

ALLIANCE FOR HEALTHY HOMES

Protecting Children from Lead and Other Environmental Health Hazards



October 7, 2004

The Honorable Kenneth M. Donohue, Sr.
Inspector General
Department of Housing and Urban Development
451 Seventh Street, NW
Washington, DC 20410

Dear Inspector General Donohue:

I am writing to report improprieties in the review and award of FY2004 lead safety and healthy homes grants by the Office of Healthy Homes and Lead Hazard Control (OHHLHC). I request an investigation of abuses and mismanagement by this office in the grant application review, ranking, and award process for the most recent round of lead safety and healthy homes grants. This complaint covers the period July 13, 2004, the deadline for submission of grant applications to HUD, through September 27, 2004, the date HUD announced \$167 million in grants for lead hazard control, lead hazard reduction demonstration, lead technical, lead outreach, Operation LEAP, healthy homes technical, and healthy homes demonstration (<http://www.hud.gov/news/release.cfm?content=pr04-093.cfm>). The Alliance submits this complaint on behalf of children at risk for lead poisoning and asthma hazards in their homes and in response to concerns raised by state and local agency staff, advocates, and researchers across the country.

In rushing to award lead safety and healthy homes grants to meet an artificial end-of-fiscal-year deadline, OHHLHC failed its duty to perform a thorough and competent review of the 300-plus applications received. OHHLHC improperly delegated decision-making authority to a contractor, whose reviewers may not have been properly trained or qualified. The tight schedule made it difficult for contract reviewers to perform thorough evaluations, and delays left little or no time for voting members of the Application Review Panels (ARPs) to review the applications and make deliberative decisions. It appears that the schedule forced the ARPs to accept the contract reviewers' suspect evaluations and that applicants' performance on prior grants was ignored. As a result, the funding decisions that flowed from this flawed process do not reflect the merit of the applications submitted. If the Inspector General investigation confirms these charges, these failures amount to abuse and mismanagement approaching dereliction of duty.

Improperly Delegating Decision Making Authority

The responsibility for competitively awarding grants based on merit is an inherently governmental function and one of the OHHLHC's most important duties under law. The most critical steps in this process are reviewing, rating, scoring, and ranking grant applications. Given the complexity of HUD's lead safety and healthy homes grant programs, evaluating grant applications requires knowledge, judgment, impartiality, and careful deliberation. In all past years, the OHHLHC convened panels of federal employees who had subject-matter expertise in lead safety and healthy homes to rate and score grant applications and recommend competitive

awards according to rank based on the merits of the applications. This process had consistently worked well, winning this program recognition as one of HUD's strongest. This year, OHHLHC management radically changed the approach by contracting out the review of grant applications. OHHLHC failed to meet the requirements of its own Desk Guide, which clearly assigns responsibility for rating and scoring grant applications to federal employees in two-person teams made up of voting members of Application Review Panels. While the Desk Guide provides that advisory members of an ARP, such as individuals hired under contract, may provide assistance, it is inappropriate – whether by design or default – to delegate discretionary authority for making competitive grant decisions to a contractor or contract employee.

Sole Source Award to a Company with Limited Capacity

The OHHLHC issued a contract to an outside firm (referred to below as “the contractor”) to review and evaluate applications for lead safety and healthy homes grants for its 2004 grant round. There is no public record of HUD's advertisement for these services, and details about this contract's price, terms, project period, and task assignments are not publicly available. Apparently, the OHHLHC awarded this contract on a sole source basis without receiving other bids. It appears that the contractor did not have staff on board who could carry out the application reviews prescribed by the contract, because the firm undertook a hurried search for individuals to serve as grant application reviewers. While awarding a sole source contract may be legally allowable in some instances, entrusting the review and evaluation of applications for the award of \$167 million dollars in federal grants to a firm that lacked staff qualified to perform these reviews poses such grave risks as to constitute gross mismanagement. Such an inept decision must be evaluated against the norm across all federal agencies: awarding competitive grants is a solemn responsibility, which requires the greatest diligence, care, and safeguards to ensure the integrity and credibility of the grant-making process.

Concerns about the Qualifications of Contract Reviewers

While the exact dates are not known, the firm that received the sole-source contract faced an extremely tight schedule in recruiting and hiring individuals with sufficient training, qualifications, and experience to review the lead safety and healthy homes grant applications. It strains credulity that the contractor could so quickly recruit qualified individuals and raises questions whether the contract reviewers had relevant experience and judgment to equip them to evaluate lead safety and healthy homes proposals. For example, evaluating the quality of applications to manage a lead hazard control grant or conduct a research study requires broader perspective and greater sophistication than is required for many technical disciplines, such as a lead inspector or abatement contractor. It is unknown what qualifications were deemed acceptable and whether knowledgeable program staff in the OHHLHC reviewed and approved the resumes of the contract reviewers to ensure their qualifications. The Desk Guide calls for the chair of each ARP to appoint reviewers.

Concerns about Whether Contract Reviewers Received Proper Orientation and Training

Presumably, contract reviewers would need training and orientation by OHHLHC staff to provide background in the NOFA and guidance about how to evaluate grant applications for

different programs. It is worth investigating the extent and quality of training provided to contract reviewers and whether some contract reviewers were hired after the training took place.

Concerns about the Depth and Quality of Review of Contract Reviewers' Evaluations

Given the tight deadlines the contractor faced in evaluating more than 300 applications, it is questionable whether the contract reviewers performed a detailed and thoughtful evaluation of each grant application. A review of the contract reviewers' completed evaluation forms and an assessment of the sophistication and insight of their summaries of applications' strengths and weaknesses should quickly reveal the thoroughness and quality of their reviews.

Concerns about ARPs Opportunity to Review Grant Applications and Deliberate over the Results

The OHHLHC's Desk Guide explicitly calls for teams of at least two ARP members to review each grant application independently, score each sub-element, identify strengths and weaknesses, and discuss the results. Given the compressed time frame, it is questionable whether ARP members (i.e., federal employees who are voting members) actually read, reviewed, and evaluated all grant applications. It is also questionable whether they had time to meet to compare scores, discuss strengths and weaknesses, and deliberate over final grant decisions, as called for by the Desk Guide. Voting ARP members' rote acceptance of the contract reviewers' scores and rankings would violate the Desk Guide's standards for a thorough, thoughtful, and deliberative selection process and fall far short of the HUD Reform Act's requirements for documentation of grant decisions.

Failure to Take Grantees' Past Performance into Account

The OHHLHC places tremendous emphasis on measuring and tracking grantees' performance. Remarkably, grantees' performance on current and past projects was apparently not factored into these grant decisions. Although many grants were awarded to deserving applicants, inattention to prior performance is evidenced by a significant number of awards to grantees who are widely known to have performance, financial management, or capacity problems, as well as awards to grantees that HUD currently ranks in the "yellow zone."

Inappropriate Award to Flagrant Violator of Federal Disclosure Law

One of the most egregious awards was a \$1,981,258 grant to AIMCO, the nation's largest landlord and rental property-management company. In 2002, HUD and EPA imposed on AIMCO the largest ever penalty for widespread violations of the federal disclosure law. The Consent Agreement that settled the enforcement case required AIMCO to make its 130,000 rental properties lead-safe and to train current and future employees in lead safety. Delays in executing its responsibilities under the Consent Agreement forced AIMCO to pay additional penalties to HUD and EPA. It would be improper for HUD to award AIMCO federal funds for activities that are required by the Consent Agreement or to meet requirements of HUD's lead-safe housing rule that apply to AIMCO properties that receive federal housing assistance. In any event, it is inappropriate for HUD to reward AIMCO's bad behavior by offsetting its \$129,580 penalty with a \$1,981,258 grant.

Rushing to Judgment to Meet an Artificial Deadline

The OHHLHC management made an arbitrary decision to obligate lead safety and healthy homes funds by the end of the fiscal year, which forced a rushed and haphazard grant application review process. In fact, there was no imperative to make grant awards by September 30, because these are multi-year funds for multi-year projects. Because of HUD's delays in publishing its SuperNOFAs this year, no other program across the Department attempted to meet such a tight schedule to obligate funds by the end of the fiscal year. The artificial deadline imposed by OHHLHC management, in combination with delays throughout the process, forced the hurried recruitment of contract reviewers, compressed the time available for contract reviewers to evaluate applications, and left little or no time for voting members of HUD's Application Review Panels to fulfill their responsibilities to review the applications and make deliberative and considered funding decisions. While OHHLHC can technically be credited with obligating \$167 million during the last four days of the fiscal year, the "empty shell" grant agreements executed lack detailed budget figures and scopes of work and withhold authority to begin projects pending negotiation of a future grant amendment. Valuing the rate of obligating funds as a key measure of program success can have perverse consequences.

Conclusion

I urge the Inspector General to investigate the OHHLHC's process for reviewing, evaluating, selecting, and awarding all seven categories of lead safety and healthy homes grants for 2004. If the concerns outlined above are borne out by an investigation, the Inspector General should ensure that the Secretary takes immediate steps to right the wrongs that resulted from the failures in this year's grants evaluation process as well as to ensure the integrity of future grant competitions.

As background, the Alliance for Healthy Homes is a national public interest, policy and advocacy organization committed to protecting children from lead and other housing-based health hazards. The Alliance anchors a loose-knit network of community-based organizations committed to lead safety and healthy homes and works closely with many state and local health departments and HUD grantees. Over the past 14 years, the Alliance has helped shape landmark federal lead poisoning prevention legislation, shift the national approach to primary prevention, and strengthen federal, state, and local prevention policies and programs. Over this period, the Alliance has supported HUD's mission by developing and validating more cost-effective tools and strategies, building consensus on workable and protective lead-safety standards, developing special strategies for economically-distressed housing, influencing enlightened state and local laws, overcoming state regulatory barriers, pioneering community-based leveraging strategies, rebutting challenges to HUD's lead-safe housing rule, and winning increased resources for lead safety and healthy homes.

The Alliance has received HUD grants for technical, policy, education, and leveraging projects since 1991. The Alliance's performance on all projects funded by HUD and other federal agencies has been consistently strong. In partnership with state and local health departments and community-based organizations working to protect children at highest risk, the Alliance applied

this year for (or was a principal subcontractor in) five lead safety and healthy homes grant applications. None of these applications was selected for funding by HUD. The Alliance has a current grant from HUD that is supporting community-based leveraging strategies in partnership with 18 community-based organizations in low-income, high-risk, communities of color across the country. The Alliance also has a pending proposal for the Community Environmental Testing Bank, which OHHLHC evaluation panels have twice recommended for funding over the past year.

I hereby request the Inspector General's assistance in guarding against the OHHLHC's retaliation against the Alliance for making this complaint.

Lest these problems be overly generalized, I want to make clear that this failure is confined to the breakdown in HUD's grant review and selection process. The solution to this problem is not to eliminate these programs or reduce their funding. The need for lead safety and healthy homes grants remains urgent in communities at risk across the country. As a result of HUD's investment in building technical capacity over the past decade, state and local agencies and community-based organizations are better prepared than ever before to put these funds to good use, as evidenced by the strong performance of most OHHLHC grantees. Children at risk for lead poisoning and asthma should not suffer as a result of the OHHLHC's failures, nor should applicants who submitted strong proposals. The solution is simple: correct the breakdown in the OHHLHC's application review and ranking process.

So that there is no confusion about where responsibility for these failures lies, Joseph Smith is the HUD management official who held authority and exercised hands-on control of the entire process for reviewing and awarding the 2004 round of lead safety and healthy homes grants.

Please contact me at 202-543-1147 if I can provide additional information.

Sincerely,

Don Ryan
Executive Director