



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



MANAGEMENT AUDIT

Marjorie Landa

Deputy Comptroller for Audit

Audit Report on the New York City
Housing Authority's Section 3 and
Resident Employment Programs

MG13-061A

August 15, 2014 (REVISED)

<http://comptroller.nyc.gov>



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CITY OF NEW YORK
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BUREAU OF AUDIT

August 15, 2014

Ms. Shola Olatoye
Chair & Chief Executive Officer
New York City Housing Authority
250 Broadway - 12th Floor
New York, NY 10007

RE: Audit Report on the New York City Housing Authority's Section 3 and Resident Employment Programs, MG13-061A

Dear Ms. Olatoye:

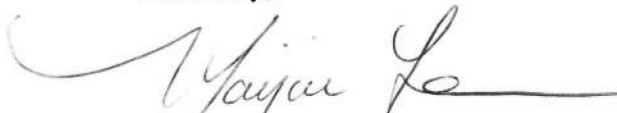
As is described in the enclosed letter from the United States Department of Housing and Urban Development (HUD) dated August 4, 2014, the New York City Comptroller's Office has been informed by HUD that pursuant to Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1702u (Section 3), all capital contracts awarded by the New York City Housing Authority (NYCHA), regardless of the dollar amount, are subject to Section 3 requirements.

This information is different from what we had been told by NYCHA officials. Specifically, in the course of our audit, Comptroller's Office audit staff reviewed the statutes and regulations applicable to Section 3 and questioned NYCHA personnel about the meaning of certain portions of the regulations. In answer to our questions, we were informed by NYCHA officials that, pursuant to HUD guidelines, NYCHA's Resident Economic Empowerment and Sustainability Unit monitors only contracts over \$100,000 to ensure that 30% of new hires are residents. In addition, the auditors were provided with NYCHA's "Capital Manual," which states that "NYCHA capital projects with budget of \$100,000, or more, are subject to Section 3 requirements." Based on the provisions of NYCHA's guidelines, additional material and statements by NYCHA staff, and NYCHA's review and comments of multiple drafts of the audit, the final audit report for audit number MG13-061A, *Audit Report on the New York City Housing Authority's Section 3 and Resident Employment Programs* repeated the description of the applicability of Section 3 compliance we were provided by NYCHA: that capital projects with budget of \$100,000 and above are subject to Section 3 requirements.

In accordance with the information provided by HUD, we have revised the final report of audit number MG13-061A, *Audit Report on the New York City Housing Authority's Section 3 and Resident Employment Programs*. A copy of the revised audit report is enclosed with this letter. The revised report corrects the description of Section 3 and makes clear that there are no

dollar thresholds for capital contracts subject to Section 3. However, the contents of this revised report are otherwise the same as the prior version issued by this office on July 23, 2014. This revision does not impact the audit's findings or conclusions. Please disregard the earlier version of this report.

Sincerely,



Marjorie Landa

Enc.

c: Brenda Keating, Audit Director, NYCHA
Anthony Shorris, First Deputy Mayor
Dean Fuleihan, Director, Office of Management and Budget
Bernard Rosen, Chairperson, Audit Committee
Mary Tarlow, Director, Mayor's Office of Operations
George Davis, Deputy Director, Mayor's Office of Operations
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August 4, 2014

Marjorie Landa, Esq.
Deputy Comptroller for Audit
Office of the Comptroller for the
City of New York

mlanda@comptroller.nyc.gov

SUBJECT: Section 3 hiring and contracting goals

Dear Ms. Landa:

This is in response to your July 30, 2014 email to Douglas Feeley, of my staff, regarding your office's recently released audit of the New York City Housing Authority's (NYCHA) Section 3 Program (MG13-061A) (herein referred to as Audit Report). You requested guidance on the correct interpretation of the thresholds governing NYCHA's obligations to comply with the hiring and contracting goals of Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1702u (Section 3). Below we provide technical assistance regarding the hiring and contracting goals of Section 3.

The purpose of Section 3 is to ensure that employment, training, and contracting opportunities generated by certain HUD financial assistance are, to the greatest extent feasible, directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and the businesses that provide economic opportunities to such persons.

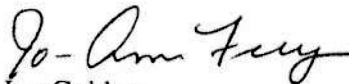
The regulations governing Section 3, found at 24 CFR § 135.3(a) (3) *Thresholds* - (i) state: "*No thresholds for section 3 covered public and Indian housing assistance. The requirements of this part apply to section 3 covered assistance provided to recipients, not withstanding the amount of assistance provided to the recipient. 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*". [Emphasis added]

The above-referenced Audit Report contains an error regarding the applicability of Section 3 to NYCHA's capital projects. The Audit Report at page 1 incorrectly states: "Contractors who are awarded capital contracts valued at \$100,000, or more are required...to ensure that 30 percent of new hires are NYCHA residents or (other) low-income New Yorkers". As identified above, Section 3 does contain minimum numerical goals for hiring and contracting. However, there clearly are no thresholds limiting the applicability of the hiring and contracting goals to contracts of a particular dollar amount by public housing authorities.

It is our hope that your office will issue a correction so that NYCHA's potential contractors and subcontractors will be fully informed of a preference to which they are entitled under Section 3.

If you have any further questions regarding this matter, please do not hesitate to contact me or Douglas Feeley of my staff. Mr. Feeley may be reached at 212-542-7561 or douglas.feeley@HUD.gov.

Sincerely,


✓ Jay Golden
Region II Director
Office of Fair Housing
and Equal Opportunity



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, NY 10007

SCOTT M. STRINGER
COMPTROLLER

July 23, 2014

To the Residents of the City of New York:

My office has audited the New York City Housing Authority (NYCHA) to determine whether it has adequate controls to ensure that the construction contractors it hires meet the requirements of the federal program known as "Section 3" and of NYCHA's Resident Employment Program (REP). These programs mandate that construction contractors employed by NYCHA hire a percentage of residents and low-income New Yorkers to work on the projects covered by the contracts. We audit agency efforts such as these as a means of increasing accountability and of ensuring that City agencies are operating in the best interest of the public.


The audit found that NYCHA failed to institute sufficient controls to ensure that its Section 3 and REP programs were carried out in accordance with applicable guidelines. Among other things, we found that NYCHA failed to update its written procedures or to ensure that all staff members charged with monitoring the Section 3 and REP programs were following those procedures. In addition, we found that NYCHA did not take corrective action where contractors were non-compliant with program requirements. As a result, NYCHA not only failed to address the underlying hiring problems but also sent the message to its contractors that their failure to comply with Section 3 and REP requirements would carry no consequences. Lax controls undermine the effectiveness of programs that are intended to provide NYCHA residents and low-income New Yorkers with job opportunities. As a result, these individuals are less likely to be able to take advantage of such opportunities.

The audit makes seven recommendations to NYCHA. Included among those recommendations are that NYCHA should: institute controls to ensure that construction project managers review and verify hiring summaries for accuracy; ensure that contract monitors document their follow-up efforts with contractors and include all supporting evidence of their efforts in the contract folders; take disciplinary action against contractors that fail to comply with hiring guidelines following appropriate warnings; and update and revise its written procedures to reflect current operations.

The results of the audit have been discussed with NYCHA officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov.

Sincerely,



Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

Audit Report on the New York City Housing Authority's Section 3 and Resident Employment Programs

MG13-061A

AUDIT REPORT IN BRIEF

This audit determined whether the New York City Housing Authority ("NYCHA") has adequate controls to ensure that contractors meet federal Section 3 and NYCHA's Resident Employment Program ("REP") requirements for hiring of NYCHA residents and low-income New Yorkers.

Section 3 of the U.S. Housing and Urban Development ("HUD") Act of 1968 is designed to provide public housing residents with job opportunities. Contractors who are awarded capital contracts by NYCHA are required "to the greatest extent feasible" to ensure that 30 percent of new hires are NYCHA residents or low-income New Yorkers. In addition, under REP, NYCHA requires contractors awarded contracts valued at \$500,000 or more to ensure that at least 15 percent of the contracts' total labor costs are expended on NYCHA residents or low-income New Yorkers. Contract monitors from NYCHA's Resident Economic Empowerment and Sustainability ("REES") Unit and its Capital Projects Division ("CPD") are responsible for ensuring compliance with Section 3 and REP requirements.

Between 2010 and 2012, NYCHA awarded 224 capital projects contracts valued at \$928,910,564, a sum that is not only to be used to improve NYCHA's physical infrastructure, but is also intended to be leveraged to boost economic opportunity for NYCHA residents.

Audit Findings and Conclusions

NYCHA has failed to institute sufficient controls to ensure that its Section 3 and REP programs are carried out in accordance with its guidelines. Specifically, based on our analysis of 29 sampled contracts (21 of which were closed at the time of our review), we found:

- Compliance and monitoring issues with 83 percent of the contracts reviewed at Capital Projects Division and with 97 percent of the contracts reviewed at Resident Economic Empowerment and Sustainability unit. A breakdown by contract is shown in Appendix I.
- Eight of the 21 sampled closed contracts failed to meet either the applicable Section 3 or REP hiring requirements. In connection with the six sampled contracts subject to REP hiring requirements, NYCHA residents lost out on over \$180,000 in potential wages.

- Nearly half of the required Section 3 hiring summaries and 74 percent of the required REP hiring summaries were either incomplete, blank, or inaccurate.
- For 17 contracts that required compliance with REP, contractors claimed to have expended a total of \$1,453,747 on NYCHA residents, whereas our analysis of certified payroll records found that the contractors had expended only \$977,154 on NYCHA residents, a difference of \$476,593.

These shortcomings resulted from NYCHA's failure to adequately monitor and enforce Section 3 and REP compliance. We found that NYCHA had failed to update its guidelines and to ensure that all staff charged with monitoring the programs were both familiar with and operated in accordance with those guidelines. In addition, NYCHA did not take corrective action in instances of non-compliance. As a result, it not only failed to address underlying problems, but also sent the message to its contractors that failing to comply with Section 3 and REP would carry no consequences.

Lax controls undermine the effectiveness of programs that are intended to provide NYCHA residents and low-income New Yorkers with job opportunities. As a result, these individuals are less likely to be able to take advantage of such opportunities.

Audit Recommendations

To address these weaknesses, we make seven recommendations which are discussed in greater detail in the report:

1. NYCHA should institute controls to ensure that construction project managers review and verify hiring summaries for accuracy.
2. NYCHA should ensure that monitors are familiar with their responsibilities for reviewing and verifying hiring summaries.
3. NYCHA should require contractors to submit a list of all permanent staff at the start of a contract.
4. NYCHA should ensure that contract monitors document their follow-up efforts with contractors and include all supporting evidence of their efforts in the contract folders.
5. NYCHA should take disciplinary action against contractors that fail to comply with hiring guidelines following appropriate warnings.
6. NYCHA should update and revise its written procedures to reflect current operations.
7. NYCHA should ensure that monitors coordinate their efforts to ensure that all documents required to verify resident employment are transmitted to each unit in a timely manner.

Agency Response

In its response, NYCHA disagreed with all but one of the audit's findings. However, the agency provided no evidence to support its arguments. After careful review and consideration of the arguments in NYCHA's response, we found that those arguments do not alter our original findings and recommendations.

Further, NYCHA did not specifically address the audit's seven individual recommendations in its response. However, based on the arguments NYCHA makes in response to the audit's findings,

it appears that NYCHA agrees with Recommendation 1. Further, NYCHA appears to contend that it already complies with Recommendations 2, 5 and 7. Finally, NYCHA's response indicates that it disagrees with Recommendations 3 and 6. NYCHA's response does not appear to address Recommendation 4 so it is unclear whether the agency agrees with this recommendation or not.

After the final report for this audit was issued on July 23, 2014, we were informed by HUD that the \$100,000 contract threshold identified by NYCHA as applicable to its Section 3 program set forth in the report was incorrect. This report has been revised to reflect the fact that all capital contracts awarded by NYCHA, regardless of their amount, are subject to Section 3 requirements. This revision has no impact on any of the audit's findings or conclusions.

The full texts of NYCHA's response and HUD's subsequent letter are included as addenda to this report.

INTRODUCTION

Background

The mission of NYCHA is to provide safe, affordable housing for low-and moderate-income New Yorkers and to facilitate access to social and community services. To that end, NYCHA works to connect its residents to job readiness and training initiatives. REES and CPD are responsible for overseeing the agency's Section 3 and REP programs, which seek to assist residents to become economically self-sufficient through job placement, training, supportive services and educational opportunities.

Section 3 of the HUD Act of 1968 is designed to provide public housing residents with job opportunities by requiring contractors who are awarded capital contracts by NYCHA to ensure "to the greatest extent feasible" that 30 percent of new hires are NYCHA residents or low-income New Yorkers.¹ In addition, under REP, Chapter 6, Section P of NYCHA's CPD manual requires contractors awarded contracts valued at \$500,000 or more to ensure that at least 15 percent of the total labor costs under their NYCHA contracts are expended on NYCHA residents or low-income New Yorkers.² For Calendar Years 2010 through 2012, NYCHA awarded 224 capital projects contracts valued at \$928,910,564.

Contract monitors from REES and CPD are responsible for ensuring that eligible contractors meet the Section 3 and REP requirements. REES contract monitors ("CMs") are tasked with matching qualified residents with contractors seeking new hires, following up with those residents who are hired, and obtaining feedback on those residents who are not hired. CPD construction project managers ("CPMs") are responsible for ensuring that the residents who are hired are working on the job sites as well as reviewing requests for payments and monitoring contractor compliance with hiring guidelines.

NYCHA construction contractors generally submit their payment request packages to CPD once a month. These packages include: 1) attendance sheets listing the names of all employees who worked during that pay period; 2) certified payrolls; and 3) Section 3 and REP Hiring Summaries, which are designed as monitoring tools to track compliance with hiring requirements. The contractors are required to list the names of all new hires (resident and non-resident) on the Section 3 hiring summary so that the CMs and CPMs can determine the number of new hires who are NYCHA residents or low-income New Yorkers. Contractors are also required to list their total labor costs and the NYCHA resident labor costs on the REP hiring summary so that the CMs and CPMs can determine the percentage of labor costs expended on NYCHA residents or low-income New Yorkers.

According to NYCHA officials, CPMs are responsible for assessing the completeness of the information submitted in the payment packages, which CPM supervisors then review and forward to REES. At REES, CMs review the hiring summaries to assess compliance with hiring requirements and input the information from the summaries into the year-to-date database. When it appears that the contractors may not meet their hiring goals, CMs are expected to contact the contractors and discuss the methods they can employ to achieve compliance.

¹ HUD provides most of NYCHA's funding and specifically funds its contracts subject to Section 3. According to NYCHA officials, the agency does not receive any funding specifically for the administration of the Section 3 program.

² The priority level for referring job applicants to contractors begins with the applicants residing in the development where the work is performed. If no qualified applicants are found, the search is expanded to residents from surrounding developments. If there are still no qualified applicants, then the search is further expanded to low-income New Yorkers.

Objective

The objective of our audit was to determine whether NYCHA has adequate controls to ensure that contractors met the Section 3 and REP requirements for hiring of NYCHA residents and low-income New Yorkers.

Scope and Methodology Statement

We conducted this performance 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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covered contracts that were awarded during Calendar Years 2010 through 2012. Our review included payments to contractors through July 2013. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results with NYCHA

The matters covered in this report were discussed with NYCHA officials during and at the conclusion of this audit. A preliminary draft report was sent to NYCHA officials and was discussed at an exit conference held on May 29, 2014. On June 12, 2014, we submitted a draft report to NYCHA officials with a request for comments. We received a written response from NYCHA officials on June 26, 2014.

In its response, NYCHA disagreed with all but one of the audit's findings. However, the arguments raised in the response are unsupported by evidence, despite NYCHA having been given ample opportunity to provide such evidence up to, at and following the exit conference. Also, in several instances, NYCHA's responses are not relevant to the audit findings being discussed. As a result, after careful review and consideration of the arguments in NYCHA's response, we found that those arguments do not alter our original findings.

NYCHA's response ostensibly addresses the audit's findings, but it does not indicate whether or not the agency agrees with the audit's specific recommendations. However, based on the arguments NYCHA makes in response to the audit's findings, it appears that NYCHA agrees with Recommendation 1 (institute controls to ensure that construction project managers review and verify hiring summaries for accuracy). Further, NYCHA appears to contend that it already complies with Recommendation 2 (ensure that monitors are familiar with their responsibilities for reviewing and verifying hiring summaries), Recommendation 5 (take disciplinary action against contractors that fail to comply with hiring guidelines following appropriate warnings), and Recommendation 7 (ensure that monitors coordinate their efforts to ensure that all documents required to verify resident employment are transmitted to each unit in a timely manner). Finally, NYCHA's response indicates that it disagrees with Recommendation 3 (require contractors to submit a list of all permanent staff at the start of a contract) and Recommendation 6 (update and revise its written procedures to reflect current operations). NYCHA's response does not appear to address Recommendation 4 (ensure that contract monitors document their follow-up efforts

with contractors and include all supporting evidence of their efforts in the contract folders). Thus, it is unclear whether NYCHA agrees with this recommendation or not. NYCHA management's failure to explicitly indicate whether or not it agrees to implement the audit's recommendations, which are intended to strengthen the agency's administration of these vital employment programs, is of great concern. We urge NYCHA to implement these recommendations and ensure that it maximize its ability to provide much needed employment opportunities to its residents and low-income New Yorkers.

After the final report for this audit was issued on July 23, 2014, we were informed by HUD that the \$100,000 contract threshold identified by NYCHA as applicable to its Section 3 program set forth in the report was incorrect. We had been informed by NYCHA that in its monitoring of Section 3 compliance, it has interpreted the regulation to pertain only to capital contracts valued at \$100,000 or more. However, according to HUD, all capital contracts awarded by NYCHA, regardless of the dollar amount, are subject to Section 3 requirements. This revision has no impact on any of the audit's findings or conclusions. However, we note that we did not include any capital contracts under \$100,000 in our audit sample of 29 contracts.

The full texts of NYCHA's response and HUD's letter are included as addenda to this report.

FINDINGS AND RECOMMENDATIONS

NYCHA has failed to institute sufficient controls to ensure that its Section 3 and REP programs are carried out in accordance with its guidelines. Specifically, based on our analysis of 29 sampled contracts (21 of which were closed at the time of our review), we found compliance and monitoring issues with 83 percent of the contracts reviewed at CPD and with 97 percent of the contracts reviewed at REES. (See Appendix I for a breakdown.) The details of our findings are discussed in the following sections of this report.

Contractors Did Not Consistently Meet Section 3 and REP Hiring Requirements

Our review found that 8 of the 21 sampled closed contracts failed to meet either the Section 3 hiring requirements applicable to federally funded capital contracts or the NYCHA REP hiring requirements applicable to capital contracts valued at \$500,000 or more.³ Specifically, two of the contracts (valued at \$3,229,008) failed to meet required Section 3 hiring requirements and six of the contracts (valued at \$12,076,306) failed to meet required REP hiring requirements. In connection with these six REP contracts alone, NYCHA residents lost out on more than \$180,000 in potential wages. A detailed breakdown of these eight contracts is provided in Table I.

Table I

Analysis of Eight Contracts that Did Not Meet
Section 3 or REP Hiring Requirements

Section 3					
Contract #	Contract Value	Number of New Hires (actual)	NYCHA Residents That Should Have Been Hired	NYCHA Residents Actually Hired	Difference
ST1015181	\$985,000	9	3	1	2
ST1011438	\$2,244,008	10	3	2	1
REP					
Contract #	Contract Value	Total Labor Cost (actual) A	NYCHA Resident Labor Cost That Should Have Been Expended B (15% of A)	Actual NYCHA Resident Labor Cost C	Deficit D (B-C)
HE9006205	\$793,000	\$233,730	\$35,059	\$26,787	\$8,272
BW7066139	\$4,206,930	\$1,384,724	\$207,709	\$126,220	\$81,489
HE1016669	\$807,382	\$204,445	\$30,667	\$26,085	\$4,582
EV1101959	\$2,994,400	\$709,801	\$106,470	\$79,955	\$26,515
ST9011482	\$2,244,008	\$1,043,240	\$156,486	\$103,447	\$53,039
GR1022549	\$1,030,586	\$246,727	\$37,009	\$26,132	\$10,877
TOTALS	\$12,076,306	\$3,822,667	\$573,400	\$388,626	\$184,774

³ We sampled 29 contracts from a population of 224 capital contracts subject to Section 3 hiring requirements awarded during Calendar Years 2010 through 2012. Of the 29, 20 also fell under the REP hiring requirements. Twenty-one of the 29 contracts, including 14 REP contracts, were completed as of December 2013.

NYCHA did not implement sufficient controls to ensure that contractors complied with Section 3 and REP hiring requirements, as indicated by the eight contracts above. The remaining closed contracts we sampled did meet hiring requirements.

We identified deficiencies in 28 (97 percent) of the 29 contracts covering the following areas: verification of documentation submitted by contractors, determination of Section 3 compliance, resident referrals to contractors, and corrective action taken in instances of non-compliance. These issues are discussed in more detail in the following sections of this report.

NYCHA Response: NYCHA disagreed with our calculations in this finding, stating that “NYCHA’s calculations regarding Section 3 and REP hiring performance do not match Comptroller calculations. NYCHA found that in some cases, contract values cited by the Comptroller’s [O]ffice were incorrect or calculations were made for contracts that were not yet complete.”

Auditor Comment: During the course of the audit, as well as during the exit conference, NYCHA officials confirmed that they do not verify the accuracy of the calculations on the hiring summaries. At no time subsequent to the receipt of the preliminary draft report, including in its written response to the report, has NYCHA provided evidence that our calculations were inaccurate. NYCHA has also not provided its own calculations in support of its claim. In the absence of such evidence, we are unable to give credence to NYCHA’s arguments and have no basis to change our findings.

NYCHA also claims that we made calculations for contracts that had not yet been completed. However, as is clearly stated in the report, our analysis and conclusions were based on a review of the 21 *closed* contracts in our sample, of which it was found that eight were not in compliance with hiring requirements.

NYCHA Response: Regarding contractors’ compliance with REP hiring requirements, NYCHA states that “REP guidelines call for NYCHA residents to account for 15% of total labor costs for qualified contracts. As noted by the Comptroller’s Office, these goals were either met or exceeded in 21 out of the 29 contracts reviewed. In the instances where the goals allegedly fell *short*, most were related to contracts that were only partially complete.”

Auditor Comment: The numbers and conclusions cited by NYCHA in its response are based on incorrect information and faulty logic. To reach the conclusion that the REP goals were “met or exceeded in 21 out of 29 contracts,” NYCHA improperly included Section 3 contracts that were not subject to REP hiring requirements in its analysis as well as open contracts for which compliance could not yet be determined. By contrast, our analysis properly included only closed contracts, of which there were 21. Of these 21 contracts, only 14 were subject to REP hiring requirements. As stated in the report, we found that six contracts did not meet applicable REP hiring requirements. For another two contracts, we were unable to confirm the accuracy of the compliance rates because the hiring summaries and payrolls submitted by the contractors were inaccurate. Accordingly, the audit found that, at most, eight (57 percent) of the 14 contracts met the applicable REP hiring requirements, not 21 (72 percent) of the 29 as is incorrectly asserted by NYCHA.

Inadequate Monitoring of Hiring Requirements

Limited Verification of Documentation Submitted by Contractors

Our audit found that nearly half of all hiring summaries—critical documents for ensuring Section 3 compliance—were either blank or incomplete. As a result, NYCHA was unable to properly monitor compliance with hiring requirements and NYCHA residents and low-income New Yorkers may have missed out on available employment opportunities.

The Section 3 and REP hiring summaries are necessary for the assessment of contractor compliance with NYCHA hiring requirements. These summaries include the names of all new hires and identify workers who are NYCHA residents or low-income New Yorkers.

In connection with the REP summaries, contractors are required to include the total payroll amount to date, the total payroll paid to NYCHA residents or to low-income New Yorkers and the percentage of total payroll paid to NYCHA residents or to low-income New Yorkers. According to CPD's *Capital Manual*, which includes instructions and directions for CPMs to follow when monitoring hiring compliance, each payment request package submitted for contracts subject to Section 3 requirements must contain a Section 3 hiring summary. For those contracts that are also subject to REP requirements, the *Capital Manual* requires that a REP hiring summary also be included.

In instances where the summaries are not completed properly (e.g., where information is left blank, names don't match supporting documents, etc.), the construction project managers are required to notify their superiors and REES so that they can address the issues with the contractors and return the summaries for correction.

For the period reviewed, contractors submitted 299 payment packages for the 29 sampled contracts, all of which were subject to the Section 3 hiring requirements. These payment packages included 383 requests for payment.⁴ Of the 299 payment packages, 188 (containing 234 requests for payment) were related to contracts that were subject to REP hiring requirements. Because each individual payment request requires a Section 3 hiring summary, and where applicable, a REP hiring summary, this meant that the contractors should have included 383 Section 3 hiring summaries and 234 REP hiring summaries as part of those 299 payment packages.

Our review of the packages found that nearly half (179, or 47 percent) of the 383 required Section 3 hiring summaries were either blank or incomplete.⁵ Further, our review identified certain contractors who had repeated problems with their hiring summaries. For example, one contractor working on contract # BW1103001 submitted 43 hiring summaries, 41 of which were incomplete. Of those 41 incomplete summaries, 21 were blank and did not list any new hires. The remaining 20 only listed some of the new hires reflected on the attendance sheets or listed on previous hiring summaries.

Additionally, we found that 172 (74 percent) of the 234 required REP hiring summaries were either incomplete or inaccurate.⁶ For example, the REP hiring summary submitted in connection with a payment request for contract #EL1200375 reported that the contract was 63

⁴ A package can contain more than one request.

⁵ It was apparent that some of the summaries were incomplete because sign-in sheets showed that additional individuals had been working on these contracts who did not appear on the summary sheets submitted by the contractors. The 179 summaries related to 20 of the 29 contracts.

⁶ These 172 summaries related to 17 of the 29 sampled contracts.

percent complete and that the contractor expended \$253,550 of his payroll costs on NYCHA residents. However, when we calculated the payments based on certified payroll records, we found that the contractor had only expended \$60,837 on NYCHA residents – a difference of \$192,713.

In our review of all 20 sampled REP contracts, we were unable to confirm the accuracy of the compliance rates for 3 of the 20 contracts due to inadequate hiring summaries and payrolls submitted by the contractors.⁷ For the remaining 17 contracts, we found that contractors incorrectly reported the percentage of compliance for 12 contracts.⁸ For the 17 contracts, contractors claimed to have expended a total of \$1,453,747 on NYCHA residents, whereas our calculation based on certified payroll records found that the contractors had expended only \$977,154 on NYCHA residents – a difference of \$476,593.⁹

Certain NYCHA policies contributed to the deficiencies found in the contractors' hiring summaries, including the fact that NYCHA management did not expect the CPMs to verify the information reported on the hiring summary as a way of determining whether the contractors met the hiring requirements. Principally, NYCHA contended that the contractors' unsworn signatures on the hiring summaries constituted attestations of their accuracy and so allowed the CPMs to rely on the hiring summaries, rather than require further review or recalculation be done. In addition, as discussed in more detail below, staff did not have a clear understanding of who was responsible for reviewing the accuracy of the hiring summaries.

Inadequate Controls to Determine Section 3 Compliance

Our audit found that NYCHA lacks adequate controls that would allow it to determine Section 3 compliance. Specifically, NYCHA does not require contractors to provide lists of existing staff prior to the commencement of the contract. Absent such lists of existing staff at the start of a contract, it is not possible to compare the existing staff to a list of new employees on the hiring summaries and then against certified payrolls. Thus, without such lists, NYCHA is hindered in its efforts to determine whether contractors are accurately recording all new hires on the Section 3 hiring summary.

As noted above, pursuant to Section 3 hiring requirements, 30 percent of new hires, to the greatest extent feasible, should be NYCHA residents or low-income New Yorkers. However, based on the information that NYCHA obtains from contractors, it is difficult to ascertain whether all new hires were reported as required.

Inadequate Follow-up of Resident Referrals to Contractors

Our review of the contract folders for the 29 sampled contracts revealed that required information about the monitoring efforts was missing for many of the contracts. REES CMs are responsible for referring NYCHA residents for job training and for job interviews. As part of that process, the CMs are required to monitor job vacancies, maintain ongoing communication with contractors and document in contract monitor folders all aspects of their efforts to ensure that contractors comply with HUD and REP guidelines.

We found that 9 (31 percent) of the 29 folders lacked evidence that the CM contacted the contractor to refer residents for interviews. Once the contractor indicated that it was ready to

⁷ At the time of our review, two of these three contracts were closed and one was still in progress.

⁸ In 11 instances, the percentage of compliance was overstated, and in one instance, it was understated.

⁹ A breakdown of the 17 contracts is shown in Appendix II.

hire, the CM must refer at least two qualified residents per vacancy for the contractor to interview. We found that only 20 folders had evidence of such referrals. After reviewing those 20 folders, we also found:

- 10 (50 percent) lacked evidence that at least two residents were referred per vacancy;
- 15 (75 percent) lacked evidence that the CMs obtained feedback from the contractor for the reasons why the referred residents had not been hired; and
- 15 (75 percent) lacked evidence that additional residents had been referred when the contractors did not hire the initial residents who were referred.

NYCHA has no formal requirements mandating the documentation that CMs must maintain as evidence of their monitoring efforts. However, according to REES officials, the contract folders are required to contain specific details about monitoring efforts, such as the number of job referrals made per vacancy, the justifications offered by contractors when NYCHA residents are not hired, and ongoing communications with contractors.

REES officials stated that communication for referrals between CMs and the contractors was ongoing. However, most of this communication was in the form of emails, which REES does not require its CMs to store or retain during our period of review. REES officials also stated that they were in the process of developing a database to store all progress notes and email communications between the CM and contractors. However, we were informed that the database was not ready for our review. Based on the evidence provided, we have limited assurance that CMs made sufficient efforts to ensure contractor compliance.

No Evidence that Corrective Action Was Taken in Instances of Non-Compliance

We found no evidence that NYCHA took corrective action against contractors who were not in compliance with the hiring guidelines. As a result, contractors that fail to comply with these requirements can still be considered for future contracts, undermining the promise of Section 3 and REP.

According to NYCHA's policies and procedures as outlined in its *Contract Monitor Duties* manual, REES contract monitors are required to send letters to contractors that are not in compliance with Section 3 requirements and/or REP requirements by the time a project is 25 percent complete. The first letter is a warning instructing the contractors to take corrective action to address the non-compliance. If little or no action is taken within 10 days, a second letter should be sent threatening to withhold payments. If there is still no sign of improvement after an additional 10 days, a third letter should be sent threatening to suspend work and withhold payments if corrective action is not taken.

Pursuant to §48A of NYCHA's *Instructions to Bidders and General Conditions for NYCHA Contracts*, a contractor's non-compliance with the requirement to expend at least 15 percent of the labor costs on NYCHA residents "shall constitute a breach of this Contract and may result in sanctions, default, and/or a finding of no-responsibility with respect to future contracts with the Authority." Similar means of enforcement are set forth in §135.38 of the HUD guidelines for Section 3 contracts, which provides that "[n]oncompliance with HUD's regulations . . . may result in sanctions, termination of [a] contract for default, and debarment or suspensions from future HUD assisted contracts."

However, we found that NYCHA does not track compliance with hiring guidelines for its contractors. We found no evidence that REES sent any letters to or had any other form of communication with the eight contractors in our sample whose contracts ended and who did not comply with the REP or Section 3 hiring requirements. In addition, we found that NYCHA does not impose sanctions on or take disciplinary action against any of these contractors. When we asked REES officials how often they found it necessary to take any type of disciplinary action against non-compliant contractors, we were informed that it was not an issue because the contractors were in full compliance. This response was inconsistent with what we found during the course of our audit.

Inadequate Policies and Procedures

NYCHA has written policies and procedures that either have not been updated or have not been implemented, which contributed to the deficiencies discussed in the report. We examined NYCHA's written policies and procedures, as outlined in its *Contract Monitor Duties* manual, as well as its *Capital Manual*. We then compared them to the descriptions of these procedures we received from interviews of NYCHA management and staff members and found inconsistencies between the two.

For example, the written procedures in NYCHA's *Capital Manual* refer to the project administrator as the individual responsible for reviewing the hiring summaries and certified payrolls. However, in our interviews with NYCHA management, we were told that the CPMs were responsible for reviewing the hiring summaries and certified payrolls upon the receipt of payment requests. In addition, the *Capital Manual* also refers to the hiring *plans* as the documents to be used to ensure contractor compliance with Section 3 and REP hiring requirements. However, in their interviews, NYCHA management stressed that the *hiring summaries* were to be used as monitoring tools to track contractors' compliance with hiring guidelines and made no mention of the plans being used for that purpose. Based on the fact that the *Capital Manual* still referred to REES as RES (Resident Employment Services) – the unit's name five years ago - it appears that the Manual has not been updated for more than five years.

NYCHA's failure to update and implement its policies and procedures contributes to unclear lines of responsibility for staff charged with overseeing the contracts. Further, updated written procedures that reflect the current process are essential to providing guidance to staff and to helping ensure that staff responsible for monitoring contractors does so in a consistent manner and promptly addresses relevant issues.

Recommendations

1. NYCHA should institute controls to ensure that CPMs review and verify hiring summaries for accuracy.

NYCHA Response: NYCHA appears to agree with this recommendation, stating, "Controls are currently in place that require project managers to review hiring summaries, we acknowledge that improvements need to be made in the accuracy and completeness of the Section 3 and REP documentation."

2. NYCHA should ensure that monitors from both REES and CPD are familiar with their responsibilities for reviewing and verifying the hiring summaries.

NYCHA Response: NYCHA states that “responsibilities are well understood by contract monitors and part of their routine responsibilities” and thus appears to claim that this recommendation is unnecessary. NYCHA further maintains that “[t]o further their familiarity, REES conducted a 2-day training session for contract monitors and other relevant staff in March 2013, during the audit review period, to review existing procedures, as well as provide an overview of new enhanced procedures for contract monitors due diligence review.”

Auditor Comment: Notwithstanding NYCHA’s claim that the contract monitors understand their job responsibilities, when this finding was discussed at the audit exit conference, CPD and REES officials were unable to tell us which unit was responsible for verifying the accuracy of the hiring summaries. Thus, it is understandable that the staff of CPD and REES would be equally unsure as to who is responsible for this verification. We, therefore, urge NYCHA to reconsider its response and to implement this recommendation.

3. NYCHA should require contractors to submit a list of all permanent staff at the start of a contract.

NYCHA Response: NYCHA maintains in its response that “[g]iven that NYCHA’s REP program is such a successful means of hiring residents, there is no need to get data on a contractor’s permanent staffing. REP does not distinguish between new and existing hires as long as they represent NYCHA residents.”

Auditor Comment: The audit recommendation relates to the Section 3 program and its requirement that 30 percent of all *new* hires be NYCHA residents or low-income New Yorkers. Thus, NYCHA is required to distinguish between existing staff and new hires. NYCHA’s response addresses the REP program only, which is not the subject of this recommendation. We, therefore, urge NYCHA to carefully re-examine this finding and implement this recommendation.

4. NYCHA should ensure that REES contract monitors document their follow-up efforts with contractors after they refer residents for employment and that the monitors include all supporting evidence of their monitoring efforts in the contract folders.

NYCHA Response: NYCHA officials did not address this recommendation, focusing instead on a “proposed new system that would allow REES to electronically store additional types of contractor-related information as part of a longer-term technology solution for the department.”

Auditor Comment: As stated in the audit report, NYCHA officials had been unable during the audit to provide us with a timeframe for the completion of this new database and no timeframe is indicated in the audit response. Accordingly, we continue to urge NYCHA to implement this recommendation.

5. NYCHA should take disciplinary action against contractors not in compliance with hiring guidelines after appropriate warnings have been given.

NYCHA Response: NYCHA in its audit response asserts that it “is already using the tools available to us to address a contractor’s performance” and thus appears to contend that it is already in compliance with this recommendation. NYCHA concludes its response by stating, “Continued poor performance results

are non-responsibility determinations, VENDEX warnings/cautions and ultimately debarment.”

Auditor Comment: During the course of our audit, we found no evidence indicating that disciplinary action was taken against non-compliant contractors, a fact that was confirmed by NYCHA officials throughout the audit as well as at the exit conference. Accordingly, we urge NYCHA to implement this recommendation.

6. NYCHA should update and revise its written procedures to reflect current operations.

NYCHA Response: NYCHA claims in its response that “[t]he current procedures are still applicable” and thus appears to disagree with the need for this recommendation. At the same time, NYCHA states that “[d]uring the audit review period, REES created enhanced procedures for contract monitoring.”

Auditor Comment: The procedures provided to us by NYCHA refer to the hiring plan rather than the hiring summary for the monitors to review to evaluate contractor compliance, which is incorrect based on the practice currently in place at NYCHA. In addition, NYCHA in its response does not specify either the unit responsible for verifying the accuracy of the hiring data or the process to be used for verification. To date, REES officials have not provided us with their updated procedures. CPD officials acknowledged at the exit conference that they had no timeframe for when their procedures would be updated. As a result, our finding remains and we urge NYCHA to implement this recommendation.

7. NYCHA should ensure that monitors from both REES and CPD coordinate their efforts to ensure that all documents required to verify resident employment are transmitted to each unit in a timely manner.

NYCHA Response: NYCHA states that “REES and CPD coordinate efforts and share information regularly” and thus appears to contend that it is already in compliance with this recommendation.

Auditor Comment: We maintain that the monitoring and compliance deficiencies identified in this audit would have been considerably less prevalent had there been better coordination between REES and CPD. Accordingly, we urge NYCHA to reconsider its response and implement this recommendation.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance 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. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covers contracts that were awarded during Calendar Years 2010 through 2012. Our review included payments to contractors through July 2013.

To obtain an understanding of the responsibilities of NYCHA's REES unit pertaining to the monitoring of contracts, we interviewed the vice president of program development and strategy as well as the chief of corporate affairs for NYCHA's Law Department, CMs, supervisors, and data and career specialists. We also attended a REES orientation session provided for NYCHA residents interested in Section 3 and REP employment and training opportunities and observed information REES CMs entered into the year-to-date database.

To obtain an understanding of the responsibilities of NYCHA's CPD unit pertaining to the monitoring of contracts, we interviewed CPD's Vice President of Quality Assurance and the Executive Assistant to the Vice President. Additionally, to obtain an understanding of the specific criteria used by the CPMs to monitor contractor compliance with Section 3 and REP requirements, we interviewed nine CPMs and compared their responses with NYCHA's guidelines.

To obtain an understanding of the guidelines governing the Section 3 and REP programs, we reviewed the following:

- Section 3 of the U.S. Housing and Urban Development Act of 1968;
- *Contract Monitor Duties* manual, which provides information regarding the responsibilities of REES CMs;
- CPD's *Capital Manual*, which includes requirements on NYCHA's REP procedures;
- Contractors' hiring plans and hiring summaries; and
- *Instructions to Bidders and General Conditions*, Section 48A.

We obtained a list from the REES year-to-date database of 224 capital project contracts¹⁰ that had been awarded during Calendar Years 2010 to 2012. To determine the reliability of that information, we randomly selected 30 contracts for further review. We performed limited testing of the accuracy and reliability of these contracts by comparing the information recorded in the database to the hard-copy files. We determined whether essential information, such as the contractor name, contract number, contract dollar amount, number of projected new hires and the letter of award dates, were accurately recorded. In addition, to obtain reasonable assurance as to the completeness of the contracts provided in the electronic file, we requested from CPD management a list of all contracts that were awarded during the audit scope and compared it to

¹⁰ Of the 224 capital projects contracts, 176 required compliance with both Section 3 and REP hiring requirements, and 48 required compliance with Section 3 hiring requirements only.

the REES list. Based on our testing, we concluded that we could be reasonably assured that the data provided was reliable.

To determine whether NYCHA was effectively monitoring contractor compliance with Section 3 and REP regulations, we selected a stratified random sample¹¹ of 34 contracts from the year-to-date database. Our sample consisted of seven contracts over \$100,000 and under \$500,000 and 27 contracts over \$500,000 with a combined value of \$118,803,265. We did not review the files for five of these contracts for the following reasons: one was in default due to contractor non-performance; one was on hold due to Hurricane Sandy; and three were not subject to Section 3 or REP compliance requirements.¹²

To test whether the CPMs properly monitored the contracts in our sample for compliance with hiring requirements, we reviewed the payment packages created each time a contractor requested payment on a contract. This included reviews of the itemized billing statements, all daily attendance sheets, certified payrolls, Section 3 hiring summaries, and REP hiring summaries for each payment period. For the 29 contracts in our sample, we reviewed and analyzed 299 payment packages, which included 617 Section 3 and REP hiring summaries, along with 1,147 certified payroll statements. In our reviews of the payment packages, we determined whether all of the employees' names listed on the daily attendance sheets were noted on the certified payrolls and whether the residents were being paid for the correct number of hours worked.

We also determined whether the contractors submitted accurate Section 3 and REP hiring summaries. Specifically, for the Section 3 hiring summaries, we checked to see whether the contractors listed the names of all new hires on the summaries and whether CPMs ensured that 30 percent of new hires were residents. Additionally, for the REP hiring summaries, we checked to see whether the following information required to ascertain hiring compliance was consistently listed on the summaries: total payroll, including fringe benefits, paid during the payroll period; total payroll paid on the contract to date; total wages including fringe benefits paid to the residents who worked during the payroll period; total wages paid to the residents to date; and the percentage of total payroll paid to residents on the contract to date.

To test whether REES properly monitored contracts, we reviewed REES's contract monitoring case folders for the 29 contracts. We reviewed the folders to determine whether REES followed proper procedures when monitoring the contracts, including whether there was evidence of adequate communication with the contractors to ensure compliance and whether there was evidence that the CM obtained feedback from the contractors regarding those NYCHA residents referred for employment. We also reviewed the extent to which the REES CMs reviewed the Section 3 and REP hiring summaries.

The results of the above tests, while not statistically projected to their respective populations, provided a reasonable basis for us to assess the adequacy of NYCHA's controls for ensuring that contractors complied with Section 3 and REP regulations relating to the hiring of NYCHA residents.

¹¹ Because our population included both Section 3 as well as REP contracts, we used a stratified random sample to ensure that our sample included a proportionate number of both types of contracts.

¹² These three contracts had no new hires and so the requirements of Section 3 were inapplicable. At the same time, the REP requirements did not apply because two of the contracts were less than \$500,000, and the third had not progressed as of the end of the audit scope period to the point at which the contractor had submitted any payment requests.

Compliance and Monitoring Issues Found for Sampled Contracts

Contract #	Contracts That Must Also Meet REP Hiring Requirements	Contract Completion Percentage as of July 2013	Monitoring Issues with CPD							Monitoring Issues with REES
			Did Not Comply with Section 3 Hiring Guidelines	Did Not Comply with REP Hiring Guidelines	Inaccurate Section 3 Hiring Summaries	Inaccurate REP Hiring Summaries	Unable to Confirm Accuracy of Section 3 Hiring Summaries	Unable to Confirm Accuracy of REP Hiring Summaries	Contracts That Have at least One Issue with CPD Monitoring	Insufficient Evidence of Communication between CM and Contractor
GD1106627		100%								X
HE1115110		100%								X
PL1015943		100%			X				X	X
PL1125089		100%								
HE9006205	X	100%		X	X	X			X	X
SP1111525	X	60%			X	X			X	X
EV1122960	X	100%			X	X			X	X
BW7006139	X	100%		X	X	X			X	X
SP1111524	X	100%			X			X	X	X
EV1101964/	X	100%			X	X			X	X
HE1016669	X	100%		X	X	X			X	X
ST1015181	X	100%	X		X	X			X	X
HE1201091	X	50%			X	X			X	X
VA1009271	X	100%					X	X	X	X
EV1101959	X	100%		X	X	X			X	X
EV1128306	X	40%				X			X	X
EV9004136	X	100%			X	X			X	X
EL1200375	X	63%			X	X			X	X
BW9021242		100%			X				X	X
EV1128372	X	48%				X			X	X
BW1009605		64%			X				X	X
RC1108814		100%								X
ST1011438	X	100%	X		X	X			X	X
GD1006605		100%								X
HE1019672	X	100%			X	X			X	X
ST9011482	X	100%		X		X			X	X
GR1022549	X	100%		X	X	X			X	X
BW1103001		84%			X				X	X
SP1111520	X	61%						X	X	X
29	20		2	6	19	17	1	3	24 (83%)	28 (97%)

17 REP Contracts with Incorrect Hiring Summaries

Contract #	Contract Value	Contract Completion Percentage	Total Labor Cost (as per hiring summaries) A	Total Labor Cost (calculated by auditors) B	Difference C (A-B)	NYCHA Resident Labor Cost (as per hiring summaries) D	NYCHA Resident Labor Cost (calculated by auditors) E	Difference F (D-E)	REP Percentage (as per hiring summaries) G(D/A)	REP Percentage (calculated by auditors) H (E/B)	Difference I (G-H)
HE9006205	\$793,000	100%	\$168,916	\$233,730	(\$64,814)	\$26,615	\$26,787	(\$171)	15%	11%	4%
SP1111525	\$9,000,000	60%	\$157,010	\$174,839	(\$17,829)	\$3,600	\$3,600	-	2%	2%	-
EV1122960	\$834,000	100%	\$117,353	\$125,492	(8,138)	\$26,912	\$26,912	-	23%	21%	2%
BW7006139-5862	\$4,206,930	100%	\$1,474,611	\$1,384,724	\$89,888	\$168,883	\$126,220	\$42,663	11%	9%	2%
EV1101964-6493	\$767,030	100%	\$133,613	\$134,692	(\$1,079)	\$27,592	\$27,592	-	21%	21%	-
HE1016669	\$807,382	100%	\$175,563	\$204,445	(\$28,882)	\$26,086	\$26,086	-	15%	13%	2%
ST1015181	\$985,000	100%	\$134,469	\$169,297	(\$34,828)	\$40,023	\$40,023	-	30%	24%	6%
HE1201091	\$7,152,181	50%	\$294,067	\$318,995	(\$24,928)	\$55,353	\$64,846	(\$9,493)	19%	19%	-
EV1101959	\$2,994,400	100%	\$595,116	\$709,801	(\$114,684)	\$81,528	\$79,955	\$1,573	15%	11%	4%
EV1128306	\$6,260,717	40%	\$499,935	\$320,180	\$179,755	\$40,813	\$25,189	\$15,624	8%	8%	-
EV9004136	\$6,276,556	100%	\$996,765	\$1,144,221	(\$147,456)	\$209,988	\$193,073	\$16,915	21%	17%	4%
EL200375	\$15,868,000	63%	\$2,079,596	\$857,028	\$1,222,568	\$253,550	\$60,837	\$192,713	12%	7%	5%
EV1128372	\$11,190,310	48%	\$1,009,978	\$657,733	\$352,245	\$245,897	\$36,092	\$209,805	24%	5%	19%
ST1011438	\$2,244,008	100%	\$83,469	\$88,176	(\$4,707)	13,053	\$13,080	(\$27)	16%	16%	-
HE1019672	\$2,275,600	100%	\$453,963	\$578,475	(\$124,512)	\$97,887	\$97,283	\$602	22%	17%	5%
ST9011482	\$2,244,008	100%	\$749,678	\$1,043,240	(\$293,562)	\$101,492	\$103,447	(\$1,955)	14%	10%	4%
GR1022549-7134	\$1,030,586	100%	\$368,326	\$246,727	\$121,599	\$34,475	\$26,132	\$8,343	9%	11%	(2%)
Totals	\$74,929,708		\$9,492,428	\$8,391,795	\$1,100,636	\$1,453,747	\$977,154	\$476,593			



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SHOLA OLATOYE
CHAIR & CHIEF EXECUTIVE OFFICER

June 26, 2014

Marjorie Landa
Deputy Comptroller for Audit
The City of New York
Office of the Comptroller
1 Centre Street
New York, NY 10007-2341

Dear Ms. Landa:

Thank you for your draft audit report commenting on your audit of the New York City Housing Authority's Section 3 and Resident Employment Programs (REP). We have reviewed the report and our comments on the audit are listed below.

NYCHA takes proactive measures to ensure that contractors meet Section 3 of the Housing and Urban Development Act of 1968 and other hiring obligations, including the NYCHA's Resident Employment Program. The Authority has a long standing commitment to facilitating access to high quality services and creating job opportunities for its residents.

To this end, NYCHA established in 2010 the Office of Resident Economic Empowerment and Sustainability (REES), in order to implement programs, policies and collaborations aimed at supporting residents to increase their income and assets. REES' work extends beyond Section 3, as the department is responsible for connecting residents to services and administering programs in four key areas: employment and advancement; business development; financial literacy and asset building; and adult education and training. REES works through a partnership-based service model to advance resident economic opportunity. REES also monitors contractor compliance, in collaboration with NYCHA administering departments, to generate job opportunities for residents through NYCHA's contracting needs.

Key to this effort is ensuring residents have access to training to better qualify for construction and other related Section 3 job opportunities. To accomplish this, NYCHA established the NYCHA Resident Training Academy (NRTA), an employment-linked training program, which serves as the Authority's premier vehicle for preparing residents for Section 3 jobs. Funded through private philanthropic sources, NRTA reflects NYCHA's collaboration with many other highly effective training providers in New York City. The program is designed not only to prepare trainees for entry-level employment, but to assist in developing career strategies that will lead to advancement and higher wages. Since launching the program in 2010, over 900 NYCHA residents have graduated from the NRTA with over 87% of

program graduates (804 residents) placed into jobs with NYCHA and NYCHA vendors across all training tracks.

For the current HUD Section 3 reporting period (October 1, 2012 – September 30, 2013), REES facilitated 1,034 direct job placements. These job placements included 416 hires leveraged through NYCHA's contracting expenditures, representing our efforts to comply with the Federal Section 3 provision.

Comments on Audit Scope, Requests, and Findings

In July of 2012, NYCHA's Audit Department received an engagement letter addressed to Chairman Rhea from the New York City Comptroller's Office, which specified that the Comptroller's Office would be conducting an audit of NYCHA's compliance with Section 3 of the Housing and Urban Development Act. NYCHA complied with all of the requests submitted by the Comptroller's Office in relation to the audit over the 23-month audit period. The audit required significant management time and staff resources, at a critical time when REES had begun the process of training and implementing new strategies that coincided with the department's ongoing transition from the former Department of Resident Employment Services. Key to this transition was a shift by NYCHA from providing direct employment assistance services to a partnership-based service coordination model, wherein NYCHA residents are connected to a variety of economic opportunity services, including, but not limited to employment assistance services. Another key component of this transition included enhanced practices and procedures for contract monitoring as part of NYCHA's larger job generation effort, wherein NYCHA has taken an agency wide approach to generate jobs and other economic opportunities for residents through projects triggered by Section 3 obligations and beyond. New managerial hires have been added to REES specifically to address this effort.

The contracts reviewed during the audit period, 2010-2012, were monitored during the aforementioned transition period and prior to the development of enhanced procedures. As such, certain audit recommendations have already been addressed through new practices. This misalignment in scope was brought to the auditors' attention throughout the process.

The Comptroller's Office never provided NYCHA with a clear and concise audit scope, which gave them free reign to expand the scope at will. Ultimately, NYCHA received over 14 formal audit requests throughout the engagement, some of which were not relevant to the scope as defined in the final report. For example, the audit included an extensive review of data in REES' SSTS database, a Client Management System, not relevant to the monitoring of Section 3 contractor performance. This review involved onsite observation with staff; followed by requests for detailed data field descriptions and finally a data extraction to allow the auditors to review the contents of the SSTS database independently.

The auditors requested clarification from NYCHA on interpretation of Section 3 regulations throughout the audit. As documented in response to two separate audit requests, NYCHA seeks to enforce HUD Section 3 guidelines regardless of contract materiality; efforts not accurately reported in their preliminary audit report.

Comments on Audit Findings and Recommendations

Finding #1 – Contractors did not consistently meet Section 3 and REP hiring requirements.

Recommendation

NYCHA should institute controls to ensure that construction project managers review and verify hiring summaries for accuracy.

Management Response

While the calculations performed by the Comptroller's Office should be reviewed for accuracy before accepting this finding as correct, NYCHA's calculations regarding Section 3 and REP hiring performance do not match Comptroller calculations. NYCHA found that in some cases, contract values cited by the Comptroller's office were incorrect or calculations were made for contracts that were not yet complete. This would not accurately reflect performance. Controls are currently in place that require project managers to review hiring summaries, we acknowledge that improvements need to be made in the accuracy and completeness of the Section 3 on REP documentation.

Finding #2 – Inadequate monitoring of hiring requirements.

Recommendation

NYCHA should ensure that monitors from both REES and CPD coordinate their current efforts to ensure all documents required to verify resident employment are transmitted to each unit in a timely manner.

Management Response

We disagree with this finding. REES and CPD coordinate efforts and share information regularly. This coordination begins at the onset of the contract when CPD and REES meet with contractors to finalize hiring plans and continues throughout the life of the contract as performance is measured. REES also works with CPD on the details of each 5 year capital plan to assist in developing training programs that fit the anticipated work that is outlined in NYCHA's plan.

2a. Limited Verification of documentation submitted by contractors

Recommendation

NYCHA should ensure that monitors are familiar with their responsibilities for reviewing and verifying hiring summaries.

Management Response

We disagree with this finding. Contract monitors are responsible for recording Section 3 and NYCHA resident hiring information obtained from the hiring summaries to ensure that contractors meet their hiring goals under Section 3 and REP. These responsibilities are well understood by contract monitors and part of their routine responsibilities. To further their familiarity, REES conducted a 2-day training session for contract monitors and other relevant staff in March 2013, during the audit review period, to review existing procedures, as well as provide an overview of new enhanced procedures for contract monitors due diligence review.

2b. Inadequate controls to determine Section 3 compliance.

Recommendation

NYCHA should require contractors to submit a list of all permanent staff at the start of a contract.

Management Response

We disagree with this finding. As discussed, NYCHA has proactively implemented a rigorous REP program in order to ensure that the intent of Section 3 regulations are met. As the comptroller has noted, monitoring of a firm's entire workforce and getting visibility into who gets hired specifically to work on a NYCHA project is very difficult, making it easy for a contractor to under report. In addition, issues such as union hall referrals for union contractors, further complicate the matter. NYCHA's REP program is designed to provide compliance with the regulations, without reliance on ambiguous data. REP performance is measured against clear data that is easily verified with certified payrolls. In addition, it provides opportunity for resident hires on ALL NYCHA projects, not just those that a contractor indicates the need to hire additional employees. Given that NYCHA's REP program is such a successful means of hiring residents, there is no need to get data on a contractor's permanent staffing. REP does not distinguish between new and existing hires as long as they represent NYCHA residents. Anecdotal information suggests that REP does a better job at promoting longer-term positions for our residents than Section 3 provisions and therefore to exclude them from the initial count would understate the benefits of the program to NYCHA residents.

REP guidelines call for NYCHA residents to account for 15% of total labor costs for qualified contracts. As noted by the Comptroller's Office, these goals were either met or exceeded in 21 out of the 29 contracts reviewed. In the instances where the goals allegedly fell short, most were related to contracts that were only partially complete. The contractor has until the end of the contract period to reach the targeted 15%, therefore measuring performance before the contract is complete is not accurate. The calculations for several others were also suspect and contained errors such as the incorrect contract value.

2c. Inadequate follow-up of resident referrals to contractors.

Recommendation

NYCHA should require that REES contract monitors to document their follow-up efforts with contractors after they refer residents for employment and that the monitors include all supporting evidence of their monitoring efforts in the contract folders.

Management Response

We partially agree with this finding over the time period in which the audit was conducted. As noted in the audit report, during the audit period, REES was developing a database in collaboration with NYCHA's Information Technology department to store progress notes and other information relative to contracts. SSTS, REES' existing database, a Client Management System, does include progress notes that document resident referrals. This database was reviewed extensively by the auditors, but the proposed new system would allow REES to electronically store additional types of contractor-related information as part of a longer-term technology solution for the department.

The auditors did not have sufficient information to determine that follow up by the contract monitors was inadequate. The auditors did, however, have evidence of the resident job placements with contractors occurred through Employment Verification Forms, which are a standard part of the contract file.

2d. No evidence that corrective action was taken in instances of non-compliance.

Recommendation

NYCHA should take disciplinary action against contractors not in compliance with hiring guidelines after appropriate warnings have been given.

Management Response

We disagree with this finding. NYCHA is already using the tools available to us to address a contractor's performance. NYCHA is mindful of our commitment to the purpose of Section 3, which is to increase the training and employment of low income persons to the "greatest extent feasible." HUD's form 5370 (General Conditions for HUD-funded contracts) implements Section 3 and HUD's regulations and provides that "non-compliance with HUD's regulations in 24 CFR Part 135 *may result* in sanctions, termination of contract for default and debarment or suspension from future HUD assisted contracts." Those regulations specify that contractors "may" demonstrate compliance to the greatest extent "feasible" by "committing" to numerical employment "goals". While it is measured and tracked month by month on each contract, final REP performance and contract compliance should be measured at the end of a contract, contractor default is typically not a viable option. At the conclusion of every contract, overall contractor evaluations are performed including a review of a contractor's performance relative to contract compliance, including Section 3/REP. Such language necessarily requires NYCHA

to exercise discretion in deciding how best to balance the need to discipline contractors failing to meet these goals with its other obligations as steward of declining federal assistance such as economy and efficiency. It is these contractor evaluations that are used to assess contractor "responsiveness" and "responsibility" before awarding future awards. Continued poor performance results are non-responsibility determinations, VENDEX warnings/cautions and ultimately debarment.

2e. Inadequate policies and procedures.

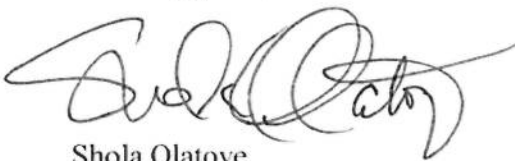
Recommendation

NYCHA should update and revise its written procedures to reflect current operations.

Management Response

We disagree with this finding. The current procedures are still applicable. The only exception is that the CPD manual still refers to Department of Resident Employment Services (RES) when discussing REP. RES has now become the Office of Resident Economic Empowerment and Sustainability (REES). During the audit review period, REES created enhanced procedures for contract monitoring due diligence review for the department.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Shola Olatoye', with a stylized flourish extending from the end.

Shola Olatoye
Chair & Chief Executive Officer



**U.S. Department of Housing and Urban
Development**

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August 4, 2014

Marjorie Landa, Esq.
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SUBJECT: Section 3 hiring and contracting goals

Dear Ms. Landa:

This is in response to your July 30, 2014 email to Douglas Feeley, of my staff, regarding your office's recently released audit of the New York City Housing Authority's (NYCHA) Section 3 Program (MG13-061A) (herein referred to as Audit Report). You requested guidance on the correct interpretation of the thresholds governing NYCHA's obligations to comply with the hiring and contracting goals of Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1702u (Section 3). Below we provide technical assistance regarding the hiring and contracting goals of Section 3.

The purpose of Section 3 is to ensure that employment, training, and contracting opportunities generated by certain HUD financial assistance are, to the greatest extent feasible, directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and the businesses that provide economic opportunities to such persons.


The regulations governing Section 3, found at 24 CFR § 135.3(a) (3) *Thresholds* - (i) state: "*No thresholds for section 3 covered public and Indian housing assistance*. The requirements of this part apply to section 3 covered assistance provided to recipients, not withstanding the amount of assistance provided to the recipient. 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*". [Emphasis added]

The above-referenced Audit Report contains an error regarding the applicability of Section 3 to NYCHA's capital projects. The Audit Report at page 1 incorrectly states: "Contractors who are awarded capital contracts valued at \$100,000, or more are required...to ensure that 30 percent of new hires are NYCHA residents or (other) low-income New Yorkers". As identified above, Section 3 does contain minimum numerical goals for hiring and contracting. However, there clearly are no thresholds limiting the applicability of the hiring and contracting goals to contracts of a particular dollar amount by public housing authorities.

It is our hope that your office will issue a correction so that NYCHA's potential contractors and subcontractors will be fully informed of a preference to which they are entitled under Section 3.

If you have any further questions regarding this matter, please do not hesitate to contact me or Douglas Feeley of my staff. Mr. Feeley may be reached at 212-542-7561 or douglas.feeley@HUD.gov.

Sincerely,


✓ Jay Golden
Region II Director
Office of Fair Housing
and Equal Opportunity