



# Buffalo Municipal Housing Authority Buffalo, NY

## Legal Fees and Police Services Hotline Complaint



**To:** Lisa Pugliese, Director  
Office of Public Housing, Buffalo Field Office, 2PH

*Karen A Campbell-Lawrence*

**From:** Karen A. Campbell-Lawrence  
Acting Regional Inspector General for Audit, 2AGA

**Subject:** The Buffalo Municipal Housing Authority Did Not Always Adequately Support  
Legal Expenses and Police Service Cost Allocation

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our audit of the Buffalo Municipal Housing Authority's legal and police service expenses charged to its Federal programs.

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

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at (212) 264-4174.



**Audit Report Number: 2015-NY-100X**

**Date: February 24, 2015**

**The Buffalo Municipal Housing Authority Did Not Always Adequately Support Legal Expenses and Police Service Cost Allocation**

## Highlights

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### What We Audited and Why

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We audited the Buffalo Municipal Housing Authority's legal and police service expenses in response to a hotline complaint. The complainant alleged that Authority officials paid outside legal counsel for work that should have been done by its own legal staff and paid for police services below the baseline level of services that should have been provided under a cooperation agreement with the City of Buffalo.

### What We Found

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The allegation in the hotline complaint pertaining to outside legal expenses charged by the Authority to its Federal programs had merit. Authority officials made payments for outside legal services without documenting that these services could not be performed by the Authority's internal general counsel and without ensuring full and open competition. While the complaint that Authority officials paid for police services already provided under a cooperation agreement is without merit, Authority officials did not charge police service costs to the Authority's asset management projects in an equitable manner in relation to the services provided.

### What We Recommend

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We recommend that the Director of the U.S. Department of Housing and Urban Development's Buffalo Office of Public Housing instruct Authority officials to (1) provide documentation to support the need for \$211,216 paid for assistance from outside legal and that the services were obtained through full and open competition in accordance with Federal procurement regulations; (2) establish procedures to ensure that they do not procure outside legal services that should be provided by Authority officials; (3) provide documentation showing that legal services for which \$79,244 was paid were obtained through full and open competition in accordance with Federal regulations; (4) strengthen procedures to ensure that legal services provided by outside firms are obtained in accordance with Federal procurement requirements; and (5) establish procedures to ensure that a reasonable basis is used for allocating police contract costs to Authority projects.

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# Background and Objective

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The Buffalo Municipal Housing Authority was established on April 3, 1934, based on a resolution of the Common Council of the City of Buffalo. The Authority's creation was later confirmed by an act of the New York State Legislature. Since its establishment, the Authority has been recognized as a public corporation with its own independent status. The Authority is currently governed by a board of seven members: five appointed by the mayor and two elected at large from the tenant population. Administration of day-to-day operations is the responsibility of the Authority's executive director. The Authority has 29 housing developments with 4,332 low-rent units. It received more than \$20.4 million and more than \$21.1 million in U.S. Department of Housing and Urban Development (HUD) Public Housing Operating Subsidy program funds in fiscal years 2013 and 2014, respectively.

In March 2014, the Office of Inspector General (OIG) received a complaint alleging that Authority officials paid outside legal counsel for work that should have been done by its own legal staff. The complainant alleged that outside counsel had cost the Authority \$1.2 million. The complainant further alleged that the Authority had a contract with the Buffalo Police Department to provide above baseline protection to housing residents, but only vehicle and traffic citations were provided, thus offering little protection to the residents of the Authority. The complainant alleged that this contract had cost the Authority more than \$1.9 million since 2010.

Based on the concerns identified in the complaint, we focused our audit on the eligibility and reasonableness of both internal and outside legal and police service expenses charged by the Authority to its federally funded programs. We audited payments made from federal sources to seven outside attorneys or law firms between October 2011 and July 2014. Authority officials paid more than \$1.4 million in funds from all sources to these attorneys or law firms during this time, including more than \$890,000 to the firm responsible for legal services pertaining to the abatement, demolition, and redevelopment of an Authority-owned, non-federal property. About \$28,000 was paid to this firm with HUD Operating Subsidy program funds; the remaining amount was paid with Central Office Cost Center and other non-federal funds. We also audited the two payments made to the City of Buffalo under the contract for police services, which totaled \$1.3 million and was paid with HUD Operating Subsidy program funds.

The objective of the audit was to determine whether the issues identified in a hotline complaint were valid; specifically, whether the legal and police service expenses charged by the Authority to its Federal programs were allowable and reasonable.

# Results of Audit

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## **Finding: Authority Officials Did Not Adequately Support Legal Expenses and Police Service Cost Allocation**

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The allegation in the hotline complaint pertaining to outside legal expenses had merit; however, the allegation pertaining to police services did not. Authority officials paid for outside legal services that should have been provided by the Authority's internal general counsel and without ensuring full and open competition. While the police services provided were above the baseline level of services required by the Authority's cooperation agreement and thus allowable, the cost of these services was not allocated to the Authority's asset management projects based on the actual services provided at each project. We attribute these deficiencies to Authority officials' not knowing which legal services should be performed by the Authority's counsel, unfamiliarity with Federal procurement requirements, and not maintaining documentation to ensure equitable cost allocation. As a result, \$290,460 was paid for outside legal costs for services that were not procured in accordance with Federal procurement regulations, of which \$211,216 related to general Authority legal services that were not adequately justified. Also, because Authority officials did not allocate police service costs to the Authority's asset management projects based on the actual services provided at each project, these costs were not equitably allocated.

### **Allegations Made in the Hotline Complaint**

In March 2014, OIG received a complaint alleging that Authority officials paid outside legal counsel fees for work that should have been done by its own legal staff, which consists of a general counsel, assistant counsel, and paralegal. The complainant alleged that the in-house legal staff cost the Authority about \$250,000 per year, while outside counsel cost the Authority \$1.2 million. The complainant further alleged that the Authority had a contract with the Buffalo Police Department to provide above baseline protection to housing residents at a cost of \$650,000 per year; however, only vehicle and traffic citations were provided, thus offering little protection to the residents. The complainant alleged that this contract had cost the Authority more than \$1.9 million since 2010.

### **Unsupported Legal Costs**

Authority officials made payments for outside legal services without adequate support that the services could not have been provided by the Authority's internal general counsel. Authority officials paid more than \$1.4 million in funds from all sources to seven outside attorneys or law firms between October 2011 and July 2014. Three of these firms provided general litigation services similar to legal services generally provided by the Authority's general counsel staff. The four other firms reviewed provided specific legal services that were not the responsibility of the Authority's internal general counsel.

According to the general counsel's duty statement, the general counsel is responsible for the prosecution and defense of all legal matters concerning the Authority, including but not limited to all Federal and State lawsuits, landlord or tenant matters, personal injury claims, claims of

misconduct by or against Authority employees, grievance arbitration hearings, construction claims, and regulatory matters. However, the engagement letters for the three questioned firms indicated that outside attorneys were retained to provide general litigation services pertaining to the Authority, including items in the general counsel duty statement. Authority officials said that these three outside firms were retained during a general counsel staff transition when additional general legal services were necessary. However, while the current general counsel began working for the Authority in March 2012 and an assistant general counsel was hired in January 2013, Authority officials paid \$211,216 to these firms from March 2012 through July 2014. Therefore, Authority officials did not adequately support the need to retain the contracted legal services. Regulations at 2 CFR (Code of Federal Regulations) Part 225, appendix A, C.1.a, require that to be paid with Federal funds, costs be necessary and reasonable for proper and efficient performance and administration of Federal awards. Accordingly, the \$211,216 was regarded as an unsupported cost.

### **Contracts for Legal Services Executed Without Documentation To Ensure Full and Open Competition**

Authority officials entered into five of seven contracts for outside legal services without maintaining documentation to ensure that they provided full and open competition, including the three firms providing general litigation services to the Authority. While Authority officials have procurement procedures to ensure compliance with Federal regulations, the controls in place did not ensure compliance with them. Authority officials did not maintain records sufficient to detail the significant history of the procurement, including the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and basis for the contract price and that it was competitive. Regulations at 24 CFR 85.36 and section II of the Authority's procurement policy require that all procurement transactions be conducted in a manner that ensures full and open competition. Authority officials stated that the condition described above occurred due to an oversight by the prior general counsel. Without adequately documenting the process for the procurements, Authority officials could not assure HUD of the reasonableness of the contract costs due to the lack of competition in the award of these contracts. A total of \$290,460<sup>1</sup> in operating subsidies was paid for these five contracts from HUD funds.

### **Costs of Police Services Not Allocated to Asset Management Projects in an Equitable Manner**

Authority officials did not allocate police service costs to the Authority's asset management projects based on the actual services provided at each project. In December 2010, Authority officials entered into a contract with the Buffalo Police Department to provide police services above the baseline services provided under the Authority's cooperation agreement with the City. The contract established a Buffalo Police Housing Unit at the Authority with 18 police officers, 2 lieutenants, and a police captain. The purpose of the unit was to provide supplemental services to police illegal drug, violent, and criminal activity for the safety and protection of the residents in the Authority's housing developments. The cost of the services was \$650,000 per year.

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<sup>1</sup> This amount includes the \$211,216 that we determined to be an unsupported cost.

Authority officials made two payments to the City from HUD funds totaling \$1.3 million under the contract for police services. The Authority had documentation to show that the police services provided were above the baseline level of service that was required to be furnished under the cooperation agreement. However, Authority officials did not allocate the costs to the individual asset management projects based on the level of protective services provided and did not obtain monthly police activity reports in a timely manner.

Documentation for each of the two payments made to the City disclosed that Authority officials allocated the first payment costs to 13 of the Authority's 19 asset management projects at a rate of \$50,000 per project and allocated the second payment costs based on the number of project units. Regulations at 2 CFR Part 225, appendix A, C.1.j and C.3.a, require that to be paid with Federal funds, costs be adequately documented and allocable so that the services provided are chargeable in accordance with the relative benefit received. However, Authority officials did not document the rationale for the allocation methods used, and neither method used was based on the actual services provided at each project. For example, for the contract period February 1, 2011, through January 31, 2012, there were no police services provided at one project, yet the project was charged \$50,000 for these services. For the contract period February 1, 2012, through January 31, 2013, police activity was reported at another project, which was not charged.

In addition, Authority officials did not have procedures to ensure that monthly police activity reports submitted by the Buffalo Police Housing Unit were timely and in accordance with the contract. For example, from September through December 2012, no reports were prepared, and the August 2012 report was not prepared until February 2013. Without timely submission of the reports, Authority officials could not effectively determine the type and amount of police services provided and whether they were above the baseline level of service.

### **Conclusion**

Authority officials paid \$290,460 in outside legal costs for contracts without documentation showing that they were procured in accordance with Federal procurement requirements or supporting that they were needed. Of that amount, \$79,244 related to necessary legal services, and \$211,216 related to general Authority legal services. Also, Authority officials did not allocate police service costs to the Authority's asset management projects based on the actual services provided at each project and did not have procedures to ensure that monthly police activity reports submitted by the Buffalo Police Housing Unit were timely and in accordance with the contract. We attribute these deficiencies to unfamiliarity with Federal procurement requirements and weaknesses in maintaining documentation to ensure equitable cost allocation. As a result, Authority officials lacked assurance that \$290,460 paid for legal services was adequately supported, certain projects underpaid for police services performed, and others overpaid for these services.

### **Recommendations**

We recommend that the Director of the HUD's Buffalo Office of Public Housing instruct Authority officials to

- 1A. Provide documentation to support the need for \$211,216 paid for assistance from outside legal and that the services were obtained through full and open

competition. If such documentation cannot be provided, the costs should be paid from non-Federal funds.

- 1B. Establish procedures to ensure that they do not procure outside legal services that should be provided by Authority officials.
- 1C. Provide documentation showing that legal services for which \$79,244 was paid were obtained through full and open competition. If such documentation cannot be provided, the Authority should repay any unnecessary and unreasonable costs from non-Federal funds.
- 1D. Strengthen procedures to ensure that legal services provided by outside firms are obtained in accordance with Federal procurement requirements.
- 1E. Establish procedures to ensure that a reasonable basis is used for allocating police contract costs to Authority projects as required in 2 CFR Part 225, appendix A, C.3.a.

# Scope and Methodology

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We performed the audit fieldwork from July through December 2014 at the Authority's administrative offices at 300 Perry Street in Buffalo, NY. The audit scope covered the period July 1, 2012, through June 30, 2014, and was extended as necessary. We relied in part on computer-processed data primarily for obtaining background information on the Authority's expenditure of Federal funds. We performed a minimal level of testing and found the data to be adequate for our purposes. To accomplish our objective, we

- Reviewed relevant HUD regulations, guidebooks, and files.
- Interviewed HUD officials to obtain an understanding of and identify HUD's concerns with the Authority's operations.
- Reviewed the Authority's policies, procedures, and practices.
- Reviewed the Authority's board of commissioners' meeting minutes and resolutions for our audit period.
- Reviewed the Authority's fiscal years 2012-2015 operating budgets and 2012-2103 audited financial statements.
- Reviewed engagement letters and contracts between the Authority and outside entities pertaining to our review of legal and police service costs.
- Reviewed payroll records of Authority personnel pertaining to our review of legal and police service costs.
- Interviewed key personnel responsible for the accounting and oversight of the legal and police service contract costs.

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

# Internal Controls

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

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

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

## **Relevant Internal Controls**

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

- Program operations – Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Reliability of financial data – Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.
- Laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.
- Safeguarding of resources – Policies and procedures that management has implemented to reasonably ensure that resources are safeguarded against waste, loss, and misuse.

We assessed the relevant controls identified above.

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

## **Significant Deficiencies**

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

- Authority officials did not have adequate controls over the effectiveness and efficiency of program operations when they lacked adequate support for payments for outside legal services (see finding).
- Authority officials did not have adequate controls over laws and regulations when they executed contracts without documenting that they were procured in accordance with Federal regulations and when they did not allocate police service costs to the Authority's asset management projects based on the actual services provided at each project (see finding).

# Appendixes

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## Appendix A

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**Schedule of Questioned Costs**

<b>Recommendation number</b>	<b>Unsupported 1/</b>
1A	\$211,216
1C	\$79,244
Totals	\$290,460


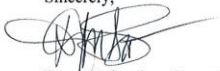

- 1/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve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

## Appendix B

### Auditee Comments and OIG's Evaluation

#### Ref to OIG Evaluation

#### Auditee Comments

	<b>Buffalo Municipal Housing Authority</b>
February 5, 2015	
<u>Executive Staff</u> Dawn E. Sanders-Garrett Executive Director Modesto Candelario Assistant Executive Director David Rodriguez General Counsel	U.S. Department of Housing and Urban Development Office of Inspector General 26 Federal Plaza, Room 3430 New York, NY 10278  Attention: Karen Campbell-Lawrence, Acting Regional Inspector General for Audit
<b>Buffalo Municipal Housing Authority response to HUD OIG Draft</b>	
<b>Buffalo Municipal Housing Authority, Buffalo, NY Legal Fees and Police Services Hotline Complaint</b>	
Dear Ms. Campbell-Lawrence:	
Enclosed, please find the Buffalo Municipal Housing Authority's response to the HUD OIG Draft Review of the Buffalo Municipal Housing Authority's Legal Fees and Police Services Hotline Complaint. Should you require any additional information or documentation, please contact me at (716) 855-6711 X225. Thank you for your time and consideration.	
Sincerely,  Dawn E. Sanders-Garrett Executive Director	
Enclosure	
cc: Lisa Pugliese, Director, Office of Public Housing Joseph Vizer, Assistant Regional Inspector General for Audit Paul Zausen, Senior Auditor	
300 Perry Street • Buffalo, New York 14204-2299 (716) 855-6711 • (FAX) (716) 855-6761 • (TDD) (716) 855-6725 "BMHA is an Equal Opportunity/Affirmative Action Employer"	
	

# Appendix B

## Auditee Comments and OIG's Evaluation

### Ref to OIG Evaluation

### Comment 1

### Comment 2

### Comment 3

### Comment 4

<b>Buffalo Municipal Housing Authority response to HUD OIG Draft Buffalo Municipal Housing Authority Legal Fees and Police Services Hotline Complaint</b>	
	<p><b>Recommendation 1A:</b> Provide documentation to support the need for \$211,216 paid for assistance from outside legal and that the services were obtained through full and open competition. If such documentation cannot be provided, the costs should be paid from non-Federal funds.</p> <p><b>BMHA Response:</b> The Authority disagrees with the HUD OIG's assertion that the \$211,216 for outside legal services was unreasonable. It is the opinion of this Authority that ceasing all work with outside legal counsel as of the date of hire of the BMHA's new General Counsel would have been detrimental to the operations of the Authority. Further, it is troubling to this Authority that the HUD OIG did not account for a transition period when making the determination that outside legal services were not necessary as of the date of hire of the General Counsel. It is unreasonable to expect Authority officials to immediately discontinue the use of outside counsel especially when outside counsel was already providing services on a variety of legal issues prior to the hire of the new General Counsel. The previously contracted outside counsel already possessed the knowledge and experience necessary to complete the cases they have already been assigned. Additionally, the Authority contracted with the previous Assistant Legal Counsel following their retirement due to their intimate knowledge of the BMHA and the myriad legal issues the Authority was dealing with at the time. It must also be taken into consideration that legal matters involving Low Income Public Housing and Housing Authorities in general are extremely complex and it is not realistic to expect that any new General Counsel with limited or no exposure to Public Housing will immediately be able to adequately represent the Housing Authority without assistance from outside legal counsel.</p> <p><b>Recommendation 1B:</b> Establish procedures to ensure that they do not procure outside legal services that should be provided by Authority officials.</p> <p><b>BMHA Response:</b> The Buffalo Municipal Housing Authority has already taken steps to reduce the need for outside legal counsel. With the hiring of General Counsel in March of 2012 and Assistant Legal Counsel in January of 2013, most legal work previously contracted to outside counsel has been kept in-house. This includes the approximately 350 monthly eviction cases, (over 4,200 cases annually) that must be brought monthly to city housing court as other various general employment and litigation matters that affect our Low Income Housing and Housing Choice Voucher Programs.</p> <p><b>Recommendation 1C:</b> Provide documentation showing that legal services for which \$79,244 was paid were obtained through full and open competition. If such documentation cannot be provided, the Authority should repay any unnecessary and unreasonable costs from non-Federal funds.</p> <p><b>BMHA Response:</b> The BMHA has every confidence that any legal services procured by the former Assistant Legal Counsel, a long tenured Authority employee with ample procurement experience, were done so in accordance with all mandated policies and procedures. The BMHA does concede however, that the procurement documents from the former Assistant Legal Counsel could not be provided to the HUD OIG for their review. The Authority made several attempts to contact the former Assistant Legal Counsel in an effort to locate the files, but such attempts were unsuccessful. The BMHA asserts that requiring repayment of the amount in question would be purely punitive in nature and create an unnecessary financial burden on</p>

# Appendix B

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## Auditee Comments and OIG's Evaluation

### Ref to OIG Evaluation

### Auditee Comments

#### Comment 5

the BMHA's central office cost center as the legal services provided were indeed eligible, necessary and reasonable.

**Recommendation 1D:**

Strengthen procedures to ensure that legal services provided by outside firms are obtained in accordance with Federal procurement requirements.

**BMHA Response:**

Current General and Assistant Legal Counsels are well versed in not only Federal procurement requirements, but General Municipal Law and BMHA procurement policy as well. The Authority has every confidence in its current staff that all previously established procurement procedures will continue to be followed.

**Recommendation 1E:**

Establish procedures to ensure that a reasonable basis is used for allocating police contract costs to Authority projects as required in 2 CFR Part 225, appendix A, C.3.a.

#### Comment 6

**BMHA Response:**

The Authority will allocate police contract costs in accordance with its Cost Recovery Distribution Plan which was submitted as part of its Stop-Loss submission to the US Department of Housing and Urban Development in 2007.

# Appendix B

## Auditee Comments and OIG's Evaluation

### Ref to OIG Evaluation

### Auditee Comments

#### Additional Information and Statement from the Office of General Counsel

##### BMHA and its Office of General Counsel

The Buffalo Municipal Housing Authority (BMHA) is in the business of developing, owning and managing housing that serves poor and working class Americans. Essentially, the BMHA is a real estate development company that is responsible for providing safe, decent and affordable housing to its residents. As part of owning real estate assets, there are a substantial number of requirements and needs that the BMHA has to meet in order to conduct the business of being a responsible landlord.

For example, on an average month, the BMHA moves approximately an average of three hundred and fifty (350) cases for eviction for non-payment of rent into Buffalo City Housing Court. These cases are processed in one court room in Buffalo City Court and the hearing dates span anywhere from three (3) to five (5) days each month, without missing a month. This adds up to an average of approximately four thousand, two hundred (4,200) cases per year.

The BMHA workforce numbers close to 250 staff/personnel. This size workforce encompasses four labor union contracts and some non-represented employees. The workforce generates grievances and files claims of all sorts during any given year. Additionally, the labor agreements require periodic negotiations that demand substantial time and resources to develop.

General litigation is a daily matter that is processed through the office of General Counsel. The litigation can span from a simple slip and fall personal injury to a multi-million dollar construction/development litigation. Hundreds of matters are reviewed and processed by the Office of General Counsel in collaboration with the BMHA Insurance Carrier assigned counsel or hired outside legal counsel every year. As part of owning brick and mortar assets, the BMHA has insurance requirements for liability and property claims. The various AMPS and other BMHA owned and operated developments are all insured under different policies that require yearly reviews and assessments.

The development and construction side of the BMHA is very complex and at times requires the Office of General Counsel to become engaged. This can be in the form of reviewing construction contracts for approval to dealing with contract and construction litigation services. Diverse Tax Credit transactions are part of the BMHA development side. These are just a few examples of what the Office of General Counsel has to participate in at different levels on any given day.

##### The Vacancy

The BMHA provided information to the OIG supporting the necessity and reasonableness of the legal fees paid to various law firms and attorneys who provided necessary legal services to operate its AMPS during the relevant review period. During the information gathering phases of the OIG review, there were several meetings and numerous documents were provided identifying the legal services to the BMHA during the period of Fiscal Years 2011-2014. The information provided, in part, was directly related to the invoices submitted and paid to the legal service providers reviewed by the OIG.

The legal services provided to the BMHA by law firms were related to Landlord/Tenant matters, complex contract litigation, contract revisions, Real Estate Development, labor and employment matters and transitional legal consultation by an attorney during the period of time the BMHA was without a General Counsel, Assistant Legal Counsel and a paralegal.

The prior General Counsel for the BMHA resigned from his position on December 31, 2010. This vacancy was open until March 2012, a period of fifteen (15) months, when the incumbent General Counsel was hired. The BMHA began a search for a replacement General Counsel in the spring of 2011. The only BMHA legal staff between January 1, 2011 and March 2012 was an Assistant Legal Counsel. Therefore, the BMHA was without a General Counsel for a period of fifteen months. There was not a paralegal or General Counsel during that fifteen month period.

The remaining Assistant Legal Counsel retired from the BMHA in October 1, 2011. In light of the absence of staff in the Office of General Counsel during the fifteen month period, the Assistant Legal Counsel who retired in October was kept on as a consultant to assist in the transition of the expected new hire General Counsel and to oversee the legal services requirements of the BMHA in the interim. A retainer was executed with the legal consultant to BMHA and he remained in service to the BMHA.

Comment 7

Comment 8

Comment 9

# Appendix B

## Auditee Comments and OIG's Evaluation

### Ref to OIG Evaluation

### Auditee Comments

#### Comment 9

Soon after the prior General Counsel resigned from the BMHA, it was evident that outside legal counsel services were necessary to allow the AMPS to conduct their business. Additionally, litigation that had been brought upon the BMHA by careless contractors needed to be addressed and at this point was ongoing. Furthermore, the Assistant Legal Counsel was also overseeing the various insurance renewals that require specialized attention every spring of every year. Despite these necessary services, there were more requirements placed on the lone Assistant Legal Counsel.

He was required to handle and process all new personal injury and property loss claims by submitting them to the appropriate insurance carriers, then monitor and supervise those cases in consultation with assigned carrier legal counsel. Furthermore, he was required to consult with management staff on landlord/tenant matters on a daily basis. Labor and operation matters were also placing additional demands on the lone Assistant Legal Counsel.

During his lone fifteen months serving the BMHA, The Assistant legal counsel also served as the transitional legal consultant to the BMHA. He made assessments and decisions that were needed in order to allow the AMPS to continue conducting their business. He maintained outside legal services for the Landlord/tenant matters. Clearly processing hundreds of eviction petitions per month required substantial attention and time. The payments made to the law firm and attorney providing those services were reasonable and necessary. A review of the charged hourly rates for the services indicates that the fee charged were at or below average hourly fees for attorneys providing the same services in the Buffalo Niagara Regional Market. Additionally, the property management at the AMPS was satisfied with the services being provided by the law firm and the attorney.

#### Comment 9

Another legal matter reviewed by the OIG was related to litigation services provided by an outside firm related to construction contract litigation at one of our Federal Buildings. The litigation had been on-going for a couple of years and the responsible firm properly handled the matter to achieve a reasonable settlement in subsequent year. During his lone fifteen months, the BMHA Assistant Legal Counsel continued to supervise the outside law firm and coordinated litigation requirements such as witnesses, document handling and relevant information. The BMHA has provided a Resolution by the BMHA Board of Commissioners approving the retention of the litigation firm and describing the RFP process, submissions and recommendation. The procurement of this firm was conducted by prior BMHA General Counsel. It is submitted that all of the fees paid to this firm were reasonable and necessary and the procurement process conducted to retain them was in full compliance with HUD procurement, NY General Municipal Law and BMHA Procurement Policy.

#### Comment 10

There were additional litigation matters reviewed by the OIG and those were either pending or new matters that the Assistant Legal Counsel determined required outside legal assistance. The services provided were completed and resolved by the outside legal firms and payment was, made by the BMHA. It is submitted that all of the fees paid to these firms were reasonable and necessary.

#### Comment 11

The services of the Legal Consultant to the BMHA from October 1, 2011 until the time he left were absolutely necessary and reasonable in light of the on-going, complex and daily operations of the BMHA. It was his stewardship of all the legal matters and day to day consultation that allowed the Housing Authority to conduct business with minor disruption. It is submitted that all of the fees paid to this consultant were reasonable and necessary. The files provided to the OIG that were procured legal services during the incumbent's tenure contain complete process of procurement as required by HUD Procurement Guidelines, General Municipal Law and the BMHA Procurement Policy.

#### Comment 12

#### The Transition

The incumbent General Counsel was hired by the BMHA and began service in March 2012. The only on site legal staff at the time he began his service was the Legal Consultant that stayed on board to provide transitional consultation and guidance to the new Incumbent. In light of the comprehensive regulation by HUD through the Code of Federal Regulations, New York State Public Housing Law, New York State General Municipal Law, Civil Service Law, New York Tax and Finance Law, Federal and State Tax Credit legislation and other regulatory and compliance regulations, the new General Counsel had to transition into the office and determine how these laws and regulations affected the daily operations of the Housing Authority.

With the invaluable assistance of the Legal Consultant, the Incumbent General Counsel was able to navigate the regulatory and insurance industry requirements of the Housing Authority. Reviewing and assessing the BMHA wide property insurance needs was immediately undertaken in preparation for the renewal process.

## Appendix B

### Auditee Comments and OIG's Evaluation

#### Ref to OIG Evaluation

#### Auditee Comments

#### Comment 13

As General Counsel continued to assess the BMHA wide operations and how his office provided its services, day to day requirements were still placing a substantial demand on the time of the office. Soon after the consultant departed, the BMHA hired a Paralegal Assistant to join the Office of General Counsel. However, the Paralegal Assistant only served for one year and a replacement has not been found. Office of General Counsel recruited an Assistant Legal Counsel to serve with the office and he began his service in January of 2013. During his service and up to the present, the Office of General Counsel was engaged in Authority-wide projects to work with the Executive Team and improve the internal processes in compliance and operations.

Large projects engaged in by the Office of General Counsel during the period of March 2012 to July 2014 include negotiating a Union Contract with the Local Engineer's Union that resulted in gaining employee contributions toward health care costs, participating in moving the BMHA to its own health care policies that achieved savings in the first year to close to three hundred thousand dollars (\$300,000.00), Executive Team sponsor for KRONOS time keeping system, collaborating with HR and Management to develop enhanced disciplinary procedures, researching best practices in diverse management areas, team leader in electronic and diverse rental payment and collections systems utilizing Yardi System.

Additionally, as part of the transitioning period, the Office of General Counsel discontinued using outside legal counsel for labor and employment matters. In October of 2012, as part of cost reduction implementation, a plan was devised to discontinue using outside legal counsel for evictions services. In July 2014, the BMHA formally took over the eviction process and is currently reviewing the process to ensure fairness and good business practices in our rental collection and resident relations as it pertains to rent. It is expected that cost savings and improvements in this process will benefit the BMHA and its residents.

#### Conclusion

The BMHA provided information to the OIG supporting the necessity and reasonableness of the legal fees paid to various law firms and attorneys who provided necessary legal services to operate its AMPS during the relevant review period. During the information gathering phases of the OIG review, there were several meetings and numerous documents were provided identifying the legal services to the BMHA during the period of Fiscal Years 2011-2014. The information provided, in part, was directly related to the invoices submitted and paid to the legal service providers reviewed by the OIG.

The legal services provided to the BMHA by law firms were related to Landlord/Tenant matters, complex contract litigation, contract revisions, Real Estate Development, labor and employment matters and transitional legal consultation by an attorney during the period of time the BMHA was without a General Counsel, Assistant Legal Counsel and a paralegal.

#### Comment 14

Clearly, a transition from an Office of General Counsel without any staff to a new General Counsel could not have been conducted quickly in order to be effective. The burdens of the business needs and day to day operations have been briefly described above. They are not all encompassing and only touch on the seven files reviewed by the OIG. The reasons for maintaining the services until completion and or discontinuance were prudent and reasonable.

#### Comment 15

With respect to the ongoing litigation at the relevant time period, it would have been irresponsible for the Office of General Counsel to inject itself into the litigation, try to get up to speed on the subject matter and best protect the interests of the BMHA. Additionally, the LBJ litigation matter was properly procured by prior General Counsel and all the fees paid were necessary and reasonable and subject to complete procurement process.

#### Comment 16

With regards to the outside legal services for landlord/tenant matters, the Office of general Counsel developed a plan with Executive Team to discontinue the outside legal services beginning fiscal year 2014-2015. That plan was executed and today the Authority is improving and reviewing the eviction process to make it more efficient and respectful of our residents. It would have been imprudent and also reckless for the Office of General Counsel to remove the outside legal services and inject itself, unprepared into a court hearing process that handles over four thousand (4,000) cases per year. Therefore, all of the outside legal services provided to the BMHA during the review period were absolutely necessary and reasonable to allow the AMPS to conduct their business. Despite the lack of full staffing, the BMHA was provided with quality legal services and paid reasonable fees to ensure continuity of business during the difficult vacancy period and through its transitional period.

## OIG Evaluation of Auditee Comments

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- Comment 1** Authority officials state that ceasing all work with outside legal counsel as of the date of hire of the Authority's new general counsel would have been detrimental to the operations of the Authority. However, the draft report does not suggest ceasing all work with outside legal counsel. We reviewed the contracts of seven outside attorneys or law firms providing services to the Authority between October 2011 and July 2014 and determined that three of these firms provided general litigation services similar to legal services generally provided by the Authority's general counsel staff. The payments to these three firms are questionable because Authority officials could not provide documentation to support that the services could not have been provided by the Authority's internal general counsel. We note in the draft audit report that payments to four other firms provided specific legal services that were not the responsibility of the Authority's internal general counsel. Payments to the other four firms were not questioned based on a lack of documentation to support that the services could not have been provided by the Authority's internal general counsel.
- Comment 2** Authority officials state that HUD OIG did not account for a transition period when making the determination that outside legal services were not necessary as of the date of hire of the new general counsel and that it is unreasonable to expect Authority officials to immediately discontinue the use of outside counsel, especially when outside counsel was already providing services on a variety of legal issues before the hire of the new general counsel. Authority officials also state that it must also be taken into consideration that legal matters involving low-income public housing and housing authorities are extremely complex and it is not realistic to expect any new general counsel to be able to adequately represent the housing authority without assistance from outside legal counsel. However, a transition period was considered, and the draft report does not suggest ceasing all work with outside legal counsel as of the date of hire of the new general counsel. Payments to outside firms for general litigation services continued through July 2014, more than 2 years after the general counsel began work at the Authority and a year and a half after the assistant general counsel was hired. Authority officials could not provide documentation to support that the services could not have been provided by the Authority's internal general counsel. In addition, Authority officials were not contractually obligated to these firms during this period, as they were under a retainer and could have been released at any time.
- Comment 3** Authority officials state that they have already taken steps to reduce the need for outside counsel. However, they need to establish formal, written procedures to ensure that they do not procure outside legal services that should be provided by Authority officials.

- Comment 4** Authority officials concede that procurement documents could not be provided. They assert that requiring repayment of the amount in question would be purely punitive in nature and create an unnecessary financial burden on the Authority's central office cost center. However, Authority officials may have violated Federal regulations and cannot support that the Authority's selection of these law firms was competitive and followed a reasonable method of procurement. If the documentation cannot be provided, these funds should be repaid from non-Federal funding sources.
- Comment 5** Authority officials state that the current general and assistant general counsels are well versed in not only Federal procurement requirements, but general municipal law and Authority procurement policy as well. However, Authority officials need to revise and strengthen the existing Authority procedures to ensure that legal services provided by outside firms are obtained in accordance with Federal procurement requirements and that proper documentation is maintained to support compliance with these requirements. This includes procedures to ensure the Authority maintains records sufficient to detail the significant history of the procurement, including the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and basis for the contract price and that it was competitive.
- Comment 6** Authority officials state that they will allocate police contract costs in accordance with the Authority's cost recovery distribution plan, which was submitted as part of its stop-loss submission to HUD in 2007. However, Authority officials need to establish formal, written procedures to ensure that a reasonable basis is used for allocating police contract costs to Authority projects as required in 2 CFR Part 225, appendix A, C.3.a. The cost recovery distribution plan was not provided during the audit; however, we will review it as part of the audit resolution process to determine whether it provides a reasonable basis for allocating police contract costs in accordance with Federal regulations.
- Comment 7** Authority officials state that they provided information to OIG supporting the necessity and reasonableness of the legal fees paid to various law firms and attorneys who provided necessary legal services to operate the Authority's asset management projects. However, while support for the payments to the law firms and attorneys was provided, payments to three firms are questionable because Authority officials could not provide documentation to support that the services could not have been provided by the Authority's internal general counsel. Payments to five firms, including the three already discussed, are questionable because Authority officials did not maintain records sufficient to detail the significant history of the procurement, including the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and basis for the contract price and that it was competitive.
- Comment 8** Authority officials state that legal services provided to the Authority by law firms were related to landlord-tenant matters, complex contract litigation, contract

revisions, and other matters during a period when the Authority was without a general counsel, assistant legal counsel, and paralegal. We determined that these services were similar to legal services generally provided by the Authority's general counsel staff and that payments for these services continued through July 2014, more than 2 years after the general counsel began work at the Authority and a year and a half after the assistant general counsel was hired.

- Comment 9** Authority officials discuss the assistant legal counsel position during a 15-month period from December 2010 to March 2012. Upon the assistant legal counsel's retirement in October 2011, Authority officials retained his services as an outside consultant, also in October 2011. While Authority officials state that the services were reasonable and necessary and at or below average fees for attorneys providing the same services, they did not maintain documentation to ensure that they provided full and open competition in the award of the contract. In addition, Authority officials made payments to the former assistant legal counsel, retained as an outside consultant, for general litigation services without adequate support that the services could not have been provided by the Authority's internal general counsel through December 2012.
- Comment 10** Authority officials state that they provided a resolution by the Authority's board of commissioners approving the retention of the litigation firm related to construction contract litigation at one of the Authority's Federal buildings. We reviewed the resolution; however, Authority officials did not maintain documentation to ensure that they provided full and open competition in the award of the contract.
- Comment 11** Authority officials state that all fees for pending or new matters that the assistant legal counsel determined required outside legal assistance were reasonable and necessary. However, documentation was not maintained to show that the costs were reasonable and necessary or that the services were procured with full and open competition.
- Comment 12** Authority officials state that payments made to the former assistant legal counsel, retained as an outside consultant, were reasonable and necessary. However, they did not maintain documentation to ensure that they obtained full and open competition in the award of the contract. In addition, Authority officials made payments to the former assistant legal counsel, retained as an outside consultant, for general litigation services without adequate support that the services could not have been provided by the Authority's internal general counsel through December 2012.
- Comment 13** Authority officials discuss a transition period when the incumbent general counsel was hired by the Authority and began service in March 2012. They discuss the hiring of additional staff and the legal work done by in-house counsel and that this work was no longer done by outside counsel. However, payments to outside firms for general litigation services continued through July 2014, more than 2 after the general counsel began work at the Authority and a year and a half after

the assistant general counsel was hired. Authority officials could not provide documentation to support that the services could not have been provided by the Authority's internal general counsel.

**Comment 14** Authority officials state that they provided information to OIG supporting the necessity and reasonableness of the legal fees paid to various law firms and attorneys who provided necessary legal services to operate the Authority's asset management projects. However, while support for the payments to the law firms and attorneys was provided, payments to three firms are questioned as being unsupported because Authority officials could not provide documentation to support that the services could not have been provided by the Authority's internal general counsel. Payments to five firms, including the three providing general litigation services, are questionable because Authority officials did not maintain documentation to ensure that they provided full and open competition.

**Comment 15** Authority officials state that to be effective, a transition from an Office of General Counsel without any staff to a new general counsel could not have been conducted quickly. Authority officials also state that it would have been irresponsible for the Office of General Counsel to inject itself into ongoing litigation and that the reasons for maintaining the services until completion or discontinuance were prudent and reasonable. However, the transition to a new general counsel was considered. Authority officials could not provide documentation to show, on an individual basis, why expenditures for outside legal counsel were necessary while also employing an internal general counsel and why it took so long for the transition of these services to the internal general counsel.

**Comment 16** Authority officials state that all of the outside legal services provided to the Authority were absolutely necessary and reasonable to allow the asset management projects to conduct their business. However, Authority officials could not provide documentation to support that the services of three firms could not have been provided by the Authority's internal general counsel and why it was necessary to use these firms through July 2014 when the incumbent general counsel was hired in March 2012 and the assistant general counsel was hired in January 2013. Also, Authority officials did not maintain documentation to ensure that they obtained the legal services through full and open competition.