



U.S. Department of Housing and Urban Development
Region 4 Office of the Inspector General
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MEMORANDUM NO:
2009-AT-1801

September 25, 2009

MEMORANDUM FOR: Victor Rocher, Director, Office of Public Housing, 4DPH

//signed//

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

SUBJECT: Miami-Dade Public Housing Agency Needs to Strengthen Controls over Its American Recovery and Reinvestment Act Funds

INTRODUCTION

The Miami-Dade Public Housing Agency (Agency) was awarded a \$19.3 million capital fund formula grant under the American Recovery and Reinvestment Act of 2009 (ARRA). ARRA requires swift obligation and expenditure deadlines with stringent emphasis on accountability and transparency. As part of our organization's commitment to ensure the proper use of these funds, we performed a review of the Agency's operations to evaluate its capacity to administer ARRA funding. Specifically, our objective was to review and assess the Agency's capacity and risks in the following areas: basic internal controls, financial management, and procurement.

We provided a draft report to the Agency on September 9, 2009, and received written comments on September 18, 2009. We have included the comments and our evaluation of those comments in appendix A.

For each recommendation without a management decision, please respond and provide status reports in accordance with U.S. Department of Housing and Urban Development (HUD) Handbook 2000.06, REV-3. Please furnish us copies of any correspondence or directives issued because of the audit.

METHODOLOGY AND SCOPE

To accomplish our objective, we

- Reviewed and obtained an understanding of relevant ARRA legislation, program guidance, and criteria;
- Reviewed relevant Agency policies and procedures;
- Interviewed HUD and Agency officials;
- Reviewed Agency financial records;
- Reviewed Agency files and records to include staffing assignments, job descriptions, and organization charts;
- Reviewed the Agency's annual plans; and
- Reviewed Agency procurement files and records for two ARRA activities.

At the time of our review, the Agency had not awarded any construction contracts but indicated that contracts for three planned ARRA activities were almost finalized. We reviewed the two planned ARRA activities with the largest dollar amounts totaling \$345,049. Since the Agency had not finalized the award of these contracts, we limited our review to determining (1) whether the selection(s) appeared reasonable and justified, (2) that documentation was available to support the selection process, and (3) whether the procurement procedures were in accordance with applicable laws and regulations. The results of our review apply only to the items selected and cannot be projected to the universe or population.

Our review generally covered the period January 1 through May 31, 2009, and we extended the period as needed to accomplish our objective. We conducted our review from June 1 through July 31, 2009, at the Agency office located at 1401 NW 7th Street, Miami, Florida.

For this capacity report, our work was not conducted in accordance with generally accepted government auditing standards. Under ARRA, inspectors general are expected to be proactive and focus on prevention; thus, this report is significantly reduced in scope.

BACKGROUND

On February 17, 2009, the President signed ARRA. It provided \$13.61 billion for projects and programs, which included a \$4 billion appropriation of capital funds to carry out capital and management activities for public housing agencies as authorized under Section 9 of the United States Housing Act of 1937.

HUD awarded the Agency approximately \$29.9 million in capital funds in fiscal years 2007 and 2008. In March 2009, HUD awarded the Agency an additional \$19.3 million in capital funds under ARRA. As of May 2009, the Agency had not expended any ARRA funds.

We conducted two audits of the Agency's capital fund program and issued the audit reports on April 24 and September 17, 2008. Those reports disclosed that (1) the Agency did not maintain adequate supporting documentation for contracts, (2) the Agency's internal controls over capital fund drawdowns were inadequate, and (3) the Agency used capital fund program drawdowns for ineligible and unsupported expenses. In response to the audits, the Agency implemented a realignment of the procurement process for contracts to be reviewed at its procurement office. It also created new accounting policies and procedures for capital funds and better defined the roles and responsibilities of its accountants that administer capital funds.

RESULTS OF REVIEW

Procurement Procedures Had Weaknesses

Public housing agencies must follow Part 85 and other ARRA requirements. Regulations at 24 CFR [*Code of Federal Regulations*] 85.36 require that public housing agencies maintain records sufficient to detail the significant history of each contract's procurement.

The Agency did not comply with ARRA procurement requirements for the two contracts reviewed. Specifically, it needs to strengthen its controls to ensure that it maintains records sufficient to detail the significant history of each contract's procurement such as

- Identifying that it was an ARRA activity in advertising and within the contract and specifying that the bidder agrees to accept all the terms and conditions according to ARRA regulations at 2 CFR 176.210 within the contract, the bid form, and special conditions;
- Maintaining documentation to support the basis for the independent cost estimate and the reason for substantial differences between the cost estimate and price as required by HUD Procurement Handbook 7460.8;
- Requiring the contract to indicate the amount of liquidated damages that can be assessed to the contractor and the number of required days to complete the work according to regulations at 24 CFR 85.36; and
- Documenting the rationale for the procurement method used and selection of contract type according to regulations at 24 CFR 85.36.

Regulations at 2 CFR 176.60 prohibit use of recovery funds for construction unless all goods used in the project are produced in the United States. The Agency did not include in the two contracts the requirement to buy American products for construction until HUD informed it of the requirement. It later notified the two contractors of this requirement. HUD officials informed us that the Agency needed to issue a change order or addendum to the contracts to ensure that the contractors complied with this requirement.

The Agency's approach to ensuring that contractors comply with this requirement for future contracts was also inadequate. Regulations at 2 CFR 176.100(b) require that a determination be

made, regarding whether the contractor will use U.S. manufactured products, before the recipient obligates or awards the funds. Agency officials planned to incorporate 2 CFR Part 176 into future contracts and require contractors to certify compliance with this requirement. Some Agency officials informed us that contractors would certify compliance with the buy American requirement after the contract was awarded, while other staff said that the certification would be provided before the funds were obligated. HUD officials informed us that Agency certifications were not sufficient to document compliance with regulations at 2 CFR 176.60.

Public and Indian Housing (PIH) Notice 2009-12 states that public housing agencies shall amend their procurement standards and policies and remove all procurement standards that are contrary to Part 85 or the Recovery Act. This amended policy can be used only for procurements related to Public Housing Capital Fund Stimulus (Formula) Recovery Act Funded grants. The Agency had not reviewed or amended its procurement policies and procedures to ensure compliance with ARRA requirements.

Staffing Levels May Be Inadequate

Office of Management and Budget memorandum M-09-15 requires heightened management attention in ensuring that a sufficient and adequate trained workforce be available to responsibly plan, evaluate, award, and monitor contracts. We focused our analysis on the responsibilities of the asset project managers and purchasing specialists. Asset project managers coordinate the bidding process, prepare contract documentation, and monitor progress toward completion of ARRA-funded activities. Purchasing specialists coordinate the administration and awarding of contracts.

We estimate that the workload for the asset project managers and purchasing specialists will increase approximately 60 percent for the three-year duration of the capital fund recovery grant if current staffing levels remain the same.

Asset project managers

<i>Description</i>	<i>Capital fund program grant</i>	<i>Capital fund recovery grant</i>	<i>Totals</i>
Average amount of funds administered per year (1)	\$7,214,337	\$4,249,110	\$11,463,447
Number of employees to administer the programs	3	3	3
Average amount of funds administered per employee	\$2,404,779	\$1,416,370	\$3,821,149
Percentage increase in workload per employee (2)			58.9%

Purchasing specialists

<i>Description</i>	<i>Capital fund program grant</i>	<i>Capital fund recovery grant</i>	<i>Totals</i>
Average amount of funds administered per year (1)	\$9,569,330	\$5,775,843	\$15,345,173
Number of employees to administer the programs	3	3	3
Average amount of funds administered per employee	\$3,189,777	\$1,925,281	\$5,115,058
Percentage increase in workload per employee (2)			60.4%

- (1) For each budget line item of the 2007 and 2008 capital fund program grants and 2009 capital fund recovery grant, the Agency provided us with an estimated percentage of the grant amount administered by staff. To obtain the average amount of capital funds administered per year for the 2007 and 2008 program grants, we totaled the percentage calculations per budget line item and divided the result by two. To obtain the average amount of capital funds administered per year for the capital fund recovery grant, we totaled the percentage calculations per budget line item and divided the result by three. We divided by three to conservatively spread these funds over the three years during which the Agency must expend the funds.

- (2) Asset project manager: $\$3,821,149 - \$2,404,779 / \$2,404,779 = 58.9$ percent
Purchasing specialist: $\$5,115,058 - \$3,189,777 / \$3,189,777 = 60.4$ percent

Based on the increased workload, Agency staffing levels may be inadequate to administer the additional \$19.3 million in capital funds awarded under ARRA. Agency management indicated that it did not conduct an analysis of staffing needs but believed its staffing was adequate to administer capital funds. ARRA-funded activities were included in previously approved annual plans, and Agency management considered the staffing adequate to administer them. However, Agency staff said that deficiencies in ARRA contracts, such as failing to indicate the amount of liquidated damages and the number of required days to complete the work, were due to workload pressures. Agency staff also expressed concerns over the shortage of staff due to the lengthy contract bidding process, list of responsibilities, and increase in capital fund activities. Agency staff members said that they had not received any formal training and believed that additional staff and training on ARRA requirements were needed.

The Agency Had Not Properly Prioritized Its ARRA-Funded Activities

Public Law 111-5 (otherwise known as ARRA) requires that public housing agencies give priority to capital projects that can award contracts based on bids within 120 days from the date the funds were made available. Also, PIH Notice 2009-12 states that public housing agencies must give priority consideration to the rehabilitation of vacant rental units.

HUD made funds available to the Agency on March 18, 2009. The Agency maintains a monthly report that details the status of each activity and the percentage of work that has been obligated. Based on this report, as of July 13, 2009, no construction contracts had been awarded. Agency staff stated that the delay in awarding contracts was due to the lengthy procurement process, which could take up to six months. The Agency gave priority to activities based on need and high dollar amount and not to the rehabilitation of vacant units.

Conclusion

The Agency needs to strengthen its controls to fulfill the requirements under the ARRA capital fund program. It needs to (1) maintain sufficient records to detail the significant history of each contract's procurement, (2) amend its procurement policies and procedures as required by HUD, (3) evaluate its staffing levels and provide staff with training on ARRA requirements to better administer the program, and (4) prioritize its ARRA-funded activities to move them more quickly toward completion and meet ARRA requirements to obligate all funds within one year of availability (March 18, 2010).

RECOMMENDATIONS

We recommend that the Director of the Office of Public Housing require the Agency to

- 1A. Fully document the significant history of the procurement for the two contracts reviewed to comply with ARRA procurement requirements.
- 1B. Provide HUD with documentation supporting that change orders or addendums were issued for the two contracts reviewed to ensure that the contractors comply with the ARRA buy American requirements.
- 1C. Amend its existing procurement policies and procedures to ensure compliance with all applicable federal and ARRA requirements for all future procurements when obtaining goods and services.
- 1D. Conduct a formal analysis to assess its staffing levels and ensure that staff members are adequately trained to comply with ARRA requirements.
- 1E. Prioritize its ARRA-funded activities to ensure that it complies with ARRA obligation deadlines.

Auditee's Comments

September 18, 2009

Mr. James D. McKay
U. S. Department of Housing and Urban Development (USHUD)
Region 4 Office of the Inspector General
Office of Audit, Box 42
Richard B. Russell Federal Building
75 Spring Street, SW Room 330
Atlanta, GA. 30303-3388

Re: USHUD letter of September 9, 2009 concerning its review of the American Recovery and Reinvestment Act (ARRA) Capital Fund Program administered by Miami-Dade Public Housing Agency (MDPHA)

Dear Mr. McKay:

I am in receipt of the draft memorandum dated September 9, 2009, regarding the results of the review conducted by the US Department of Housing and Urban Development Office of the Inspector General (HUD OIG) of the ARRA Capital Fund Program administered by MDHPA. I appreciate the issues and concerns expressed in your letter. These concerns have already been addressed, as enumerated herein.

BACKGROUND

As noted in your letter, the Agency implemented a re-alignment of the procurement process and new accounting policies.

RESULTS OF REVIEW

Procurement Procedures Had Weaknesses

The bid preparation process was started immediately after MDPHA was notified of its ARRA award. The first two projects, Donn Gardens re-roofing and Jack Orr Plaza fire alarm, were bid and inadvertently excluded the ARRA requirements. In order to correct this, we forwarded the ARRA requirements to the two contractors that bid the work and obtained written confirmation that prices would not change and that they would complete the project using American made products, in accordance with the Buy American requirements listed in the ARRA regulations. ARRA regulations were subsequently incorporated into the bid packages for all new work.

- MDPHA acknowledges that the two projects noted above were not identified as being ARRA. This was corrected as noted.
- All of the jobs designed and bid by MDPHA architects are estimated in-house by these architects. MDPHA did not spend additional funds by requesting third party consultants to estimate the work. We consider this to be of limited value on these types of projects. Additionally, MDPHA analyzes and considers all

significant differences between the estimated cost and the bid(s) received and a determination is made whether the bid is responsive. Appropriate paperwork is prepared documenting the reasons for the cost differential.

- All of our contracts currently indicate the amount of liquidated damages that can be assessed to the contractor and the number of required days to complete the work. This information was left out of one contract and was corrected by an addendum.
- The rationale for competitive bidding all of the work, and awarding the work to the lowest responsible bidder, is allowed under USHUD regulations. MDPHA prefers this method over competitive proposals. The latter is a longer process and does not take advantage of the current competitive bid market.

In order to monitor the Buy American requirements, we designed a waiver form to be used by the contractor, as required under the ARRA regulations, if the product(s) presented for approval are not American made. The form must be signed and notarized by the contractor. The Buy American provisions can only be waived under the following three circumstances:

- a) Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality;
- b) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25% percent; or
- c) Applying the domestic preference would be inconsistent with the public interest.

These waiver conditions can be found in the ARRA regulations 2 CFR 176.60 Statutory Requirement section. As previously mentioned, the first two contractors were given this new form after bids were received. Additionally, these requirements are currently part of the MDPHA ARRA bid package.

Staffing levels May Be Inadequate

We have taken steps to address this situation by making organizational changes that will allow the Agency to function efficiently and effectively when implementing all major capital fund work including ARRA.

1. MDPHA has moved its entire capital fund program operation into the Development Division creating the MDPHA Facilities and Development Division. The division will be lead by a registered architect with over 30 years of experience. The Director brings substantial project management and implementation expertise. The Director will work closely with our Public Housing Director, using his knowledge and expertise of the day-to-day operations of the public housing program, to create synergy and cooperation on all projects.
2. We have changed the types and number of projects assigned to our three most experienced Asset Managers. They will no longer be involved with the Job Order

- Contract (JOC) projects. They will concentrate their time and efforts on the Agency's ARRA projects.
3. We have also changed the manner in which the scope of work is defined for the JOC projects. This was previously done by the Asset Managers and it has been changed so that the site manager does the initial inspection and develops the preliminary scope of work, which is subsequently reviewed by the JOC Asset Manager. This has substantially lightened the workload of the Asset Managers assigned to ARRA projects.
 4. We have adjusted the regions so that they are not specific to boundaries, but rather general geographic areas (North, Central and South). This will allow us to redistribute projects more evenly among the Asset Managers.
 5. We have added four full time positions, which will be strictly dedicated to Facilities. One is an administrative position, and three are technical positions.
 6. For future projects, we will be "bundling" more projects into fewer contracts, so that we can implement more projects, faster and more efficiently.
 7. We will evaluate staffing on a continuing basis, and add personnel quickly to address workload increases, as required.
 8. We have increased the number of staff meetings to review the status of all ARRA projects. We have also asked staff to take a more active participation under a team approach, so that challenges and concerns are discussed and addressed and the team can benefit from shared experience.
 9. We are currently working on an updated procedures manual which will also serve for training, or refresher, of our personnel.

The Agency Had Not Prioritized Its ARRA Activities

We have prioritized all construction activities and strategized the work as follows:

1. MDPHA In-House staff will design and prepare specifications for bidding all fiberglass shingle roofs, and some flat bituminous roofs. A total of 40 projects are being designed In-House by MDPHA.
2. The remaining more complicated high rise roofs, window replacements in high rise buildings, and fire protection systems in high rise buildings, are being designed by outside consultants. A total of 22 projects have been assigned to outside consultants.

The Elevator improvements will be managed by the Miami Dade County General Services Administration (GSA), which has the necessary technical expertise to manage elevator improvements. All of the work assigned to GSA was bid in August 2009. GSA is currently in the award phase.

Conclusion

MDPHA expects to obligate up to 60% of its ARRA funds by the end of October 2009. We fully expect to obligate and complete all projects within the designated ARRA deadlines. We have re-organized our Facilities staff, added additional staff, and implemented new approaches to make us more effective and efficient in complying with USHUD guidelines, while also meeting required milestones.

RECOMMENDATIONS

As per your recommendations, we have:

1A. Complied with ARRA requirements, and the intent of the program, for the two contracts where the ARRA requirements were inadvertently left out, as previously noted.

1B. Staff previously provided USHUD with copies of the addenda and correspondence notifying the two contractors of the ARRA requirements. Additional copies can be provided, if requested.

1C. Procedures have been amended to comply with ARRA requirements. All specifications contain the ARRA requirements as part of the contract documents.

1D. We have augmented our Facilities staff to an appropriate level and we will continue to monitor the staff, and make the necessary adjustments, as needed.

1E. All ARRA-funded activities have been prioritized to ensure compliance with ARRA obligation deadlines.

Please contact me if you have any questions or concerns regarding this matter. Thank you for your assistance.

Sincerely,

Gregg Fortner, Executive Director
Miami Dade Public Housing Agency

c: Victor Rocher, USHUD
Elaine C. Furey, USHUD

OIG Evaluation of Auditee Comments

- Comment 1** The Agency stated that the Donn Gardens and Jack Orr projects inadvertently excluded the ARRA procurement requirements and that corrective measures were being taken. However, we informed Agency staff that they also did not comply with ARRA procurement requirements for the Jollivette Plaza project contract.
- Comment 2** The Agency stated that the rationale for competitive bidding of all work and awarding the work to the lowest responsive bidder is allowed under HUD regulations. We maintain that the Agency should document the rationale for the procurement method used and selection of contract type according to regulations at 24 CFR 85.36.
- Comment 3** The Agency stated that to monitor the Buy American requirements they designed a waiver form as required by 2 CFR 176.60 to be used by contractors if the products presented for approval are not American made. HUD officials informed us that Agency certifications were not sufficient to document compliance with regulations at 2 CFR 176.60.
- Comment 4** The Agency stated that it has begun implementing several corrective measures to address our findings and recommendations. We believe that the corrective measures when implemented and enforced would improve Agency administration of the ARRA capital fund program.