Fairmont Housing Authority, Fairmont, NE

Public Housing Program

Office of Audit, Region 7
Kansas City, KS

Audit Report Number: 2015-KC-1008
September 1, 2015

To: Denise Gipson, Director, Office of Public Housing, 7DPH

//**signed**//

From: Ronald J. Hosking, Regional Inspector General for Audit, 7AGA

Subject: The Fairmont Housing Authority Did Not Fully Comply With Procurement Requirements and Spent Funds for Ineligible Expenses

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 Fairmont Housing Authority.

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, section 8M, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at http://www.hudoig.gov.

If you have any questions or comments about this report, please do not hesitate to call me at 913-551-5870.

Audit Report Number: 2015-KC-1008
Date: September 1, 2015

The Fairmont Housing Authority Did Not Fully Comply With Procurement Requirements and Spent Funds for Ineligible Expenses

Highlights

What We Audited and Why

We audited the Fairmont, NE, Housing Authority's procurement and expenditures for its U.S. Department of Housing and Urban Development (HUD) public housing program. We selected the Authority for review based on data analysis showing that the Authority's executive director was listed as the executive director of two additional housing authorities and as the fee accountant for all three authorities. Our audit objective was to determine whether the Authority followed HUD rules and regulations and its own policies and procedures for procurement and expenditures.

What We Found

The Authority did not properly procure the company that provided both executive director and fee accounting services or the cost to prepare the agency plans paid to the fee accountant. Additionally, it did not require contractors to comply with contract provisions. This condition occurred because the Authority lacked detailed operating procedures that included steps for implementation, such as checklists. As a result, HUD could not be assured that the Authority received the best value for the $47,417 spent for the purchase of goods and services. Additionally, HUD and the Authority lacked assurance that the contractors would comply with all program requirements, including prevailing wage requirements.

Additionally, the Authority spent $1,485 of its capital funds for ineligible expenses. This condition occurred because the Authority lacked detailed operating policies and procedures for the review and approval of expenditures. As a result, it did not have $1,485 available to spend on other Public Housing Capital Fund projects.

What We Recommend

We recommend that HUD require the Authority to (1) reprocure its executive director and fee accounting services using the appropriate policies and procedures to justify the amount spent on these services during our audit period, (2) justify the unsupported expenses, (3) collect ineligible expenses and repay its Capital Fund program, and (4) develop and implement policies and procedures to address the deficiencies noted.

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Background and Objective

The Village of Fairmont, NE, created the Fairmont Housing Authority in 1965. The Authority's mission is to provide quality housing to eligible persons in a professional, fiscally prudent manner and be a positive force in the community by working with others to assist families with appropriate supportive services. A five-member board of commissioners governs the Authority, and a company providing executive director services manages its daily operations. The Village board appoints the Authority board members to serve a 5-year staggered term. The Authority's central office is located at 255 E Street, Fairmont, NE.

The Authority maintains 20 low-rent units for which the U.S. Department of Housing and Urban Development (HUD) provides an annual subsidy through its Public Housing Operating Fund program to assist with operation and maintenance costs. The Authority received $35,152 and $38,246 in operating subsidy payments in 2013 and 2014 respectively.

Additionally, the Authority receives an annual Public Housing Capital Fund grant from HUD. The Capital Fund provides funds to housing authorities to modernize public housing developments. The Authority received $14,270 and $15,116 in capital funds in 2013 and 2014 respectively.

Our objective was to determine whether the Authority followed HUD rules and regulations and its own policies and procedures for procurement and expenditures.

Results of Audit

Finding 1: The Authority Did Not Fully Comply With Federal and Local Procurement Requirements

The Authority did not properly procure goods and services or require contractors to comply with contract provisions. This condition occurred because the Authority lacked detailed operating procedures that included steps for implementation, such as checklists. As a result, HUD could not be assured that the Authority received the best value for the $47,417 spent for the purchase of goods and services. Additionally, HUD and the Authority lacked assurance that the contractors would comply with all program requirements, including prevailing wage requirements.

The Authority Did Not Properly Procure Goods and Services

The Authority did not properly procure executive director services, fee accounting services, or the completion of its agency plan. In addition, it did not complete a required cost analysis when it received only one bid from each of the contractors for three different projects.

The Authority Did Not Properly Procure Executive Director or Fee Accounting Services

The Authority did not properly procure its executive director or fee accounting services and did not maintain sufficient documentation as required by HUD Handbook 7460.8, REV-2, section 3.3, and its own procurement policy. HUD Handbook 7460.8, REV-2, section 3.3, states that the Authority must maintain records sufficient to detail the significant history of each procurement action, including the rationale for the method of procurement, solicitation, and information regarding contractor selection or rejection.

The Authority should have maintained written supporting documentation in its procurement file. However, the contracts between the executive director services and fee accounting services provider and the Authority were the only procurement documents that the Authority maintained to detail the procurement of the two services. The Authority signed contracts for executive director and fee accounting services with the same provider. The Authority signed its first contract for executive director services in January 2015, but the company had been acting as the executive director services provider since September 2004. The Authority signed a 2-year contract for fee accounting services in November 2010 and signed an addendum to the contract in June 2014, extending services for 2 more years. The Authority did not document the solicitation process or information regarding the contractor selection or rejection.

The Authority signed contracts with a company to provide executive director and fee accounting services without attempting to procure the services from another source. The Authority's procurement policy required publicly solicited sealed bids by formal advertisement for procurement actions above $10,000. For procurement actions between $100 and $10,000, the Authority should have received written bids from at least three sources. The Authority paid $24,600 and $3,991 from its operating funds for executive director and fee accounting services, respectively, from August 2011 through December 2014. The combined amounts required the Authority to publicly solicit sealed bids for the executive director services and receive written bids from three sources for the fee accounting services. The Authority did not attempt to obtain a bid from any source other than the executive director and fee accounting service company that it signed contracts with. The following tables detail the monthly and combined fees paid to the executive director and fee accounting services company during our audit period.

Executive director services	Monthly fee	Combined
August 1, 2011, through December 31, 2014	$600	$24,600
Total		**$24,600**

Fee accounting services	Monthly fee	Combined
August 1, 2011, through July 31, 2012	$94	$1,128
August 1, 2012, through July 31, 2014	97	2,328
August 1, 2014, through December 31, 2014	107	535
Total		**$3,991**

The Authority Did Not Properly Procure the Completion of Its Agency Plan
The Authority paid $1,200 to its fee accounting services company for the completion of its 2014 5-year and annual agency plan. The Authority's procurement policy required written bids from at least three sources for purchases between $100 and $10,000. The Authority's fee accountant stated that the Authority's board members approved the completion of the agency plan after she had completed it and submitted an invoice for the service to the Authority's board. The invoice the Authority received did not include details on how the $1,200 fee was calculated. While the Authority received a benefit by having the mandatory 5-year and annual agency plan completed, the service expense was not supported by a proper procurement or detailed invoice.

The Authority Did Not Complete a Required Cost Analysis
The Authority did not complete a cost analysis when it received only one bid from each of the contractors for three different projects, including painting Authority buildings, replacing Authority living unit doors, and replacing sidewalks on Authority property. Criteria at 24 CFR (Code of Federal Regulations) 85.36(d)(4)(ii) require the Authority to conduct a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits when soliciting a proposal

from only one source or determining competition is inadequate. However, the Authority did not complete those requirements for any of the three projects.

Further, although the Authority accepted an initial bid of $2,615 for the repair and replacement of Authority sidewalks, while completing the project, the executive director agreed to expand the scope of work to repair and replace additional sidewalks on Authority property. The additional work cost the Authority an extra $1,540 totaling $4,155. The Authority did not conduct the required cost analysis to support the expenditure or obtain support for the price of the additional work.

The following table details the amount paid to each of the three contractors.

Project	Amount paid
Paint Authority buildings	$7,640
Replace living unit doors	5,831
Replace sidewalks	4,155
Total	**$17,626**

The Authority Did Not Require Contractors To Comply With Contract Provisions

The Authority did not include in its executive director and fee accounting services contracts provisions required by HUD Handbook 7460.8, REV-2, section 5.10 or table 5.1. The executive director services contract did not include the required termination clause, a 3-year record retention clause, or ownership and proprietary interest language. The fee accounting services contract did not include the required 3-year record retention clause or ownership and proprietary interest language.

Additionally, the Authority did not execute contracts for three Capital Fund projects reviewed. The projects were to replace Authority living unit doors, paint Authority buildings, and replace sidewalks on Authority property. HUD Handbook 7460.8, REV-2, section 5.10, states that the Authority must incorporate the clauses contained in form HUD-5370-EZ, General Conditions for Small Construction/Development Contracts, into its construction contracts greater than $2,000 but not more than $100,000. Without a contract in place, the Authority did not require contractors to comply with these provisions. Authority staff told us that the Authority did not always execute contracts with contractors. The Authority based the decision on the type of work and the Authority's familiarity with the contractor.

The Authority Lacked Detailed Procedures

The Authority lacked detailed operating procedures that included steps for implementation, such as checklists. The Authority's procedures did not ensure that it followed its procurement policy, along with HUD Handbook 7460.8, REV-2.

HUD Lacked Assurance

HUD could not be assured that the Authority received the best value and greatest overall benefit for $47,417 spent for the purchase of goods and services, including $24,600 for executive director services, $3,991 for fee accounting services, $1,200 for agency plan completion, $7,640 for painting services, $5,831 for living unit doors, or $4,155 for sidewalk replacement. Additionally, HUD and the Authority lacked assurance that the contractors would comply with all program requirements, and the Authority put itself at risk by not always executing contracts that included all required contract provisions, including prevailing wage requirements.

Recommendations

We recommend that the Director of HUD's Omaha, NE, Office of Public Housing require the Authority to

1A. Reprocure its executive director services using the appropriate policies and procedures to ensure properly procured services going forward and use the quotes from that procurement to justify the $24,600 spent for executive director services from August 2011 through December 2014. For any amount the Authority cannot support, HUD should reduce future annual operating funds.

1B. Reprocure its fee accounting services using the appropriate policies and procedures to ensure properly procured services going forward and use the quotes from that procurement to justify the $3,991 spent for fee accounting services from August 2011 through December 2014. For any amount the Authority cannot support, HUD should reduce future annual operating funds.

1C. Justify the $1,200 spent for the 2014 5-year and annual agency plan. For any amount the Authority cannot support, HUD should reduce future annual operating funds.

1D. Justify the three awards given to contractors when only one bid was received totaling $17,626. For any amount the Authority cannot support, HUD should reduce future annual capital funds.

1E. Develop and implement detailed operating procedures, including checklists, which fully implement its procurement policy and HUD requirements.

1F. Submit all contracting actions to HUD, including solicitation and contracts, for review and approval before executing contracts until the Authority demonstrates compliance and HUD determines, based on the information available, that this review is no longer necessary.

Finding 2: The Authority Spent Capital Funds for Ineligible Expenses

The Authority spent $1,485 of its capital funds for ineligible expenses. This condition occurred because the Authority lacked detailed operating policies and procedures for the review and approval of expenditures. As a result, it did not have $1,485 available to spend on other Capital Fund projects.

The Authority Spent Capital Funds for Ineligible Expenses

The Authority spent $1,485 of its capital funds for services covered in the executive director services contract. According to 2 CFR Part 225, appendix A, part C, for a cost to be allowable under a Federal award, it must be reasonable and necessary for proper and efficient performance and administration of the project. The Authority paid the executive director services provider $1,485 from its 2012 annual Capital Fund grant to administer the 2012 grant. However, the executive director services contract provided for the administration of the annual Capital Fund grant. It was not necessary to pay the executive director service provider an additional $1,485 for services paid for under the executive director services contract.

The Authority Lacked Detailed Operating Policies and Procedures

The Authority lacked detailed policies and procedures for the review and approval of expenditures. It did not have policies and procedures in place to determine expense eligibility based on requirements at 2 CFR Part 225 before board approval and payment.

The Money Was Not Available for Other Capital Fund Projects

As a result of the deficiency noted above, the Authority did not have $1,485 available to spend on other Capital Fund projects.

Recommendations

We recommend that the Director of HUD's Omaha, NE, Office of Public Housing require the Authority to

2A. Collect from its executive director services provider and repay its Capital Fund program the $1,485 that it improperly paid the provider from its capital funds.

2B. Develop and implement policies and procedures for the review and approval of expenditures to ensure that it fully implements HUD requirements.

Scope and Methodology

Our review generally covered the period July 1, 2011, through December 31, 2014. We conducted our fieldwork from February through April 2015 at the Authority located at 255 E Street, Fairmont, NE. We also conducted fieldwork at the York Housing Authority because the executive director at Fairmont also conducts business in York. The York Housing Authority is located at 215 North Lincoln Avenue, York, NE.

To accomplish our objective, we

- Interviewed the Authority's executive director and board chair;
- Interviewed HUD's Office of Public Housing staff in Omaha, NE;
- Reviewed the Authority's policies and procedures, procurement files, contracts, and financial records; and
- Reviewed Federal regulations and HUD requirements.

Using the Authority's general ledger for fiscal years 2012-2014, we selected a procurement sample as well as a separate expenditure sample. We reviewed the general ledgers for expenditures exceeding the $100 micro purchase threshold, including recurring payments to the same vendor that exceeded this amount, potential ineligible payments, and payments to the Authority's executive director and fee accounting services company. We organized the amounts in an Excel spreadsheet according to the general ledger expenditure description and used the Excel spreadsheet to select our sample.

During our audit period, the Authority paid the executive director and fee accounting services provider a total of $42,163, which included the monthly $600 fee for executive director services and monthly fees for fee accounting services of $94 (August 1, 2011, through July 31, 2012), $97 (August 1, 2012, through July 31, 2014), and $107 (August 1, 2014 through December 31, 2014). The Authority spent another $63,617 during the audit period on items and contractors other than the executive director and fee accounting services provider. Of the total $63,617 in other expenditures, the Authority paid for $29,930 using capital funds and the remaining $33,687 using operating funds. During our audit period, the Authority spent a total of $105,780 ($42,163 + $63,617) for services, supplies, repairs, and contracts.

For the procurement sample, we reviewed the procurement of the three contractors that received the largest capital fund expenditures during our audit period. We also reviewed the procurement of both executive director and fee accounting services.

For the expenditure sample, we reviewed two of the three largest capital fund expenditures, which represented 23.42 percent of the total capital fund expenditures during our audit period. We selected the largest capital fund expenditure. We also selected the third largest expenditure because it was sole-source procured. We also reviewed two of the three largest payments to the executive director and fee accounting services provider during 2014. The two largest payments to the executive director and fee accounting services company during our audit period were for the 2011 and 2012 Capital Fund administration expenses. We selected the 2012 expenditure because it was more recent. We then selected the next largest payment made to the executive director and fee accounting services company during our audit period.

Our results apply to the items reviewed and cannot be projected to the portion of the population that we did not test.

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 objective.

Internal Controls

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

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

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

Relevant Internal Controls

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

- Controls over the Authority's procurement.
- Controls over the Authority's expenditures.

We assessed the relevant controls identified above.

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

Significant Deficiency

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

- The Authority lacked detailed processes and procedures for implementing HUD procurement (finding 1) and expenditure (finding 2) regulations.

Appendixes

Appendix A

Schedule of Questioned Costs

Recommendation number	Ineligible 1/	Unsupported 2/
1A		$24,600
1B		3,991
1C		1,200
1D		17,626
2A	$1,485	
Totals	**$1,485**	**$47,417**

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

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

Appendix B

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments

Fair-View Apartments
FAIRMONT HOUSING AUTHORITY

August 12, 2015

Mr. Ronald J. Hosking, Regional Inspector General for Audit
Office of Inspector General
400 State Avenue, Suite 501
Kansas City, KS 66101

Dear Mr. Hosking:

On July 28, 2015, the Fairmont Housing Authority received an email sent jointly by our HUD leader, Principal Deputy Assistant Secretary Lourdes Castro Ramirez, and your boss, HUD Inspector General David A. Montoya, that began with the following:

> "Public Trust and Integrity is Our Collective Responsibility. Public Housing Agencies (PHAs) are managed by dedicated public servants that often go above and beyond to provide residents with safe, decent and affordable housing that strengthens communities. Similarly, the vast majority of families living in these communities, like so many Americans, are working towards improving their quality of life.
>
> Efficient operations and effective accountability are essential to ensuring that the limited public housing resources are protected and used prudently, to better the lives of those we are charged with serving."

We TOTALLY concur in this statement and appreciate the efforts of your office to assist us in achieving this standard. We also appreciate the professionalism and courtesy exhibited by your agents. While we are mystified at the amount of time your agents spent with three housing authorities containing only 75, 35, and 18 public housing units out of the approximately 1,129,416 that remain in America's public housing inventory, we are proud of the fact that your agents found only alleged minor non-compliance issues in our operations. **We hereby pledge to work closely with the Omaha HUD Office to explain in detail each of the technical non-compliance issues you found and regain our reputation as an outstanding high performing housing authority that we deserve.** Let us now look at both of your two findings.

Finding One: The Authority did not fully comply with federal and local procurement requirements.

We do not question that the Fairmont Housing Authority did not "fully" comply with procurement requirements. We question if ANY housing authority can withstand the scrutiny we have undergone and come out with no procurement findings. That stated, we do not claim

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infallibility and certainly have room to learn and appreciate the efforts of your staff to better educate us. This stated, let's look at each element of this finding.

Comment 1

The first element was the statement that we did not properly procure executive director, fee accounting services or agency plans. We agree with this observation. We innocently and improperly sole-sourced these services and, when this was brought to our attention, immediately took action. Once the Board of Commissioners became aware of this issue, a consultant was retained using small purchase procedures and he agreed that we handled this improperly when procured years ago. Based on advice we received, we used an independent third-party consultant who has no relationship with current staff to assist us in properly procuring an executive director and fee accountant. This has been accomplished and, after going through the proper process and interviewing potential replacement for executive director and fee accountants, we chose the best candidate at our July Board meeting and resolved this deficiency. We will fully discuss this with the Field Office and are confident this can be immediately closed. Based upon the cost element of these procurement submissions, we are confident that we received the best price possible for accounting services between 2011 and 2014, the period covered by the audit.

Comment 2

The second element involves contracting technicalities that your agents allege. We agree that, as a small housing authority with limited staffing capacity, we do not do everything exactly the same as if we were a large organization. Depending on the situation, we may have been more informal that you seek using implied as well as express contracts to procure items and services for the housing authority. In the ideal world we totally agree with you, but in the real world we have chosen to comply with HUD requirements in the least bureaucratic manner possible in order to devote the maximum time possible to direct resident services. While we certainly respect our obligation to the taxpaying investor in our operations, we take our responsibilities to the residents extremely seriously, as we believe HUD has instructed us to do. When one has limited resources, one must make choices. We will work with Omaha to resolve this inherent conflict.

Comment 3

The three awards given to contractors for painting the exterior of units, $7,460; replacement of steel screen doors, $5,831; and sidewalk replacement, $4,155 was referenced in the report as only received one bid for the services. To explain, two bids were received for the painting. Four contractors were contacted by letter for a bid and only two responded despite follow up phone calls. The screen doors had three bids, two of the bids were from lumber yards and one bid from a steel door company. The sidewalk replacement only had one bid, despite attempts to obtain bids from other contractors. At the time of the replacement, several other cement jobs were in place in the community and contractors expressed no time to do the small sidewalk job requested. The contractor that was hired to do the cement work was from a community 35 miles away.

The third element is that we lack policies and detailed procedures. We believe our procurement policy is fully compliant with the sample policy in the HUD Procurement Handbook but plead guilty to not having detailed written operating procedures and checklists. Please see the preceding paragraph for our reasoning. This stated, we will be happy to work with the Omaha

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Field Office on their specific practical suggestions. To repeat, we want to be fully compliant while realistic in what we can accomplish.

Comment 1

Finally, we are very confident we will be able to demonstrate to Omaha that we received the best value possible for executive director and fee accounting services in the past even though we admit the procurement process was flawed.

Comment 4

There is one major objection to the recommendations contained in your report, that we submit all contracting action to Omaha for prior approval before we take action. We think this would be a major impediment to providing quality services to our residents due to the inevitable delays caused by a grossly understaffed Omaha Field Office in their duty and ability to serve all 107 Nebraska housing authorities. We do not think the findings you have made are anywhere near serious enough to justify this massive federal intrusion into the operations of an independent housing authority.

We do not believe this suggestion is compliant with Section 2(a)(1)(C) of the United States Housing Act of 1937, our basic authorizing legislation that states: (a) DECLARATION OF POLICY.—It is the policy of the United States - (1) to promote the general welfare of the Nation by employing the funds and credit of the Nation, as provided in this Act -

> (A) to assist States and political subdivisions of States to remedy the unsafe housing conditions and the acute shortage of decent and safe dwellings for low-income families;
>
> (B) to assist States and political subdivisions of States to address the shortage of housing affordable to low-income families; and
>
> (C) 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, with appropriate accountability to public housing residents, localities, and the general public;

Nor is it consistent with Section 3 of the latest (1995) ACC that binds HAs to HUD –

> **Section 3 – Mission of HUD.**
>
> HUD shall administer the Federal public and Indian housing program for the provision of decent, safe, and sanitary housing to eligible families in accordance with this ACC and all applicable statutes, executive orders, and regulations. HUD shall provide maximum responsibility and flexibility to HAs in making administrative decisions within all applicable statutes, executive orders, regulations and this ACC. HUD shall provide annual contributions to the HA in accordance with all applicable statutes, executive orders, regulations, and this ACC.

Also, it is inconsistent with QHWRA Section 502(a)(5)(C) –

> (5) the interests of low-income persons, and the public interest, will best be served by a reformed public housing program that--

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(A) consolidates many public housing programs into programs for the operation and capital needs of public housing;

(B) streamlines program requirements;

(C) vests in public housing agencies that perform well the maximum feasible authority, discretion, and control with appropriate accountability to public housing residents, localities, and the general public; and

(D) rewards employment and economic self-sufficiency of public housing residents.

Finally, it is not compliant with the procurement section of the COFAR, which at 2 CFR 300.318 states the following which is in line with the thought process of Section 2 of the USHA:

> (k). The non-Federal entity **alone** must be responsible, in accordance with good administrative practice and sound business judgment, **for the settlement of all contractual and administrative issues arising out of procurements.** These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency **will not substitute its judgment for that of the non-Federal entity** unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

With all of this stated, perhaps we could agree that all purchases that exceed the small purchase threshold, rather than absolutely ALL purchases, go through the Omaha Office until their finding can be clearer. We believe both that practicality should be observed and the actions recommended should be consistent with the problems found. This is more appropriate.

Finding Two: The Authority Spent Capital Funds in the amount of $1,485 for Ineligible and Unsupported Costs.

Comment 5

While no one wants to expend federal funds on ineligible or unsupported activities, we feel obligated to place this finding in context. The finding involves $1,485 over a four-year period, 2011 through 2014. **In context, the Fairmont Housing Authority spent a total of $400,149 during this same period. Therefore, despite an extensive, thorough examination by multiple Inspector General employees diligently looking for problems, only 37% of 1% of our expenditures is being challenged. While we seek zero defects, we are not overly concerned with a possible .0037% error rate.** This is significantly purer than Ivory Soap. This stated, we will work with the Omaha Office to lower this incredibly small percentage and produce proof of the appropriateness of most of them to the Omaha Office. This stated, let's look at each element of this finding.

Comment 6

Element one-The Authority spent $1,485 for services covered under contract. The engagement letter with the management company states "monthly-update and obligate Capital Fund in eLOCCS". It was the intent of the contractor to provide the monthly update in eLOCCS as part

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of the monthly services amount. The Capital Fund administration would be paid to the contractor from the services provided for the Capital Fund, which I am sure you would agree is more than updating the obligated and requesting funds in the eLOCCS system. This will be explored in greater detail with the Omaha HUD Office. Reasonable value was received at a reasonable price for this programmatically required activity. The recommendation to have the Executive Director repay the $1,485 for administration of the Capital Fund is questionable and unreasonable. This hinges on your agent's interpretation of the services to be provided by the Executive Director.

Comment 7

The Fairmont Housing Authority currently has a total of two part-time employees. We are not the New York City Housing Authority or even the Omaha Housing Authority. By necessity, we work in a more informal atmosphere. We clearly do not have detailed written operating policies and procedures, and this is by design. We are anxious to work with the Omaha HUD office on practical suggestions they can make to show us how this is achievable and still allow enough time to provide the high quality of service to our residents that we demand.

Comment 8

Finally, the report states that $1,485 over a four-year period was not available for other Capital Fund expenses. I feel it is important to note that despite this allegation and extreme pro rations of both operating subsidy and Capital Fund, we have operated two out of the four years in the black.

Comment 9

To compliment this solid financial management we received the following REAC scores for financial management (25 is perfect) and physical scores (40 is perfect):

	2011	2012	2013	2014
Physical	38	38	37	37
Financial	25	25	25	25

We think these are excellent scores that reflect a well-run housing authority.

Thank you again for this opportunity to formally respond to your office's draft audit and we look forward to working with the Omaha HUD Public Housing Division to resolve these finding as expeditiously as possible.

Sincerely yours

CSNaber

Cindy Naber
Executive Director

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OIG Evaluation of Auditee Comments

General The Authority took considerable effort in its response to minimize the efforts of the auditors and the audit results identified in the report. HUD and the Authority's Board should take the findings seriously. During our review, we found the Authority did not maintain adequate documentation to support procurements, nor did it keep a listing of its procurements or contracts. We reviewed a small sample of procurements and expenditures using the Authority's general ledger. We reviewed $9,695 of a total universe of $105,780 expenditures during our 3.5-year audit period – not 4 years as stated in the auditee's comments. Our universe did not come close to the $400,149 of expenditures suggested by the auditee, nor can our results be projected to such a population. We did not expand the scope of our review because we determined that it was likely that we would uncover similar issues as those reported, and it would have placed a burden on the Authority to cost justify additional items.

Comment 1 The reprocurement of executive director and fee accounting services that the Authority plans to use to justify the cost of previous executive director and fee accounting services took place after OIG had completed its review. OIG did not review any bids for the reprocurement of the services. At the time of the report issuance, OIG could not comment on the Authority's ability to support previous executive director and fee accounting service expenses.

Comment 2 The Authority contracted for both executive director and fee accounting services. The executive director contract only requires the executive director to be onsite, at most, five days per month. However, the Authority's comments indicate that direct tenant services are a high priority. If the Authority is concerned with limited staffing capacity, it should consider requiring the executive director services provider to be onsite more frequently, allowing tenants to have access to the provider more often.

The Authority failed to comply with HUD requirements. HUD requirements include required contract provisions to protect HUD funds, program participants, and to ensure compliance with federal rules and regulations, including prevailing wage requirements.

Comment 3 During our review, we asked the Authority to provide us with all the supporting documentation for the procurement of painting services, living unit doors, and Authority sidewalk repair and replacement. The Authority provided us with the files that contained support for the procurement actions. The procurement file for painting services contained letters to four different contractors asking them to bid on the services. However, the file only contained a response by the contractor that was awarded the job. The Authority was unable to provide a bid from another contractor. The procurement file for the living unit doors did not contain any documents sent to or received from any contractors other than the contractor that was awarded the job. The procurement file for the concrete for the replacement and repair of sidewalks did not contain any documentation indicating that all other local concrete contractors were unavailable.

Comment 4 In our review of the Authority's procurement, we identified significant deficiencies in the Authority's procurement. According to HUD Handbook 7460.8, REV-2, section 12.2(L), solicitation and contracts by any PHA (public housing authority) whose procurement procedures or operations fail to comply with the procurement standards in 24 CFR 85.36 shall have prior HUD approval. We found the Authority did not comply with 24 CFR 85.36 when it failed to maintain documentation on the procurement for its executive director and fee accounting services or require contractors to comply with the required contract provisions. Our recommendation that all contracting actions go through the Omaha field office still stands.

Comment 5 Our review only included a small sample of the Authority's expenditures and procurements over a 3.5-year audit period – not 4 years as stated in the auditee's comments (see the Scope and Methodology section on pages 9-10). We did not review 100% of the funds expended during the audit period. Our limited review cannot be projected to the entire population of expenditures. Therefore, it cannot be said that the items we did not review were spent in accordance with HUD's rules and regulations.

Comment 6 The Authority did not have a contract in place with the executive director or fee accounting services provider that allowed it to pay either provider the ten percent capital fund administration draw. If the Authority needed additional assistance with the capital fund administration outside of what was already included in the executive director contract, it should have properly procured those services.

Comment 7 The calculation of two part-time employees does not include the executive director and fee accounting services company that the Authority contracted with to carry out the Authority's day to day operations. If the Authority feels that staffing is the cause of the procurement and expenditure issues identified in this report, it should require the executive director services provider to be onsite more frequently or explore procuring a different provider.

Policies and procedures are the only way to ensure that the Authority complies with HUD rules and regulations and expends funds effectively and efficiently. The Authority failed to comply with HUD rules and regulations for its procurement and expenditures, as noted in the audit report.

Comment 8 The Authority did not have the $1,485 available to spend on other operating expenditures, and the funds could have been spent on other eligible activities or moved into the Authority's reserves for future shortages. Also, our audit period was 3.5 years – not 4 years as stated in the auditee's comments.

Comment 9 Audits conducted by the OIG have very different scopes and objectives than those conducted by HUD. Therefore, it is not uncommon for the OIG to identify issues not previously identified by HUD.

Appendix C

Criteria

2 CFR 85.36 – Procurement

d. Methods of Procurement to be Followed

4. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

ii. Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

2 CFR Part 225 – Cost Principles for State, Local, and Indian Tribal Governments

Appendix A

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.
   j. Be adequately documented.
2. **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 governmental units or components are predominately federally-funded.

HUD Handbook 7460.8, REV-2 – Procurement Handbook for Public Housing Agencies Chapter 3

3.3. Documentation

A. **General 24 (CFR 85.36(b)(9)).** The PHA [public housing agency] must maintain records sufficient to detail the significant history of each procurement action. Such documentation is particularly important in the event a protest is lodged against the PHA. It will also facilitate future purchases of similar supplies or services since it will not be necessary to recreate solicitation documents. Supporting documentation shall be in writing and placed in the procurement file. These records shall include, but shall not necessarily be limited to, the following:

   1. Rationale for the method of procurement selected. For example, the contract file would not need to state why the Contracting Officer chose small purchase procedures

to order a desk but would want to note why noncompetitive proposals was used for a roofing contract.

2. The solicitation.
3. Selection of contract pricing arrangement, but only if not apparent. For example, the contract file would not need to document why a firm fixed-price was used to obtain building materials.
4. Information regarding contractor selection or rejection, including, where applicable, the negotiation memo, the source selection panel, evaluation report, cost and price analysis, email correspondence (including offers, selections, pertinent pre- and post-award discussions and negotiations, etc.)
5. Basis for the contract price (as prescribed in this handbook), and
6. Contract administration issues/actions.

   The level of documentation should be commensurate with the value of the procurement. A sample contract file checklist is included in **Appendix 2.**

B. **Record Retention (24 CFR 85.42(a) & (b).** PHAs shall retain all significant and material documentation and records concerning all procurements they conduct. These records must be retained for a period of three years after final payment and all matters pertaining to the contract are closed. If any claims or litigation are involved, the records shall be retained until all issues are satisfactorily resolved.

Chapter 5

5.10. Standardized Forms/Mandatory Contract Clauses

A. **General**. Except in the case of bid specifications and contracts for construction or maintenance work in excess of $2,000 (see paragraphs B and C, below), small purchases, including purchase orders, are subject only to the mandatory clauses contained in Table 5.1.

   PHAs may be further bound by certain State or local requirements (See Chapter 13). Other than these Federal, State or locally-mandated provisions, PHAs should include language with any small purchase that is necessary and appropriate, consistent with good business practice.

   In addition to Table 5.1, HUD has developed forms which contain the contract clauses required for small purchases related to construction and maintenance work. The use of the Table and these forms are described in the paragraphs below.

B. **Mandatory Requirements for <u>Construction Contracts greater than $2,000 but not more than $100,000</u>**. PHAs must incorporate the clauses contained in form HUD-5370-EZ, General Conditions for Small Construction/Development Contracts, and the applicable Davis-Bacon wage decision. Form HUD-5370-EZ has been designed for small construction jobs. PHAs may use form HUD-5370 in lieu of the HUD-5370-EZ if the former is more appropriate given the nature of the work.

C. **Mandatory Requirements for <u>Maintenance Contracts (including nonroutine maintenance work) greater than $2,000 but not more than $100,000</u>**. PHAs must incorporate the clauses contained in Table 5.1; Section II of form HUD-5370-C, General Conditions for Non-Construction Contracts, and the applicable HUD wage decision.

TABLE 5.1. MANDATORY CONTRACT CLAUSES FOR SMALL PURCHASES OTHER THAN CONSTRUCTION

The following contract clauses are required in contracts pursuant to **24 CFR 85.36(i**) and Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. HUD is permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy. The PHA and contractor is also subject to other Federal laws including the U.S. Housing Act of 1937, as amended, Federal regulations, and state law and regulations.

Examination and Retention of Contractor's Records. The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

Right in Data and Patent Rights (Ownership and Proprietary Interest). The PHA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials, and documents discovered or produced by Contractor pursuant to the terms of this Contract, including, but not limited to, reports, memoranda or letters concerning the research and reporting tasks of the Contract.

Energy Efficiency. The Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

Procurement of Recovered Materials

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

(b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of $10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of $10,000 of the item both under and outside that contract.

Termination for Cause and for Convenience (contracts of $10,000 or more).

(a) The PHA may terminate this contract in whole, or from time to time in part, for the PHA's convenience or the failure of the Contractor to fulfill the contract obligations (cause/default). The PHA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the PHA all information, reports, papers, and other materials accumulated or generated in performing the contract, whether completed or in process.

(b) If the termination is for the convenience of the PHA, the PHA shall be liable only for payment for services rendered before the effective date of the termination.

(c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (cause/default), the PHA may (1) require the Contractor to deliver to it, in the manner and to the extent directed by the PHA, any work described in the Notice of Termination; (2) take over the work and prosecute the same to completion by contract of otherwise, and the Contractor shall be liable for any additional cost incurred by the PHA; and (3) withhold any payments to the Contractor, for the purpose of set-off or partial payment, as the case may be, of amounts owned by the PHA by the Contractor. In the event of termination for cause/default, the PHA shall be liable to the Contractor for reasonable costs incurred by the Contractor before the effective date of the termination. Any dispute shall be decided by the Contracting Officer.

Fairmont Housing Authority Procurement Policy

Small Purchase Procedures
For purchases and contracts from $100 to $10,000 in the aggregate, the Executive Director (or other authorized individuals) shall obtain price quotations in writing from an adequate (at least three) number of suppliers using small purchase procedures except that for purchases up to $250 price quotations may be obtained orally or by telephone.

For purchases and contracts in excess of $10,000 in the aggregate, the Executive Director (or other authorized individuals) shall publically solicit sealed bids by formal advertisement in at least one newspaper of general circulation and by mailing solicitations to bid to a sufficient number (at least three) of known suppliers using a complete purchase description including specifications, if any, and providing sufficient time as required by State law prior to the date set for opening the bids.