



**Bay City Housing Authority,  
Bay City, TX  
Public Housing Programs**

**Office of Audit  
Fort Worth, TX**

**Audit Report Number: 2021-FW-1003  
September 29, 2021**



**OFFICE OF INSPECTOR GENERAL**  
U.S. Department of Housing and Urban Development

**To:** Lorraine Walls  
Director, Office of Public and Indian Housing, 6EPH

*//signed//*

**From:** Kilah S. White  
Assistant Inspector General for Audit, GA

**Subject:** The Bay City Housing Authority, Bay City, TX, Did Not Follow Requirements for Its Legal Services Contract, Administrative Costs, and Board Meetings

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of the Bay City Housing Authority, Bay City, TX.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, appendix 8M, requires that OIG post its reports on the OIG website. Accordingly, this report will be posted at <https://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call Danita Wade, Audit Director, at (817) 978-9309.

## Highlights

### What We Audited and Why

Based on a complaint and a request from the U.S. Department of Housing and Urban Development's Office of Public and Indian Housing (HUD PIH), we audited the Bay City Housing Authority, Bay City, TX. The complainant's allegations included improper procurement of an attorney and board meetings held without proper notice. HUD PIH expressed concerns regarding the Authority's financial records and policy adherence. Our audit objectives were to determine whether the Authority (1) followed Federal and its own procurement requirements for the board's legal services, (2) paid its administrative costs in accordance with Federal requirements, and (3) conducted its board meetings in accordance with the State of Texas' requirements.

The Bay City Housing Authority, Bay City TX, Did Not Follow Requirements for Its Legal Services Contract, Administrative Costs, and Board Meetings

### What We Found

The Authority improperly procured its legal services contract, paid ineligible and unsupported administrative costs, and did not follow Texas' Open Meetings Act or its own bylaws when conducting board meetings. These conditions occurred because the board (1) improperly believed an emergency existed, (2) lacked knowledge and training, (3) did not follow the training it received, (4) overruled the executive director, and (5) did not provide proper oversight. As a result, the Authority (1) paid \$20,000 for the board's personal legal expenses, of which \$15,000 was recovered, (2) paid \$39,256 in questioned administrative costs, (3) had less funds available to assist its residents, and (4) did not hold proper board meetings or maintain meeting minutes showing that it made valid and documented decisions.

### What We Recommend

We recommend that the Director of the Houston Office of Public Housing require the Authority to (1) recover the remaining \$5,000 of ineligible legal service costs paid and ensure that additional invoiced legal service costs totaling \$24,250 are not paid; (2) support or repay questioned costs totaling \$39,256; (3) update its bylaws, policies, and procedures to reflect current Federal and State of Texas requirements; and (4) take action to address invalid or undocumented board decisions.

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# Background and Objectives

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The Bay City Housing Authority, Bay City, TX, was established in 1941 to help provide decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities. The Authority is governed by a five-member board of commissioners appointed by the mayor of Bay City, TX to serve staggered multi-year terms. The board is responsible for securing the management of the Authority and ensuring that the Authority’s operations are undertaken in accordance with laws and program requirements, and the board’s priorities and policies. The Authority has six employees.

The Authority consists of 92 low rent public housing units and 266 housing choice vouchers. The Houston field office of the U.S. Department of Housing and Urban Development’s Office of Public and Indian Housing (HUD PIH) has oversight and monitoring responsibility for the Authority. The Authority received the HUD PIH funding shown in table 1 for fiscal years 2017 to 2019.

**Table 1: HUD funding for fiscal years 2017 - 2019**

Program fund	Fiscal year 2017	Fiscal year 2018	Fiscal year 2019
Public Housing Operating Fund	\$ 249,482	\$ 220,301	\$ 229,132
Public Housing Capital Fund	107,736	160,581	167,917
Housing Choice Voucher Program	752,841	729,123	896,155
<b>Total</b>	<b>1,110,059</b>	<b>1,110,005</b>	<b>1,293,204</b>

On June 30, 2017, the long-term board chairman resigned. Two additional commissioners resigned in July 2017, leaving the board with only two commissioners and no quorum<sup>1</sup> for almost 2 months. Between August 2017 and July 2018, the board’s membership changed six times. In addition, the Authority had four executive directors in 1 year, as shown in table 2.

**Table 2: Timeline of executive directors**

Time period	Executive directors
2002 – 05/15/2018	Executive director 1
05/16/2018 – 06/03/2018	A commissioner served as interim executive director
06/04/2018 – 02/28/2019	Executive director 2
03/11/2019 – the present	Executive director 3

After receiving multiple complaints and witnessing the board conducting an unposted meeting, the previous mayor of Bay City asked the board chairperson to resign in December 2018. The chairperson did not resign. The mayor issued a letter to remove the chairperson and issued

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<sup>1</sup> According to Texas’ requirements at Texas Government Code, title 5, section 551.001(6), a quorum would be three commissioners for a board that consisted of five commissioners.

letters to remove the other two commissioners. On January 3, 2019, the board's attorney filed a lawsuit on behalf of the Authority and the board against the mayor for wrongfully removing the commissioners. On February 7, 2019, the court ruled that the three commissioners could not be removed until the removal was approved by a majority vote of the Bay City Council. The court also determined that the mayor's three additional commissioner appointees were not qualified to act as commissioners because they were not approved by a majority vote of the City Council. Based on this ruling, from July 2018 until the end of our review period, the board consisted of three commissioners.

In February 2019, an anonymous complainant alleged that the Authority paid \$20,000 to an attorney hired by the board, even though the Authority was not involved in the lawsuit. They also alleged that the board held meetings without posting notice of the meetings. Additionally, in March 2019, HUD PIH requested a comprehensive review due to issues including negative bank statement balances, a lack of current financial records and policies, and policies not being followed.

In September 2019, the newly elected mayor of Bay City began to replace the commissioners as their terms expired. On April 8, 2020, the mayor appointed the fifth and final commissioner. With this last appointment, the Authority's five commissioner positions had been filled, and all previous commissioners had been replaced.

Our audit objectives were to determine whether the Authority followed Federal and its own procurement requirements for the board's legal services, paid its administrative costs in accordance with Federal requirements, and conducted its board meetings in accordance with the State of Texas' requirements.

# Results of Audit

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## **Finding 1: The Authority Did Not Properly Procure Its Legal Services Contract**

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The Authority's board did not properly procure its legal services contract that it awarded after the Bay City mayor began to take removal action against its commissioners. This condition occurred because the board (1) believed the commissioners' removal created an emergency; (2) lacked experience and knowledge of Texas' requirements; (3) did not follow the training it received; and (4) overruled the executive director. As a result, the Authority used Federal funds to pay \$5,000 for ineligible legal services, which reduced the amount of Federal funds available to assist its residents and had \$24,250 of outstanding ineligible legal services invoices.

### **The Board Did Not Follow Requirements When It Awarded a Legal Services Contract**

The board did not follow Federal requirements or the Authority's procurement policy when it awarded a sole-source contract for legal services to pursue litigation against the mayor for the commissioners' removal. The board did not 1) advertise for legal services, 2) competitively procure the contract, 3) maintain documentation, and 4) enter into a contract that met requirements.<sup>2</sup> Further, the board did not seek HUD Office of General Counsel's approval before entering into litigation, as required by HUD's Litigation Handbook.<sup>3</sup> In addition, the contracted legal services were a personal cost of the commissioners, not the board, and not a cost that the Authority should have paid, as personal costs are prohibited by Federal cost principles.<sup>4</sup>

The board took improper actions to procure the contract as shown in the following timeline in figure 1.

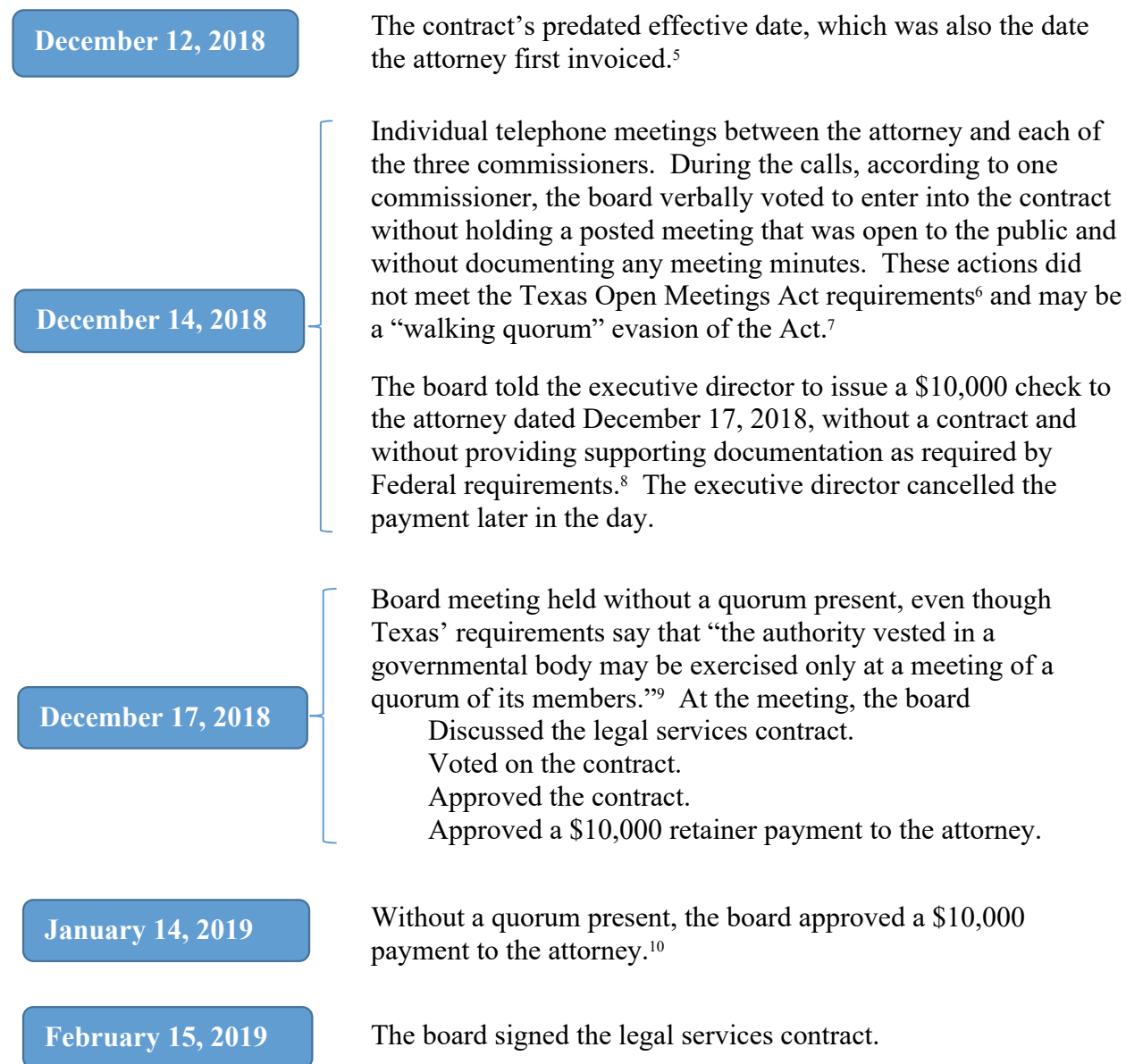
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<sup>2</sup> 2 Code of Federal Regulations (CFR) 200.318(i), 200.319(a), 200.320(b), (d), and (f)

<sup>3</sup> HUD Handbook 1530.01 REV-5, section 5-3(a)

<sup>4</sup> 2 CFR 200.445(a)

**Figure 1: Timeline of the procurement of the legal services contract**



<sup>5</sup> 2 CFR 200.404(a) and (d)

<sup>6</sup> Texas Government Code, title 5, section 551.021

<sup>7</sup> Texas Open Meetings Handbook 2018, chapter VI, section E cited “conducting secret deliberations and voting over the telephone” as examples of a “walking quorum.”

<sup>8</sup> 2 CFR 200.403(g)

<sup>9</sup> Texas Open Meetings Handbook 2018, chapter I, section C

<sup>10</sup> Ibid.



### **The Board Improperly Believed the Three Commissioners' Removal Was an Emergency**

According to the board, the mayor dismissed the commissioners without due process and caused an emergency or urgent need, which required the board to conduct a noncompetitive procurement to fight the commissioners' removal. However, the board's assessment was incorrect because removal of commissioners did not meet the definition of an emergency as defined in the Authority's 2008 procurement policy.<sup>11</sup> The board also said that the Authority could not function without a board. Yet, the Authority had previously operated without a functioning board for two months in 2017. Thus, it could have continued to operate while the mayor selected and the Bay City Council approved replacements.

### **The Board Lacked Experience and Knowledge of Texas' Requirements**

The board improperly procured the legal services contract because it lacked experience and knowledge of Texas' Open Meeting Act requirements. The three commissioners' statements indicated that none of them had experience serving on the board of a Texas governmental entity prior to being appointed to the Authority's board. Further, even though Texas requires that all appointed public officials who are members of a governmental body receive training about the Open Meetings Act within 90 days of appointment, the three commissioners involved in awarding the legal services contract could not prove that they had attended training.

### **The Board Did Not Follow the Training It Received**

The board said that it was not familiar with Federal procurement requirements, it did not know it had to follow Federal procurement requirements, and it received no training as reasons for why it improperly procured the contract. However, the board received at least two training courses that addressed procurement, but its actions indicated that it ignored the training received. The board also had access to other free online training provided by HUD for new commissioners, which included procurement training. HUD PIH recommended the board attend this training in March 2018, but it did not complete the training.

### **The Board Overruled the Executive Director**

The legal services contract conditions occurred because, on more than one occasion, the board overruled the executive director or acted in the place of the executive director. For example, the board acted as the contracting officer to obtain the legal services, even though the Authority's 2008 procurement policy stated that the executive director was the contracting officer, and board approval was not required for any procurement action. The executive director at the time stated that she was unaware that the board had sought legal services until a commissioner requested a check for an attorney. Further, on one check stub for the legal services, the executive director noted that she wrote the check "under duress" and noted on another that the board would not let her meet or talk to the lawyer. Additionally, the executive director sought to remove the Authority from the lawsuit in February 2019, but the board directed the attorney to ignore the executive director's instructions.

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<sup>11</sup> Bay City Housing Authority Procurement Policy, dated January 29, 2008, Procurement Methods and Requirements, section F.1.b

### **The Board Incurred \$44,250 in Ineligible Legal Services Expenses**

Since HUD's Office of General Counsel stated that it did not consider litigation brought by individual board members a proper expense of a HUD program, the \$44,250 invoiced by the attorney for legal services was an ineligible expense. These legal expenses were personal expenses of the individual board members and not the Authority. Even though the attorney invoiced the Authority for \$44,250, the Authority only paid \$20,000. Further, in May 2020, the current executive director filed a claim with the Authority's insurance company under its Public Employee Dishonesty Crime Coverage option and recovered \$15,000, resulting in \$5,000 of ineligible legal expenses being paid by the Authority.

### **Conclusion**

Because the Authority's board did not properly procure its legal services contract, the board awarded an ineligible contract for legal services. The Authority paid only \$20,000 for legal services and was able to recover \$15,000 of the \$20,000 that it paid. As a result, the Authority paid \$5,000 for ineligible legal services, which reduced the amount of Federal funds available to benefit its residents and had outstanding invoices for ineligible legal services totaling \$24,250.

### **Recommendations**

We recommend that the Director of HUD's Houston Office of Public Housing require the Authority to:

- 1A. Reimburse its Public Housing Operating Fund \$5,000 from non-Federal funds for the unrecovered remaining balance of the \$20,000 that was paid to the attorney.
- 1B. Ensure that no Federal funds are used to pay the remaining legal services invoices totaling \$24,250, which will result in these funds being put to better use.
- 1C. Update its policies to ensure the future commissioners obtain training on Texas' Open Meetings Act requirements and HUD's training for commissioners within 90 days after appointment, which will ensure that future commissioners understand the requirements for board meetings and procurement actions.

We also recommend that the Director of HUD's Houston Office of Public Housing:

- 1D. Evaluate the reported actions the three commissioners took when procuring the legal services contract and, if warranted, pursue administrative sanctions or other corrective actions.

## **Finding 2: The Authority Paid Ineligible and Unsupported Administrative Costs**

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The Authority paid ineligible and unsupported administrative expenses. Specifically, it paid for ineligible and unsupported travel, training, credit card, and personal cell phone expenses. The Authority also did not always record its financial transactions correctly and completely in its general ledger. These conditions existed because the board did not exercise proper oversight, and the Authority's 2018 travel policy conflicted with Texas' requirements. As a result, the Authority used its public housing program funds to pay \$39,256 in questioned expenses, which reduced the amount of Federal funds available to benefit its residents. Further, HUD did not have reasonable assurance that the Authority provided accurate, current, and complete disclosure of its Federal program's financial results, or that it had established effective control over and accountability for all funds.

### **The Authority Paid for Ineligible and Unsupported Travel and Training Expenses**

The Authority used both low-rent operating funds and Housing Choice Voucher Program funds to pay \$2,574<sup>12</sup> for ineligible travel and training expenses of its commissioners and employees such as flight upgrades, alcohol, a souvenir, and non-employee meals.<sup>13</sup> Additionally, the Authority used \$3,369 in low-rent operating funds to pay for the travel and training expenses of employees assigned to the Housing Choice Voucher Program, which is improper as the costs of one Federal program should not be paid by another.<sup>14</sup> It also did not maintain support for payments to commissioners and employees for per diem expenses, training vendors, and hotels totaling \$15,191 from low rent operating funds and \$500 in Housing Choice Voucher Program funds as required by Federal cost principles for both commissioners and employees and Texas law for commissioners.<sup>15</sup> For example, the commissioners did not always provide supporting receipts for the entire amount of their travel advances and reimbursements. Employees did not include the travel form required by the Authority's 2016 and 2018 travel policies in the supporting documentation or did not fully complete the form.

### **The Authority Paid for Ineligible and Unsupported Credit Card Charges**

The Authority paid for ineligible and unsupported expenses totaling \$17,030<sup>16</sup> on seven Authority credit cards. For example, it

- Used low-rent operating funds to pay a total of \$1,402 for ineligible expenses, such as finance charges; entertainment expenses, such as food for the board, refreshments, and party supplies; and non-program expenses, such as fuel for the vehicle assigned to the Housing Choice Voucher Program.<sup>17</sup>
- Did not maintain support to explain \$15,628 in various credit card purchases.

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<sup>12</sup> This amount includes \$704 in Housing Choice Voucher Program funds and \$1,870 in low-rent operating funds.

<sup>13</sup> 2 CFR 200.404(a) and (d); 200.423; and 200.445(a)

<sup>14</sup> 2 CFR 200.403(a)

<sup>15</sup> 2 CFR 200.403(g); Texas Local Government Code, title 12, section 392.035; and Texas' Attorney General Opinion LO-94-043

<sup>16</sup> This amount includes \$15,628 in unsupported expenses and \$1,402 in ineligible expenses. See table 3.

<sup>17</sup> 2 CFR 200.449(a); 200.438; and 200.405(a), (c), and (d)

## **The Authority Lacked Support for Payments for an Executive Director’s Personal Cell Phone**

The Authority paid for unsupported personal cell phone expenses for executive director 1. Federal cost principles state that the cost of goods or services for personal use are unallowable.<sup>18</sup> A former commissioner and the executive director made conflicting statements regarding payments for the cell phone, neither of which matched the handwritten details on the invoices and check payment stubs. For example,

- The commissioner stated that the executive director was supposed to reimburse the Authority \$57 every month for the phone, but the board did not revisit the arrangement after the initial approval several years ago.
- The executive director paid the phone provider, and not the Authority, between \$24 and \$47 for the months reviewed.
- The executive director stated that she paid a fixed percentage of the phone bill, but she could not remember the percentage. However, she paid an amount that ranged between 20 and 46 percent of the total bill, and she did not pay a consistent amount.

Neither the Authority nor the executive director could produce a written agreement or board minutes to show the terms of the cell phone reimbursement arrangement. Although some of the phone costs may have related to Authority business, the executive director did not have documents showing what percentage of the cell phone calls was personal or business related as required by Federal cost principles,<sup>19</sup> making the \$592 paid by the Authority unsupported, of which \$508 was paid from low-rent operating funds and \$84 was paid from Housing Choice Voucher Program funds.

## **The Authority Did Not Always Record Transactions Correctly**

The Authority did not always provide complete supporting documentation for transactions to its fee accountant, which caused the fee accountant to determine where to record transactions in the general ledger based on the limited information provided. The Authority improperly allocated expenses in 36 percent of the transactions reviewed. In addition, the Authority used low-rent operating funds to pay Housing Choice Voucher Program expenses, but it did not properly record the expenses in its financial records, which resulted in the Housing Choice Voucher Program fund’s owing the low-rent operating fund \$4,469<sup>20</sup> for Housing Choice Voucher Program expenses.

## **The Board Did Not Provide Proper Oversight**

The Authority paid questionable administrative costs because the board did not provide proper oversight at the Authority. Although, a commissioner signed the checks along with the executive director, the Authority did not have a check signing or financial monitoring policy. Additionally, the board did not

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<sup>18</sup> 2 CFR 200.445(a)

<sup>19</sup> 2 CFR 200.403(g)

<sup>20</sup> This amount includes \$3,369 in previously questioned amounts paid to hotel and training vendors and \$1,100 in credit card and employee per diem expenses.

- Question when an executive director used a personal credit card to pay for Authority business travel.
- Ensure that the executive director provided and required supporting documentation.
- Ensure that the executive directors paid bills on time and paid credit card statements in full, which caused ineligible late fees and interest payments.
- Ensure that the executive director paid the agreed amount to the Authority for her personal cell phone.
- Revisit its agreement to pay a portion of the executive director’s personal cell phone bill or ensure that the director maintained documented support for the business versus personal use of the phone.
- Adopt a cost allocation plan or Authority policy to ensure that costs were supported by receipts and charged to the proper public housing program.

Further, the Authority had four executive directors in a 1-year period, and two of them, whom the board selected, had little to no housing experience. A third executive director, who served for a short period, was also a commissioner, even though the Authority’s 2018 bylaws stated that no commissioner of the Authority shall be eligible for the office of executive director.<sup>21</sup>

### **The Board Adopted a New Travel Policy That Contradicted Texas’ Requirements**

The Authority paid questionable travel costs because the board adopted a new Authority travel policy in July 2018, which was contradictory and easily misinterpreted. For example, one section in the policy stated that commissioners and employees would be reimbursed actual costs. However, another section stated that food expenses would be determined by per diem and receipts were not required, which conflicted with Texas’ requirements that commissioners should receive reimbursement only for actual and documented expenses.<sup>22</sup>

### **Conclusion**

Because the board did not provide proper oversight and adopted a contradictory travel policy, the Authority used low-rent operating funds to pay \$6,641 in ineligible expenses and \$31,327 in unsupported expenses, and it used Housing Choice Voucher Program funds to pay \$704 in ineligible expenses and \$584 in unsupported expenses, as shown in table 3. As a result, the Authority had less Federal funds available to assist its residents. Finally, HUD did not have reasonable assurance that the Authority provided accurate, current, and complete disclosure of the financial results of its Federal programs or that it had established effective control over and accountability for its funds.

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<sup>21</sup> Authority bylaws, dated March 1, 2018, article II, sections 5 and 7

<sup>22</sup> Texas Local Government Code, title 12, section 392.035

**Table 3: Schedule of questioned administrative costs**

Category of questioned costs	Credit cards	Travel and training	Cell phone	Subtotals	Totals
Unsupported low-rent operating costs	\$15,628	\$15,191	\$508		\$31,327
Unsupported Housing Choice Voucher costs	-	500	84		584
<b>Total unsupported costs</b>	<b>15,628</b>	<b>15,691</b>	<b>592</b>		<b>31,911</b>
Total ineligible low-rent operating costs which consisted of:	1,402	5,239	-		6,641
<i>Housing Choice Voucher Costs paid with low rent operating funds</i> <i>Ineligible low-rent operating costs</i>				\$4,469 2,172	
Total ineligible Housing Choice Voucher costs	-	704	-		704
<b>Total ineligible costs</b>	<b>1,402</b>	<b>5,943</b>	<b>-</b>		<b>7,345</b>
<b>Total questioned costs (unsupported + ineligible)</b>	<b>17,030</b>	<b>21,634</b>	<b>592</b>		<b>39,256</b>

**Recommendations**

We recommend that Director of the Houston Office of Public Housing require the Authority to:

- 2A. Reimburse its low-rent operating fund \$2,172 from non-Federal funds for the ineligible travel, training, and credit card expenditures.
- 2B. Reimburse its low-rent operating fund \$4,469 from its Housing Choice Voucher Program fund for the expenses that should have been paid from its Housing Choice Voucher Program fund.
- 2C. Reimburse its Housing Choice Voucher Program fund \$704 from non-Federal funds for the ineligible travel and training expenditures.
- 2D. Support or repay \$31,327 to its low-rent operating fund from non-Federal funds for the various unsupported expenditures.
- 2E. Support or repay \$584 to its Housing Choice Voucher Program fund from non-Federal funds for the unsupported travel, training, and phone expenses paid with Housing Choice Voucher Program funds.
- 2F. Update and implement its policies and procedures, including creating a policy for recording expenses, a cost allocation plan, and a travel policy, to ensure that the Authority appropriately pays and accurately reports its costs.

### **Finding 3: The Board Did Not Properly Conduct Its Meetings**

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The board did not follow Texas' requirements when it (1) held meetings without posting notification of the meeting 72 hours in advance, (2) held meetings without a quorum, (3) did not certify its proceedings for closed meetings, (4) did not maintain minutes of each meeting, and (5) voted on issues in closed session. In addition, documents showed that for 13 of 17 board meetings reviewed, the board did not follow 1 or more basic requirements in the Authority's bylaws. Further, the board passed 25 resolutions during fiscal year 2019, 15 of which did not meet its bylaw requirements. These conditions occurred because the board (1) could not show that its commissioners obtained Open Meetings Act training as required, (2) did not follow the training that it did receive, (3) disregarded the Authority's bylaws, and (4) did not ensure the Authority's bylaws included the applicable Texas requirements. As a result, HUD and other interested parties had no assurance that the board (1) held proper meetings, (2) maintained accurate records, or (3) made valid and documented decisions.

#### **The Board Meetings Did Not Follow Texas' Requirements**

The board could not show that it followed 1 or more of Texas' requirements for 7 of 17 meetings that it held. Although the Authority provided documentation to support that the board called 23 meetings, the documentation showed that it held only 17 meetings during fiscal year 2019. The following deficiencies occurred at the 17 meetings

- Three meetings did not document that the board met Texas' 72-hour notice requirement.<sup>23</sup> Further, the Authority's 2018 bylaws allowed notification of a special meeting within 2 days of the meeting, which conflicted with Texas' 72-hour notice requirement.
- Three meetings were held without the board's documenting a quorum, as required by Texas' government code.<sup>24</sup> Two of the meetings included persons appointed by the mayor, but not approved by the City Council as required by the Bay City Charter. The Authority did not have any official record of the third meeting as required by Texas' requirements;<sup>25</sup> thus, the board was unable to document that a quorum was present.
- Four meetings included a closed session, but the board did not meet the closed session requirements contained in Texas' government code, including the recording of the closed session or certified agenda requirements and the open meeting voting requirement for actions taken in a closed meeting.<sup>26</sup>

#### **The Board Meetings Did Not Follow the Authority's Bylaws**

The board did not follow one or more basic components required by the Authority's 2018 bylaws in 13 of the 17 meetings held. For example, the board

- Did not review or document its review and approval of the previous meeting minutes for seven of the eight regular meetings held.

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<sup>23</sup> Texas Government Code, title 5, section 551.043(a)

<sup>24</sup> Ibid., section 551.001(4) and (6)

<sup>25</sup> Ibid., section 551.021(a)

<sup>26</sup> Ibid., sections 551.102 and 551.103

- Did not consider or review the monthly financial and vacancy reports at three of the eight regular meetings.
- Did not hold five of the eight regular meetings on the day of the month specified in the bylaws.
- Held a special meeting instead of its annual meeting in May 2018.<sup>27</sup>
- Did not record meeting minutes at the May 15, 2018 meeting.
- Did not properly maintain records of resolutions and approvals of resolutions.
  - Some approved resolutions contained duplicate numbers.
  - One resolution contained the voting record for a different resolution.
  - Several resolutions did not contain dates to reflect when the resolution was passed or when the policy in the resolution became effective.
- Did not maintain clear and concise agendas and meeting minutes, including not following the meeting agendas.
- Did not hold a regular monthly meeting for 6 months: July 2018, August 2018, September 2018, October 2018, November 2018, and January 2019.

### **The Board Lacked Training and Did Not Follow the Training Received**

The board did not properly conduct its meetings because it lacked training and did not follow the training it received. The board stated that it did not receive training and could not show that it completed the Open Meetings Act training within 90 days after appointment, as required by Texas' government code for all new board members.<sup>28</sup> Further, the board did not complete HUD's free Lead the Way training as recommended by HUD's Office of Public Housing in a March 2018 technical site review report. However, the board completed purchased training including the 18<sup>th</sup> Annual Nelrod Consortium Conference in March 2018, and Commissioner training in May 2018. The course descriptions showed that the trainings covered the Texas Open Meetings Act; the Texas Local Government Code, which is also known as the Texas Housing Authorities Law; oversight responsibilities; ethics; and procurement. As a result, the board should have known about the Authority's bylaws and the Open Meetings Act requirements at least after May 2018. Yet, the board did not follow the training it received as a significant number of its meetings and meeting minutes did not meet Texas' or its own bylaws requirements. In addition, the board revised the Authority bylaws in March 2018, but did not follow them.

### **Conclusion**

Because the board did not follow Texas' requirements or the Authority's bylaws, HUD had no assurance that the board (1) held proper meetings, (2) maintained accurate meeting records, or (3) made valid and documented decisions at the meetings as required by Texas' government code.<sup>29</sup> The new board will have to review the prior board's actions and take action to address any invalid or undocumented decisions.

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<sup>27</sup> Bay City Housing Authority 2018 Bylaws, section 1

<sup>28</sup> Texas Government Code, title 5, section 551.005(a)

<sup>29</sup> Ibid., title 5, section 551.141



## **Recommendations**

We recommend that the Director of the Houston Office of Public Housing require the Authority's new board to

- 3A. Complete HUD's "Lead the Way" online training and Texas' Open Meetings Act training.
- 3B. Review the board minutes during our audit period, determine which board decisions were invalid, and take action to address the invalid decisions.
- 3C. Revise its bylaws to agree with the Texas Open Meetings Act.

# Scope and Methodology

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We performed our work at the Authority's office located in Bay City, TX from May 2019 through October 2020. Our audit period was April 1, 2017 through March 31, 2019, for the administrative costs review and April 1, 2018 through March 31, 2019, for the legal services contract review and board meeting minutes. We expanded both periods of our review as described below.

To accomplish our objectives, we

- Reviewed relevant Federal, State of Texas, and Bay City regulations and requirements.
- Reviewed the Authority's policies and procedures that were applicable for administrative costs and procurement actions during the audit period.
- Reviewed the Authority's organization documentation from 1941 to determine its board size.
- Reviewed 17 sets of board meeting minutes and 23 agendas for the Authority's fiscal year 2019 (April 1, 2018 through March 31, 2019). We used a 100 percent selection sampling technique because the population of agendas and board meetings was small.
- Determined the universe of payments made by the Authority, which included 1,154 low rent operating subsidy fund checks totaling \$958,541 and 1,035 Housing Choice Voucher Program fund checks totaling more than \$2.092 million.
- Reviewed supporting documentation for the legal contract procurement and all three payments, including stop payments, to the attorney totaling \$30,000.<sup>30</sup>
- Reviewed 100 percent of payments to 23 payees identified as high risk, including payments to credit card companies, executive directors, commissioners, and travel and training vendors. We used a 100 percent selection of these high-risk payees, which consisted of 160 payments totaling \$61,650.
- Reviewed an additional 10 payments totaling \$4,062 to other payees identified in high-risk areas of travel and training. We selected these payments because they were made to specific vendors for travel or training costs recorded in the general ledger.
- Reviewed 100 percent of the cell phone payments and supporting documentation made for the previous executive director's personal cell phone during the audit period totaling \$592. We expanded the scope to March 2017 due to that billing cycle's including transactions dated in April 2017. We selected these payments because, based on complaints, we considered payments for the previous executive director's cell phone as high risk.
- Compared the expense to the Authority's general ledger category for each payment reviewed and determined whether the expenses were reasonably and accurately recorded.

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<sup>30</sup> In August 2019, the Authority placed a stop payment on one of the checks for \$10,000. This action resulted in it paying only \$20,000.

- Interviewed the following
  - HUD PIH personnel,
  - Texas Comptroller personnel,
  - City of Bay City employees,
  - the current and previous mayors of Bay City,
  - members of the City Council of Bay City,
  - training vendors and instructors,
  - Authority employees and the board,
  - personnel at the Authority's fee accountant,
  - former Authority commissioners and employees,
  - the Authority's independent public auditor, and
  - the City attorney for the previous mayor.
- Reviewed communications among HUD, the Authority, and the mayor's office.
- Reviewed communications between the commissioners' attorney and HUD's Office of General Counsel.
- Reviewed bank statements for the review period.
- Reviewed the Authority's audited financial statements for the review period.
- Reviewed HUD monitoring reviews conducted during the review period.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Internal Controls

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

- effectiveness and efficiency of operations,
- reliability of financial reporting, and
- compliance with applicable laws and regulations.

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

## Relevant Internal Controls

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

- The Authority's controls over procurement, including policies and procedures, management knowledge and training, and board oversight to ensure compliance with HUD's, the State's, and the Authority's procurement requirements.
- The Authority's controls over administrative costs, including policies and procedures to ensure compliance with applicable laws and regulations.
- The Authority's controls over board meetings, including policies and procedures to ensure compliance with applicable laws and regulations.

We assessed the relevant controls identified above.

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

## Significant Deficiencies

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

- The Authority's board did not follow Federal and its own requirements when it contracted for legal services (finding 1).
- The Authority's management did not follow Federal and Texas' requirements when it paid for ineligible and unsupported administrative expenses (finding 2).
- The Authority's board did not follow Texas' requirements and its local policies when it conducted its board meetings (finding 3).

# Appendixes

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## Appendix A

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**Schedule of Questioned Costs and Funds To Be Put to Better Use**

<b>Recommendation number</b>	<b>Ineligible 1/</b>	<b>Unsupported 2/</b>	<b>Funds to be put to better use 3/</b>
1A	\$ 5,000		
1B			\$24,250
2A	2,172		
2B	4,469		
2C	704		
2D		\$31,327	
2E		584	
<b>Totals</b>	<b>12,345</b>	<b>31,911</b>	<b>24,250</b>

- 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. In this instance, if the Authority implements our recommendation 1B, it will save \$24,250 by avoiding additional improper payments.

# Appendix B

## Auditee Comments and OIG's Evaluation

### Ref to OIG Evaluation

### Auditee Comments

BAY CITY HOUSING AUTHORITY  
Housing Choice Voucher Program  
3012 Sycamore Avenue  
Bay City, TX 77414-6859  
Phone No. (979)245-2652 Fax No. (979)245-1274

August 26, 2021

Theresa Carroll  
Danita Wade

Bay City Housing Authority of Bay City Written Response to OIG Audit Report 2021-xx-xxx

Bay City Housing Authority Board of Commissioners have acknowledged the Draft Audit Report sent to Bay City Housing Authority on August 18, 2021. Draft indicates that previous Executive Director along with previous Board Of Commissioners did not follow requirements for its Legal Services Contract, Administrative Costs, and Board Meetings. Bay City Housing Authority Board Of Commissioners and Executive Director will address these findings below:

**Finding 1: The Authority Did Not Properly Procure Its Legal Services Contract:**

- A. The Bay City Board Of Commissioners recommended that Executive Director contact current Insurance Provider to see if the HA had any type of Omissions and Errors insurance on Board Members and Staff. Executive Director reached out to current Insurance Risk Pool of Bay City Housing Authority. TML advised Executive Director of current insurance policy and the nature of pay. TML issued Bay City Housing Authority a check in the amount of \$15,000.00. (See Attached Check). The Board Of Commissioners continue to work on ways to address the Previous Board Members that have accumulated this expense upon the Housing Authority. The first attempt is to notify the individuals via postal mail. Housing Authority currently await a response.

**Finding 2: The Authority Paid Ineligible and Unsupported Travel and Training Expenses**

- A. The Bay City Housing Authority Board Of Commissioners would like feed back concerning the noted \$39,256 questionable costs. Bay City Housing Authority can not re pay this noted questionable costs due to financial stance of the HA. Housing Authority currently await response for HUD and their expectations of Bay City Housing Authority Board Of Commissioners. However, Bay City Board Of Commissioners Have Adopted A New Travel Policy to eliminate this issue for further happening (See Attached). **Please note the Current Board Of Commissioners have worked diligently in getting the case dismissed of previous Mayor and Board Members. They were successful in their hard work. (Please see attached)**
- B. The Bay City Board Of Commissioner have adopted a Cost Allocation Plan. (See Attached)

**It is noted that HUD require HA to pay back unallowable cost (Not from Federal Fund) Bay City Board Of Commissioners would like some advice on how to pay these costs. What are HUD suggestions concerning this matter? Would HUD consider allowing the HA to move forward with preventive actions, Check and balances, along with updated policy and procedure with a long-term payment plan (Not to include federal funds. HA currently does not have any funds that would not include Federal Funds. Board of Commissioner continues to look for ways to hold previous staff accountable for these costs.**

Comment 1  
Comment 2

Comment 3

Comment 4

Comment 1  
Comment 5

Comment 1

Comment 4

**Ref to OIG  
Evaluation**

Comment 1  
Comment 6

**Finding 3: The Board Did Not Properly Conduct Its Meetings**

- A. Bay City Board Of Commissioners have taken the "Open Meetings Act" Training. Bay City Housing Authority continues to respect the laws that govern "Open Meetings Act" **(Please see attached BOC Open Meetings Act Trainings)**
- B. **(See attached Revised By Laws)**

The Bay City Housing Authority Board OF Commissioners will continue to govern Bay City Housing Authority according to State and Federal Laws. Staff continues to train on errors made by previous staff and Executive Director, with check and balances put in place. Board Of Commissioners continue to hold Executive Director accountable, Executive Director continues to hold Staff accountable. We have overcome several challenges as a Team. We continue to move the Bay City Housing Authority forward for our tenants and our community.

La Wanda Davis



Executive Director  
Bay City Housing Authority  
(979) 245-2652 EXT. 101  
director@baycitypha.org

## OIG Evaluation of Auditee Comments

- Comment 1 The Authority provided supporting documents to resolve the findings. We did not include them in the report as they were voluminous, and some contained private personal or financial information.
- Comment 2 The Authority said it recovered \$15,000 from its insurance provider for the legal services contract. We acknowledged the recovery in the draft report. Ineligible costs of \$5,000 remain. The Authority should work with HUD PIH to resolve the recommendation.
- Comment 3 The Authority said that it would contact the previous board members to recover the remaining expenses. We acknowledge the statement. The Authority should work with HUD PIH to recover the remaining \$5,000 of ineligible expenses.
- Comment 4 The Authority said that it cannot repay \$39,256 of questioned costs due to its financial position and a lack of non-Federal funds. We disagree that the Authority should be relieved of the financial burden of repaying the ineligible or unsupported costs based solely on its financial position and a lack of non-Federal funds. The Authority should work with HUD PIH to reimburse its HUD accounts with non-Federal funds. This would include taking actions to recover those funds from individuals that allowed or received the improper payments.
- Comment 5 The Authority said that it adopted a new travel policy, and it provided a copy of its new cost allocation plan. It also stated that it had worked to have the previous legal case dismissed. We acknowledge that it has begun corrective actions. The Authority should submit these policies to HUD PIH to ensure that the changes address the report's recommendations.
- Comment 6 The Authority showed that the current board completed training, and it provided updated bylaws. We acknowledge the corrective actions. However, HUD PIH should confirm that the Authority's bylaws address the report's recommendations.



## Appendix C

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### Criteria

## **2 CFR Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards**

### **Subpart D - Post Federal Award Requirements**

#### **Procurement Standards**

#### **Section 200.318 General procurement standards**

- (a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part....
- (i) The non-Federal entity must maintain records sufficient to detail the history of 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.

#### **Section 200.319 Competition**

- (a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
  - (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
  - (2) Requiring unnecessary experience and excessive bonding;
  - (3) Noncompetitive pricing practices between firms or between affiliated companies;
  - (4) Noncompetitive contracts to consultants that are on retainer contracts;
  - (5) Organizational conflicts of interest;
  - (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
  - (7) Any arbitrary action in the procurement process...
- (c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
  - (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, must 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 equivalent” description may be used as a means to define the

performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

- (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

### **Section 200.320 Methods of procurement to be followed.**

The non-Federal entity must use one of the following methods of procurement...

- (b) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources...
- (d) *Procurement by competitive proposals.* 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. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
  - (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
  - (2) Proposals must be solicited from an adequate number of qualified sources;
  - (3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
  - (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; ...
- (f) *Procurement by noncompetitive proposals.* Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
  - (1) The item is available only from a single source;
  - (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
  - (4) After solicitation of a number of sources, competition is determined inadequate.

## **Subpart E – Cost Principles**

### **Basic Considerations**

#### **Section 200.403 Factors affecting allowability of costs.**

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles...
- (g) Be adequately documented.

#### **Section 200.404 Reasonable costs.**

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

- (a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award....
- (d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.

#### **Section 200.405 Allocable costs.**

- (a) A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:
  - (1) Is incurred specifically for the Federal award;
  - (2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and
  - (3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart...
- (c) Any cost allocable to a particular Federal award under the principles provided for in this part may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.
- (d) Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis...

#### **General Provisions for Selected Items of Cost**

##### **Section 200.423 Alcoholic beverages.**

Costs of alcoholic beverages are unallowable.

##### **Section 200.438 Entertainment costs.**

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval of the Federal awarding agency.

**Section 200.445 Goods or services for personal use.**

- (a) Costs of goods or services for personal use of the non-Federal entity’s employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

**Section 200.449 Interest.**

- a. *General.* Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-Federal entity's own funds, however represented, are unallowable.

**Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement...

**HUD Handbook 1530.01 REV-5, Litigation Handbook**

*Chapter 5. Responsibilities of HUD Assistance Recipients*

5-3. Limitations on Litigation Activity

With the exception of litigation involving a PHA in the section 8 program, the following additional requirements apply to Litigation involving a PHA program project, or activity receiving loan, grant, or subsidy assistance from HUD:...

- a. *Initiation of Litigation by Public Housing Agency:* A PHA shall not initiate litigation, other than routine eviction actions, without obtaining the prior written concurrence of HUD. The PHA shall communicate in writing any proposal to institute such litigation to the Regional Counsel together with the reasons for the proposed action. The Regional Counsel shall concur unless he/she finds that such action would be frivolous as a matter of law, contrary to Department policy or not cost-beneficial.

**HUD Handbook 7460.8, REV-2, Procurement Handbook for Public Housing Agencies**

*Chapter 7. Competitive Proposals*

7.4 Procurement of Legal Services by PHAs

- D. *Time and Materials Contracts.* Legal services can be procured on an hourly basis using a type of contract known as time-and-materials (or sometimes, “labor-hour”) contracts. Under these contracts, the contractor’s services are pre-priced (usually, in terms of hours) in the contract, and the PHA orders services in unit amounts (e.g., hours) as needed until the funds in the contract are exhausted. PHAs may use this type of contract only after the PHA determines that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk.

## *Chapter 8. Noncompetitive Proposals*

### 8.2 Definition

A noncompetitive proposal means a procurement through either a “sole source,” when the PHA solicits an offer from one source, or a “single source,” when the PHA solicits offers from multiple sources but receives only one or the competition is determined inadequate.

### 8.5 Justification/Documentation

- A. Procurement by noncompetitive proposals shall be conducted only if a written justification is made as to the necessity of using this method in accordance with the procedures described in the PHA’s procurement policy. Approval to award a contract resulting from a noncompetitive proposal does not eliminate or alter any other requirements of 24 CFR 85.36 governing the contract. The justification should include the following information:
1. Description of the requirement;
  2. History of prior purchases and their nature (competitive vs. noncompetitive)
  3. The specific exception in 24 CFR 85.36(d)(4)(i)(A) through (D) which applies;
  4. Statement as to the unique circumstances that require award by noncompetitive proposals;
  5. Description of the efforts made to find competitive sources, e.g., advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.;
  6. Statement as to efforts that will be taken in the future to promote competition for the requirement; and,
  7. Signature of the Contracting Officer and any higher approving official as required by the PHA’s policy.

## *Chapter 10. Miscellaneous Requirements*

### 10.8 Use of Options

#### C. Limitations...

2. Time and Quantity. Contracts shall not exceed a period of five years, including options for renewal or extension. Contracts, other than energy performance contracts, with terms, plus extensions, that exceed a total of five years are viewed as restrictive of competition and in violation of 24 CFR 85.36(c). A Field Office may approve contracts in excess of five years if it determines there is no practical alternative... A PHA must also follow its own procurement policy and any applicable local or State laws and regulations. There must be a finite period for a contract, including all options, and a specific limit on the total quantity or maximum value of items to be purchased under an option.

## *Appendix 1. Procurement Policy Felton Housing Authority [FHA]*

### Noncompetitive Proposals

- A. Conditions for Use. Procurement by noncompetitive proposals (sole-source) may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, and if one of the following applies:
2. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the FHA, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such

cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency;

- B. Justification. Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the responsible Contracting Officer. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include the following information:
1. Description of the requirement;
  2. History of prior purchases and their nature (competitive vs. noncompetitive);
  3. The specific exception in 24 CFR 85.36(d)(4)(I)(A) through (D) which applies;
  4. Statement as to the unique circumstances that require award by noncompetitive proposals;
  5. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
  6. Statement as to efforts that will be taken in the future to promote competition for the requirement;
  7. Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and
  8. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

**Texas Government Code**  
**Title 5. Open Government**  
**Subtitle A. Open Government**  
**Chapter 551. Open Meetings**  
**Subchapter A. General Provisions**

*Section 551.001 Definitions*

- (4) "Meeting" means:
- (A) a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action...
- (6) "Quorum" means a majority of a governmental body, unless defined differently by applicable law or rule or the charter of the governmental body.

*Section 551.005. Open Meetings Training*

- (a) Each elected or appointed public official who is a member of a governmental body subject to this chapter shall complete a course of training of not less than one and not more than two hours regarding the responsibilities of the governmental body and its members under this chapter not later than the 90th day after the date the member:

- (1) takes the oath of office, if the member is required to take an oath of office to assume the person's duties as a member of the governmental body; or
- (2) otherwise assumes responsibilities as a member of the governmental body, if the member is not required to take an oath of office to assume the person's duties as a member of the governmental body.

### **Subchapter B. Record of Open Meeting**

#### *Section 551.021. Minutes or Recording of Open Meeting Required*

- (a) A governmental body shall prepare and keep minutes or make a recording of each open meeting of the body.
- (b) The minutes must:
  - (1) state the subject of each deliberation; and
  - (2) indicate each vote, order, decision, or other action taken.

### **Subchapter C. Notice of Meetings**

#### *Section 551.043. Time and Accessibility of Notice; General Rule*

- (a) The notice of a meeting of a governmental body must be posted in a place readily accessible to the general public at all times for at least 72 hours before the scheduled time of the meeting, except as provided by Sections 551.044-551.046.

### **Subchapter E. Procedures Relating to a Closed Meeting**

#### *Section 551.102. Requirement to Vote or Take Final Action in Open Meeting*

A final action, decision, or vote on a matter deliberated in a closed meeting under this chapter may only be made in an open meeting that is held in compliance with the notice provisions of this chapter.

#### *Section 551.103. Certified Agenda or Recording Required*

- (a) A governmental body shall either keep a certified agenda or make a recording of the proceedings of each closed meeting, except for a private consultation permitted under Section 551.071.
- (b) The presiding officer shall certify that an agenda kept under Subsection (a) is a true and correct record of the proceedings.
- (c) The certified agenda must include:
  - (1) a statement of the subject matter of each deliberation;
  - (2) a record of any further action taken; and
  - (3) an announcement by the presiding officer at the beginning and the end of the meeting indicating the date and time.
- (d) A recording made under Subsection (a) must include announcements by the presiding officer at the beginning and the end of the meeting indicating the date and time.

### **Subchapter G. Enforcement Remedies; Criminal Violations**

#### *Section 551.141. Action Voidable*

An action taken by a governmental body in violation of this chapter is voidable.

## **Texas Local Government Code**

### **Title 12. Planning and Development**

#### **Subtitle C. Planning and Development Provisions Applying to More Than One Type of Local Government**

#### **Chapter 392. Housing Authorities Established by Municipalities and Counties**

##### **Subchapter C. Commissioners and Employees**

##### *Section 392.031 Appointment of Commissioners of a Municipal Housing Authority*

(a) Each municipal housing authority shall be governed by five, seven, nine, or 11 commissioners. The presiding officer of the governing body of a municipality shall appoint five, seven, nine, or 11 persons to serve as commissioners of the authority. An appointed commissioner of the authority may not be an officer or employee of the municipality.

##### *Section 392.035 Compensation*

A commissioner of a housing authority may not receive compensation for service as a commissioner. A commissioner is entitled to receive reimbursement for the necessary expense, including traveling expenses, incurred in the discharge of duties as a commissioner.

## **Texas Open Meetings Act Handbook 2018**

### *Chapter I. Introduction*

#### **Section C. Quorum and Majority Vote**

The authority vested in a governmental body may be exercised only at a meeting of a quorum of its members...

### *Chapter VI. Meetings*

#### **Section E. Meetings of Less than A Quorum to Evade the Act: “Walking Quorums”**

On occasion, a governmental body has tried to avoid complying with the Act by deliberating about public business without a quorum being physically present in one place and claiming that this was not a “meeting” within the Act. Conducting secret deliberations and voting over the telephone, when no statute authorized this, was one such method....

### *Chapter XI. Penalties and Remedies*

#### **Section C. Voidability of a Governmental Body’s Action in Violation of the Act; Ratification of Actions...**

A governmental body cannot give retroactive effect to a prior action taken in violation of the Act, but may ratify the invalid act in a meeting held in compliance with the Act. The ratification will be effective only from the date of the meeting at which the valid action is taken....

Ratification of an action previously taken in violation of the Act must comply with all applicable provisions of the Act.

## **Texas Office of the Attorney General**

### **Letter Opinion 94-043**

Section 392.035 of the Local Government Code prohibits a commissioner of a housing authority from receiving compensation in any form. However, a commissioner may receive



reimbursement for necessary expenses incurred while travelling in his official capacity as long as such expenses are supported by adequate evidence of actual money expended.

## **Public Housing Agency Commissioner Handbook**

### **Controlling Documents**

#### **Governing Statutes and Regulations**

In addition to the various legal contracts, the following statutes and regulations govern and/or guide PHA operations...

Federal Regulations 2 CFR Part 200.317 - 200.326 Procurement...

#### **PHA Policies and Procedures**

Policies are the documents that drive all of your administrative and program activities...

Policies are adopted by the Board of Commissioners...Any changes to policies have to be approved by the Board...

*Administrative Policies*

Fiscal Policies and Documents

Procurement...

## **Bay City, TX Code of Ordinances**

### **Part I Charter**

#### **Article III The Mayor**

*Section 3.10 Other Duties and Powers*

Unless otherwise provided by State law, ordinance, or this Charter, the powers and responsibilities of the Mayor shall include, but shall not be limited to, the following:

- (a) To appoint, subject to the prior consent of the Council, all officers and department heads of the City and the members of all boards, commissions, committees, and agencies of the City.

## **Bay City Housing Authority Bylaws, dated March 1, 2018**

### **Article II Officers**

*Section 5. Executive Director*

The Secretary shall be the Executive Director of the Authority and shall have general supervision over the administration of the business and affairs of the Authority...

*Section 7. Election or Appointment...*

The Secretary shall be appointed by the Authority. Any person appointed to fill the office of Secretary or any vacancy therein, shall have such terms as the Authority fixes, but no Commissioner of the Authority shall be eligible for the office.

### **Article III Meetings**

*Section 1. Annual Meetings.*

The Annual meetings of the Authority shall be held on the regular meeting day in May of each year.

*Section 2. Regular Meetings.*

The Authority shall hold regular monthly meetings on the 3<sup>rd</sup> Tuesday of the month at 4:30 p.m. at City Hall of the City of Bay City unless otherwise announced.

*Section 3. Special Meetings.*

The Chairman of the Authority may when he/she deems it expedient, and shall, upon the request of two members of the Authority, call a special meeting of the Authority for the purpose of transacting any business designated in the call. The call for a special meeting may be mailed to the business or home address of each member of the Authority at least two days prior to date of such special meeting. At such special meeting no business shall be considered other than as designated in the call, but if all of the members of the Authority are present at a special meeting any and all business may be transacted at such special meeting...

*Section 5. Order of Business.*

At the regular meetings of the Authority the following shall be the order of business:

1. Call [sic] to order
2. Roll call/Establish [sic] of a Quorum
3. Approval of Agenda
4. Approve Minutes of Previous Meeting
5. Citizens to be heard
6. Consider for Approval
  - a. Low Rent & Section 8 Financial Reports
  - b. Vacancy Report
7. Unfinished Business
8. New Business
9. Adjournment

All resolutions shall be in writing and shall be copied in a journal of the proceedings of the Authority.

*Section 6. Manner of Voting.*

The voting on all questions coming before the Authority shall be by yeas and nays and shall be entered upon the minutes of such meetings.

**Bay City Housing Authority Procurement Policy, dated January 29, 2008**

**Definitions**

Contracting Officer - The Executive Director or an official authorized by the Executive Director to enter into and/or administer contracts and make related determinations and findings. For the purpose of this Policy, the term includes any PHA employee designated and authorized to perform the duties of a Contracting Officer.

**General Provisions**

**Procurement Authority**

While the Executive Director is responsible for ensuring that the PHA's procurements comply with this Policy, the Executive Director may delegate all procurement authority as is necessary and appropriate to conduct the business of the Agency. The person responsible for procurement will be referred to as the Contracting Officer.

Further, and in accordance with this delegation of authority, the Executive Director shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy. The Executive Director shall also establish a system of

sanctions for violations of the ethical standards described in this Policy, consistent with Federal, State, or local law.

### **Board Approval of Procurement Actions**

Other than approval of this Procurement Policy, approval by the Board of Commissioners is not required for any procurement action, as permitted under State and local law. Rather, it is the responsibility of the Executive Director to make sure that all procurement actions are conducted in accordance with the policies contained herein.

### **Procurement Methods and Requirements**

#### **C. Small Purchases (over \$2,000 but not exceeding \$50,000)**

- 1) General
  - a. PHA shall obtain a reasonable number of quotes, preferably three.
  - b. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources.
  - c. Award shall be made to the qualified vendor that provides the best value to the PHA. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file.
  - d. The PHA shall not break down requirements aggregating more than the Small Purchase threshold into several purchases that are less than the applicable threshold merely to (1) permit use of the Small Purchase procedures or (2) avoid any requirements that apply to purchases that exceed the Micro Purchase threshold.
- 2) Cost Analysis
  - a. A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required.
  - b. If a reasonable number of quotes is not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer's personal knowledge at the time of purchase, or any other reasonable basis.
- 3) Solicitation - Quotes may be obtained orally (either in person or by phone), by fax, in writing, or e-mail...

#### **E. Competitive Proposals**

Competitive Proposal is the preferred method for procuring professional services that will exceed the Small Purchase threshold.

- 1) Permits
  - a. Consideration of technical factors other than price
  - b. Discussion with offerors concerning offers submitted
  - c. Negotiation of contract price or estimated cost and other contract terms and conditions.
  - d. Revision of proposals before the final contractor selection
  - e. Withdrawal of an offer at any time up until the point of award
- 2) Conditions for Use

Competitive Proposals (including turn-key proposals for development) may be used if there is an adequate method of evaluating technical proposals and where the PHA determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited.

3) Solicitation Method - Request for Proposal (RFP)

- a. The Request for Proposal (RFP) shall clearly identify the relative importance of price and other evaluation factors and subfactors, including the weight given to each technical factor and subfactor.
- b. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued.
- c. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals.
- d. PHA may assign price a specific weight in the evaluation criteria or the PHA may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

4) Advertising

- a. Solicitation must be done publicly.
- b. The PHA must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.
  - 1) Advertising in newspapers or other print mediums of local or general circulations [sic], not less than once each week for two consecutive weeks.
  - 2) Advertising in various trade journals or publications (for construction)
  - 3) E-Procurement. The PHA may conduct its public procurements through the Internet using a-procurement systems. However, all e-procurements must otherwise be in compliance with 24 CFR 85.36, State and local requirements, and this Policy.
- c. Notices/advertisements should state, at a minimum
  - 1) the place, date and time that the bids are due. A minimum of 15 days shall generally be provided for preparation and submission of Competitive Proposals. The Executive Director may allow for a shorter period under extraordinary circumstances.
  - 2) the solicitation number
  - 3) a contact who can provide a copy of and information about the solicitation
  - 4) a brief description of the needed items

5) Evaluation

- a. The proposals shall be evaluated only on the criteria stated in the RFP.
- b. Where not apparent from the evaluation criteria, the PHA shall establish an Evaluation Plan for each RFP.
- c. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement.
- d. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.

6) Negotiations

Negotiations are exchanges (in either competitive or sole source environment) between the PHA and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract.

- a. Negotiations shall be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP.
  - b. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals.
  - c. No offeror shall be given any information about any other offerer's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal.
  - d. A common deadline shall be established for receipt of proposal revisions based on negotiations.
  - e. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions.
    - 1) Discussions are tailored to each offerer's proposal, and shall be conducted by the Contracting Officer with each offeror within the competitive range.
    - 2) The primary object of discussions is to maximize the PHA's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation.
    - 3) The Contracting Officer shall indicate to, or discuss with, each offerer still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the Contracting Officer, be altered or explained to enhance materially the proposer's potential for award.
    - 4) The scope and extent of discussions are a matter of the Contracting Officer's judgment.
    - 5) The Contracting Officer may inform an offeror that its price is considered by the PHA to be too high, or too low, and reveal the results of the analysis supporting that conclusion.
- 7) Cost and Price Analysis
- a. The presence of adequate competition should generally be sufficient to establish price reasonableness.
  - b. Where sufficient bids are not received, the PHA must compare the price with the ICE [Independent Cost Estimate].
  - c. For Competitive Proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the ICE, the PHA must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

8) Award

Award shall be made on the basis of the proposal that represents the best overall value to the PHA, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price, and provided that the price is within the maximum total project budgeted amount established for the specific property or activity...

**F. Non-Competitive Proposals**

1) Conditions for Use

Procurement by Non-Competitive Proposals (sole-source) may be used **only** when the award of a contract is not feasible using Small Purchase procedures, Sealed bidding, cooperative purchasing, or Competitive Proposals, **and** if one of the following applies:

- a. the item is available from only a single source, based on good faith review of available sources;
- b. an emergency exists that seriously threatens the public health, welfare, or safety of the property, or would otherwise cause serious injury to the PHA, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency;
- c. HUD authorizes the use of Non-Competitive Proposals; or
- d. after solicitation of a number of sources, competition is determined inadequate.

2) Justification

- a. Each procurement based on Non-Competitive Proposals shall be supported by a written justification for the selection of this method.
- b. The justification shall be approved in writing by the responsible Contracting Officer.
- c. Poor planning or lack of planning is not justification for emergency or sole-source procurements.
- d. The justification, to be included in the procurement file, should include the following information:
  - 1) Description of the requirement;
  - 2) History of prior purchases and their nature (competitive vs. Non-Competitive);
  - 3) The specific exception in **24 CFR 85.36(d)(4)(i)(A)** through **(D)** which applies;
  - 4) Statement as to the unique circumstances that require award by Non-Competitive Proposals;
  - 5) Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
  - 6) Statement as to efforts that will be taken in the future to promote competition for the requirement;
  - 7) Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and

- 8) Price Reasonableness. The reasonableness of the price for all procurements based on Non-Competitive Proposals shall be determined by performing an analysis, as described in this Policy.

### **Bay City Housing Authority Travel Policy, Revised March 29, 2016**

5. Food expenses shall be determined by per diem...Employees and/or Commissioners will be paid by check prior to leaving and after having signed the travel form and a tax exemption form will be attached, if traveling in Texas. Payment for food expenses shall be made with respect to days and portions of days prior to travel. No receipts will be required by employees.

Commissioners will receive an estimated draw to cover their expenses before leaving on training. Estimated draws will depend on whether training is in or out of State. Expense receipts will be returned with cash reimbursement, if necessary. A hotel tax exemption form will be enclosed.

### **Bay City Housing Authority Travel Policy, Revised July 2, 2018**

3. ...Commissioners and employees will be reimbursed up to actual costs up to the budgeted amount in that fiscal year. Any amounts exceeding the budget for travel will require Board approval and payments. Actual costs will include hotel/motel accommodations and meals...
5. All travel expenses must be recorded a specified travel form signed by the person authorized to travel and approved by the Executive Director or other designated person prior to reimbursement. The Executor Director [sic] travel expenses shall be approved by the Board Chairman.
6. Food expense shall be determined by a per diem... No receipts will be required.