital Improvement Program.

Having said all of the above, it is significant to note that HUD has determined that the WHA is a **High Performer** under its Public Housing Assessment System (PHAS) with a score of 93 out of a total of 100 points. The WHA has been designated a High Performer for every year but one since 2000. It is significant to note that despite the shortage of funding from Congress and HUD, and dozens of Federal regulations all impacting operations, the WHA has been able to properly operate and maintain its public housing portfolio with distinction.

The WHA also administers approximately 550 Section 8 Housing Choice Vouchers.

Section 2(a) of the United States Housing Act (USHA) of 1937 establishes the mission of public housing to remedy the unsafe housing conditions and acute shortage of decent and safe dwellings for low-income families. Section 2 goes on to state that "It is the Policy of the United States . . . consistent with the objectives of this title, to **vest in public housing agencies that perform well, the maximum amount of responsibility and flexibility in program administration. . . .**" *Emphasis added.*

The Office of Management and Budget provides that grantees should be similarly treated through OMB Circular A-102 and HUD's implementing regulations at 24 CFR 85.36(b)(11) which states:

Grantees and sub-grantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of their procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or sub-grantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or sub-grantee unless the matter is primarily a Federal concern. Violations of law will be referred to local, State, or Federal authority having proper jurisdiction.

HUD has determined the WHA to be a High Performer under its own evaluation system. The WHA has been High Performer every year since 2000, with the exception of 2005, and all years during Edward R. Jagnandan's tenure as Executive Director. Furthermore, the WHA has an annual audit of its operations. Consistent with the Single Audit Act and its Compliance Supplement, the Auditor tests for program compliance. All WHA audits have been issued by its independent auditor, without significant findings or recommendations.

Comment 3

As we detail further on in this response, this OIG report is replete with subjective opinions in which the OIG is substituting its judgment for that of the Wilson Housing Authority and otherwise usurping the WHA's inherent statutory authority under Section 2 of the USHA to have maximum amount of flexibility in administering the public housing program.

The administrative record, as determined by HUD, demonstrates that the WHA has the capacity to properly administer the Public Housing Capital Fund and its Capital Fund ARRA grants. In fact, the OIG itself observes this fact when it states in its report that the Forrest Road Homes public housing development is "in excellent condition." In administering these programs, the WHA has not violated any statutory requirements. While there may be some limited regulatory infractions with respect to our procurement practices, which either require correction or have already been corrected, those infractions are more administrative in nature and do not rise to the level of lack of capacity as the OIG suggests, particularly given the entire body of WHA's work and success in administering the public housing and Section 8 Housing Choice Programs as discussed above. It also does not rise to the level of warranting withdrawal of the entire ARRA grant. We also have disagreements and differences of opinion with regard to the substance and magnitude of the issues raised on the Capital Fund ARRA Competitive grant as will be further discussed below.

Finding 1. The Authority Lacked the Capacity to Effectively Administer Recovery Act Funds.

OIG Assertion: Procurement Requirements Not Followed.

OIG Assertion: Cost Estimates Not Prepared.

The OIG states that the WHA did not provide independent cost estimates (ICE) for 13 of 18 contracts reviewed and thus had no basis for ensuring that contract costs were fair and reasonable. We agree that an ICE is required for most procurements. Note HUD Handbook 7460.8 REV2, paragraphs 5.4A and 5.5D that discuss limited requirements for determining price reasonableness and require that documentation under the small purchase threshold be kept to a minimum.

It is true that for some procurements an ICE was not prepared. The WHA, as a part of its own management assessment of itself, hired the Nelrod Company to perform a review and provide assistance. This deficiency was identified at that time and the WHA has since modified its procedures to require an ICE for each procurement as appropriate. This self-assessment is not indicative of a PHA without the capacity to administer the ARRA grant, but instead demonstrates a strong desire and intent to comply with applicable Federal regulations.

We would like to point out that an ICE by itself is not the method by which 24 CFR 86.36 provides for determining fair and reasonable contract prices. In fact, we call your attention to HUD Handbook 7460.8 REV 2, paragraph 10.3A.1 that states:

While this initial cost estimate **may not be sufficient for price reasonableness**, it can assist the Contracting Officer in determining the extent to which the offerors understand the PHA's requirements. *Emphasis added.*

As such, HUD uses the ICE only as a tool to "assist" the Contracting Officer in determining reasonable costs. Instead, the operative regulatory requirement is a cost or price analysis (see 24 CFR 85.36(f)). If a PHA advertises a given procurement in accordance with its procurement policy and there are two or more offerors, the PHA carries out either a cost or price analysis. Paragraph 10.3B. goes on to state that: "A comparison of proposed prices received in response to the solicitation to each other is generally sufficient to establish price reasonableness."

The same paragraph in the HUD PIH Procurement Handbook goes on to provide other methodologies for determining price reasonableness.

Comment 4

Comment 5

As to the discussion of using qualifications-based selection (QBS) criteria for architectural and engineering contracts, we note that 24 CFR 85.36 provides:

Grantees and sub-grantees **may** use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

The HUD PIH Procurement Handbook 7460.8 REV 2 contains similar but more detailed language describing this procedure. This methodology, where no price competition is permitted, is also present in Federal contracting, see applicable Federal Acquisition Regulations.

While it is true that North Carolina State law requires PHAs to use QBS in the selection of A/E contracts, ARRA specifically pre-empts State law when using ARRA funds. Consistent with ARRA and HUD instructions (Notice PIH 2009-12, Procurement: Item 2. State Law and Item 3. Part 85) WHA amended its procurement policy to permit it to use the competitive proposals method when contracting for A/E services. In this regard, we would point out that HUD procurement regulations at 24 CFR 85.36(b) require PHAs "to use their own procurement procedures which reflect applicable state and local laws and regulations provided that the procurements applicable Federal law and standards [are] identified in this section." Accordingly, the WHA procurement was, in fact, complying with ARRA, its own procurement policy and 24 CFR 85.36 when it contracted for A/E services with ARRA funds.

Comment 6

The OIG finding that the Authority had no basis for ensuring that the contract costs were fair and reasonable is clearly inconsistent with Federal regulations and guidance and is, therefore, completely without merit.

OIG Assertion: Statements Of Work Are Unclear.

The OIG indicates that the descriptions of the needed services for these services were not specific and that costs quoted for the bids indicate that these were not specific. Depending on the needs of the individual PHA, some Statements of Work (SOW) need to be less specific to permit the contractor to develop its own methodology and approach for accomplishing a given task. In addition, having variations in price is also not necessarily the result of an unspecific SOW. Market conditions can also cause variations in price. Evidence is clear that current market conditions today are extremely volatile in this economy. It is noted that the OIG failed to cite specific SOWs and specific language in any SOW from a qualified professional (e.g., architect or engineer) that the

Comment 7

SOWs were in fact unclear or that an unclear SOW in fact led to an unreasonable price. Instead, the OIG conclusion was based on a subjective conclusion based on limited facts. Consequently, the OIG failed to provide clear and convincing evidence that the WHA's statements are unclear.

OIG Assertion: Full and Open Competition Not Provided.

The OIG states that it reviewed a "request for proposals" on a single contract and concluded that the authority did not award the contract through full and open competition. The OIG goes on to state that the solicitation required the "bidders" to submit certain (unspecified) documents, but the WHA awarded contracts without the documents in question.

Comment 8

First, the OIG appears confused as to the procurement method employed by the WHA. On one hand, it discusses a "request for proposals" which is employed in the competitive proposals method but the OIG then discusses "bidders" which is used in the sealed bid method. The distinction is important in determining if the PHA complied with Federal regulations. In the case of the maintenance contract, the WHA used the competitive proposals method, not the sealed bid method.

Second, the OIG concluded that the WHA failed to issue a public solicitation as required by 24 CFR 85.36 and its procurement policy. In fact, WHA did advertise, and received seven responses. This is further verifiable evidence that the WHA did conduct full and open competition.

Comment 9

The OIG concludes that because the "bidders" who are actually "offerors" did not submit certain undefined documents, there was no full and open competition. In reality, failure to submit certain documents is considered by HUD to be a "minor informality." See HUD PIH Procurement Handbook 7480.8 REV2, paragraph 6.12.D. that says:

Minor Informalities. The Contracting Officer may waive minor informalities or allow the bidder to correct them. Minor informalities are **matters of form rather than substance**. They are insignificant mistakes that can be waived or corrected without prejudice to the other bidders and have little or no effect on price, quantity, quality, delivery, or contractual conditions. Examples include failure to: return the number of signed bids required by the bid package; sign the bid, provided that the unsigned bid is accompanied by other documents indicating the bidder's intent to be bound (e.g., a signed cover letter or a bid guarantee); complete one or more certifications; or acknowledge receipt of an amendment or addendum, provided that it is clear from the bid that the bidder received the amendment/addendum and intended to be bound by its terms, or the amendment/addendum had a negligible effect on price, quantity, quality, or delivery. *Emphasis added.*

Comment 10

We would point out that the WHA undertakes dozens of procurements during the course of the year. Even if there were some substance to the OIG claim, which the WHA disputes, a lapse in a single contract does not make the case that the WHA has failed to conduct full and open competition for its procurements.

The OIG concludes by saying that the Authority did not select the bidder with the most demonstrated experience, thus violating its selection process and federal requirements. As noted above, WHA used the competitive proposals method of procurement in the selection of the maintenance contract. In that regard, we call to our attention to 24 CFR 85.36(d) (3) which says:

- The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded.
- Awards will be made to the **responsible firm whose proposal is most advantageous to the program, with price and other factors considered.**
Emphasis Added.

Under these Federal procurement regulations, the WHA is neither required to select the lowest price nor the most experienced. Instead, we may select, **in the opinion of the authority**, the firm that is most advantageous with regard to price and other factors. As noted, 24 CFR 85.36(b) (11) vests the authority and discretion with the WHA to make the determination as to the most advantageous proposal, not the OIG.

It should also be noted that the firm retained to provide maintenance services had previously been retained by WHA to provide similar services. Consequently, WHA had first-hand experience with this firm and confidence in their work. As part of this arrangement called for the hiring of former WHA maintenance employees, WHA also knew of their work experience, capabilities, and reliability. In short, the unique knowledge of and experience with WHA offered by this maintenance provider made it the most advantageous maintenance provider for WHA.

Based on the draft report, the OIG claim that the WHA failed to provide full and open competition when undertaking procurement activities with public housing funds is completely without foundation or supportive facts.

OIG Assertion: Improperly Used Recovery Act Funds.

This claim is not factual.

Comment 11

The provision of management, maintenance and/or community space is an eligible expense under the Capital Fund. PHAs are required to include all eligible costs in the Capital Fund portion of their PHA Plans. The administrative facility was included in the WHA's Capital Fund portion of its PHA Plan which plan was subsequently approved by HUD. The choice as to whether the PHA opts to construct a new facility or purchase an existing facility is a decision of the WHA and is not a statutory or regulatory matter. In this case, the WHA determined that purchasing and rehabilitating an existing building in downtown Wilson was less expensive. The WHA should be commended by the OIG for using a less costly vehicle to provide its administrative space. Recovery Act funds were not improperly used.

OIG Assertion: Unsupported Capital Fund Reimbursement.

Comment 12

The WHA hired a new CFO, Patricia Ladensack, in October 2009. The finance department has changed from capital fund expense reimbursement to draw-downs. Ms. Ladensack has corrected the payment documentation discrepancies, miscoded expenses and incorrect budget line items. As in other cases, the WHA, as a part of its sound management practices, identified the problem on its own, prior to the OIG audit, and has already corrected the problems.

OIG Assertion: Other Control Weaknesses.

Comment 13

As stated earlier, the WHA suffered from the unprofessional work performance by two ex-employees with prominent positions on the executive committee. The individuals hired as Finance Director and Director of Development proved not only incompetent and inept, but have now shown themselves to be vindictive and malicious, out for financial gain at the expense of the WHA. Following the staff purge WHA sought the assistance of knowledgeable and experienced consultants to fill the void and engaged the Nelrod Company in March 2009 to assist in evaluating its operational procedures and continued employing Casterline Associates PC, a national leader in PHA financial management. It had Dave Shaffer of HA Resources, another experienced professional, under contract to assist with procurement, CFP and ARRA budgets. Patricia Ladensack, the new CFO, was hired in October of 2009, as noted above, and Michael S. Frangos was hired in December 2009. Mike Frangos attended NAHRO CFP training in March 2010, Lisa Braswell, Director of Facilities attended NAHRO procurement training in April 2010. Also the entire WHA executive staff, housing, finance and development departments received procurement training in June 2010.

It is evident that the WHA is constantly self-assessing and constantly making revisions to its operations to achieve the highest level of performance. These types of management actions are not indicative of a PHA that lacks capacity to administer a public housing Capital ARRA program but instead are signs of an authority that does in fact have such a capacity.

Finding 2. The Authority's Plan for its Recovery Act Was Ineligible.

The OIG makes a number of points that are itemized below for which the WHA provides its responses.

OIG Assertion: Proposed Costs Higher Than HUD's Limits.

The OIG argues that the WHA should have used the Greenville TDC market area rather than the Greensboro market area when submitting its application. The OIG concludes that the WHA used the incorrect TDC Cost Limits and therefore the application was ineligible.

This appears to be nothing more than an inadvertent and unintentional technical error of interpretation rather than a fatal flaw in the application. It is significant to note that HUD does not provide PHAs with any determination of which geographic jurisdictions it considers to be in any given TDC market area. Wilson is a classic example where there is no TDC provided by HUD and there are two cities with TDCs that are approximately equidistant from Wilson. See HUD Notice PIH 2010-20. As such, both PHAs and HUD are left to make their own determination as to the appropriate geographic jurisdictions contained in each market area.

At this point, no construction has started and the WHA has not used public housing funds in excess of the TDC limits. Moreover, we call your attention to paragraph 3.C.3 of said notice which permits PHAs with ARRA grants to request TDC waivers for the very work that the WHA contemplates under its ARRA grant. Even if we used the correct market area and determined that the costs exceeded that market area, HUD permits us to request a waiver.

We also would argue that had the WHA inadvertently used the incorrect market area and/or otherwise exceeded HUD's TDC, this is not a fatal flaw making it ineligible. First, the NOFA makes no such statement.

Comment 15

WHA did prepare a revised TDC worksheet to correct this inadvertent error, and in so doing selected Raleigh as the appropriate market area, under advice from Gene Rahuba, HUD Engineer, on the basis that when two nearby markets with TDCs are approximately equidistant, we should select the one with the highest TDCs. Raleigh's city limit is 33 miles from the subject site, while per the OIG report, Greenville is 35 miles from Wilson. Using the Raleigh TDC limits, the submitted budget does not exceed the corrected TDC limit.

Second, the WHA shows its intent to comply but accidentally clicked the alphabetically adjacent "Greensboro" rather than the intended "Greenville". The remedy is not recapture of the entire grant as recommended by the OIG. Such an approach is clearly overzealous and unnecessarily penalizes the residents who would benefit from the ARRA improvements. Instead, a more reasonable approach would be to make those costs in excess of TDC, if any, ineligible expenses under the Capital Fund ARRA grant.

As noted above, no public housing funds have been expended in excess of the TDC limits contained in HUD Notice PIH 2010-20 and no such funds will be expended above those limits. Since there appears to be a difference of opinion between the OIG and the WHA as to the HUD Greensboro Office's interpretation of the correct market area, we will seek a written determination from that Office and abide by that determination.

Based on the above, WHA strongly disagrees that the ARRA competitive grant was ineligible on the basis of the TDC market area confusion.

OIG Assertion: Premature Replacement of Recent Installations.

The OIG contends that the WHA plans for use of the ARRA grant contain flaws rendering the application ineligible for funding.

In summary, the OIG cites as a basis for this claim, a number of items including the following:

- The WHA completed an energy performance contract and implementation of the current plan would result in the wasteful destruction or removal of at least \$411,030 in recently installed improvements.
- The WHA would remove recently installed items, which would be replaced with "still more green models."
- The WHA ARRA competitive grant application did not disclose that recent improvements would be destroyed.

The WHA has a number of comments that provide a more clear and accurate picture of the facts.

First, we would like to remind the OIG that the purpose of the ARRA CFRC Category 4 Grant is to further upgrade the property, thereby reducing its energy consumption and providing a substantial rehabilitation that will ensure its long-term viability. The Forrest Road Homes site was not selected based on extensive deferred maintenance and the NOFA has no such requirement. Category 2 of the CFRC competition was geared toward distressed properties, while Category 4 is geared toward properties that will benefit from energy conservation measures. As support for this, we call the attention of the OIG the language of the NOFA, which states, in part:

Category 4. Creation of an Energy Efficient, Green Community. Unlike the other Categories, this Category will be rated and ranked by score. The purpose of Category 4 is to facilitate transformational energy efficiency and 'green' retrofits to substantively increase energy efficiency and environmental performance of public housing properties and thereby reduce energy costs, generate resident and PHA energy savings, and reduce Green House Gas emissions attributable to energy consumption. This will be accomplished by funding competitive proposals received from eligible PHAs that respond to one of the two options available under this category: Option 1 - Substantial Rehabilitation or New Construction; and Option 2 - Moderate Rehabilitation. Eligible PHAs may submit multiple proposals under one or more of the options provided under this section. It is the intention that this funding will help to produce benchmark projects demonstrating energy efficiency, healthy, safe living environments; lower utility costs; conservation of energy, water, materials and other resources; utilization of renewable energy resources where feasible; and to the extent possible, enhancement of the health of local and regional ecosystems.

a. Eligible Activities. These activities include:

(1) Option 1, Substantial Rehabilitation or New Construction - Funds in this Category may be used to pay for any eligible Capital Fund expenses, as defined in 24 CFR Parts 905, 941 and 968, that help achieve the Category and Option 1 objectives of creating energy efficient, green communities through substantial rehabilitation or new construction. Specifically, this includes eligible activities under the Capital Fund that enable you to provide substantial rehabilitation or new construction to redevelop a public housing project including community facilities or other non-dwelling space that are part of the project to produce substantially new construction that is green and energy efficient. Activities include but are not limited to development of connections to neighborhoods and green space; site improvements that provide surface water management techniques that capture, retain, infiltrate and/or harvest rainfall; water conservation through the use of water-conserving appliances, fixtures and efficient irrigation if required; energy efficiency that meets Energy Star standards for new construction, utilizes Energy Star appliances and efficient lighting use of materials beneficial to the environment, promotes healthy/safe living environments for residents through the use of low or no-volatile organic compounds (VOC) paints and adhesives, urea/formaldehyde-free composite wood and green label certified floor coverings. . . .

Comment 16

It should also be noted that in the renovations that were carried out with capital funds over the past ten years, there were indeed energy conserving measures taken. However, technological advances now allow for even greater energy savings. Also, many of the issues that cause excessive energy usage were not addressed at all in the prior upgrades. It is without question that the building envelope is responsible for the greatest amount of energy loss. While the previous renovations appropriately provided new windows, it did not seal the attics, provide additional attic insulation, provide for the addition of wall insulation, new exterior doors, sealing of all gaps and crevices in the exterior walls, and so forth. Likewise, the windows previously installed in the units are energy efficient, although more efficient windows are now available. New roof shingles were installed in 24 of the units, but they unfortunately do not meet the Energy Star requirement of the NOFA.

As the OIG Report also notes, the CFRC Category 4 plan as submitted to HUD also includes site improvements, such as the harvesting of rainwater, as well as the installation of geothermal systems to provide more energy efficient heating and cooling.

Comment 15

The OIG Report states that “HUD’s rules prohibited it (the CFRC Plan) from being modified to render it eligible.” We are not aware of what these “rules” are. Please provide specific citation.

Comment 17

The OIG Report states that the Plan will result in the waste of \$411, 030 in recent improvements. No detail was provided by the OIG of how this amount was calculated. We have provided the OIG with our analysis of previous improvements with capital funding, and showing which improvements are to be retained, which ones are likely to be recycled and which ones will neither be retained nor recycled. This analysis shows that based on the planning through that time (March, '10), 94% of the cost of the previous renovations will be retained, and only 6% will not be recycled or retained, with those items being: Roof Shingles; Floor tiles; Soffits; and Dryer Vents. A narrative was provided that explained that these changes are needed in order to either meet the Green requirements of the NOFA (e.g., roof shingles and soffits) or as a result of the substantial renovations (e.g., the moving of dryer vents due to enlargement of the very small units). By our estimate, as provided to the OIG, the value of the “lost items” is only \$67,138 (see Appendix C, Exhibit 8). As explained in our prior communication, the soffits need to be changed to support the conversion of the attic to “semi-conditioned space,” a key element of sealing the building envelope. Floor tiles are being replaced not because they have exceeded their useful life, but because the concrete floors will be broken up to replace the cast iron piping that is under the slabs. Shingles will be replaced not because of their age, but rather because the expansion of the units will necessitate compromising the roof

system, and also because the shingles are not Energy Star rated, which is a goal of the CFRC program (see memo May 3, 2010, included herein as Appendix C, Exhibit 7).

Comment 18

The OIG Report states that the “Authority’s grant application did not disclose the cost of recent improvements it would destroy in the renovation process or the cost involved in removing serviceable equipment and storing it, and perhaps eventually installing it elsewhere.” This is true. However, the NOFA does not require or even request that such items be discussed in the application.

Comment 19

In regard to premature replacement and life-cycle costing analysis, the OIG inquired as to why the application did not comply with PIH Notice 09-43, released in October 2009. First, the application was submitted five months previous to the release of this notice, and in fact the PIH Notice referenced was issued after the CFRC awards were made. Second, when we inquired of HUD Washington as to the applicability of this Notice, we were informed by the Office of Public Housing Improvements that the Notice does not apply—rather, the CFRC NOFA is the governing document for this program, and no such requirements are included in the NOFA. See attached memo e-mailed to Jerica Hamilton HUD OIG dated May 3, 2010 (attached herein as Appendix C, Exhibit 6).

Comment 20

The following are 2 lists of improvements. The first list includes energy and water saving work items under the cited Energy Performance Contract. The second includes work proposed under this contract. You will note that the scope of energy improvements that are proposed under the ARRA grant dwarf the work under the Energy Performance Contract by a significant factor. Thus, it would be more appropriate to say, “a limited amount of similar work was undertaken”, rather than to say that the authority “had recently completed similar work.” As noted above, the WHA is achieving the purposes of ARRA and the NOFA under Category 4, to the maximum extent practical.

Prior Renovations Scope vis-à-vis water and energy conservation:

- a) Toilets at 1.6 GPF
- b) Faucets at 2.0 GPM
- c) Showerheads at 2.5 GPM
- d) Roof Shingles (non Energy Star)

Current Improvements Scope of Work vis-à-vis water and energy conservation, as well as a healthy living environment:

- a) Toilets at 1.1 GPF

Comment 21

- b) Faucets at 1.0 GPM in bathroom and 1.5 GPM in kitchen
- c) Showerheads at 1.75 GPM
- d) Roof Shingles (Energy Star Rated) or Standing Seam Metal Roofing
- e) Rain Gardens and Bio-swales to capture rainwater
- f) Pervious pathways (50% of area)
- g) Sealing of Attic, with increased insulation
- h) Insulation of Walls, with addition of fiber cement siding
- i) Installation of geothermal heating and cooling system
- j) Installation of high energy-efficient doors
- k) Energy Star lighting package
- l) Energy Star appliances
- m) Landscaping to maximize passive solar benefits, and reduce water consumption
- n) Sealing of all wall, floor and joint penetrations
- o) Compact fluorescent lighting for apartment entrances and porches, and an energy-saving LED exterior lighting or induction system for pole lights and wall packs
- p) Individual retail electric meters for each unit
- q) Use of zero VOC interior paint and primer
- r) Urea/formaldehyde-free cabinets
- s) Energy Star-labeled bathroom fans that exhaust directly to the outdoors and are connected to a light switch and are equipped with a humidistat sensor or time, or operate continuously
- t) Power vented fans or range hoods that exhaust to the exterior.

The OIG concludes that the work proposed by the WHA under the ARRA grant was "neither necessary nor reasonable given the excellent condition of the development and the excessive costs."

The entire body of facts as outlined in this response present the opposite and a very different conclusion. Specifically, the work proposed by the WHA under the ARRA grant is:

- Consistent with the USHA and ARRA and applicable HUD regulations.
- Consistent with HUD's NOFA inviting PHAs to apply for ARRA grants, specifically Category 4 of that NOFA.
- The costs are or will be reasonable and within applicable HUD cost guidelines.

OIG Assertion: Development is in Excellent Condition.

The OIG states that the Forrest Road Homes development is well maintained by the authority and residents, both inside and out and, with recent renovations, has no deferred maintenance needs.

Comment 22

The OIG seems to conclude that the development is ineligible for a CFRC Grant simply from this vague, erroneous and generalized interpretation of eligible expenses under the Capital Fund Program and the CFRC NOFA.

The WHA has a couple of issues with this conclusion.

On the one hand the OIG concludes that the WHA maintains its units in "Excellent Condition" but in the same breath concludes that the WHA does not have the capacity to administer an ARRA Capital Fund grant. This conclusion of the OIG is mutually inconsistent with the facts and its own findings.

Section 9(d) (1) of the USHA states that the Capital Fund is available for carrying out the following activities:

- "(A) The development, financing, and modernization of public housing projects, including the redesign, reconstruction, and reconfiguration of public housing sites and buildings (including accessibility improvements) and the development of mixed-finance projects;
- (B) Vacancy reduction;
- (C) Addressing deferred maintenance needs and replacement of obsolete utility systems and dwelling equipment;
- (D) Management improvements, including the establishment of initial operation of computer centers in and around public housing through a Neighborhood Networks initiative, for the purpose of enhancing the self-sufficiency, employability, and economic self-reliance of public housing residents by providing them with onsite computer access and training;
- (F) Demolition and replacement;
- (G) Resident relocation;
- (H) Capital expenditures to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents and to improve resident participation;
- (I) Capital expenditures to improve the security and safety of residents; and,
- (J) Homeownership activities, including programs under section 32."

Comment 23

As one can see, deferred maintenance is not the only eligible activity for which Capital Funds can be used. Moreover, the USHA and HUD regulations at 24 CFR 903, 968 and 905 vest the individual PHA with the responsibility of determining what work will be done subject to HUD approval of its PHA Plan under 24 CFR 903 (see further discussion under Inadequate Planning). Every work item discussed in the WHA application and contained in the scope of work is eligible under the above statutory provisions cited above, 24 CFR 905 and 968.

Further, the WHA again calls your attention to the language of the NOFA issued by HUD upon which the WHA was awarded the grant in question.

Category 4. Creation of an Energy Efficient, Green Community. Unlike the other Categories, this Category will be rated and ranked by score. The purpose of Category 4 is to facilitate transformational energy efficiency and 'green' retrofits to substantively increase energy efficiency and environmental performance of public housing properties and thereby reduce energy costs, generate resident and PHA energy savings, and reduce Green House Gas emissions attributable to energy consumption. This will be accomplished by funding competitive proposals received from eligible PHAs that respond to one of the two options available under this category: Option 1 - Substantial Rehabilitation or New Construction; and Option 2 - Moderate Rehabilitation. Eligible PHAs may submit multiple proposals under one or more of the options provided under this section. It is the intention that this funding will help to produce benchmark projects demonstrating energy efficiency, healthy, safe living environments; lower utility costs; conservation of energy, water, materials and other resources; utilization of renewable energy resources where feasible; and to the extent possible, enhancement of the health of local and regional ecosystems.

a. Eligible Activities. These activities include:

(1) Option 1, Substantial Rehabilitation or New Construction - Funds in this Category may be used to pay for any eligible Capital Fund expenses, as defined in 24 CFR Parts 905, 941 and 968, that help achieve the Category and Option 1 objectives of creating energy efficient, green communities through substantial rehabilitation or new construction. Specifically, this includes eligible activities under the Capital Fund that enable you to provide substantial rehabilitation or new construction to redevelop a public housing project including community facilities or other non-dwelling space that are part of the project to produce substantially new construction that is green and energy efficient. Activities include but are not limited to development of connections to neighborhoods and green space; site improvements that provide surface water management techniques that capture, retain, infiltrate and/or harvest rainfall; water conservation through the use of water-conserving appliances, fixtures and efficient irrigation if required; energy efficiency that meets Energy Star standards for new construction, utilizes Energy Star appliances and efficient lighting use of materials beneficial to the environment, promotes healthy/safe living environments for residents through the use of low or no-volatile organic compounds (VOC) paints and adhesives, urea/formaldehyde-free composite wood and green label certified floor coverings; use of renewable energy resources; and address operations and maintenance of the public housing units.

Nowhere in the above NOFA language are applications limited to properties that only require deferred maintenance. All of the work items contemplated by the WHA are in full compliance with the provisions of the NOFA.

As it turns out, the 44 units in 20-6 are in need of improvements due to previously deferred maintenance. These units have not had new roofing shingles in over 15 years; the wall-heating units were installed in 1999, are ductless and only serve a portion of each unit. The vinyl floor tiles were never changed and asbestos-containing mastic has never been abated in these units. Finally these units only had their bathrooms painted as part of

Comment 24

the energy upgrades where the bathrooms had been upgraded. We note that the interior pictures on page 16 of the OIG report are of a fully rehabilitated unit that suffered extensive fire damage and unit restoration in 2009, which was funded through an insurance claim rather than the Capital Fund. As such, the pictures misrepresent the overall condition of the units of Forrest Road Homes. Moreover, the OIG did not provide us with a copy of its own report completed by a qualified inspector examining all aspects of the property, including those items subject to life cycle replacement.

All 68 units have deferred maintenance which includes corroding sewer lines within and under building slabs, as well as the need for new sewer laterals connecting each unit to the main, heating and air-conditioning systems as well as the painting, roofing and asbestos abatement needed in 20-6 mentioned earlier. Only the 24 units of 20-3 recently received new PTAC units, which are easily warehoused for future use in other developments. Further, page 14 of the OIG report fails to note that the WHA is replacing systems that have indeed run their useful life-cycles and are in need of replacement, such as through the installation of individual upgraded electrical meters and panels, new kitchen cabinets, new closet doors, and new high-efficiency water heaters with drain pans. WHA is also adding items that have never been installed, such as the addition of gutters and downspouts, ducted bathroom exhaust fans, fresh outdoor air intake and humidistat, ducted range vent hood, programmable thermostat, and the installation of code compliant (AFI and GFI) outlets and electrical circuits.

In view of the above, the OIG suggestion that the WHA was ineligible because of the OIG's subjective opinion that the development is in excellent condition is (1) inconsistent with its own conclusion that the WHA did not have the capacity to administer the Capital Fund and (2) the above-cited statutory and NOFA provisions. The WHA application and planned work is, in fact, fully consistent with this language.

OIG Assertion: Inadequate Planning.

The OIG erroneously concludes that the WHA's planning appeared flawed from the outset as a function of the various activities it undertook to fund public housing improvements, in the absence of otherwise adequate appropriations. Further, the OIG asserts that WHA has not established the need for such renovations nor performed a physical needs assessment as required by HUD.

Congress and HUD have established a long-term planning requirement for public housing agencies. Specifically, Section 5A of the USHA and 24 CFR 903 require PHAs to develop and submit 5-year and annual PHA Plans.

Comment 25

The PHA includes a Capital Improvements section. This is the specific Federal requirement for planning for PHAs. The WHA is in full compliance with these requirements as can be confirmed by the HUD Greensboro Office which is responsible for approving the PHA plan for each PHA in its jurisdiction.

As it relates to the physical needs assessment (PNAs), HUD Headquarters has concluded that its Modernizations Standards Handbook, which was issued in 1985 and has not been materially modified since then, and provides HUD guidance to PHAs for the PNA is outdated and obsolete. HUD anticipates issuing a new format for conducting the PNA. As a result, HUD **directed** PHAs "**not**" to carry out the PNAs until HUD issues a new format.

See attached item 8 in the Recovery Act Capital Fund Formula Frequently Asked Questions # 3, Dated July 24, 2009 contained at HUD's website at:

<http://www.hud.gov/offices/pih/programs/ph/capfund/ocir.cfm>

HUD's response to this issue is as follows:

PHAs are required pursuant to paragraph 7(k) of the American Recovery Act (ARRA) Formula Grant Capital Fund (CFP) Amendment to the Consolidated Annual Contributions Contract (the Recovery Act ACC Amendment) to provide a Physical Needs Assessment, as specified by HUD. However, as noted above, HUD is in the process of revising the PNA so that it can better meet the needs of HUD and PHAs. The Recovery Act ACC Amendment indicates that the PNA shall be completed "as specified by HUD." Therefore, **PHAs are advised to not complete the PNA** required by the Recovery Act ACC Amendment until the Recovery Act PNA is available. *Emphasis added.*

As of the date of the WHA's response to the OIG, HUD has not issued a new PNA template for PHA's to use. Finally, we would also bring your attention to the CFRC NOFA issued by HUD. With one exception, there is no requirement, specific or otherwise, for additional planning beyond what is already provided in statute and regulation for which the WHA is in full compliance. That exception is for the conduct of an eco-charrette to prepare a Green Development plan *after the award of a grant* (and not before submittal of the grant application). This eco-charrette was conducted and the resulting Green Development Plan was submitted to HUD.

Again, the WHA is following HUD regulations and instructions relative to planning. The OIG findings in this regard that the WHA was ineligible are completely without foundation in either statute, regulation or the NOFA issued governing the grant which the OIG seeks, incorrectly, to have withdrawn.

"Only Acceptable Analysis."

The OIG Report says that the "only acceptable analysis would necessarily have compared the total renovation cost per Forrest Road unit with expected and supportable energy savings/water conservation outcomes." Here the OIG concludes that it would take 207 years for the energy savings to recoup all of the redevelopment costs (including all the upgrades and other systems changes that are not specifically energy related). This OIG-suggested methodology appears to be counter to the instructions in PIH Notice 2009-43, and elsewhere in HUD regulations, which says that "[t]he incremental additional costs for the more sustainable choices must be recoverable from savings over the expected life of the equipment and the equipment must be cost-effective to maintain." Thus, HUD's own direction as to the analysis of savings from energy upgrades compares the "incremental additional costs" *of the equipment to the utility savings*. To our knowledge and belief, there is no HUD requirement to recoup *the total renovation cost of a substantial rehabilitation* through energy savings. If there is such a regulation, please provide the citation.

"Adding Cost of 'Destroyed' Recent Improvements to the Development Cost."

HUD's instruction for TDC analysis does not require any such calculation, and in fact, the TDC worksheet has nowhere to include such costs. If there are HUD regulations that require such a calculation, please provide the citation.

Final WHA Conclusion and Response.

While we appreciate that the OIG review may have been well intentioned, the draft report materially misrepresents the facts, particularly the capacity of the WHA to administer the ARRA Competitive Grant.

The WHA is and has been a high performer under HUD's assessment system for many years. It makes mistakes and errors like every other agency, including the OIG. The facts are indisputable that the WHA has done an excellent job of administering the public housing program, as the OIG points out in its report.

What we are faced with are (1) some minor administrative issues that either are being or have been addressed and (2) a difference of opinion over the administration of the public housing program and the scope of work under the WHA's ARRA competitive grant. By law and regulation, the WHA, and only the WHA, is vested with the authority for making those decisions.

The administrative record clearly shows that the WHA has the capacity to administer the ARRA Competitive Grant and there is no factual basis for HUD to withdraw the grant.

OIG Evaluation of Auditee Comments

- Comment 1** The Authority's claim that we failed to 'forecast' the findings is not correct. We briefed the Authority about the issues in the report throughout the course of the review. Specifically, we discussed the issues in finding one with the Authority on February 12, 2010, and the issues in finding two on April 23, 2010 and June 4, 2010.
- Comment 2** The Authority's claimed status as a High Performer is not based on an assessment by HUD. It is based on a self assessment of its operations conducted in 2007 under HUD's Public Housing Assessment System (PHAS). HUD has not performed a confirmatory review to determine the validity of the Authority's assessment.
- Comment 3** We agree that the Authority has a right to exercise flexibility in administering its public housing programs; however, it must still follow the applicable requirements. It is subject to HUD oversight and audit by the OIG as provided for in the Housing Act, applicable regulations, and its annual contribution contracts. The Authority's internal control systems have not allowed management or staff in the normal course of performing their assigned duties to prevent or detect violations of program requirements.
- Comment 4** The Authority indicated that it modified its procurement procedures to require cost estimates on the advice of its consultant. However, the Authority was apparently not following the modified procedures because it awarded two contracts without obtaining independent cost estimates after the consultant's March 2009 review.
- Comment 5** We did not question the Authority's use of a qualifications-based selection method to procure the architect and engineering contract. We questioned the Authority's ability to determine price reasonableness for the contract deliverables without an independent cost estimate, or other documented price source, for use in evaluating the proposed prices.
- Comment 6** None of the procurement criteria presented by the Authority contradicts the finding. The Authority's statement that independent cost estimates are only a tool avoids the fact that they are required by the regulations. The Authority states that the operative requirement is a cost or price analysis but does not explain how that either negates the requirement for the independent cost estimate or how it could perform an adequate analysis without first having an independent cost estimate. Further, it did not explain how the cited criteria specifically applied to the 13 contracts listed in Appendix D of the report. The files for these contracts contained neither an independent cost estimate nor documentation supporting an Authority determination of fair and reasonable price.

- Comment 7** Although some statements of work need to be less specific to allow the contractor to develop its own methodology and approach, the Authority should provide sufficient information to afford vendors the opportunity to provide a reasonable response. For example, the entire statement of work provided to potential offerors for the file assessment contract states, “The Wilson Housing Authority is requesting a proposal to perform assessment of needs for internal (inside the file) and external file management and develop a written File Sense Plan to re-organize the internal and external files used by the Executive Director and Executive Secretary, and review the Plan with the WHA staff who will implement it.” The Authority admitted that two offerors misunderstood the statement of work and priced a file assessment for the entire authority rather than just the administrator’s files. While the Authority is correct in stating that market conditions can also cause a variation in price, it did not provide an adequate alternative explanation as to why quotes for several of its contracts showed so much variation.
- Comment 8** The Authority is correct in stating that the proper term should be offeror when discussing requests for proposals; however, it used the terms offeror and bidder interchangeably in its request for proposals. We adjusted our use of these terms in the finding where necessary.
- Comment 9** The failure to obtain and review documents on which a proposal is required to be evaluated is not a minor informality. The initial proposal evaluation must be based on the documents submitted, not other personal knowledge of the offeror (HUD Handbook 7460.8 Revision 2 section 7.2K). According to the request for proposal for the subject contract, three of the rating factors were based on evaluation of documentation supporting the offeror’s qualifications. Since the offeror failed to submit the required documents, the only proper course of action would have been to disqualify the offeror as provided for in the request for proposal.
- Comment 10** The Authority’s interpretation that full and open competition deficiencies were limited to the one maintenance services contract is not correct. We included the discussion of this contract in the finding as an example because it was the largest contract. Appendix D of this report cites five procurement actions that did not represent full and open competition. Specifically, these included the contracts for information technology service, the asset management plan consulting, the maintenance operation evaluation, and the file assessments. The winning proposal for the information technology service was dated after the deadline in the request for proposal, the score sheets for the asset management plan consulting proposals were dated more than one week after the selection of the vendor, two change orders issued for the maintenance evaluation did not relate to the original scope of work, and the selected vendor for the file assessment contract was contacted four days prior to the other vendors. In addition, the request for proposal for the file assessment requested a specific product that was a registered trademark of the winning bidder. The regulations consider that specifying only a

brand name product instead of allowing *an equal* product to be offered is restrictive of competition (24CFR85.36(c)(vi)).

Comment 11 We did not dispute that the use of capital funds for an administrative building is an eligible expense. We questioned the purchase because the Authority did not spend the funds as outlined in the annual PHA Plan that the HUD field office approved. In addition, purchasing a building requires additional steps the Authority did not follow. Therefore, the purchase became an ineligible use under the Recovery Act.

Comment 12 The Authority submitted additional documentation with its comments to resolve the report recommendations related to unsupported costs. In our opinion, this material was not sufficient to justify cost eligibility; however, we will provide it to the HUD Greensboro field office for further review.

Comment 13 Recent procurement training should serve to improve internal controls within the Authority. However, the training was not obtained immediately after the procurement assessment in March 2009; it was obtained after we discussed the need for training with the Authority during our review.

Comment 14 We agree that HUD's guidance regarding the determination of total development cost limits for areas without such assigned limits lack specificity. However, in such cases, we believe the selection of a total development cost area must have a reasonable basis. We can find no justification for using the higher total development cost limits for Raleigh over those for Greenville. Wilson is 35.7 miles from Greenville and 48.4 miles from Raleigh, not 33 miles from Raleigh as claimed by the Authority. However, more importantly, any reasonable analysis shows Wilson and Greenville are much more similar to each other than either is to Raleigh. Raleigh is a large metropolitan area while Wilson and Greenville are small cities in rural counties. Populations, average incomes, average home values, and average home construction costs are similar for Wilson and Greenville, markedly higher for Raleigh. In addition, although the Authority's consultant stated that he considered Wilson to be part of the Raleigh housing market, HUD's most recent market analysis of the Raleigh housing market does not include Wilson⁸.

Comment 15 The NOFA provided for the correction of errors during the application process, not after grant award. Similarly, applicants were afforded the opportunity to request a waiver of total development costs during the application process, not after. HUD would have considered the application for a waiver and accepted or rejected it. As stated in the NOFA, HUD's rejection of the waiver would have resulted in rejection of the entire application. Since the Authority neither requested a waiver nor disclosed the error to HUD during the application process, HUD was unaware of the excessive amount requested and unknowingly based its

⁸ Comprehensive Market Analysis Reports, Analysis of the Raleigh North Carolina Housing Market as of August 1, 2004, page 3. Economic Research, U.S. Dept. of Housing and Urban Development

grant award decision on erroneous information. It would be unfair to other applicants if some applicants were afforded the opportunity to correct or change their applications contrary to the NOFA provisions. As stated on page 93 of the NOFA, "HUD will not fund incomplete applications or does not cure its technical deficiencies."

Comment 16 The Authority did not support that its plan to replace the recently installed energy efficient windows with still more efficient models would be either a reasonable or necessary use of Federal funds. The Authority's comments cited other needs addressed by its plan which were not included in its previous energy conservation efforts for the development. It cited new attic and wall insulation, doors, and sealing gaps and crevices in exterior walls. We agree that such improvements might both increase energy efficiency and be cost effective. The Authority could have addressed such needs if it had applied for grant funds under the NOFA category of moderate rehabilitation instead of substantial rehabilitation. Such improvements might have further increased the energy efficiency of the development at moderate cost without the unnecessary destruction of the recently installed, and yet unpaid for, energy improvements.

Comment 17 We do not agree with the Authority's estimated costs for recent improvements. The amount cited by the Authority is limited to the costs of shingles, soffits, flooring, and dryer vents. It did not include the costs associated with bathroom and kitchen renovations. During the review we requested the Authority provide us with a cost breakdown of the previous work performed. The director of development was unable to provide us this information but supplied us with invoices and payment schedules requiring us to determine the amounts ourselves.

Comment 18 The Authority's comments attempt to justify its actions by stating that the NOFA did not require it to disclose to HUD the cost of recent energy saving improvements that would be destroyed or removed in the planned green renovation process. However, we believe the Authority failed to comply with a key requirement of the NOFA by withholding this information. The NOFA, on page 70, required that the Authority propose reasonable costs in relation to anticipated results. The Authority included nothing in its budget to indicate that it had analyzed the costs in terms of the anticipated results. The destruction or removal of recently installed energy saving improvements would impact both the costs and the resulting energy savings. It is reasonable to conclude that the incremental energy savings from implementing the project would be less than what would normally be expected since recent energy savings improvements were already in place. The Authority has yet to perform such an analysis.

Comment 19 We changed our reference from PIH Notice 09-43 issued in October 2009 to PIH Notice 09-09 issued in March 2009 since the Authority correctly stated that PIH Notice 09-43 was issued after the competitive grant application was submitted.

Comment 20 The Authority’s claim that some of the public housing requirements we cite do not apply because the NOFA is the governing document is not correct. The NOFA made clear that that all other applicable public housing requirements applied. Page 108 of the NOFA contains the following statement, “*Grantees must administer the grant in accordance with all requirements of this NOFA and all requirements applicable to public housing, including the 1937 ACT, the Recovery Act, HUD regulations, the ACC, including all amendments, and all other Federal statutory, Executive Order, and regulatory requirements as such requirements may be amended from time to time.*”

Comment 21 The Authority’s comments indicate that it intends to replace the recently installed 2.0 GPM kitchen faucets with models requiring 1.5 GPM. If done, this would represent an additional unnecessary expense since, according to page 75 of the NOFA, the existing 2.0 GPM faucets installed during the recent renovations already meet the green renovation standard for substantial rehabilitation. As with other aspects of its plans, the Authority has provided no analysis to support the faucet replacement and, since any incremental savings would necessarily be reduced, we do not believe that these or other replacements of recent installations can be justified.

Comment 22 Our conclusion that the Authority lacked capacity to administer Recovery Act funds was based largely on the deficiencies disclosed in Finding 1 plus the planning issues of finding 2. We gave the Authority credit for maintaining the Forrest Road units; however, capacity to administer the Recovery Act grants is much more encompassing than unit maintenance.

Comment 23 The Authority’s claim that all the work items in its application were eligible is not supported. The finding clearly shows that some of the Authority’s planned activities were ineligible under the provisions of the regulations cited in the NOFA. Thus, the Authority did not accurately represent its planned activities and inappropriately certified in its application that the items were eligible (The NOFA required the Authority to certify that the funds would only be used to pay for eligible capital fund activities and expenses as defined by the regulations).

The application upon which HUD awarded the grant contained incomplete information, serious errors, and an inappropriate certification that the activities were eligible. In accordance with the NOFA provisions, the appropriate remedy is for HUD to recapture the grant. HUD should do this as soon as possible and redistribute the funds to the next eligible applicant in accordance with its usual procedures.

Comment 24 The Authority stated that our photographs misrepresented the condition of the units because all the photographs are of a fully rehabilitated fire damaged unit. This statement is not true. Only one of the photographs was of one of the six fully rehabilitated fire damaged units on Jefferson Street. During our work, we observed the exteriors of all the Forrest Road units and the interiors of six units.

All the units appeared to be in excellent condition both inside and out and we believe our photographs are representative of their appearance. The Authority's plan to destroy or remove the renovations made to the six fire damaged units gives further credence to our argument that the Authority has failed to support the need for the planned substantial rehabilitation. The Authority's argument that the renovations to these units were paid for by the insurance company, not the capital fund, does not appear to be relevant.

The Authority attempted to justify the substantial rehabilitation on the basis of specific claimed deferred maintenance needs, such as sewer lines, applicable to some Forrest Road units. However, we could not locate support for these claims in the Authority's most recent HUD PHA Plan. If these are valid needs, the Authority should include them in its next PHA Plan so that they can be approved by HUD and addressed through the annual capital fund allocation.

Comment 25 The Authority's correct contention that PHAs were advised by HUD on July 24, 2009, not to complete a physical needs assessment for Recovery Act funds until HUD issued a new format failed to explain why the Authority had not completed a physical needs assessment since December 2001.

Appendix C

CRITERIA

- 24 CFR 85.20(b)(2) “Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.”
- 24 CFR 85.20(b)(6) “Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.”
- 24 CFR 85.36(b)(9) “Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.”
- 24 CFR 85.36(c)(1) “All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §85.36. Some of the situations considered to be restrictive or competition include but are not limited to: (i) Placing unreasonable requirements on firms in order for them to qualify to do business, (ii) Requiring unnecessary experience and excessive bonding, (iii) Noncompetitive pricing practices between firms or between affiliated companies, (iv) Noncompetitive awards to consultants that are on retainer contracts, (v) Organizational conflicts of interest, (vi) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirement of the procurement, and (vii) Any arbitrary action in the procurement process.”
- 24 CFR 85.36(c)(3) “Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations: (i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a procurement. ...”

- 24 CFR 85.36(d)(2)(ii)(A) “The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids.”
- 24 CFR 85.36(d)(3)(i) “Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical.”
- 24 CFR 85.36(f)(1) “Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. ...”
- 24 CFR 905.10(k) “Eligible expenses include the following:...Addressing deferred maintenance needs and the replacement of obsolete utility systems and dwelling equipment;...”
- 42 U.S.C. (United States Code)
1437g(d)(1) “The Secretary shall establish a Capital Fund for the purpose of making assistance available to public housing agencies to carry out capital and management activities, including ... (c) addressing deferred maintenance needs and the replacement of obsolete utility systems and dwelling equipment.”
- Handbook 7485.2 The public Housing Modernization Standards Handbook Section 1.4: “PREMATURE REPLACEMENT. Serviceable building components (such as roofing), equipment (such as furnaces or domestic hot water heaters), appliances (such as ranges and refrigerators) or materials (such as paving) shall not be replaced prematurely (such as 100 percent replacement) except under special circumstances where energy conservation opportunities make it eligible (15-year or less simple payback) and where ongoing maintenance and operating costs will not be adversely affected. It is assumed that replacements will be made gradually over a period of time when they become necessary. Serviceable and functional building components, systems, equipment or materials that do not present a safety or health hazard shall not be replaced prematurely...”
- Notice PIH
2009-12 (HA) Replacement Reserves – Account 1490. “Under section 9 of the 1937 Act, PHAs [public housing agency] no longer have the statutory authority to accumulate ANY Capital Fund grants in a replacement reserve...”

Notice PIH
2009-09 (HA)

“PURCHASING COST EFFECTIVE ENERGY EFFICIENT EQUIPMENT/PRODUCTS PHAs [public housing agency] should purchase energy star equipment such as appliances when economically feasible. The incremental additional costs for the more energy efficient equipment will be recoverable from energy savings over the expected life of the equipment and the equipment must be cost effective to maintain. If energy savings are insufficient to pay for the additional cost of purchasing energy star-labeled equipment, the upgraded equipment should not be purchased unless there are compelling circumstances such as energy being in short supply or emergency conditions that must be considered when making the selection.

There are several ways to calculate the effective cost of equipment when energy savings are accrued over a specific amount of time. Utility costs have a large impact in calculating the effective cost of equipment. Energy STAR products provide specific information about savings that can be obtained by reduced energy use.

A PHA should purchase energy star-labeled products such as windows and ensure that any new buildings are constructed according to energy STAR standards, unless the PHA’s cost analysis (required by 24 CFR Part 85 and 24 CFR Part 941) finds incremental cost of the energy star products or building yields a negative life-cycle cost savings and exceeds HUD’s Total Development Cost (TDC) limits.”

OMB Circular A87 “Part C. Basic Guidelines (1) Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria: (a) Be necessary and reasonable for proper and efficient performance and administration of Federal awards.”

NOFA for the Capital Fund Recovery Competition Grants

Category Specific
Threshold Requirements

Page 69 “Applicants must comply with all Category Specific Threshold Requirements, whether applying under Option 1 or Option 2, in this section in order to be considered for funding. ...”

Eligible Activities
Page 70

“(i) PHAs must submit in their application a budget for the activities it will implement under this grant, indicating committed sources and projected uses. The budget must propose reasonable costs in relation to anticipated results.”

Soft Cost Limits
(Developer's Fees)
Page 71

“Your projected soft costs must be reasonable and comparable to industry standards. Upon awards, soft costs will be subject to HUD’s Cost Control and Safe Harbor Standards. These standards provide specific limitations on such costs as developer’s fees (between 9 and 12 percent) ...”

TDC Waivers
Page 71

“(v)...Applicants must comply the the applicable Total Development Costs (TDC) and Housing Cost Cap (HCC) limits...If a request to exceed TDC/HCC is denied, the application will be denied.”

Performance
Measures
Page 115

“...The recipient PHA must obtain prior HUD approval to deviate from its application in a significant way...”

Appendix D

PROCUREMENT DEFICIENCIES

Contracts	Contracted amount	Unsupported costs as of 5/13/2010	Funds to be put to better use	No cost estimate before procurement	Unclear statement of work	Unjustified noncompetitive award	Competition not full and open	History not properly documented	
Building maintenance	\$1,955,967	\$1,757,358	\$198,609				x		
Real Estate Assessment Center public housing inspections ¹	\$22,493	\$21,811	\$0	x	x			x	
Information technology services ¹	\$14,029	\$15,423	\$0				x	x	
2009 maintenance operation review ¹	\$5,466	\$7,866	\$0	x					
Salary study ²	\$2,400	\$0	\$0	x					
Asset management plan	\$6,800	\$6,800	\$0	x			x		
2008 maintenance operational evaluation	\$11,700	\$11,700	\$0	x			x		
Staff development ¹	\$2,190	\$2,270	\$0	x		x		x	
Energy performance technical consulting ^{1,3}	\$48,000	\$33,569	\$0	x		x		x	
Recovery Act consulting ³	\$14,500	\$7,479	\$7,021	x					
Architect services	Based on delivery orders	\$320,064	Not defined	x					
Accounting services - 2007 yearend closeout ⁴	Not defined	\$176,537	Not defined	x					
Accounting services - 2008 yearend closeout ³	\$100,000					x			x
Accounting services - 2009 yearend closeout ³	\$50,000			x	x	x			x
File assessment	\$2,999	\$2,999	\$0	x	x		x		
Procurement review	\$4,384	\$4,384	\$0	x					
Total		\$2,368,260	\$205,630						

¹These contracts were completed, but a different amount was paid than the contracted amount.

²This contract was terminated before completion.

³These amounts are not-to-exceed (NTE) amounts.

⁴The 2007 yearend closeout contract did not specify terms regarding an NTE amount or period of time.