



EMERGENCY ASSISTANCE REPAIR PROGRAM

REVIEW

May 16, 2013

OPI Case #12-020

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Executive Summary

At the request of the City of Rochester's Department of Neighborhood and Business Development (NBD) in August 2012, the Office of Public Integrity (OPI) conducted a review of the Emergency Assistance Repair Program (EARP).

At the time of this review, the City had agreements in place with two community organizations, Group 14621 and Northwest Community Services (NCS). NCS had an informal agreement with NEAD and SWPC to execute the EARP program. This agreement was not formalized or approved by the City.

On August 14, 2012, during a review of invoices submitted for payment, the Department of Neighborhood and Business Development staff members noted discrepancies. Amounts invoiced to the City did not match supporting documentation including contractor invoices and change orders explaining any discrepancies.

It was noted that the file for 176 Morton Street contained bid documentation totaling \$14,500 and a change order for \$226 but the contractor invoiced \$15,500 for the work performed. Upon review of the file for 68 Bowman Street, NBD noted bid documentation totaling \$11,480 and a contractor invoice for only \$10,726.

Additionally, information on documents provided to the City clearly showed the use of white-out. New numbers and calculations were written over the areas where the white-out was used.

OPI investigators decided to conduct a full program review of EARP and its policies and procedures.

OPI first met a representative of the South Wedge Planning Committee (SWPC). During this interview it was stated that a Joint Venture Partnership (JVP) existed between SWPC, NCS and North East Area Development (NEAD). SWPC was responsible for handling most of the administrative duties and supplying necessary documents to the City. As a result, SWPC routinely received documents to be reviewed and submitted for payment. As a part of the review, changes and corrections were frequently made using white-out. The City advised SWPC not to change any documentation submitted to them.

On or about September 06, 2012, OPI secured EARP records from the SWPC, NCS, NEAD and Group 14621 offices. cursory examination of these records revealed many inconsistencies. Each organization appeared to handle applications and files differently, without much order or adherence to policies or procedures.

During the preliminary review of the EARP files, investigators observed that the files lacked standardization. The bid packages failed to comply with the City's bid process. The community organizations utilized multiple funding sources which prohibited financial reconciliation by the City. Change orders lacked supporting documentation.

The initial review also revealed potential risk for health and safety as related to lead safe work practices. The current contracts have very specific requirements addressing lead issues. Additionally, the United States Department of Housing and Urban Development (HUD) regulations require NCS, SWPC, NEAD and Group 14621 to adhere to specific lead based paint compliance controls, abatement procedures and completion of clearance testing. On September 11, 2012, OPI issued NBD an Interim Guidance regarding Lead Safe Practices (Appendix A).

Further review revealed that NCS utilizes SWPC and NEAD agencies in the execution and administration of the program. In addition to the City's direct dealings with NCS, each of these agencies had been soliciting and accepting applications, processing applications, soliciting bids, and executing rehabilitation agreements on behalf of the EARP program. These organizations refer to themselves as having a Joint Venture Partnership (JVP). This JVP was an agreement created among the groups themselves, however, this agreement was not reviewed or approved by the City's Law Department.

On September 12, 2012, OPI issued NBD an additional Interim Guidance regarding contractual relationships (Appendix B).

Due to the vast number of files, it was determined that a statistical sampling selection be performed.

In the review of the files and documentation, OPI observed issues in the following areas:

- Inconsistent use of funds for emergency repairs
- Failure to completely/properly execute necessary paperwork
- Incomplete files
- Altered documentation
- Violations of HUD & City lead regulations
- Violation of HUD and City procurement regulations
- Improper use of lead abatement funds
- Inadequate review of work by JVP and the City
- Improper payment approval by the City

This review has revealed numerous deficiencies. As a result of the review, OPI concluded that material weaknesses exist in the reporting process of the EARP program.

OPI concludes that:

1. The administrative policies & procedures established by HUD and the City of Rochester for EARP were not followed during the administration of the program by the participants.
2. The contractual requirements between the City of Rochester, NCS and Group 14621, were detailed but not adequately executed.

3. Within the documentation available, OPI did not discover that any funds provided by or through the City of Rochester for the EARP program, had been misused, misallocated or misappropriated.

During our review OPI observed the need for this type of program. We recommend redesign of the program with controls that address the deficiencies identified in this review.

Background

EARP replaced the Residential Assistance Program (RAP) program in 2009. The implementation of the EARP program was an initiative to address shortcomings that existed with RAP. The City of Rochester wanted to tailor a program that would address true emergencies rather than general repair assistance.

EARP is designed to assist income eligible residential homeowners to defray the expense of certain types of emergency repairs that are related to health and safety and/or threaten the long term integrity of residential structures.

EARP provides small home improvement grants to homeowners who are at or below 80% of the median income. The program is designed to provide small home improvement grants to address code violations and emergency repairs. Only emergencies determined to be "substantial" emergency repairs that threaten the long-term integrity of the house are eligible for EARP grants. These repairs include:

- Electrical system repairs
- Repair or replacement of furnaces
- Plumbing repairs
- Leaking roofs and consequential damage
- Sewer lines
- Water heaters and service line renewal

EARP eligibility is limited to owner-occupants of one to four unit structures who have lived in their City home for at least three years prior to receiving an EARP service grant, and have not received a RAP or EARP grant from July 1, 2004 through March 30, 2011. Properties may receive only one grant every ten years. Owner-occupant applicants must be current or have a payment plan in place for taxes and mortgage payments. Proof of homeowner's insurance is required.

The minimum EARP grant is \$250. The maximum grant is \$3,500 (up to \$4,500 when repairs specifically involve disturbance of lead-based paint) for all repairs other than emergency roof repairs requiring a complete roof tear-off. The maximum grant for an emergency roof tear-off is \$7,000 (\$8,500 when roof-related repairs involve disturbance of lead-based paints). If lead is exposed in the repair process, remediation is considered on a case-by-case basis.

The City's Bureau of Business and Housing Development is responsible for managing the Community Development Block Grant (CDBG) funds that are earmarked for the EARP program. Since the program's inception in 2009, in excess of \$2 million dollars has been allocated to this program.

The City's EARP program is largely funded by HUD's Community Development Block Grant (CDBG). The City's agreement with HUD allows for sub-contractors to administer the EARP program. At the time of this review, the City had agreements in place with Group 14621 (contracts #033567 and #122046) and NCS (contracts #032306, #033568, #123457 and #122123). The contract periods are approximately March 1, 2010 to present.

On August 14, 2012, during a review of invoices submitted for payment, the Department of Neighborhood and Business Development staff members noted discrepancies. Amounts invoiced to the City did not match supporting documentation including contractor invoices and change orders explaining any discrepancies.

It was noted that the file for 176 Morton Street contained bid documentation totaling \$14,500 and a change order for \$226 but the contractor invoiced \$15,500 for the work performed. Upon review of the file for 68 Bowman Street, NBD noted bid documentation totaling \$11,480 and a contractor invoice for only \$10,726.

Additionally, information on documents provided to the City clearly showed the use of white-out. New numbers and calculations were written over the areas where the white-out was used.

OPI investigators decided to conduct a full program review of EARP and its policies and procedures.

At the time of our review NCS had an informal agreement with NEAD and SWPC to execute the EARP program. This agreement was not formalized or approved by the City and did not contain necessary standards.

Generally, the City of Rochester's Law Department reviews contracts utilized by Neighborhood and Business Development. These contracts govern the way the City interacts with the community development organizations that administer the EARP program. These contracts specify the manner in which the City and its partners should proceed and provide clear requirements that contractors should follow. This practice is in place to protect all parties involved.

Scope and Methodology

We conducted our review in accordance with Principles and Standards for Offices of the Inspector General as promulgated by the Association of Inspectors General.

The scope of the review was limited to the review of the EARP Program from its inception in 2009 through September 2012.

Due to the vast number of files, it was determined that a statistical sampling selection be performed. The sampling size of 82 was determined by using table 2-6 on page 1-28 of "Sampling for Modern Auditors" and the following parameters: Population 304, confidence level of 95%, precision level +/- 4% and expected error rate of +/- 5%. OPI numbered the folders from 1 to 304. Using Excel, we then selected 82 random numbers between 1 and 304. We performed detail testing on those folders in which the random number selected corresponded with the consecutive number assigned to each folder. The sample selection assures proper representation throughout the entire population.

OPI reviewed the Emergency Assistance Repair Program to determine if:

1. The administrative policies & procedures established by HUD and the City of Rochester for EARP were followed during the administration of the program by all participants.
2. The contractual requirements between the City of Rochester and the sub-grantees were correctly detailed and adequately executed.
3. Any funds provided by or through the City of Rochester for the EARP program, were misused, misallocated or misappropriated.

Review

Based on the information received from Neighborhood and Business Development, OPI obtained the EARP folders from the offices involved and the review commenced. The initial review of the files revealed several issues.

During this review OPI noted the following:

1. SWPC often used white-out to change documentation within EARP files that were sent to them from the other participating community groups.
2. In some cases the community groups used funds designated for the remediation of lead. There was no documentation of the utilization of Lead Safe Work Practices found in construction documents or project files. EARP grants allow for additional funding when repairs involve the disturbance of lead-based paint, as the affected area must be remediated. In these cases, supporting documentation must be submitted to verify compliance with the law as well as the use of lead safe work practices that add additional cost. On multiple occasions proper documentation was not present in the respective folder.

Failure to utilize lead safe work practices may potentially expose the residents to potential health safety issues. This was further detailed in the preliminary guidance (Appendix A). Examples of this deficiency are:

- 205 Sawyer St.
 - 87 Sanford St.
 - 237 Depew St.
3. Continued examination of files confirmed that NCS did informally partner with NEAD and SWPC. NCS, NEAD and SWPC referred to themselves as having a Joint Venture Partnership. In reviewing the document that NCS had in place, it was determined that the agreement lacked the terms and conditions required by HUD and the City. Further, it had not been reviewed and approved by the City's Law Department as required.
4. Required documents were missing or incomplete. Files lacked organization and standardization. We were unable to determine how many homeowners were qualified for EARP funding. The key documents were not presented (i.e., copy of approved NYS identification of applicant, proof of applicant's income, applicant's bank statements, etc.). Specific examples of these are:
- 179 Cummings St.
 - 511 Brooks Ave.
 - 294 Marlborough St.
5. In instances where the total cost of the project exceeded the EARP allowance, the community groups would routinely leverage funds from alternate sources, i.e., NYS Affordable Housing Council, Federal Home Loan Bank (FHLB), Bishop Sheen and Cheshire Donation (Special Fund – SWPC). This is an acceptable practice.

Although it was apparent that these funds were utilized, insufficient documentation existed to determine how much funding came from which source. As a result, the City has been paying the invoices provided they do not exceed the maximum amount of an EARP award and are equal or less than the contractors invoice. This deficiency potentially exposes the City to overcharges as it is impossible to balance the project expenses against all revenues received for the project. Specific examples of are:

- 167 Ellison St.
 - 57 Frances St.
 - 117 Gregory St.
6. The contract between the City of Rochester and NCS and Group 14621, as well as HUD regulations, requires that any work performed utilizing EARP monies be the result of a competitive bidding process. This process requires that no less than three sealed bids, offered on the contractor's letterhead, be received pursuant to a scope of work and bid request that has been circulated to a list of contractors chosen by the homeowner and approved by the sub-grantee and City. Under very specific circumstances the City may authorize emergency work to proceed without a competitive bid process but only to stabilize an emergency situation. Work

performed following the stabilization must still be performed subsequent to a competitive bid.

A contract can only be awarded to the lowest responsible bidder. The sub-grantees should not be soliciting bids from any contractor who the City has deemed irresponsible.

OPI observed numerous violations of these requirements.

A. Notice to Proceed was issued prior to the opening date of the competitive bids. Specific examples of these are:

- 62 Quincy St.
- 600 Grand Ave.
- 449 Central Park

B. Contracts were awarded without the use of a competitive bid. Specific examples of these are:

- 31 Malvern St.
- 274 Curlew St.
- 19 Hollenbeck St.

C. Work was performed without a competitive bid process as an emergency exception that exceeded stabilization process. Specific examples of these are:

- 440 Hazelwood Terrace
- 151 Merrill St.
- 539 Lakeview Park

D. Bids were accepted that were not offered on the company letterhead. Specific examples of these are:

- 72 Cambridge St.
- 22 Morningside St.
- 57 Rossiter St.

E. Work was performed by a company that was not a bidder. Specific examples of these are:

- 578 Arnett Blvd.
- 151 Merrill St.
- 57 Phelps Ave.

F. The non-low bidder was utilized without proper documentation for rejection of the low bid. Specific examples of these are:

- 72 Klein St.
- 62 Quincy St.
- 46 Berlin St.

A sealed bidding process is a control designed to insure that all eligible contractors are equally afforded the opportunity to be awarded the project on a level playing field. In this process it is in the best interest of a contractor to offer competitive pricing for the scope of work bid.

7. OPI observed the use of construction change orders that resulted in substantive work being performed without a bidding process. In the sample records reviewed, it was routine for a scope of work to be prepared and bid out by NCS or Group 14621. In several instances the scope of work was changed after the job was awarded. Most of these changes resulted in increased project costs. The changes and the subsequent work were performed without following any competitive bid process.

A change order is used when additions or subtractions are made to the work done or materials used. This may affect the total cost of the project and should only occur when unforeseen work directly related to the original scope of work is uncovered during the project. An example of this might be the unforeseen replacement of a rotten roofing rafter that was uncovered during a roof replacement. The need could not be determined prior to the commencement of work and the opening of the roof sheathing yet the work is directly related to the scope of work that was competitively bid.

The majority of change orders observed in the review had additions or changes to the scope of work that were not due to an unforeseen condition or circumstance. They were also not directly related to the originally bid scope of work. This approach defeats the control that a bid process provides to the program. Specific examples of these are:

- 76 Harvest St.
- 1946 Norton St.
- 274 Curlew St.

8. Various documents were found throughout files that were signed by the applicant, however information within the body of the document was not filled out. Specific examples of these are:

- 159 Winterroth St.
- 960 Atlantic Ave.
- 562 Clay Ave.

9. OPI discovered instances where EARP grants were awarded to the same property more than once in a 10 year period. This is a violation of the program guidelines as set forth by HUD and the City. Specific examples of these are:

- 562 Clay Ave.
- 578 Arnett Blvd.
- 36 Treyer St.

10. In some cases, OPI found contracts that lacked signatures from all necessary parties. The Three Party Agreement provides protection to each of the parties. The lack of a properly executed contract represents a missing control. Specific examples of these are:

- 74 Clay Ave.
- 137 Canton St.
- 356 Lakeview Park

11. Finally, OPI discovered that the City approved payment without proper documentation on numerous occasions. Specific examples of these are:

- 72 Benton St.
- 41 Fox St.
- 332 Parsells Ave.

Conclusion

The City of Rochester's objective is to assist homeowners with emergency repairs rather than the traditional home repairs addressed in the pre-2009 RAP program. The EARP program with HUD and contracts with NCS and Group 14621 were established to meet this objective.

The program was designed to assist homeowners with emergency home repairs. NBD's lack of controls resulted in a large number of general repairs, diminishing the emergency philosophy of the program as approved by HUD and the City.

The application and repair process for most properties took several months to progress from request to completion of work. A large portion of the work performed could be construed as that of a general repair nature such as complete roof tear-offs and replacements, window and door replacements, and cosmetic improvements. Few cases were identified where homeowners if not assisted would have to leave their homes as their health and safety would have been immediately impacted.

It is apparent that the process is heavily regulated as a result of the funding sources. This potentially makes the administration of this program economically and technically unfeasible for the community development organizations or any single entity administrator.

The monitoring of the Emergency Assistance Repair Program provided by the City's Bureau of Neighborhood and Business Development was inadequate. As the sponsoring department, the responsibility for oversight and technical assistance rests within the Bureau.

OPI does note that the initial concern was brought to light by the Department during a program site visit and review. However, this review appears to be the first thorough review conducted in several years.

OPI concludes that:

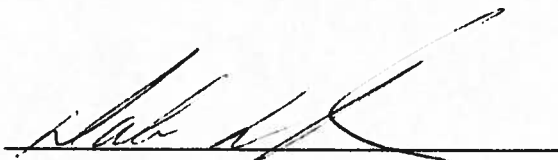
1. The administrative policies & procedures established by HUD and the City of Rochester for EARP were not followed during the administration of the program by the participants.
2. The contractual requirements between the City of Rochester, NCS and Group 14621, were detailed but not adequately executed.
3. Within the documentation available, OPI did not discover that any funds provided by or through the City of Rochester for the EARP program, had been misused, misallocated or misappropriated.

Recommendation

This review has revealed numerous deficiencies in the EARP program. OPI noted that material weaknesses exist in the reporting. OPI recommends that the processes of the program be extensively reviewed. The program, as it exists now, should be terminated.

During our review OPI observed the need for this type of program. We recommend redesign of the program with controls that address the deficiencies identified in this review.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Mark R.", written over a horizontal line.

Appendix A



To: Bret Garwood, Director of Business and Housing Development
From: George E. Markert, Director, Office of Public Integrity
Date: September 11, 2012
Subject: Interim Guidance, EARP Program – Lead Safe Practices

The Office of Public Integrity is taking the unusual step of providing interim guidance with regards to the Emergency Assistance Repair Program (EARP) while an overall review of the program is conducted. This interim guidance is being provided due to the potential for health and safety concerns related to the administration of the lead safe work practices portion of the EARP program. As interim guidance this report should not be viewed as fully highlighting any concerns or shortcomings that may exist in the administration of this program.

Preliminary interviews and file review indicate that serious deficiencies may exist in the assessment, review and documentation of the EARP program in those situations where lead based paint may be present at a rehabilitation location funded by EARP. Steps should be taken to insure that occupants of those rehabilitation locations are not exposed to lead based paint dust and the resultant health risks associated with such exposure.

The EARP contract has very specific requirements that address lead issues.¹ The contract requires the consultant and their sub-contractors to conform to the US Department of Housing and Urban Development's (HUD) regulations regarding rehabilitation work in owner occupied houses that may contain lead based paint. In turn, HUD regulations require the adherence to certain regulations of the US Environmental Protection Agency (EPA). Generally speaking, those regulations require that in rehabilitation work funded by HUD, contractors must utilize lead safe work practices unless laboratory testing has shown that the areas to be disturbed do not contain lead based paint.² The City contract requires each rehabilitation bid to be submitted with the Lead Safe Work Practices training certificate of each of the laborers that will work on the project accompany the bid upon submission.³

In those instances where the subsidy of rehabilitation provided by HUD solely or by HUD and other Federal funds exceeds \$5,000, "a full risk assessment by a qualified Risk Assessment agency must be scheduled by the consultant."⁴ The Consultant must insure that paint testing is conducted (or a presumptive acknowledgement of the presence of lead paint issued), perform a risk assessment prior to the commencement of rehabilitation, perform interim controls, and implement safe work practices during the work.⁵ Within 24 hours of the satisfactory completion

¹ AGREEMENT FOR COMMUNITY DEVELOPMENT SERVICES July 1, 2011 – June 30, 2012, Exhibit E

² 40 CFR §745.85

³ AGREEMENT FOR COMMUNITY DEVELOPMENT SERVICES July 1, 2011 – June 30, 2012, Exhibit E, paragraph 2.B.

⁴ AGREEMENT FOR COMMUNITY DEVELOPMENT SERVICES July 1, 2011 – June 30, 2012, Exhibit E, paragraph 4

⁵ 24 CFR §35.930(c)



of the work a clearance test must be performed by a certified agency. The report of this clearance shall be made a part of the file.⁶

The contract specifically requires that a sub-file regarding lead be prepared for each grantee of the program. It clearly requires certain documentation to be contained within the file to include:

- A. The "Lead-Safe Housing Rule Checklist for General Compliance Documentation" form
- B. The "Lead Safe Housing Requirements Screening Worksheet" form
- C. Property Exemption Statement (if applicable)
- D. Signed homeowners receipt of the "Renovate Right" brochure
- E. A "Summary Notice of Lead-Based Paint Inspection" form
- F. Summary Notice of Completion of Lead-Based Paint Hazard Reduction (if applicable)
- G. A copy of the Clearance Report from the Clearance Agency

Preliminary review of grantee files for Contract # 122123 has revealed the following deficiencies that require immediate correction.

1. Missing Documentation

Overall, no lead file reviewed contains all of the documentation as required above. Even basic paperwork such as the signed receipt for the "Renovate Right" brochure is absent. The City must insure that the Consultant conforms to the requirements of the contract that exist to insure the health and safety of the grantee.

2. Improper Claim to Exemption

Consultant repeatedly claimed an exemption to the lead-paint requirements as the repair was deemed an emergency. In each of these cases the repairs, while seemingly necessary, followed the same process as non-emergencies. Bids were solicited from contractors, the bids were then reviewed and an award to the low bidder made. The time that elapses from application to commencement of work negates the emergency exemption intended by the HUD regulation. The imposition of the emergency exemption **temporarily** relieves the requirement to perform a certified risk assessment.⁷

3. Failure to cause a Risk Assessment to be performed

As described above, the City Contract and HUD regulations require a Risk Assessment be performed by a certified risk assessor on all EARP projects whose combined subsidy of EARP and other Federal funds exceeds \$5,000.⁸ HUD requires that assessments be performed in accordance with EPA standards as set forth in 40 CFR 745.227(h). HUD offers guidance as to why the assessment is to be performed and sets forth how it is to be reported.⁹

⁶ AGREEMENT FOR COMMUNITY DEVELOPMENT SERVICES July 1, 2011 – June 30, 2012, Exhibit E, paragraph 5. E.

⁷ 24 CFR §35.115(a)(9)

⁸ 24 CFR §35.930(c)

⁹ HUD, Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, Chapter 5

4. Improper Clearance Examination

In almost every file that was reviewed that contained a "Clearance Examination Report", the report was not performed in accordance with HUD requirements. It appears that the consultants are accepting a "visual assessment" only for the final clearance. HUD regulations require that visual assessment, dust sampling, testing of samples and interpretation of the testing be included in the report.¹⁰

Further, in those files that did contain a "Clearance Examination" report, the report was deficient in that it failed to provide "documentation of the hazard reduction or maintenance activity" as well as failing to document observations on all areas that work was performed.¹¹ As a result it is unknown in these instances if a lead-paint issue remains.

5. Misleading or incorrect contract language

While it is not the intent of this guidance to provide a full review of the contract terms and language, OPI noted two sections in Exhibit E that are pertinent to this report. Within Exhibit E, Section 5., paragraphs B. and D., the City offers contractual guidance in the form of a "note" that is incorrect or misleading.

In the first instance the City offers guidance for reasons that a property may be exempt from the HUD testing and reporting requirements for lead-based paint on this program. The section is misleading in that not all reasons offered actually exempt the project from testing or lead safe work practices.

For example, "[Note: Some of the exemptions... whether the property has been dedicated to the elderly or disabled,...", the exemption would not apply if others under the age of 62 or in the case of the disabled, a child, under the age of 6, were expected to reside in location.¹² Further contract guidance, "... and whether emergency actions are immediately necessary to safeguard...", would lead one to believe they are exempt from the regulations. However the exemption applies only to work necessary to stabilize the structure and safeguard the health and safety of occupants. In fact HUD states that the regulations "shall apply to any work undertaken subsequent to, or above and beyond, such emergency actions."¹³

The second guidance note in this contract exhibit is incorrect on its face. The guidance states, "[Note: The \$7,000 limit on roof tear-offs is exempt from lead hazard reduction requirements as lead has not historically been used in roofing work. Repairs to, or painting of, soffit and eave surfaces will require lead clearance.]."

The presumptive exemptions listed in the HUD regulations do not list "roofs" as exempt. OPI can only assume that the City intended to suggest that roof tear-offs would be exempt under §35.115(a) (8), "Any rehabilitation that does not disturb a painted surface." This exemption could only be claimed subsequent to the scope of work being determined. Such exemption would apply only to clearance testing; and risk assessments for projects that have \$5,000 or less in combined Federal funding of which HUD funds comprise a part of.

¹⁰ 24 CFR 35.1340(b)(2)

¹¹ 24 CFR §35.1340 (c)

¹² 24 CFR §35.115 (a)(3)

¹³ 24 CFR §35.115(a)(9)

6. Lead Safe Work Practices Training Certificate

File review did not provide any proof that contracted workers possessed the necessary training and certification required to perform the rehabilitation utilizing lead safe work practices. EPA regulations require workers to be certified in lead safe work practices.¹⁴ The City Contract requires that valid training certificates for all workers who will be engaged in the rehabilitation activities be submitted with each bid. If the bid does not contain these certificates, the bid should be rejected.¹⁵

The review has revealed serious failures to provide documentation or to perform necessary tests that are required by Statute and as a contractual provision. These lapses potentially expose the residents of these locations to lead dust.

OPI strongly recommends that you cease reimbursement on any further invoices from the Consultants. They should be required to develop a remediation plan that provides sufficient proof to the City that they possess the personnel, skills and expertise required to administer the contract with regards to lead issues on an ongoing basis.

Please do not hesitate to contact me if you have any questions.

¹⁴ 40 CFR §745.00 ET SEQ.

¹⁵ AGREEMENT FOR COMMUNITY DEVELOPMENT SERVICES July 1, 2011 – June 30, 2012, Exhibit E, paragraph 2. B.



To: Carlos Carballada, Commissioner, NBD
Robert Bergin, Corporation Counsel

From: George E. Markert, Director, Office of Public Integrity

Date: September 24, 2012

Subject: Preliminary Exposure Assessment, EARP Program – Lead Safe Practices

OPI has completed an initial review of files provided to us by the four contractors and sub-contractors for the EARP program, contracts #033567, 033568, 122046 and 122123. The contract periods began on July 1, 2010, and continue through the present.

This initial review focused on documenting the lead-paint information that each file contained, and an assessment to the conformity of the information to the Contract and HUD regulations.

This information may assist in your thought process while developing a response for the Mayor as requested in his e-mail of 09/17/2012. Due to the poor condition of the files OPI had to make certain assumptions.

Assumptions:

- "Lead Safe Housing Requirements Screening Worksheet" contained inaccuracies and were recused for this assessment
- General scope of work determined from review of estimates, invoices and change orders
- Exemptions granted based upon review of scope and the presumed status based upon work type
- All files have been provided by the contractors
- Exam costs are based upon prior similar expenses

	SWPC	NEAD	NCS	14621	Totals
Total Locations	75	97	92	56	320
Exempt	20	4	10	3	37
Subsidy over \$5,001	44	64	76	20	204
Visual Clearance Exam (VCE)	48	64	49	44	205
Interior Clearance Exam (ICE)	7	29	33	9	78
Interior work over \$5,001	6	14	27	6	53
VCE performed	25	4	17	0	46
ICE w/lab performed	0	1	0	0	1



Using average costs of \$75 for a visual clearance examination, \$275 for a clearance examination that utilizes dust wipes and laboratory analysis, and \$600 for a risk assessment, OPI has calculated the cost of performing these tests on the above deficient locations at approximately \$64,300.

	Locations Requiring	Reports Possessed	Total Deficient	Average Cost	Total \$
Clearance (visual)	205	- 46	= 159	x 75	= 11,925
Clearance (laboratory)	78	- 1	= 77	x 275	= 21,175
Risk Assessment	53	- 1	= 52	x 600	= <u>31,200</u>
					<u>64,300</u>

This table does not include assumptions or calculations for;

- Failed exams and subsequent re-tests
- Cost delta for expanded testing due to possible disbursement of lead dust from time
- Cost estimates for blood testing of children age or under 6 who may have been exposed
- Necessary remediation from any hazards discovered

Our review of the EARP program is ongoing. This report is not intended to represent a final report as to the conformity of the program and its participants to the contract or any statute or administrative regulation pertaining to lead-based paint.

Please do not hesitate to contact Investigator Dale Pascoe or myself if you have any questions.

Appendix B



Inter-Departmental Correspondence

To: Bret Garwood, Director of Business and Housing Development

From: George E. Markert, Director, Office of Public Integrity

Date: September 12, 2012

Subject: Interim Guidance, EARP Program – Contractual Relationship

The Office of Public Integrity is taking the unusual step of providing interim guidance with regards to the Emergency Assistance Repair Program (EARP) while an overall review of the program is conducted. This interim guidance is being provided following consultation with an investigator from the U.S. Department of Housing and Urban Development (HUD). As interim guidance this report should not be viewed as fully highlighting any concerns or shortcomings that may exist in the administration of this program.

As you are aware, our agreement with HUD allows the City to sub-contract with other agencies for the administration of our Emergency Assistance repair Program that is funded largely by HUD's Community Development Block Grant (CDBG) funds. The City has contracted directly with two agencies for this service, Group 14621 and NCS Community Development Corporation.

In our initial interviews and file reviews concerning this program it is apparent that NCS has been utilizing two other agencies to assist in the execution of the program. The agencies that OPI is aware of are the South Wedge Planning Committee (SWPC) and North East Area Development Inc. (NEAD). Also apparent is that representatives of the City have been dealing with these additional agencies in the execution and administration of the program. Specifically, each of these agencies has been soliciting and accepting applications, processing application paperwork, soliciting bids, and executing rehabilitation agreements on behalf of the EARP program.

Representatives of NCS, SWPC and NEAD routinely refer to their relationship as the "Joint Venture Partnership" and they indicate that the parties have executed an agreement amongst themselves.

The contracts between NCS and the City for this program prohibit assignment of any portion without the prior written consent of the City. Many provisions of the City contract are required by both the City and HUD to be included in the consultant's sub-contracts. A review of the Joint Venture Partnership agreement reveals that it contains none of the language required.

It is the understanding of OPI that the Joint Venture Partnership agreement has not been reviewed or approved by the City Law Department.

OPI strongly advises that you suspend payments related to the program until such time that the City provides written consent for execution of a specific sub-contract that is conforming to the City's requirements as reviewed and approved by the Law Department, and said sub-contract is duly executed between the parties.





To: Thomas S. Richards, Mayor
Carlos Carballada, Commissioner, NBD

From: Bret Garwood, Director of Business & Housing Development, NBD
Vicky Wehbring, Director of Administration and Finance, NBD
Conrad Floss, Associate Community Housing Planner, NBD

Date: May 17, 2013

Subject: Response to OPI Review of EARP—Next Steps for Housing Rehabilitation Programs

In response to the OPI review of the Emergency Assistance Repair Program (EARP), this memo outlines the proposed response to address each of the issues and concerns raised in the review. NBD is also proposing enhancements to current policies and procedures, recommendations for program changes, and next steps to re-launch the housing rehabilitation programs that were paused during the completion of the review, including the Emergency Assistance Repair Program and the FIS Exterior and Security Repair Program for owner occupants.

There were many issues identified in the report issued by OPI. To correct for these deficiencies, several new policies and systems will be created. Most importantly, the review has identified the difficulty in administering and monitoring EARP as it simultaneously attempted to complete emergency repairs and substantial rehabilitation utilizing leveraged resources and City funding. As a result, the City will be moving forward to establish two programs to be implemented City-wide using the funds previously allocated for EARP and funding for FY 2013-14. The first program, an emergency program, will address only emergency repairs for qualifying home owners, such as furnace replacements, broken water lines and sewer lines. The second program, a substantial rehabilitation program, would conduct more comprehensive housing rehabilitation in owner occupied properties in partnership with community development organizations, including roof replacement, lead hazard control, exterior and security repairs, etc. The separation of goals between the two programs will allow for emergency repairs to be completed in a timely manner and will preserve the substantial leveraged resources available in partnership with community organizations.

ISSUES/CONCERNS AND CORRECTIVE ACTIONS:

Listed below are the issues raised by the OPI review and other concerns that need to be addressed as the City moves forward in providing funding for housing rehabilitation programs:

- **Use of Appropriate Lead Hazard Controls:** The City will require that its established operating model for the Lead Hazard Control and FIS programs be followed by agencies that are awarded City funding for affordable housing rehabilitation programs. This standardization will curtail much of the administrative and regulatory issues that were identified in the OPI report and will ease the City's ability to efficiently monitor projects.

Many of the issues involved the application (or lack thereof) of federal regulations regarding lead hazard control. The City has been operating a lead program for many years. The policies and procedures that are established for the program are in place to ensure that all

federal regulations are being followed and the established forms and documents have been used to document compliance with such regulations. This process will be integrated into all housing rehabilitation programs. Agencies that receive funding to carry out such programs will be required to comply with these established practices.

- **Documentation of Lead Safe Work Practices:** For the emergency repair program, documentation will be required that demonstrates that lead based paint will not be disturbed as part of the project. For the substantial rehabilitation program, participating organizations will be required to use contractors that have an EPA firm license as a lead abatement firm. A construction meeting will take place before each project begins to ensure that the site is properly set up for lead hazard control as per HUD regulations. City staff will inspect at least once during construction to ensure continued compliance throughout the duration of the project.
- **Joint Venture Partnership Agreements:** Should the City award funding to an agency that is a party to the Joint Venture Partnership, or another comparable collaborative of agencies, a formal agreement will be required that establishes the existence of the partnership, its members, operating policies and procedures, and their acceptance of all terms and conditions of the agreement with the City.
- **Use of White-out on Documents:** The existing policies and procedures manual utilized for the Lead Hazard Control and FIS housing rehabilitation programs will be utilized as a model for the proposed new emergency and substantial rehabilitation programs. These policies and procedures will state that the use of white-out and/or any hand-written changes made to documents that are submitted to the City for review will be prohibited. Any such documentation that is received will be returned.
- **File Management and Lack of Standardization:** The City will require the use of its own forms and documents. A sample project file with a project checklist and standard forms will be given to any agency that receives funding. Upon file review by City staff, if an unapproved form or document is discovered, it will not be accepted. The agency will be required to correct the deficiency.
- **Identification of Multiple Funding Sources:** The emergency repair program will not seek to leverage funding from other sources in order to ensure appropriate response to emergencies while adhering to regulations, policies and procedures. For the substantial rehabilitation program, as part of the standard forms and documents there will be a form that identifies all sources and uses of funding. The total amount of funding that appears on this form must match the total project cost, including any change orders, on the contractor invoice and owner agreement. Project files must evidence the submission of funding requisitions to all funders listed on the form.
- **Competitive Bidding:** Consistent with the policies and procedures, five contractors must be selected by the property owner and be listed on the Contractor Selection Sheet (a standard City form). Bids received must be recorded on the Bid Results Sheet indicating the address of the property, the date bids were mailed, the date bids were received and a record of the bid amounts. The lowest reasonable bid must be accepted for the project.
- **Environmental Review:** The City will act as lead agency to ensure compliance with the National Environmental Protection Act (NEPA). This will include the completion of a Tier 1 environmental review followed by a Tier 2 site-specific review for each property that is to receive assistance. Projects will not be awarded until evidence of NEPA compliance is obtained.

- **Disbursements:** Prior practices have allowed for the submission of only certain documents to satisfy payment requests submitted by agencies. This practice will be terminated. For an agency to be reimbursed for a project cost, a complete project file and original documents must be submitted to the City for review. The City will review submitted files in a timely fashion and will reserve the right to reject a payment if a deficiency is discovered. Agencies will be given the opportunity to correct minor deficiencies; however, should a major finding be discovered a payment will not be issued.
- **Definition of Emergency Repairs:** Emergency repairs will include:
 - Furnace Replacement
 - Sewer Line Replacement
 - Water Line Replacement

Roof replacement will not be an eligible activity for the emergency repair program as it triggers more substantial regulatory standards due to the possible disturbance of lead based paint and the overall project cost. This will instead be an eligible activity in the substantial rehabilitation program.

- **Administrative Fees:** Administrative fees will not be provided in future contracts. Instead, program delivery costs will be eligible for reimbursement based on either payroll/staff expenses or indirect cost plans. This practice has already been utilized in NBD HOPWA and ESG contracts and should be standard practice for these types of fees. Agencies responding to the RFP described below should outline how they will invoice for this service.
- **Re-application By Owners within 10 Years:** One area of concern highlighted in the OPI review is the policy that properties not be allowed to reapply for emergency assistance for a 10 year period. It will be necessary for the City to maintain a listing of all properties that have received assistance by date and review any new applications prior to approval being given by any agency. Language will need to be incorporated into the RFP stating that City approval must be obtained prior to issuing an approval for participation. The reason for this provision is the large demand for these services compared to the available funds.
- **Ensuring Adherence to Policies, Procedures and Requirements:** The City will provide or facilitate orientations, training and enforcement of the following areas of concern, as outlined in the OPI review, before any future contracts are implemented for the emergency and substantial rehabilitation programs:
 - Adherence to proper bid policies and timeliness
 - Application intake and processing
 - Income qualification
 - Standard file layout and maintenance (to provide consistency)
 - Change Order requirements, approvals and processing
 - Federal OMB requirements
 - Maintaining integrity of original documents
 - Properly documenting total project costs and backup documentation
 - Lead Paint requirements
 - Sub-grant and contractor requirements
 - Invoice submission requirements
- **Lack of Appropriate Monitoring:** Federally-funded programs generally consist of various monitoring and program review requirements, including payment documentation. NBD will modify its current program review policy, both in BHD and Administration and Finance, to ensure that program requirements are being met by operating agencies, as well as proper programmatic review, to ensure program compliance.

- **Income Eligibility:** Another area of concern is an agency's ability to properly review and process income eligibility requirements for program participants and obtain all necessary documentation. Included in the RFPs for services will be the requirement that the agency outlines and/or describes their ability to perform this activity and their understanding of the federal guidelines. Federal programs stipulate that property owners who receive funding be at a certain income level. Generally, there are three acceptable ways to document income for the HOME program (these are guidelines, not promulgated regulations). The City will provide guidance on proper documentation procedures.
- **Need for Inspections:** In addition to the inspections described above, a final inspection for each project will be required prior to payment. Not all EARP projects were inspected by City staff prior to or upon completion of work. While understanding workload constraints on current staff, this should be a requirement for all rehabilitation projects. Photos were also not routinely taken or provided for EARP projects. This can be rectified by the new inspection procedures.
- **Change Orders:** Change orders must be approved by the City. This is to include a description of the work and associated costs. Change orders must be signed by the City, contractor, and the property owner before the work is authorized.

NEXT STEPS—EMERGENCY REPAIR AND SUBSTANTIAL REPAIR PROGRAMS:

Prior to launching the two proposed programs for emergency repairs and substantial housing repairs, NBD will complete a request for proposal process. Approximately \$1,000,000 will be made available for the two proposed programs. The City has approximately \$300,000 in CDBG funding available from the EARP contract that was canceled last fall pending the OPI review. In addition, the City is planning to allocate approximately \$780,000 in CDBG funding as part of the 2013-14 Consolidated Plan. This funding will be allocated as shown below:

- 1) **Emergency Assistance Repair Program:** \$300,000 (\$75,000 per quadrant). It is anticipated that a single community organization will be awarded funding to assist with the intake and application process for this program as described below.
- 2) **Substantial Repair Program:** \$700,000 (\$175,000 per quadrant). It is anticipated that separate contracts will be issued to a community organization for each quadrant.
- 3) **Warranty Fund:** \$80,000 will be held by the City for completion of any necessary warranty repairs for the above programs and other prior repair programs.

Below are descriptions and next steps for the implementation of the two programs.

NEXT STEPS—CITY-WIDE EMERGENCY REPAIR PROGRAM:

This program will offer financial assistance to eligible homeowners of single-family structures requiring emergency repairs. An emergency will be defined as a needed repair that threatens the health and safety of occupants. While a large range of repairs could fall under this definition, NBD will limit the scope to include the replacement/repair of furnaces, water lines and sewer lines. Roof replacement will not be included in the program due to its expense and the likelihood of triggering federal lead based paint requirements that make an emergency response difficult to complete in a timely fashion. This program will not seek to leverage resources from outside agencies because utilizing a mix of funds will slow down the process. It is anticipated that approximately 100 to 125 home owners will receive assistance with the \$300,000 in funding

during 2013-14. That is a comparable number of assisted home owners as was served by an annual allocation of \$500,000 in the prior EARP program due to the reduction in the average expense of projects due to the elimination of roof replacement as an eligible activity.

This program should be viewed as a pilot because of the substantially changed delivery method for this service. NBD will release an RFP to recruit an outside agency to provide intake services for the program. It is expected this agreement to be for 6 months and should cost under the traditional 10% (\$30,000) administration fee. The City will receive applications from the intake agency and approve eligible projects.

NBD will operate the construction management of this program in-house and will not involve the participation of community development organizations. This change has been proposed for two primary reasons. First, the community development organizations have often argued that EARP does not pay enough administrative fees to cover expenses. NBD has concluded that rather than pay an increased fee and therefore reduce the amount of funding available for repairs, it is better to operate the program in-house. Second, this change will test a new system that can be compared to previous experiences in order to evaluate its relative efficiency. Emergency repair programs have been in operation for the last 10 years through many organizations. NBD believes that a comparable amount of staff time will be required to directly deliver the proposed program as it would be to monitor an outside agency to deliver the program.

Work will be scheduled upon application approval. Projects will be assigned to contractors through established term agreements/contracts to ensure a fast response and completion of repairs. These term contractors will be selected through a competitive bidding process.

Eligible applicants will be defined as having an immediate emergency for heat, water and/or sewer. The income guideline for this program is established at 50% of the area median income (AMI) as defined by HUD.

At the conclusion of this pilot program, NBD will provide an evaluation to determine its actual efficiency and effectiveness and make recommendations for future funding.

NEXT STEPS—CITY-WIDE SUBSTANTIAL REPAIR PROGRAM:

This program will offer financial assistance to eligible home owners of single-family structures requiring substantial rehabilitation. Proposed repairs will include primarily roof replacement, siding, window replacement, painting, porch repair/replacement, electric work and mechanical replacements such as furnaces and hot water tanks. All assisted properties will receive a lead based paint inspection/risk assessment and the property will be made lead-safe at the conclusion of the project. If funding allows, properties will be eligible for a healthy homes intervention to allow for smoke detectors, carbon monoxide detectors, and remediation of other environmental health hazards such as mold. The guidelines for this program generally mirror the FIS substantial rehabilitation programs, which are administered in a way that address many of the concerns in the OPI review.

The program will operate in partnership with outside agencies for both intake and construction management similar to the Focused Investment Strategy program for owner-occupants. Agencies will be responsible for customer service, intake and construction management services. The City will be responsible for completing the environmental reviews (NEPA), approving applications, ordering lead based paint risk assessments, providing site inspections and managing the grant disbursements. The City will provide operational policies and procedures for agencies to follow to ensure that all local and federal regulations are followed. The City will also provide standardized forms and documents to be used for the program to

ensure that all needed information is captured and can be readily found during an audit. The City will require that agencies submit completed files with original documents as part of the payment process. A file review will be conducted by City staff before a payment is authorized.

Partner agencies will be selected through an RFP process. The RFP will request proposals from agencies to carry out the program in one or more of the four City quadrants. Eligible respondents must have the ability to provide at minimum a 50% match to City funds. Respondents must demonstrate a proven history in carrying out housing rehabilitation programs, maintain qualified staff, have an industry-recognized accounting system, be fiscally solvent, and be in good standing with the City. Respondents that have unresolved issues with other agreements or are otherwise not compliant with City requirements will not be eligible. Respondents must demonstrate in a detailed budget and cost allocation plan how costs charged to the City are allocated. All costs must be eligible under CDBG guidelines, fully justified, and transparent to the City. Respondents must have at least one EPA-certified Lead Supervisor on staff or under contract to ensure compliance with HUD and EPA regulations regarding lead hazard control. Finally, respondents must detail how they will provide income verification and documentation and identify the specific methodology to be used.

The program is expected to be funded at a minimum of \$1,050,000 (\$700,000 City funds and \$350,000 leveraged funds) being divided evenly over the four City quadrants. Projects are expected to average \$20,000, but may not exceed \$24,000. Approximately 50 properties will be served. At its conclusion, the program will be evaluated to test its efficiency and effectiveness. Recommendations will be made for its continuation and/or modification.

NEXT STEPS—FIS OWNER OCCUPANT REPAIR PROGRAM:

The third phase of the FIS Owner Occupant Repair Program was paused pending the completion of the OPI Review. It had been authorized by City Council. NBD briefed City Council in the Fall of 2012 regarding the OPI Review and suggested that prior to moving ahead with the program NBD would bring the agreements back to City Council for approval. Legislation will be brought to City Council in July to re-launch the program with the agencies previously under contract.

TIMELINE:

The tasks listed below provide a timeline for the next steps described above:

Program Design Tasks:

	<u>Completion:</u>
Update Policies and Procedures for Emergency Repair Program	June
Update Policies and Procedures for Substantial Rehabilitation Program	June
Update and Create New Forms	July
Issue Final Policies and Procedures for Programs	August

Program Delivery RFP Tasks:

	<u>Completion:</u>
Issue RFP for Emergency Repair Program Intake Services	May 31
Issue RFP for Substantial Rehabilitation Program	May 31
Issue RFP for lead hazard evaluation services	May 31
RFPs Due to City	July 12
Selection of Proposed Partner Organizations	July 26
Contract Execution	September
Program Launch	September

Term Contracts for Emergency Repair Contractors Tasks:

Issue Bids for Term Contracts for Emergency Repairs
Contract Execution

Completion:

July
September

Administrative and City Council Tasks:

City Council Briefing
City Council Approval of Consolidated Plan
45 Day Program Environmental Review (NEPA)
City Council Approval for Appropriations and Agreements

Completion:

June
June 18
July
August 13

We look forward to working together to move these programs forward so that we may continue to provide assistance and services to the community. Please let me know if you need any further information or clarification. With your concurrence, we will proceed with the plan as outlined above.

xc: Bob Bergin, Law
Dale Pascoe, OPI