



**Flint, MI Housing Commission's  
American Recovery and Reinvestment Act Public  
Housing Capital Fund Grants**



Issue Date: September 27, 2012

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TO: Willie C. Garrett, Director of Public Housing, 5FPH

*Kelly Anderson*

FROM: Kelly Anderson, Regional Inspector General for Audit, Chicago, IL, 5AGA

SUBJECT: The Flint Housing Commission, Flint, MI, Did Not Always Administer Its Grants in Accordance With Recovery Act, HUD's, and Its Own Requirements

Enclosed is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General (OIG), final report of our audit of the Flint Housing Commission's American Recovery and Reinvestment Act Public Housing Capital Fund competitive grants.

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 8L, 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 (312) 353-7832.



Date of Issuance September 27, 2012

## **The Flint Housing Commission, Flint, MI, Did Not Always Administer Its Grants in Accordance With Recovery Act, HUD's, and Its Own Requirements**

# Highlights

Audit Report 2012-CH-1013

### **What We Audited and Why**

We audited the Flint Housing Commission's American Recovery and Reinvestment Act of 2009 Public Housing Capital Fund competitive grants. We selected the Commission based upon our analysis of risk factors relating to the housing agencies in Region 5's<sup>1</sup> jurisdiction. Our objective was to determine whether the Commission administered its grants in accordance with Recovery Act, HUD's, and its own requirements. This is the first of two planned audit reports on the Commission's Recovery Act grants.

### **What We Recommend**

We recommend that the Director of HUD's Detroit Office of Public Housing require the Commission to (1) reimburse HUD more than \$3 million in grant funds for the inadequate procedures used in the procurement process and (2) implement adequate procedures and controls to ensure that contracts are awarded and managed in accordance with HUD's requirements and its own procurement policy.

### **What We Found**

The Commission generally complied with the requirements of the Davis-Bacon Act for all four of its Recovery Act competitive grants. However, it failed to follow HUD's and its own procurement requirements for its Recovery Act competitive grants. Specifically, it did not (1) provide an adequate rationale for using a noncompetitive procurement method for its Recovery Act contracts, (2) prepare an independent cost estimate or analysis before the solicitation of offers, and (3) obtain approval from HUD and its board before revising its plan for use of the funds. Additionally, the Commission did not (1) issue payments to its contractor in accordance with HUD's requirements and (2) ensure that its contractor included Section 3 clauses in contracts for work funded by the Recovery Act grants. As a result, the Commission hindered full and open competition, and HUD and the Commission lacked assurance that more than \$3.1 million in Recovery Act competitive grant funds was used appropriately.

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<sup>1</sup> Region 5 includes the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.  
Indiana, Michigan, Minnesota, Ohio, and Wisconsin,

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## **BACKGROUND AND OBJECTIVE**

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The Flint Housing Commission operates a public housing program that consists of 10 low-income housing communities with 1,248 units including 133 scattered sites throughout Flint, MI. The following four housing projects received American Recovery and Reinvestment Act of 2009 competitive grant funds: Richert Manor, Howard Estates, Centerview Apartments, and Mince Manor. Richert Manor is a 132-unit single-room highrise building. Howard Estates is a family site that consists of 96 townhouses. Centerview Apartments is a 90-unit, one-bedroom complex. Mince Manor is a 110-unit complex for the elderly.

The Commission was established by the City of Flint, Michigan, on July 27, 1964. The Commission's primary funding source is the U.S. Department of Housing and Urban Development (HUD) under the regulation of the State of Michigan's Act 18 of 1933, MCL 125.651-709e. A five-member board of commissioners is appointed by the mayor of Flint to serve a 5-year term. The executive director, appointed by the board, is responsible for general supervision over the administration of the Commission's business and is charged with the management of its housing projects. The commission administers the projects under its annual contributions contract with HUD.

On February 17, 2009, the President signed the Recovery Act. The Recovery Act provided an additional \$4 billion to public housing agencies to carry out capital and management activities, including the modernization and development of public housing. The Recovery Act required that \$3 billion of these funds be distributed as formula grants and the remaining \$1 billion be distributed through a competitive process. In March 2009, the Commission received a formula grant of more than \$2.5 million, and in September 2009, it received four competitive grants, which totaled more than \$3.1 million. Of the \$3.1 million in Recovery Act competitive funds, Richert Manor (grant number MI00900000109R) received \$670,535, Howard Estates (grant number MI00900000209R) received \$884,312, Centerview Apartments (grant number MI00900000609R) received more than \$1.1 million, and Mince Manor (grant number MI00900001109R) received \$445,939.

The competitive grant funds may be used to carry out priority capital and management activities at public housing projects. Specifically, these competitive grant funds were used by the Commission in projects for category 4, option 2, the creation of energy-efficient, green communities – moderate rehabilitation, of HUD's Notice of Funding Availability, dated June 3, 2009.

According to the Recovery Act, the Commission was required to obligate 100 percent of its competitive grant funds within 1 year, expend 60 percent of the funds within 2 years, and fully expend the funds within 3 years. As of March 2010, the Commission had obligated 100 percent of its competitive grant funds and as of June 2011, it had expended 100 percent of the funds.

For the fiscal years ending June 30, 2009, and June 30, 2008, HUD designated the Commission as substandard physical based on poor physical inspection reports. Since this designation classified the Commission as a troubled public housing agency, execution of the Recovery Act annual contributions contract amendments was the Commission's acknowledgement and

agreement to additional monitoring and oversight by HUD as deemed necessary in order to ensure proper use of the Recovery Act capital funds. The Commission was notified of HUD's minimum baseline strategy of monitoring and oversight, which included a manual review of all of its Recovery Act capital fund grants.

Our objective was to determine whether the Commission administered its Recovery Act competitive grants in accordance with HUD's requirements and its own policies. Specifically, we wanted to determine whether it followed HUD's and its own procurement requirements for its Recovery Act competitive grant activities.

## RESULTS OF AUDIT

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### Finding: The Commission Failed To Follow HUD's and Its Own Procurement Requirements for Its Recovery Act Competitive Grants

While the Commission generally complied with the requirements of the Davis-Bacon Act, it failed to follow HUD's and its own procurement requirements for all four of its Recovery Act competitive grants. Specifically, it did not (1) provide an adequate rationale for using a noncompetitive procurement method for its Recovery Act competitive grant contracts, (2) prepare an independent cost estimate or analysis before the solicitation of offers, and (3) obtain approval from HUD and its board before it revised its plan for the use of the funds. Additionally, the Commission did not (1) issue payments to its contractor in accordance with HUD's requirements and (2) ensure its contractor included Section 3 clauses in contracts for work funded by the Recovery Act grants. The deficiencies occurred because the Commission misapplied HUD's requirements regarding the method of procurement and lacked adequate procedures and controls to administer its grants. Further, it did not have an adequate contract administration system. As a result, the Commission hindered full and open competition, and HUD and the Commission lacked assurance that more than \$3.1 million in Recovery Act competitive grant funds was used appropriately.

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#### **The Commission Did Not Use the Proper Method of Procurement**

The Commission received more than \$3.1 million in Recovery Act funds to implement category 4, option 2, the creation of energy-efficient green communities – moderate rehabilitation, of HUD's Notice of Funding Availability, dated June 3, 2009 for four of its projects. The four projects included Richert Manor (grant number MI00900000109R), Howard Estates (grant number MI00900000209R), Centerview (grant number MI00900000609R), and Mince Manor (grant number MI00900001109R). The Commission entered into four contractual agreements for its four Recovery Act competitive grants that were awarded by HUD. We reviewed the procurement process for the four agreements to determine whether the Commission obtained the contracted services in accordance with HUD's regulations and its own Capital Fund Stimulus Grant procurement policy during the audit period March 18, 2009 through September 30, 2011, expanded as necessary. While the Commission generally complied with the Davis-Bacon Act requirements, we identified deficiencies with the Commission's method of procurement, cost reasonableness methods, grant activities performed, contract payments, and Section 3 compliance.

The Commission failed to use the proper method of procurement for all four of its grants' contractual agreements. The contractual agreements ranged in price from \$445,939 to more than \$1.1 million. Since the contractual agreements were all above \$100,000, section IV, part A of the Commission's procurement policy stated that board approval was required and either the sealed bids or proposal method of procurement should be used. However, the Commission used the noncompetitive method of procurement and sole sourced all four contractual agreements to Siemens Building Technologies without maintaining an adequate rationale as required by 24 CFR (Code of Federal Regulations) 85.36(b)(9).

The Commission failed to maintain evidence that the following conditions existed to support its use of the noncompetitive method of procurement as required by section IV, part G, of its procurement policy:

1. The items (energy-efficient windows, roof replacement, and green roof) were available only from a single source, based on a good faith review of available sources. The Commission did not maintain a good faith review of available sources. We determined that grant-funded activities, including energy-efficient windows, roof replacement, etc., were available from many sources in the State of Michigan and across the United States.
2. An emergency existed that seriously threatened the public health, welfare, or safety or endangered property or would otherwise cause serious injury. 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 should be limited to those supplies, services, or construction necessary to meet the emergency. The Commission and its contractor, Siemens, said that the President of the United States' emphasis on job creation was the exigent circumstance for bypassing the competitive methods of procurement. However, section VI.B.1 of HUD's Notice of Funding Availability, dated June 3, 2009, states that the Commission had 1 year to obligate funds. Section VI.B.3 of the notice states that if solicitation of a proposal is from only one source or if the public housing agency finds that after solicitation of a number of sources, that competition is inadequate, the public housing agency may award the contract noncompetitively when small purchase procedures, sealed bids, or competitive proposals are infeasible.

As discussed below, the Commission did not solicit proposals for its competitive grant activities. Further, Office of Management and Budget (OMB) Memorandums M-09-10 and M-09-15, section 6.1, state that the critical importance of the Recovery Act and the funds it will make available to stimulate the American economy requires heightened management attention to acquisition planning to mitigate schedule, cost, and performance risk; obtain maximum practicable competition; provide appropriate agency oversight at critical decision points; etc. Although the memoradums required agencies to

commence expenditures and activities as quickly as possible consistent with prudent management, this statement, by itself, does not constitute a sufficient justification to support award of a Federal contract on a noncompetitive basis. Agencies are expected to follow the same laws, principles, procedures, and practices in awarding noncompetitive contracts with Recovery Act funds as they do with other funds.

3. The Commission must make available, upon HUD request, its Capital Fund Stimulus Grant procurement policy and any documents requested related to the procurement activity as stated in 24 CFR 85.36(g). Since it was a troubled public housing agency, execution of the Recovery Act annual contributions contract amendment was the Commission's acknowledgement and agreement to additional monitoring and oversight by HUD as deemed necessary to ensure proper use of the Recovery Act capital funds. This requirement included submission of the obligation submission approval request. The request stated that each public housing agency received a letter stating the minimum baseline strategy for monitoring and oversight. The strategy stated that before obligation, all award documents (such as solicitations, contracts, and board resolutions when applicable) must be submitted for review and approval. To expedite the approval of planned obligations, a two-part review process for all procurement actions was developed.

Part I of the review process consisted of a review of the bid and solicitation process employed by the public housing agency, which must have been completed and approved before advertising and soliciting bids. Part II of the review process entailed a review of the public housing agency's determination of successful respondents and must have been completed before award of the contract. After submission of a completed package, HUD would review and approve the obligating documents within 10 business days and provide written notification to the public housing agency that it could either proceed with the bid and solicitation or award the procurement action and report the obligation in HUD's Line of Credit Control System. The Commission submitted both parts I and II of its obligation submission approval request packages in June 2010, after it executed its contracts with Siemens in February and March 2010. Further, the obligation submission approval request packages did not indicate that the Commission advertised or solicited bids.

4. The Commission failed to solicit any sources to determine that competition was inadequate, and it did not require its sole-sourced contractor to submit a proposal for evaluation in accordance with section 8.4 of HUD's Handbook 7460.8, Revision-2 (handbook).

**The Commission Did Not Prepare an Independent Cost Estimate or Cost Analysis**

The Commission failed to prepare an independent cost estimate for its four Recovery Act competitive grants. Section 3.2 of HUD's handbook states that an independent cost estimate is the public housing agency's estimate of the cost of the goods or services to be acquired under a contract or a modification. It assists the public housing agency in evaluating the reasonableness of the contractor's proposed costs or prices. It also helps the contracting officer to determine the contracting method to be used. The independent cost estimate must be prepared before the solicitation of offers.

The Commission also failed to perform a cost analysis for its four grants. Section 10.3 of HUD's handbook states that for every procurement, public housing agencies are required to perform a cost or price analysis to determine that the price is reasonable. In noncompetitive situations, no incentive exists for an offeror to submit a low price, and no price competition exists for determining the reasonableness of the price; therefore, a cost analysis must be conducted. Construction contracts awarded using any method other than sealed bidding and modifications to construction contracts also require a cost analysis.

The Commission's former executive director provided cost reasonableness certifications; however, these certifications were performed after the contracts for the Recovery Act grants were awarded. Further, the Commission was unable to provide supporting documentation for its cost reasonableness certifications. We identified solicitation efforts between its contractor, Siemens, and its subcontractors for grant activities including the energy-efficient windows, domestic hot water heaters, air conditioning sleeves, roof replacement, green roof, porch lights, furnaces, and LED (light-emitting diode) lighting. However, the quotes that were submitted by the subcontractors did not include a breakdown of the specific elements of costs and profits.

Siemens also did not break down the specific elements of costs and profits for any of the individual activities or for any of the grants as a whole. For the air conditioning sleeve activity, Siemens did not select the lowest bidder to perform the activity at the Richert Manor project, and documentation was not provided to support this selection. There were other grant activities for which the Commission was unable to provide quotes or other documentation to support their cost reasonableness. These activities included the energy management system, green assessments, staff training, resident education, and green operations and maintenance manual. Therefore, the Commission did not provide a cost analysis or an alternative method of determining that the price was reasonable, in accordance with HUD's regulations, for its Recovery Act grant-funded activities.

**The Commission Revised Its Grant Activities Before Receiving Approval From HUD and Its Board**

The Commission executed revised grant activities before obtaining approval from HUD and its board. For instance, the grant application for the Mince Manor project only included energy-efficient window replacement as a grant activity. However, the contractual agreement that the Commission executed with its contractor, Siemens, dated February 23, 2010, identified additional grant activities, including window blinds, an energy management system, a green assessment, a green operations and maintenance manual, staff training, and resident education. Further, the final invoiced amounts submitted by Siemens indicated additional activities that were included in neither the grant application nor the contractual agreement. These activities included the installation of a domestic hot water heater and exterior LED lighting, which were also funded by the Mince Manor Recovery Act competitive grant. Siemens further indicated that the hallway lights were substituted for the energy management system as a grant-funded activity. However, neither the grant application, contractual agreement, final invoice, nor other documentation supported this statement.

For the Mince Manor grant, the Commission obtained board approval for the domestic hot water heater and exterior lighting revised activities but not for all of the revised activities funded by the grant. The domestic hot water heater activity was approved by the board on June 10, 2010, nearly 1 month after the hot water heater was installed at the Mince Manor project on May 20, 2010.

Further, the Commission failed to obtain HUD approval before executing any of the additional grant activities that were performed, contrary to section VI of Public and Indian Housing Notice PIH 2010-34, which states that “a grantee’s ability to revise the plan outlined in its application is limited. Grantees may not use the funds on more than one development or use any excess funds on activities other than those specified in the grant application. No modification to the grant program outlined in the grantee’s application in any significant way is permissible without the consultation and approval of HUD. Public housing agencies must use the Recovery Act competitive grant funds on Capital Fund eligible activities currently identified in their grant application.” The Detroit HUD office indicated that it later approved the Commission’s revised grant activities. However, the Commission failed to request or obtain approval from HUD headquarters as required. The Commission’s failure to obtain HUD’s approval for revisions to the activities that occurred in all four Recovery Act competitive grants is outlined in the table below.

<b>Grant-funded activity</b>	<b>Richert Manor</b>	<b>Howard Estates</b>	<b>Centerview</b>	<b>Mince Manor</b>
Window blinds	\$43,792	\$55,796	\$26,971	\$10,908
Domestic hot water heater	88,742	-	70,282	45,765
Air conditioning sleeves	50,742	-	-	-
LED lighting	-	-	-	122,481
Porch lights	-	14,283	-	-
Furnace replacement	-	186,265	-	-
Energy management system	-	-	45,922	83,796
Green assessment, green maintenance and operations manual, staff training, and resident education	22,958	22,958	22,961	22,958
<b>Total unsupported amounts</b>	<b>\$206,234</b>	<b>\$279,302</b>	<b>\$166,136</b>	<b>\$285,908</b>

**Contract Payments Were Not Issued in Accordance With HUD’s Requirements**

The Commission made progress payments to its contractor, Siemens, for all four of its Recovery Act competitive grants. However, it failed to ensure that these payments were made in accordance with HUD’s requirements. Section 11.2 of HUD’s handbook states that all progress inspections should be documented using an appropriate public housing agency inspection report form. The inspection report should include a description of the work completed and a determination as to whether the work is acceptable. If progress payments are necessary, the public housing agency must require the contractor to prepare a construction progress schedule for each project. The public housing agency is responsible for making progress payments to the contractor based on the approved schedule of amounts for contract payments. The public housing agency should review each contractor request and should approve the payment if the following conditions have been met (if the contractor requests payment for items that have not been acceptably completed, the public housing agency should delete those items and adjust the payment accordingly): the contractor’s request is consistent with the approved schedule of amounts for contract payments and the work covered by the payment has been performed in accordance with the construction documents. Form HUD-51000, Schedule of Amounts for Contract Payments, further states that “no progress payments should be made to the contractor unless a schedule of amounts for contract payments in accordance with the construction contract is received.”

We identified the following discrepancies with the Commission’s contract payments to Siemens:

1. The Commission’s inspection reports noted how many employees were working and whether work was occurring, but they did not indicate whether the work was acceptable.

2. The contractor's requests and the Commission's payments were not in accordance with the construction contracts. Each contract included a payment schedule in exhibit B, which estimated payments of 10 percent at contract execution, 10 percent at final completion, and between 10 and 20 percent during the course of the contract. This exhibit indicated that actual progress payments would be made pursuant to and against an agreed schedule of values. However, the schedule of values that was provided by the Commission failed to indicate dates, amounts, or percentages that outlined how the contractor would be paid. Instead, the schedules of values that were provided specifically stated "invoice" and corresponded to the invoices that were issued by the contractor for payment.
3. The work covered by the payments was not always completed in accordance with the construction documents. As of December 2010, Siemens had submitted invoices for the entire costs associated with the energy management system activity that was performed for both the Mince Manor and Centerview projects. According to the contracts, this activity involved installing new thermostats in both the residential units and local or common areas, connecting the roof top makeup air unit to the new energy management system, and installing the actual monitoring system. Total costs associated with the energy management system, based upon the final invoices submitted by Siemens, were \$129,718. During walkthrough observations performed during April 10-11, 2012, we concluded that none of the residential units or common areas in the Mince Manor project received new thermostats, not all of the residential units and none of the common areas in the Centerview project received new thermostats, and neither project had the makeup air unit installed or connected to the energy management system. The Commission failed to deduct the costs of the activities that were not acceptably completed from the contract payments for the Mince Manor and Centerview projects.
4. The Commission did not ensure that its grant expenses were charged to the appropriate accounts. All grant expenses were charged to account 1460, dwelling structures. However, HUD's Guidebook 7510.1 indicates the following:
  - a. Energy-efficient windows in common areas totaling \$128,609 should be charged to account 1470, nondwelling structures.
  - b. The window blinds activity totaling \$137,462 should be charged to account 1465, dwelling equipment.
  - c. The exterior LED lights activity totaling \$122,481 should be charged to account 1450, site improvement.
  - d. The green assessments, green operations and maintenance manual, staff training, and resident education activities totaling \$91,834 should be charged to account 1408, management improvement.
  - e. The installation of the energy management system (not including the new thermostats) should be charged to account 1475, nondwelling

equipment. The Commission did not provide a breakdown of costs associated with this activity to determine the misclassified amount.

The Commission charged a total of \$480,391 in grant expenses to the incorrect account.

### **The Commission's Section 3 Compliance Was Unsupported**

The contractual agreements between the Commission and its contractor, Siemens, included Section 3 clauses. However, the Commission did not maintain documentation showing that its contractor included Section 3 clauses in the contracts with the subcontractors or that its contractor and subcontractors followed Section 3 requirements in accordance with the requirements at 24 CFR 135.38. Due to the lack of documentation, we were unable to determine whether the Commission used the required 10 percent of Recovery Act funds for Section 3-eligible businesses. However, the Commission submitted Section 3 summary data on Form HUD-60002 to HUD in accordance with the reporting requirements found at 24 CFR 135.90.

### **The Commission Generally Complied With Davis-Bacon Act Requirements**

The Commission generally complied with the requirements of the Davis-Bacon Act for all four of its Recovery Act competitive grants. However, it failed to maintain the required payroll forms for the engineer assistant work performed by one Section 3 subcontracted employee for all four grants. In addition, two subcontracted employees were not paid the proper Davis-Bacon wage rates. One subcontractor employee who provided roofer services at the Centerview project was underpaid \$11. Another subcontractor employee who provided electrician services at the Mince Manor project was underpaid \$262.

### **The Commission Misapplied HUD's Requirements**

The Commission failed to comply with HUD's requirements and its own procurement policy during the procurement process because it lacked an adequate contract administration system to ensure that contracts were awarded and managed in accordance with HUD's requirements and its own procurement policy. The method of procurement had deficiencies because the former executive director, who acknowledged that he was the Commission's contracting officer and did not delegate these powers during the course of the grants, said that

since the grants were associated with the Commission's energy performance contract, he thought he was allowed to sole source the grant activities.

Further in his explanation regarding why the Commission used the noncompetitive method of procurement, the former executive director stated that the sealed bids method of procurement was rejected because the Commission had only one person overseeing the expenditures of the Capital Fund program and the Recovery Act formula grant. Therefore, resources were fully exhausted, limiting the procurement process.

Neither HUD's regulations nor the Commission's procurement policy supported limited staff as being a sufficient reason to bypass a certain method of procurement. Instead, this statement indicates that the Commission did not have the capacity to administer the Recovery Act competitive grants. The staff member responsible for overseeing the Commission's expenditures for the Capital Fund program and the Recovery Act formula grant said that she was not involved with the procurement of the competitive grants because she did not agree with the timing exception. However, she was involved in the contract management aspect of the competitive grants, as directed by the former executive director, including inspections and reporting.

The former executive director further stated that the competitive proposals method of procurement was rejected because there was a clear relationship between the Recovery Act grants and the proposed energy performance contract from the perspective of energy reduction targets, leverage, and the green assessment. The former executive director stated two reasons why this relationship made bringing in a second party risky. "First, there was significant risk associated with hiring a second "design build firm" that was responsible for reducing energy consumption. The Commission would then have two parties responsible for meeting the target of energy reduction. If the target reduction was not met, HUD might ask for funding to be returned. This risk would be reduced by having one firm do both. Second, leverage is directly related to the firm assisting with financing the proposed energy performance contract. Compliance with leverage is critical, and having a separate firm install the Recovery Act-funded and leveraged work would increase the risk of leverage falling through."

Based upon HUD's regulations at 24 CFR 85.36, HUD's handbook, and the Commission's own procurement policy, the hiring of a "design build firm" was not a requirement under the competitive proposals method of procurement. Instead, this method required that (1) requests for proposal be publicized and identify all evaluation factors and their relative importance, (2) proposals are solicited amongst an adequate number of qualified sources, (3) the Commission used a method to technically evaluate the proposals received and select the awardees, and (4) the contract is awarded to the responsible firm with the proposal that is most advantageous to the program, with price and other factors considered. The method in which price is not used as a selection factor can be

used only in the procurement of architectural and engineering professional services. Further, in the grant applications, the Commission had already indicated which activities it wanted to perform using the grant funds (that is, energy-efficient windows, a roof replacement, and a green roof). Therefore, the Commission was not required to hire another “design build firm” to implement a scope that reduces energy consumption because the Commission had already identified which activities it wanted to pursue and had obtained the assistance of its energy performance contractor, Siemens. The former executive director said, as confirmed by the memorandum of agreement, dated July 10, 2009, that when HUD’s Notice of Funding Availability, dated June 3, 2009, came out, he consulted with Siemens to determine whether the Commission would be eligible for any of the categories, and Siemens provided assistance to apply for category 4, option 2.

In his explanation, the former executive director stated that the noncompetitive method of procurement was selected because the Commission assessed the different procurement options and the noncompetitive method of procurement was the only available option by which the Commission could obligate the Recovery Act competitive grants within the required time constraints of HUD’s Notice of Funding Availability, dated June 3, 2009. The notice on page 117 stated that “public housing agencies should give priority to the Capital fund Stimulus (including competitive) Grant projects that can award contracts based on bids within 120 days from February 17, 2009.” Further, the Commission had previously issued a request for proposal for an energy performance contract complying fully with HUD requirements for “full and open” competition, and an energy performance contract was awarded to Siemens based upon the request complying fully with HUD procurement requirements.

Based upon the reference made by the former executive director, 120 days from February 17, 2009, would have been June 17, 2009. Since the deadline for applying for the grants was July 21, 2009, it was apparent that this was a misstatement in HUD’s Notice of Funding Availability, dated June 3, 2009. Section VI.B.1.d of the notice further stated that “HUD must obligate the Recovery Act competitive grant funding to grantees by September 30, 2009. Public housing agencies must obligate 100 percent of the grant funds awarded under this notice within 1 year of the date on which funds become available to the public housing agency for obligation (which is the effective date of the annual contributions contract amendment). If a public housing agency fails to comply with the 1-year obligation requirement, HUD will recapture all remaining unobligated funds awarded.”

It was apparent that the Commission understood the true meaning of the requirements of HUD’s notice because it indicated in the program schedule of its grant application submissions that it would “obligate the grant funds no later than 12 months from the date on which the funds became available,” not 120 days from February 17, 2009. And although the Commission signed a memorandum of

agreement with Siemens on July 10, 2009, the contracts for the grants were not executed until February and March 2010, which was more than 120 days from September 24, 2009, the date on which HUD executed the annual contributions contract amendments with the Commission.

The reference cited by the former executive director also stated that public housing agencies should give priority to Recovery Act projects that can award contracts based on bids. Section VI.B.3 of the HUD notice further stated that “public housing agencies shall instead follow the Part 85 requirements. Part 85 Compliance: Public housing agencies shall amend their procurement standards and policies as necessary in order to expedite and facilitate the use of the funds. This amended policy can be used only for procurements related to Capital Fund stimulus (including competitive) grants. This must be done in writing and consistent with public housing agency policies and procedures (such as Board approval) and labeled as Capital Fund stimulus (including competitive) grant procurement policy. Specifically, public housing agencies must remove all procurement standards that are contrary to Part 85 or the Recovery Act. Where permitted by Part 85, public housing agencies may insert their own procedures provided that they are not contrary to the purposes of the Recovery Act. For example, a public housing agency may use their existing protest procedures, written codes of standards for employees engaged in the award and administration of the contracts and other procedures as long as they are not contrary to Part 85. It is important to note that public housing agencies shall continue to follow all Part 85 requirements regarding conflicts of interest, contract cost and price.”

Although priority was to be given to contracts that could be awarded within 120 days, HUD’s notice required the Commission to follow the requirements of 24 CFR Part 85. The Commission failed to award its contracts based on bids and failed to provide sufficient documentation showing that it complied with the requirements of 24 CFR Part 85 and its amended procurement policy.

Further, since the grant activities were not included in an approved annual plan, 5-year action plan, or the original energy performance contract, Notice PIH 2009-25 stated that the Commission had to “first determine pursuant to 24 CFR 85.36(d)(4) whether a contract for the additional item was infeasible under small purchase procedures, sealed bids or competitive proposals. Then, if infeasible under these competitive methods, the public housing agency must determine whether this additional item is available only from a single source or is there a public ‘exigency’ or emergency for this work which will not permit a delay resulting from competitive solicitation. These determinations must be recorded in the public housing agency’s procurement files.” Based upon the activities indicated in the Commission’s grant applications, we concluded that it would have been feasible for the Commission to use a competitive method of procurement as required by HUD regulations and its own procurement policy.

The Commission failed to prepare an independent cost estimate and perform a cost analysis because the former executive director indicated that he was not familiar with this requirement. As previously mentioned, he provided cost reasonableness certifications but was unable to provide supporting documentation for these certifications.

The Commission did not obtain HUD's approval of all of the grant activities included in its grant applications or its revised grant activities because the former executive director thought that the Commission's 2010 annual plan was automatically approved by HUD after 120 days. However, since the Commission was designated as a troubled agency during this period, it required written approval from HUD of its annual plan and 5-year action plan and any significant revisions to its grant activities. The former executive director thought approval from the board of commissioners was sufficient to revise the Commission's grant activities.

The Commission did not issue its contract payments in accordance with HUD's requirements because it lacked an understanding of HUD's requirements and adequate procedures and controls over its grant disbursements to ensure that work was complete and approval was obtained before payments were made. Its contractor, Siemens, further stated that due to resident concerns raised at the Centerview Apartments, the Commission chose to hold off on the installation of thermostats, under the energy management system activity, at Mince Manor. He further stated that in lieu of replacing the thermostats, the Commission upgraded the hallway lighting fixtures at Mince Manor to address its public housing Real Estate Assessment Center inspection concerns. Documentation provided by the Commission included correspondence with Siemens concerning this revision, but we did not obtain documentation showing that the Commission requested or obtained approval from HUD or its board of commissioners for this revision to its grant activities. Further, during the walkthrough observations performed in April 2012, the Commission's modernization inspector said that the hallway lights were in the process of being installed. Therefore, this revised grant activity had not been completed nearly 1 year after Siemens received its final contract payment for the Mince Manor project in June 2011, and the final invoice from Siemens did not include the hallway lights as an activity.

## Conclusion

As a result of the conditions described above, the Commission limited full and open competition for the activities funded by its four Recovery Act competitive grants when it failed to comply with HUD's requirements and its own policies. Revised grant-funded activities totaling \$937,580 were not approved by HUD, and the Commission charged \$480,391 in grant expenses to incorrect accounts. As a result of the weaknesses in its procedures and controls, the Commission expended more than \$3.1 million in ineligible contracted funds for its competitive grant activities, and HUD and the Commission lacked assurance that the

Commission's accounts accurately represented contract expenses and that work was complete and disbursements were approved before payments were made.

## Recommendations

We recommend that the Director of HUD's Detroit Office of Public Housing require the Commission to

- 1A. Reimburse HUD \$3,120,000 from non-Federal funds for transmission to the U.S. Treasury for its four Recovery Act grant funds for category 4, option 2 of HUD's Notice of Funding Availability, dated June 3, 2009, whose activities were not contracted using full and open competition.
- 1B. Review the Section 3 subcontractor identified in this finding to determine whether wage restitution is owed and provide the results to HUD for review and approval. If wage restitution is required, the Commission should make the restitution from non-Federal funds.
- 1C. Update its policies for the classification of expenses to ensure that they agree with HUD's requirements and ensure that its staff is properly trained and familiar with the classification requirements.
- 1D. Implement an adequate contract administration system to ensure that contracts are awarded in accordance with HUD's requirements and the Commission's procurement policy.

## SCOPE AND METHODOLOGY

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To accomplish our objective, we reviewed

- Applicable laws; regulations; Federal Register notices; HUD's program requirements at 24 CFR Parts 85, 135, 902, 903, 905, 941, 965, and 968; 29 CFR Parts 5 and 541; HUD public and Indian housing notices; HUD Handbook 7460.8, REV-2; HUD Guidebook 7510.1; the United States Housing Act of 1937 as amended; OMB requirements at 2 CFR Part 225; OMB Circular A-133; and OMB Memorandums M-09-10, M-09-15, M-09-21, M-10-08, and M-10-34.
- The Commission's accounting records; annual audited financial statements for fiscal years 2008, 2009, and 2010; bank statements; general ledgers; contract and procurement files; policies and procedures; board meeting minutes for March 2009 through September 2011; organizational charts; program annual contributions contract with HUD; and Line of Credit Control System information and request for payment.
- HUD's files for the Commission.

We also interviewed the Commission's employees, the Commission's contractor employee, and HUD staff.

### **Finding**

We reviewed 100 percent of the contract administration process for the four Recovery Act competitive grants to determine whether these grants were appropriately administered by the Commission in accordance with HUD's and the Commission's requirements during the period March 18, 2009, through September 30, 2011. We determined that the Commission did not maintain all of the required documentation. We also contacted the Commission's contractor to determine whether it maintained additional documentation pertinent to the Commission's Recovery Act competitive grant projects.

We reviewed the Commission's subcontractor payroll records to determine whether the Commission maintained documentation to support that it ensured that its subcontractors paid the appropriate prevailing wages.

Using data mining software, we statistically selected 59 of the Commission's units or common areas to observe the following activities:

- Window replacement,
- Window blinds,
- Furnace replacement,
- Air conditioning sleeves,
- Energy management system, and

- Porch lights.

In addition, we reviewed 100 percent of these additional grant-funded activities:

- Roof replacement,
- Green roof,
- Domestic hot water heaters,
- LED lights,
- Green assessments performed for the Richert Manor, Howard Estates, Centerview, and Mince Manor projects.
- Green operations and maintenance manuals for the Richert Manor, Howard Estates, Centerview, and Mince Manor projects.
- Staff training for the Richert Manor, Howard Estates, Centerview, and Mince Manor projects.
- Resident education for the Richert Manor, Howard Estates, Centerview, and Mince Manor projects.

We performed our onsite audit work between November 2011 and May 2012 at the Commission's office located at 3820 Richfield Road, Flint, MI. The audit covered the period March 18, 2009, through September 30, 2011, but was expanded when necessary to include other periods.

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 finding and conclusion based on our audit objective.

# 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.

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## Relevant Internal Controls

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

- Effectiveness and efficiency of operations – Policies and procedures that the audited entity has implemented to provide reasonable assurance that a program meets its objectives, while considering cost effectiveness and efficiency.
- Reliability of financial reporting – Policies and procedures that management has implemented to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with generally accepted accounting principles.
- Compliance with applicable laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.

We assessed the relevant controls identified above.

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

## Significant Deficiency

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

- The Commission lacked adequate procedures and controls to ensure compliance with HUD's and its own procurement requirements for its Recovery Act competitive grants. There were deficiencies with its method of procurement, cost reasonableness methods, grant activities performed, contract payments, and Section 3 compliance (see finding).

## APPENDIXES

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### Appendix A

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

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Recommendation number	Ineligible <sup>1/</sup>
1A	<u>\$3,120,000</u>
Totals	<u>\$3,120,000</u>

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

# Appendix B

## AUDITEE COMMENTS AND OIG'S EVALUATION

### Ref to OIG Evaluation

### Auditee Comments

 <b>FLINT HOUSING COMMISSION</b>	
<p><b>Terrence Clark, Executive Director</b>                      3820 Richfield Road                      Flint, Michigan 48506                      Phone: (810) 736-3050                      Fax: (810) 736-0158</p>	<p><b>Board of Commissioners:</b>                      President Jessie McIntosh                      Vice President Geraldine Redmond, Resident Commissioner                      Commissioner Diana Kelly                      Commissioner David Solis                      Commissioner Willie Duncan</p>
<p>MI 9-1                      Richert Manor (Elderly)                      902 E. Court St. 48503                      (810) 736-3094</p> <p>MI 9-2                      Howard Estates (Family)                      801 Flora Park 48503                      (810) 736-3170</p> <p>MI 9-3                      Alherton East (Family)                      3123 Chambers 48507                      (810) 736-3159</p> <p>MI 9-4                      Garland Apartments (Elderly)                      820 &amp; 906 Garland St. 48503</p> <p>MI 9-5                      River Park Apartments                      (Family)                      7002 Pemberton Dr. 48505                      (810) 736-3088</p> <p>MI 9-6                      Centerview Apartments                      (Elderly)                      2001 N. Center Rd. 48506                      (810) 736-3102</p> <p>MI 9-7                      Forest Park (Elderly)                      4060 M.L. King Ave. 48505</p> <p>MI 9-10                      Scattered Sites (Family)</p> <p>MI 9-11                      Mince Manor (Elderly)                      3800 Richfield Rd. 48506                      (810) 736-3193</p> <p>MI 9-14                      Aldridge Place (Family)                      5838 Edgar Holt Drive 48505                      (810) 736-3148</p> <p>MI 9-15                      Kenneth M. Simmons Square                      (Elderly)                      2102 Siedron 48504                      (810) 736-3154</p> <p>Housing Choice Voucher                      Program                      Section 8                      (810) 736-3050</p>	<p style="text-align: center;">August 30, 2012</p> <p>Mr. Anthony Smith</p> <p>Assistant Regional Inspector General for Audit</p> <p>477 Michigan Ave., Room 1780</p> <p>Detroit, MI 48226-2592</p> <p>RE: American Recovery and Reinvestment Act (ARRA) Capitol Fund Competitive Grant Response</p> <p style="text-align: center;">This is the Flint Housing Commissions Response to the Office of Inspector General's Discussion Draft of the American Recovery and Reinvestment Act (ARRA) Capital Fund Competitive Grant.</p> <p>The main finding against the Flint Housing Commission was based upon HUD and FHC procurement requirements. The Administration of the FHC that was in place, at the time the Competitive grants were awarded, believed wholeheartedly that the non-competitive procurement method was the correct way to go at the time. The past Administration believed that since the FHC used full and open competition to choose a firm for our energy performance contract, that we could use the same firm to handle the Competitive grants, since the work being completed through the Competitive grants was part of the work in the EPC.</p> <p>The current Administration is of the opinion that the projects in the ARRA Competitive Capital Fund Grants were energy saving work items, and were listed in our amended Annual and 5 Year PHA Plan along with the proposed EPC that was still in the process of being approved at that time.</p>

**Comment 1**

**Comment 2  
 Comment 1**

**Ref to OIG Evaluation**

**Auditee Comments**

**Comment 3**

Since then, our EPC has been approved and the projects have been completed with the ARRA Competitive Funds. The Improvement Projects that were listed in the initial contracts are as follows:

- ❖ **Mince Manor:** Energy Efficient Windows, CFL Wall Fixtures
- ❖ **Centerview Apartments:** New Roof and Green Roof, Energy Efficient Windows
- ❖ **Howard Estates:** Energy Efficient Windows
- ❖ **Richert Manor:** New Hot Water Heater, Energy Efficient Windows, AC Sleeves

**Comment 4**

The above Projects were completed below their initial budget figures. The past Administration decided to add additional projects with the excess funds. They felt they would maximize the opportunity to get more projects completed with the same amount of funding. The added projects are as follows:

- ❖ **Mince Manor:** Installed New Hot Water Boiler and Storage Tank, LED Parking Lot Lighting
- ❖ **Centerview Apartments:** New Digital Thermostats
- ❖ **Howard Estates:** Furnace Replacements, Outside Energy Efficient Lighting

**Comment 5**

We have detailed contracts, invoices and receipts showing that the funds from the grants were used to improve our complexes for our residents and make our complexes more energy efficient and the FHC was able to do more work with the grants than originally planned. These projects were “shovel ready” as indicated in our Annual and 5 Year Plans. The past Administration’s opinion was to use this ARRA Competitive Capital Grant funds to help with the cost of the EPC. This would have reduced the amount of funding to be leveraged for the EPC. The current Administration believes the report should reflect that the funds were spent for the residents to improve their living conditions and improve the energy performance of our complexes. All work is available to see and the work was completed using Davis-Bacon wages.

**Comment 6**

The Flint Housing Commission also believes that the firm that was hired to do the work was fully vested in hiring Section 3 workers in all areas of the work, and a Section 3 “hours area” was in the bid packages sent to their sub-contractors. The FHC also included HUD Form 5370 in the “Articles and Attachments” to the contract, where it states that the contract is subject to Section 3 of the Housing and Urban Development Act of 1968. The contractor also hired a Section 3 sub-contractor as stated in the findings.

As for the Davis- Bacon errors, the Flint Housing Commission has always ensured the contractors and sub-contractors are paying the correct Davis-Bacon wages, but there is always the chance a wage could slip through and be wrong, this is human error. The Flint Housing Commission would definitely correct any wages that are wrong and make restitution to that employee. No wages were kept and no employee was under or overpaid on purpose. All staff that does handle Capital Fund Grants has been trained with HUD personnel regarding Davis-Bacon wages and is in constant communications with Detroit Department of Labor with any questions.

**Comment 7**

The Flint Housing Commission has an adequate administration system in place, and has had one for many years, as seen in the formula ARRA grant (Stimulus grant). The past administration

**Ref to OIG Evaluation**

**Auditee Comments**

**Comment 8**

(Director) decision to handle the four (4) Competitive contracts was made without conferring with the Capital Fund Administrator (Modernization Director).

The current Administration of the Flint Housing Commission is committed to properly handling any and all grants and monies allowed the FHC with the help of the Detroit HUD personnel. The Flint Housing Commission does not agree with paying back the entirety of the four (4) Competitive grants, noting that the work was completed in all four grants, and the funds expended only after correctly requisitioning it from the HUD Detroit office. Meetings were held with residents and employees to train them in different aspects of energy savings, an assessment was made by a 3<sup>rd</sup> party of the four complexes that received the grants, and the FHC received Green Operation and Maintenance manuals along with training from Siemens and the sub-contractor. All aspects of all four (4) Competitive grants were completed along with extra work not originally planned. This should account for all of the grant amounts given to the FHC for these purposes.

**Comment 9**

We hope all the items above will be taken into consideration before a final ruling is put in place by the Office of Inspector General and/or the Detroit HUD field office.

Thank you,

Terrence Clark  
Executive Director

## OIG Evaluation of Auditee Comments

**Comment 1** We do not disagree with the Commission's use of the same firm to handle the competitive grants. However as indicated in the audit report, the Commission's process to award the contracts for its competitive grants had deficiencies. The Commission's original energy performance contract that was provided on Tuesday, September 4, 2012, was not a complete document but rather an undated, unsigned table that did not make reference to the energy performance contract other than the title of the document. In contrast, the Commission provided the audit team with its energy performance contract documentation, including the request for proposals, the bid submittals, the evaluation of bids, and the contract in November 2011. On November 30, 2011, the former executive director confirmed that the unsigned and undated contract that was provided was the final contract. He indicated that the contract was neither signed nor dated because the financing portion of the energy performance contract had yet to be finalized. We used the energy performance contract provided in November 2011 to determine that the majority of activities performed for the Recovery Act competitive grants were not included in the original energy performance contract.

Furthermore, the 2010 Public Housing agency plan that was provided on Tuesday, September 4, 2012, did not include a HUD-approved annual or 5-year plan that included the Commission's Recovery Act competitive grant activities. HUD's Web Site also did not indicate an approved plan for fiscal year 2010 for the Commission, as of September 5, 2012, although the website did indicate that HUD received four versions of the Commission's fiscal year 2010 plan.

Therefore, as indicated by HUD's Public and Indian Housing Notice 2009-25, since the Commission was adding energy infrastructure improvement activities that were not included in an approved annual plan, 5-year action plan, or the original energy performance contract, the Commission had to first determine pursuant to 24 CFR 85.36(d)(4) whether a contract for the additional item was infeasible under small purchase procedures, sealed bids or competitive proposals. Then, if infeasible under these competitive methods, the public housing agency must determine whether this additional item is available only from a single source or is there a public "exigency" or emergency for this work which will not permit a delay resulting from competitive solicitation. These determinations must be recorded in the public housing agency's procurement files. Since the contracts were not awarded in accordance with HUD's requirements and its own procurement policy, we concluded that the Commission did not have valid obligations for its Recovery Act four competitive grants.

**Comment 2** Although we do not disagree that the activities that were funded by the Recovery Act competitive capital fund grants were energy saving activities, we were not provided sufficient documentation that indicated that these activities were included in a HUD-approved annual plan or 5-year plan. HUD approval was

required since the Commission was a troubled public housing agency during its administration of the Recovery Act competitive grants. In addition as Comment 1 indicates, the majority of these activities were not included in the Commission's original energy performance contract that was provided to the audit team in November 2011. Therefore HUD's Public and Indian Housing Notice 2009-25 required that the Commission first determine pursuant to 24 CFR 85.36(d)(4) whether a contract for the additional items were infeasible under small purchase procedures, sealed bids or competitive proposals. The Commission did not perform a competitive method of procurement for these activities. For those activities that were included in the energy performance contract (that is, the domestic hot water heaters for the Richert Manor and Centerview projects), these were revised grant activities that were not approved by HUD, as discussed in the audit report.

**Comment 3** Although the majority of the activities listed by the Commission may have been included on the initial contracts between the Commission and its contractor Siemens, these activities were not included in a HUD-approved annual or 5-year plan or in the Commission's original energy performance contract, as discussed in Comment 1. In addition, all of these activities were not included on the Commission's Recovery Act competitive grant applications.

- For the Mince Manor project, the energy efficient windows were neither included in a HUD-approved annual plan or 5-year plan, and they were not included in the original energy performance contract. HUD approval was required since the Commission was a troubled public housing agency during its administration of the Recovery Act competitive grants. Although lighting retrofits were included in the original energy performance contract, this was a revised grant activity that the Commission did not request nor receive approval from HUD in accordance with Sections VI and IX of HUD Public and Indian Housing Notice 2010-34.
- For the Centerview Apartments project, neither the roof replacement, green roof, nor energy efficient windows were included in a HUD-approved annual plan or 5-year plan, and they were not included in the original energy performance contract. HUD approval was required since the Commission was a troubled public housing agency during its administration of the Recovery Act competitive grants.
- For the Howard Estates project, the energy efficient windows were neither included in a HUD-approved annual plan or 5-year plan, and they were not included in the original energy performance contract. HUD approval was required since the Commission was a troubled public housing agency during its administration of the Recovery Act competitive grants.
- For the Richert Manor project, neither the energy efficient windows nor the air conditioning sleeves were included in a HUD-approved annual plan or
- 5-year plan, and they were not included in the original energy performance contract. HUD approval was required since the Commission was a troubled public housing agency during its administration of the Recovery Act competitive grants. Although the new hot water heater was included in the

original energy performance contract, this was a revised grant activity that the Commission did not request nor receive approval from HUD in accordance with Sections VI and IX of HUD Public and Indian Housing Notice 2010-34.

**Comment 4** The Commission failed to adhere to HUD's requirements regarding the revision of its grant activities. Section VI.B.2.f.4.b.i of HUD's Notice of Funding Availability, dated June 3, 2009, stated that "failure to comply with the performance measure will subject the grant to sanctions including recapture of grant funds proportional to the shortfall in scope of committed activities." In addition, Section VI of Public and Indian Housing Notice 2010-34 states that "a grantee's ability to revise the plan outlined in its application is limited.....grantees cannot change project locations (e.g. switch sites) for the proposed capital fund recovery competition grant activities. Grantees may not use the funds on more than one development or use any excess funds on activities other than those specified in the grant application. There are other limitations as well. No modification to the grant program outlined in the grantee's application in any significant way is permissible without the consultation and approval of HUD. Grantees should consult the local HUD field office as soon as possible if it anticipates the need to modify its grant program. Eligible Uses of Funds: Public housing agencies must use these funds on Capital Fund eligible activities currently identified in their grant application." Section IX of Public and Indian Housing Notice 2010-34 further states that capital fund recovery competition revisions are not permitted without HUD approval. If a public housing agency anticipates a need to modify the grant program outlined in their application in any significant way, it must submit a written request. For non- mixed finance grants, requests are submitted to the local HUD field office. (These requests will be forwarded to the Office of Field Operations for processing.) For mixed finance grants, requests are submitted to the assigned grant manager. In all cases, a copy of the written request should be submitted to the Director of HUD's Office of Capital Improvements. All requests will be considered on a case-by-case and the PHA notified of HUD's determination. Furthermore, section 28 of exhibit D of the contractual agreement between the Commission and Siemens stated that "when a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the public housing agency's approved threshold), such modification shall not be effective until the required approval is received by the public housing agency."

**Comment 5** We do not disagree that the Recovery Act competitive grant funds were used to improve the Commission's complexes for its residents. Rather, the audit report addresses deficiencies in the Commission's procurement procedures that were used to administer its Recovery Act competitive grants. We have reviewed the contracts, invoices, and receipts that were provided and we performed verifications of the grant activities, and we still conclude that the Commission failed to follow HUD's and its own procurement requirements for its Recovery Act competitive grants, as discussed in the report.

- Comment 6** As indicated in the audit report, we acknowledged that the contracts between the Commission and its contractor Siemens included the required Section 3 clauses. However, the contracts between its contractor Siemens and its subcontractors did not include the Section 3 clause specified at 24 CFR 135.38. Furthermore, while the subcontracts did specify Section 3 participation hours, the Commission did not provide sufficient documentation that the section 3 participation hours were met by all of its subcontractors in accordance with the contracts. Due to the lack of documentation, we were unable to determine whether the Commission used the required 10 percent of Recovery Act funds for Section 3-eligible businesses, as indicated in the report.
- Comment 7** We can neither agree nor disagree that the Commission's contract administration system was adequate for its Recovery Act formula grant since we have not reviewed this grant at this time. However as discussed throughout the audit report, there were deficiencies in the Commission's contract administration system for its Recovery Act competitive grants, including the execution of revised grant activities prior to board and HUD approval, contract payment deficiencies, and other deficiencies. The audit team spoke with staff from the current and past administrations during the course of the audit to determine the adequacy of the Commission's contract administration system.
- Comment 8** We commend the Commission's current administration for its commitment to properly handle all grants and monies. We did not evaluate the current administration's procurement procedures since the audit scope was limited to the period covering the Recovery Act competitive grants. Although the majority of activities may have been completed, there were deficiencies in the procurement process for all four Recovery Act competitive grants. The inadequate rationale for using the noncompetitive method of procurement, failure to prepare an independent cost estimate or cost analysis, and failure to obtain HUD and board approval for revised grant activities were some of the deficiencies that were determined based upon our review. Since free and open competition was hindered based upon these procurement deficiencies, the total amount of the four Recovery Act competitive grant funds are considered ineligible. Section V.B.3 of HUD's notice states that "HUD reserves the right to make reductions in funding for any ineligible items included in an applicant's proposed budget." Section VI.A.3 of the notice states "HUD will not fund any portion of your application that is not eligible for funding under this program, does not meet the requirements of this notice, or may be duplicative of other funded programs or activities. Only the eligible portion of your application will be funded."
- Comment 9** During the course of the audit and after the submission of the draft finding outlines and draft audit report, both the Commission's and HUD's comments have been taken into consideration. This final audit report is a result of all such correspondence.

## Appendix C

### Federal and the Commission's Requirements

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#### Finding

OMB Memorandums M-09-10 and M-09-15, section 6.1, state that the critical importance of the Recovery Act and the funds it will make available to stimulate the American economy require heightened management attention to acquisition planning to mitigate schedule, cost, and performance risk; obtain maximum practicable competition; provide appropriate agency oversight at critical decision points; etc. Although the law calls on agencies to commence expenditures and activities as quickly as possible consistent with prudent management, this statement, by itself, does not constitute a sufficient justification to support award of a Federal contract on a noncompetitive basis. Agencies are expected to follow the same laws, principles, procedures, and practices in awarding noncompetitive contracts with Recovery Act funds as they do with other funds. Competition is the cornerstone of our acquisition system.

Section V.A.4.c.2.d of HUD's Notice of Funding Availability, dated June 3, 2009, states that "grant recipients must comply with section 3 of the Housing and Urban Development Act of 1968 and its implementing regulations at 24 CFR 135. Specifically, grantees are required to ensure, to the greatest extent feasible, that training, employment, and other economic opportunities will be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns that provide economic opportunities to low- and very low-income persons in that area in which the project is located."

Section V.B.3 of HUD's notice states that "HUD reserves the right to make reductions in funding for any ineligible items included in an applicant's proposed budget."

Section VI.A.3 of the notice states "HUD will not fund any portion of your application that is not eligible for funding under this program, does not meet the requirements of this notice, or may be duplicative of other funded programs or activities. Only the eligible portion of your application will be funded."

Section VI.B.1 of HUD's notice states that the Recovery Act includes the following information for public housing agencies: "(a) public housing agencies shall give priority to capital projects that can award contracts based on bids within 120 days from the date the funds are made available to the public housing agencies; (b) public housing agencies shall prioritize capital projects that are already underway or included in the 5-year capital fund plans required by the Act (42 U.S.C. 1437c-1(a))."

Section VI.B.2.f.4.b.i of the notice states that the recipient public housing authority must obtain prior HUD approval to deviate from its application in a significant way. Failure to comply with the performance measure will subject the grant to sanctions including recapture of grant funds proportional to the shortfall in scope of committed activities.

Section VI.B.3.a of the notice states that “(4) public housing agencies may use HUD Handbook 7460.8, revision-2 for guidance. (5) Noncompetitive Proposals: According to 24 CFR 85.36(d)(4), if solicitation of a proposal is only from one source or if the public housing agency finds that after solicitation of a number of sources, that competition is inadequate, the public housing agency may award the contract noncompetitively where small purchase procedures, sealed bids or competitive proposals are infeasible and one of the circumstances in 85.36(d)(4)(i) applies. One such circumstance is public exigency that will not permit a delay resulting from competitive solicitation (85.36(d)(4)(i)(B)). If the public housing agency finds that other competitive methods of procurement are infeasible, HUD will support the public housing agency’s use of the public exigency circumstance based on the purpose and requirements of the Recovery Act.

Section 3 of the Recovery Act provides that these funds must be managed and expended to achieve the purposes specified, including commencing expenditures and activities as quickly as possible consistent with prudent management. Further the Recovery Act has imposed expeditious obligation and expenditure requirements on the Capital Fund Stimulus (including competitive) Grants and directs HUD to assist public housing agencies as necessary to expedite and facilitate the use of these grants. Public housing agencies may use the noncompetitive proposals method but must do so on a contract-by-contract basis and in compliance with all Part 85 requirements including the requirement for a cost analysis and the conflict-of-interest requirement. The public housing agency must ensure that the noncompetitive proposals process followed is clearly captured in its amended Capital Fund Stimulus (including competitive) Grant procurement policy. Further, the public housing agency must maintain records sufficient to detail the significant history of each contract’s 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 (85.36(b)(9)). No HUD preaward review is required for noncompetitive proposals as stated in paragraph 8.4(C) of HUD Handbook 7460.8, REV-2. However, all public housing agencies are reminded that they must make available, upon HUD’s request, the public housing agency Capital Fund Stimulus Grant (including competitive) procurement policy and any documents requested related to procurement activity as stated in 24 CFR 85.36(g).”

Section VI.B.3.j of the notice states that Federal labor standards are applicable to competitive grants. These labor standards involve the payment of not less than prevailing wage rates and record-keeping and reporting requirements. Davis-Bacon wage requirements apply to the activities funded with competitive grant funds. The public housing agency must obtain the appropriate Davis-Bacon wage decision, which sets forth the minimum wage rates that may be paid to construction laborers and mechanics. This wage decision and provisions requiring compliance with Federal labor standards must be included in any bid specifications and construction contracts. Development work undertaken directly by the public housing agency, with its own employees, is also subject to Davis-Bacon wage requirements.

HUD’s Recovery Act Capital Fund Formula Grant Frequently Asked Questions #2, dated October 5, 2009, procurement question 10 confirmed the use of the noncompetitive method of

procurement to obligate and award Recovery Act funds if other methods are infeasible. Question 11 identified the standard for documentation of the public housing agency determination that procurement by competitive method is not feasible. HUD stated that public housing agencies must record and document that they have attempted to procure by a competitive method first and only then, use a noncompetitive proposal method. The only change to previous procedure is the elimination of HUD preaward review, and this change applies only to Recovery Act funds unless HUD requests documents related to procurement activity as stated in 24 CFR 85.36(g).

Regulations at 24 CFR 85.36(c)(1) state that “all procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 24 CFR 85.36. Some of the situations considered to be restrictive of competition include but are not limited to noncompetitive pricing practices between firms or between affiliated companies, noncompetitive awards to consultants that are on retainer contracts, organizational conflicts of interest, and any arbitrary action in the procurement process.” Paragraph (3) states that “grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations (i) incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition; and (ii) identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.”

Regulations at 24 CFR 85.36(d)(2) describe procurement by sealed bids. Bids are publicly solicited, and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction if the conditions in 24 CFR 85.36(d)(2)(i) apply. For sealed bidding to be feasible, the following conditions should be present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively and for the business; and the procurement lends itself to a firm-fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

Regulations at 24 CFR 85.36(d)(3) describe 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. The method, in which price is not used as a selection factor, can only be used in the procurement of architectural and engineering professional services. It cannot be used to purchase other types of services, although architectural and engineering firms are a potential source to perform the proposed effort.

Regulations at 24 CFR 85.36(d)(4) describe procurement by noncompetitive proposals, which is “procurement through solicitation of a proposal from only one source or after solicitation of a number of sources, competition is determined inadequate. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies: (A) The item is available only from a single source; (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; (C) The awarding agency authorizes noncompetitive proposals; or (D) After solicitation of a

number of sources, competition is determined inadequate.” Cost analysis, such as verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required. Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for preaward review in accordance with paragraph (g) of this section.”

Regulations at 24 CFR 85.36(f) state that grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis are dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost; for example, under professional, consulting, and architectural and engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price. Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases in which cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor’s investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Regulations at 24 CFR 85.36(g) state that “grantees and subgrantees must, on request, make available for awarding agency preaward review procurement documents, such as requests for proposal or invitations for bids, independent cost estimates, etc., when (i) a grantee’s or subgrantee’s procurement procedures or operation fails to comply with the procurement standards in this section; or (ii) the procurement is expected to exceed the simplified acquisition threshold (which was set at \$100,000 per 24 CFR 85.36(d)) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.”

Regulations at 24 CFR 135.3(a)(3)(i) state that the requirements of this part apply to all contractors and subcontractors performing work in connection with projects and activities funded by public and Indian housing assistance covered by Section 3, regardless of the amount of the contract or subcontract.

Regulations at 24 CFR 135.30(c) state that each recipient and contractor and subcontractor may demonstrate compliance with the requirements of this part by committing to award to Section 3 business concerns (1) at least 10 percent of the total dollar amount of all Section 3-covered contracts for building trades work for maintenance, repair, modernization, or development of public or Indian housing or for building trades work arising in connection with housing rehabilitation, housing construction, and other public construction and (2) at least 3 percent of the total dollar amount of all other Section 3-covered contracts.

Regulations at 24 CFR 135.32(b) state that each recipient has the responsibility to comply with Section 3 in its own operations and ensure compliance in the operations of its contractors and subcontractors. This responsibility includes notifying potential contractors for Section 3-covered projects of the requirements of this part and incorporating the Section 3 clause set forth in 24 CFR 135.38 in all solicitations and contracts.

Regulations at 24 CFR 135.38 state that all Section 3-covered contracts should include the Section 3 clause. Paragraph (a) states that the work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. (United States Code) 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing. Paragraph (d) states that the contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor when the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

Regulations at 24 CFR 968.112(a) state, “A public housing agency may use financial assistance received under this part for the following eligible costs: For a Comprehensive Grant Program public housing agency, the eligible costs are: (i) Undertaking activities described in its approved Annual Statement under 24 CFR 968.325 and approved 5-year action plan under 24 CFR 968.315(e)(5); (ii) Carrying out emergency work, whether or not the need is indicated in the public housing agency’s approved comprehensive plan, including 5-year action plan, or annual statement; (iii) Funding a replacement reserve to carry out eligible activities in future years, subject to the restrictions set forth in paragraph (f) of this section; (iv) Preparing the Comprehensive Plan and 5-year action plan under 24 CFR 968.315 and the Annual Submission under 24 CFR 968.325, including reasonable costs necessary to assist residents to participate in a meaningful way in the planning, implementation and monitoring process; and (v) Carrying out an audit, in accordance with 24 CFR part 44.” Paragraph (b) states that “except in the case of emergency work, a public housing agency shall only expend funds on a development for which the public housing agency has determined, and HUD agrees, that the completion of the improvements and replacements (for comprehensive grant program public housing agencies, as identified in the Comprehensive Plan) will reasonably ensure the long-term physical and social viability of the development at a reasonable cost (as defined in 24 CFR 968.105), or for essential non-routine maintenance needed to keep the property habitable until the demolition or disposition application is approved and residents are relocated.”

Notice PIH 2009-25, section 7, states that the public housing agency’s energy improvements with Recovery Act capital funds must be reflected in its 5-year Capital Fund plan. Section 8 states that as long as Recovery Act capital funds do not supplant or substitute for energy performance contract expenditures, they may be used in energy projects currently awarded or underway that are developed to promote measurable or calculable energy and water savings in

public housing. The use of Recovery Act capital funds, in cooperation with existing and pending energy performance contracts, is encouraged when permitted. Cooperative use of the Recovery Act capital funds with an energy performance contract may enable the public housing agency to implement measures with long paybacks that would not otherwise be possible, such as windows and renewable technologies. It also facilitates the implementation of energy-related capital measures, such as replacement of underground steam, water, and gas lines. For agencies that have already procured energy performance contractors, no additional procurement is required to enable the contractor to perform the work using Recovery Act capital funds for a scope of work integral to the energy performance contract, provided those energy improvement activities were in the original contract and provided that other funds were not previously obligated for that purpose and the procurement meets the Recovery Act procurement requirements (see Notice PIH 2009-12). In a situation, however, in which a public housing agency has an approved energy performance contract but wishes to add an energy infrastructure improvement, the public housing agency must first determine, pursuant to 24 CFR 85.36(d)(4), whether a contract for the additional item is infeasible under small purchase procedures, sealed bids, or competitive proposals. Then, if infeasible under these competitive methods, the public housing agency must determine whether this additional item is available only from a single source or whether there is a public “exigency” or emergency for this work which will not permit a delay resulting from competitive solicitation. These determinations must be recorded in the public housing agency’s procurement files. The source of funds (if Recovery Act capital funds) can be the reason for the expediency determination.

Notice PIH 2010-34, section VI, states that it is important to note that a grantee’s ability to revise the plan outlined in its application is limited. For example, a grantee may not reduce the amount of leverage and match that it certified as firmly committed in its grant application; for category 4 applications, grantees are not able to change plans in ways that would cause failure to comply with the commitments made in the application that resulted in receiving points in the competition; and grantees cannot change project locations (for example, switch sites) for the proposed grant activities. Grantees may not use the funds on more than one development or use any excess funds on activities other than those specified in the grant application. There are other limitations as well. No modification to the grant program outlined in the grantee’s application in a significant way is permissible without the consultation and approval of HUD. Grantees should consult the local HUD field office as soon as possible if they anticipate the need to modify their grant program. Public housing agencies must use the Recovery Act competitive grant funds on Capital Fund-eligible activities currently identified in their grant application. Section IX states that competitive grant revisions are not permitted without HUD approval. If a public housing agency anticipates a need to modify the grant program outlined in its application in a significant way, it must submit a written request. For non-mixed-finance grants, requests are submitted to the local HUD field office (these requests will be forwarded to the Office of Field Operations for processing). For mixed-finance grants, requests are submitted to the assigned grant manager. In all cases, a copy of the written request should be submitted to HUD’s Office of Capital Improvements. All requests will be considered on a case-by-case basis, and the public housing agency will be notified of HUD’s determination.

HUD Handbook 7460.8, REV-2, section 3.2, states that the independent cost estimate is the public housing agency’s estimate of the costs of the goods or services to be acquired under a

contract or a modification. It also helps the contracting officer determine the contracting method to be used. If an outside party (whether compensated or not) assists in developing the independent cost estimate, the public housing agency must take appropriate steps to ensure that organizational conflicts of interest are avoided and that the outside party does not obtain a competitive advantage from its advance knowledge of the public housing agency's cost estimate. The contracting officer shall prepare or have prepared an independent cost estimate commensurate with the purchase requirement. The level of detail will depend upon the dollar value of the proposed contract and the nature of the goods or services to be acquired. Independent cost estimates are normally broken out into major categories of cost (for example, labor, materials, and other direct costs such as travel, overhead, and profit). Commercially available products and services may require less detail, as the marketplace tends to provide current reliable pricing information for commercially available products; a public housing agency may also not need to break out components. Noncommercial type requirements and work designed specifically for the public housing agency will require much more extensive estimation and a detailed independent cost estimate. The independent cost estimate serves as the primary in-house gauge of cost and price reasonableness, but it should not be relied upon to the exclusion of other sources of pricing information.

Chapter 8 of the handbook discusses noncompetitive proposals. Section 8.3 states that all noncompetitive proposal awards must comply with 24 CFR 85.36(d)(4). Section 8.4 states that award of contracts from noncompetitive proposals follows a process similar to that used for competitive proposals. The proposal must be evaluated. Technical and cost aspects of the proposal may be negotiated. The offeror must be determined to be responsible at the time of award. Because there is no price competition, cost analysis is required. Costs or price must be determined to be reasonable. Public housing agencies are required to submit proposed noncompetitive contracts to HUD for preaward review and approval in accordance with 24 CFR 85.36(g) unless exempted under 24 CFR 85.36(g)(3). Section 8.5 states that 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 public housing agency's procurement policy. Approval to award a contract resulting from a noncompetitive proposal does not eliminate or alter other requirements of 24 CFR 85.36 governing the contract. The justification should include the following information: (1) a description of the requirement; (2) a history of prior purchases and their nature (competitive versus noncompetitive); (3) the specific exception in 24 CFR 85.36(d)(4)(i)(A) through (D) that applies; (4) a statement as to the unique circumstances that require award by noncompetitive proposals; (5) a description of the efforts made to find competitive sources; for example, advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.; (6) a statement as to efforts that will be taken in the future to promote competition for the requirement; and (7) the signature of the contracting officer and any higher approving official as required by the public housing agency's policy. The contracting officer shall include the written justification and approval in the contract file.

Section 10.1 of the handbook states that "there are many factors that the contracting officer should consider in selecting and, when appropriate (for example, using competitive proposals), negotiating the contract type. They include (2) Price analysis, with or without competition, may provide a basis for selecting the contract type. The degree to which price analysis can provide a

realistic pricing standard should be carefully considered. (3) In the absence of effective price competition and if price analysis is not sufficient, the cost estimates of the offeror and the public housing agency provide the bases for negotiating contract pricing arrangements. It is essential that the uncertainties involved in performance and their possible impact upon costs be identified and evaluated so that a contract type that places a reasonable degree of cost responsibility upon the contractor can be negotiated.”

Paragraph 10.3.A of the handbook states that “for every procurement, public housing agencies are required to perform a cost or price analysis to determine that the price is reasonable. Public housing agencies should always compare the prices offered with the independent cost estimate. While this initial cost estimate may not be sufficient for price reasonableness, it can assist the contracting officer in determining the extent to which the offerors understand the public housing agency’s requirements. Sometimes, the comparison of prices may point out the need for verification of bids (in sealed bid procurements) or negotiations (in the competitive proposal methods) if prices of the different offerors vary widely or seem unusually high (or low) compared to the independent cost estimate. If adequate competition does not exist, including sole source procurements or noncompetitive proposals, the public housing agency must perform a cost analysis, except as provided in paragraph 10.3.B. A cost analysis is an evaluation of the separate elements that make up a contractor’s total cost proposal or price to determine whether they are allowable, directly related to the requirement, and reasonable.”

Paragraph 10.3.B of the handbook provides alternative methods of determining that a price is reasonable (other than cost analysis). “If, after appropriate solicitation efforts, the public housing agency does not receive an adequate number of responses, the public housing agency may use one of the following alternative methods of establishing price reasonableness without having to conduct a formal cost analysis. In all such cases, the public housing agency should appropriately support and document its actions in the procurement file. (1) Comparison to prior proposed prices and contract prices with current proposed prices for the same or similar items/services. The public housing agency should factor in any market changes, e.g., commodity price changes or inflation, since the last time the item or service was purchased. (2) In comparison to competitive price lists, published catalog or market prices of commodities and products, similar indices and discount or rebate arrangements. (3) Professional estimate, either one prepared by the public housing agency or outside party. The level of analysis should be commensurate with the extent and complexity of the procurement.”

Paragraph 10.3.C of the handbook states that “a cost analysis must be conducted if one or more of the following conditions apply: (1) All sole source and non competitive proposals. In noncompetitive situations, no incentive exists for an offeror to submit a low price, and no price competition exists for determining the reasonableness of the price.”

Paragraph 10.3.E of the handbook states with respect to price reasonableness, that “the procurement file should be documented to support the actions taken. Documentation is required to demonstrate price reasonableness, including any cost analyses, whenever (1) adequate competition did not exist, (2) adequate competition existed but the public housing agency received only one bid or proposal, or (3) the price obtained varied significantly from the

independent cost estimate, in which case the contracting officer should notate and explain the reasons for the difference; for example, poor estimate, etc.”

Section 11.2 of the handbook states that “all progress inspections should be documented using an appropriate public housing agency inspection report form. The inspection report should include a description of the work completed and a determination as to whether the work is acceptable. If progress payments are necessary, the public housing agency shall require the contractor to prepare a construction progress schedule for each project. The public housing agency is responsible for making progress payments to the contractor based on the approved schedule of amounts for contract payments. The public housing agency should review each contractor request and should approve the payment if the following conditions have been met (if the contractor requests payment for items that have not been acceptably completed, the public housing agency should delete those items and adjust the payment accordingly): (a) the contractor’s request is consistent with the approved schedule of amounts for contract payments and (c) the work covered by the payment has been performed in accordance with the construction documents.” Form HUD-51000, Schedule of Amounts for Contract Payments, further states that “no progress payments shall be made to the contractor unless a schedule of amounts for contract payments in accordance with the construction contract is received.”

The Commission’s Capital Fund Stimulus Grant procurement policy, adopted by the board of commissioners on September 25, 2009, states the following:

- Section III, part B, states that for all purchases above the micropurchase (\$2,500) threshold, the Commission must prepare an independent cost estimate before solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.
- Section III, part D, states that the board of commissioners designates the executive director as contracting officer. The executive director is responsible for ensuring that procurement actions comply with this policy. The executive director may delegate all or some procurement authority as is necessary and appropriate to conduct the business of the Commission. The executive director shall appoint delegations of contract authority in writing. The appointment must state the scope and limitations of authority. The executive director or designee(s) should ensure the following: “(3) For contracts exceeding \$100,000, one or more public advertisement(s) shall be made over a minimum of 10 business days. Solicitation procedures are conducted in full compliance with the Federal standards set forth at 24 CFR 85.36; and/or the Recovery Act. (4) An independent cost estimate shall be prepared before solicitation for all procurement actions that exceed \$2,500. (5) A cost or price analysis is conducted on responses for all procurement actions that exceed \$2,500.”
- Section IV, part E, states that competitive proposals are the primary alternative to the sealed bidding method of contracting for amounts above the Federal small purchase threshold (currently \$100,000) and may also be used for small purchases. Unlike sealed bidding, the competitive proposal method permits (1) consideration of technical factors other than price, (2) discussion with offerors concerning offers submitted, (3) negotiation of contract price or estimated cost and other contract terms and conditions, (4) revision of proposals before the

final contractor selection, and (5) the withdrawal of an offer at any time before the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the Commission, considering price and other factors (for example, technical expertise, past experience, quality of proposed staffing, etc.) set forth in the solicitation and not solely the lowest price.

- Section IV, part G, states that a single response to a competitive procurement, either a request for proposal or request for qualification, does not constitute sole source procurement. The Commission may award a contract based on a sole response and shall document the files to demonstrate that the procurement was appropriately advertised and determined to be fair and reasonable.

Section 28 of exhibit D of the Commission's contractual agreements with Siemens states that when a proposed modification requires the approval of HUD before its issuance (for example, a change order that exceeds the public housing agency's approved threshold), such modification shall not be effective until the required approval is received by the public housing agency.