



The Commonwealth of Massachusetts

Office of the Inspector General

GREGORY W. SULLIVAN
INSPECTOR GENERAL

JOHN W. MCCORMACK
STATE OFFICE BUILDING
ONE ASHBURTON PLACE
ROOM 1311
BOSTON, MA 02108
TEL: (617) 727-9140
FAX: (617) 723-2334

August 1, 2011

Stephen M. Wishoski
Executive Director
Malden Redevelopment Authority
200 Pleasant Street
Malden, MA 02148

Dear Mr. Wishoski:

As you know, the Massachusetts Office of the Inspector General (OIG) reviewed the American Recovery and Reinvestment Act (ARRA) funded U.S. Department of Housing and Urban Development (HUD) Lead-Based Paint Hazard Control Program (LHC) grants in Massachusetts. These grants have totaled \$8,624,565 with your agency, the Malden Redevelopment Authority (MRA), receiving \$2,984,565.

The OIG is reviewing ARRA-related grants to identify potential vulnerabilities for fraud, waste, and abuse and other risks that could negatively impact the accountability, transparency, and anti-fraud mandates contained in the statutory language and interpretive guidance of ARRA. This should not be construed as an investigation of the program or a comprehensive programmatic review. Rather, this review is to assist your agency in identifying risks and providing recommendations to address these risks.

The OIG review found that the MRA has a limited contractor pool, worked with unlicensed contractors, hired a lead inspector without providing a reasonable explanation, lacked thorough record-keeping, appeared to have been overcharged by vendors, did not always use written contracts on projects and did not prioritize projects in accordance with HUD guidelines. Moreover, the MRA may have paid for work whose cost should have been shared by a contractor and a property owner. In total, the OIG questioned as much as \$440,687, or 15%, of the MRA's ARRA grant. The following chart outlines these questionable expenditures:

Expenditures Questioned by the OIG

<u>Item</u>	<u>Budgeted Amount</u>	<u>Questionable Spending</u>
Lead Inspectors ¹	\$146,250	\$9,000 to 22,000
Vendor Overcharge ²	13,000	3,780
Deleading Ineligible Units ³	544,000	55,407
Unnecessary Outreach ⁴	90,000	90,000
Contractor Change Orders ⁵	N/A	269,500
TOTAL		\$427,687 – 440,687

Source: Office of the Inspector General

The MRA has conducted lead inspections and abatement work for more than 30 years and is a previous recipient of LHC grants. Under the current ARRA grant, the MRA had planned to remediate 225 units and facilitate lead abatement training, certification, and job opportunities for 40 low to moderate income individuals in the lead abatement field. According to the MRA, it has exceeded these goals and already has applicants on a waiting list for lead abatement services when additional funding becomes available.

MRA has incorporated a number of subgrantees under this grant to provide outreach, lead testing, risk assessment, and abatement. The subgrantees included the Malden Board of Health (MBOH), Tri-City Community Action Program (Tri-CAP), and Healthy Malden Incorporated (HMI). The MRA plan called for the MBOH to perform blood testing to identify children with elevated lead blood levels, Tri-CAP to provide outreach and education services for low to moderate income families, and HMI to focus on data collection and analysis to identify high-risk situations.

To assist the MRA and other LHC grantees in reducing program risks, the OIG has issued an advisory (attached) of potential risks that have been identified after a review of all grantees. These risks and the OIG recommendations to mitigate these risks should be reviewed by your agency for their applicability to your grant program. In addition, the OIG has identified the following issues that are specific to the MRA and as such may not be included in the attached advisory:

1. The MRA needs to improve its contractor outreach efforts for construction contractors and lead inspectors.

To obtain pre-qualified lead abatement contractors and lead inspectors, the MRA has traditionally advertised its invitation for bids (IFBs) and requests for proposals (RFP) in

¹ Based on the MRA instructing a vendor to increase his proposed pricing.

² Apparent vendor overcharge for laboratory fees.

³ Based on decision to include ineligible units for deleading. OIG estimated 11 units (rounded) or 10% of total (108 x 10%) units to be ineligible.

⁴ Based on the MRA paying for outreach and education when production goals had already been met.

⁵ MRA approved a contract change order and paid for what may have been the responsibility of others.

the Malden Evening News, a local newspaper with a circulation of 13,800 copies in Malden, Everett, Saugus, and Revere. [RFPs are used to prequalify construction contractors and to place inspectors under contract. IFBs are used to identify “low bids” from the prequalified list for each construction project.] According to MRA staff, procurement and grant award notices are also posted on the MRA website. The program director stated that contractors are free to contact the MRA about job opportunities and contractors need to be “aggressive” and that it’s “up to them to find work.” This rationale does not serve the public interest in promoting robust competition to ensure favorable pricing.

The MRA stated that they have used their current pool of construction contractors for many years (ten years or more) and only a limited number of contractors “want to do this work.” The MRA currently has six contractors on its LHC prequalified list; only two are from the circulation area of the Malden Evening News.

For many years, the MRA has also had only one lead inspector under contract. According to MRA staff, competition for lead inspectors is limited because “we don’t have enough work.” However, the MRA has consistently been one of the largest Massachusetts recipients of LHC funding (and one of the largest in the U.S. according to the program director.)

Under the current grant, the MRA issued an RFP for lead inspector services in 2009 because they “needed the help” and also issued an RFP for construction contractors in 2010. The MRA did not obtain any new contractors for either service as a result of this RFP effort.

According to the Massachusetts Division of Occupational Safety, there are 160 certified deleading contractors in Massachusetts (only eight are within the circulation area of the Malden Evening News). According to the Massachusetts Executive Office of Health and Human Services, there are 83 licensed lead inspectors in Massachusetts (only three are within the circulation area of the Malden Evening News).

Based on the above, the circulation area of the Malden Evening News may not be wide enough to make the MRA’s business opportunities known to the vast majority of licensed inspectors and certified contractors. The OIG believes that the MRA should do more to generate competition. Other grantees have been successful in encouraging competition through outreach efforts. For information purposes, OIG staff contacted 46 or approximately 50% of the total number of the certified deleading contractors in Suffolk, Essex, Middlesex, and Norfolk Counties and 16, or more than one-third of those contacted, stated they had not heard of the MRA’s program or of the Malden Evening News. The OIG also contacted all 29 licensed lead inspectors in Suffolk, Essex, Middlesex, and Norfolk Counties currently not doing business with the MRA and 17 of the 21 we spoke with stated that they would be interested in working for the MRA. Prior to our outreach, 16 of the 21 contacted had not heard of the MRA’s program. Also of note, on average, the inspectors who stated a willingness to work for the MRA

charge less per unit than MRA's incumbent inspectors; for single-family homes the average is \$100 less per inspection. Based on the MRA's grant production goal of 225 units, the MRA might have saved thousands of dollars in fees through greater competition.

The OIG also contacted a lead inspector from Malden hired by a homeowner enrolled in the LHC program [an allowable program exception] and paid by the MRA. According to this inspector, he would be willing to work for the MRA but had been unaware of the program until contacted by the homeowner. According to the MRA program director, this lead inspector had the responsibility to identify potential MRA job opportunities; it is not the MRA's job to make everyone aware. Based on the total estimated unit inspections under the grant, there is more than a \$22,000 difference between the rate this inspector would have charged and what the MRA currently pays. The MRA could have deleaded nearly three additional units with these funds.

Some contractors, although aware of the program, made troubling comments about the MRA. One contractor stated that during a prior grant cycle the MRA told him "not to bother" trying to get prequalified because grant funds would be "running out" and another stated that the MRA told him that "no money was available." According to both, the MRA discouraged them from applying.

Other contractors had more troubling comments about MRA practices. At least 25% of those contractors that had heard of the program stated that they believed that the MRA favors certain contractors that "always got the jobs." This perception may limit competition and make it difficult to validate whether the MRA is getting fair market prices from the small number of contractors it does use.

Recommendation: The OIG recommends that the MRA extend its contractor outreach by advertising beyond the Malden area including in the *Central Register* and through direct marketing efforts. Ultimately contractors are responsible for finding work. However, since prequalified lists have remained relatively stagnant for years, and the MRA received a dramatic funding increase, the MRA should have considered greater outreach efforts to attract a greater number of bidders and potential contractors. Competition will help to ensure that the MRA is paying fair and reasonable market rates for its services. The MRA should also consider how to dispel the perception that the MRA favors certain contractors. The OIG suggests that the MRA test the market through a competitive bid process to hire contractors for deleading projects rather than obtaining bids from a small number of prequalified vendors. Recently, the OIG issued an advisory for all LHC grantees in Massachusetts. This advisory may provide useful information concerning what other grantees do to extend outreach efforts.

2. The MRA prequalifies vendors that do not meet lead abatement certification requirements.

According to the MRA, its policy is to only solicit and accept bids for deleading projects from prequalified contractors. Currently, there are six contractors on the prequalification list that have been on the list for at least ten years. The OIG reviewed the status of these contractors and found that two did not have proper certification; one has performed deleading work under the current grant.

Recommendation: The MRA should ensure that all contractors performing lead abatement related construction and inspection work meet appropriate licensure, certification and insurance requirements.

3. The MRA received a proposal from the brother of a City Council member three months before the MRA issued an RFP.

The MRA issued an RFP for lead inspection services in July 2009 because it believed that it might need additional inspectors to handle an increase in inspection service demands because of the large funding increase under ARRA. The MRA did not receive any new proposals. The incumbent vendor requested to stay on the contract and the MRA counted as a response a proposal it had received in March 2009 by a vendor from Reading, MA – more than three months before the MRA issued its RFP.

As the MRA had stated that it had difficulty attracting vendors from outside the Malden area and the vendor that submitted a proposal in March 2009 came from outside the Malden area, the OIG asked the MRA how it obtained this proposal.

The OIG inquired with the MRA how a vendor could submit a detailed proposal to an RFP that had not been drafted yet. MRA staff stated that they did not know, but speculated that the vendor might have done work for the North Suburban Consortium (Consortium) but they were not sure. The MRA is the lead agency of the Consortium that consists of a number of municipalities around Malden that are involved with various HUD grant programs. Staff also suggested that the vendor might have read the “public notices” in the newspaper or on the MRA website about the renewed grant and therefore the vendor took the initiative to obtain work. The OIG had previously determined that this vendor has a brother on the Malden City Council, a fact not mentioned by MRA staff until brought up by the OIG.

Previously, OIG staff had identified an ethics disclosure document⁶ by a Malden City Councilor in MRA files. The Councilor disclosed that this vendor was his brother and that he did not have a financial interest in his brother’s business.⁷

⁶ The ethics disclosure states: “My brother, Kevin Nestor is the principal of and operates a company called Residential Inspections Company having an address of P.O. Box 309, Reading, MA 01867, which is in the business of lead paint inspections and housing

The MRA stated that the relationship had nothing to do with the MRA's decision to hire this vendor and that the matter had been "cleared by ethics."

The Councilor submitted his ethics disclosure ten days before the MRA issued the RFP for inspection services and 40 days before the vendor (his brother) signed a formal contract with the MRA. The MRA issued the RFP on July 20, 2009, the disclosure was dated July 10, 2009 and the formal contract was signed on August 19, 2009. MRA staff could not explain this timeline or how the vendor knew to submit a proposal months before the MRA issued its RFP.

MRA instructed this vendor to raise its proposed price.

Even though this "new" vendor proposed inspection prices that were lower than what the MRA had been paying, the OIG found that the MRA instructed this vendor to increase his proposed prices to match the higher prices charges by the incumbent vendor. The OIG questioned the program director about this change. He and other staff offered numerous explanations including, that he did not know about the change, that the prices first proposed by the vendor in March 2009 were not the prices proposed by the vendor in response to the RFP (the vendor did not submit a proposal in response to the RFP), and that having both vendors using the same prices "made things easier" for the payment process. MRA staff did not respond to the OIG's question about why "to make things easier" MRA staff did not request the incumbent vendor to lower his prices rather than having the new vendor increase his. This price increase is contrary to the taxpayer's interest. Based on the MRA's projection of 225 inspections under the grant, the decision to raise vendor prices cost the MRA \$9,000.

According to the MRA, it has been using the incumbent vendor for "many years." In documents that the MRA submitted to HUD, the MRA stated that the incumbent vendor gives the MRA a 40% discount for all services paid for with grant funds. Even with this

rehabilitation consulting. I have been informed by him that his company has a contract to provide services to the Malden Redevelopment Authority on an as-needed basis for lead paint inspections and rehabilitation consulting. I am an elected city councilor for the city of Malden. I have no involvement or interest, either direct or indirect, in Kevin Nestor's company, its operations, or its finances; I have no involvement in or authority over the hiring of consultants by the Malden Redevelopment Authority. I have not participated in the decision of the Malden Redevelopment Authority to utilize my brother's consulting services."

⁷ The Massachusetts Ethics Law, M.G.L. c.268A, §23(b)(3), prohibits a public employee from "knowingly, or with reason to know, act[ing] in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person."

sizeable discount, the incumbent's price is still higher than the price originally proposed by the new vendor and higher than other vendors contacted by the OIG.

Recommendation: In our opinion, the MRA is deliberately skirting a responsibility to generate competition for inspection and construction services and the lack of competition results in higher prices for MRA projects. The MRA must generate competition for these services and ensure that it is paying a competitive market rate rather than the rate the MRA believes is fair based on a long-standing relationship with one vendor.

4. Lead inspector overcharged for laboratory fees.

As discussed in the previous finding, the MRA's lead inspection vendors are supposed to charge identical fees for their services. However, there is one exception. The exception is for laboratory fees. The MRA pays the inspectors a per unit fee that includes taking "dust swipes" that are then sent to a certified laboratory for testing. If the test results verify that the presence of lead has been remediated then unit occupants may return and the MRA can make final contractor payments.

According to the MRA there are a very small number of certified laboratories and each inspector uses a testing laboratory of their own choosing. According to the MRA, the laboratory fee is a "pass through" expense from the inspectors to the MRA so the MRA is only reimbursing the inspector for the cost of the laboratory test; the inspector is not entitled to any mark-up on these laboratory fees. The MRA program director told the OIG that: "they don't make anything [money] from these samples." The inspectors charge a fee to take the samples.

The MRA's incumbent inspector uses an out-of-state laboratory while the MRA's new inspector uses an in-state laboratory. MRA staff informed the OIG that even though the in-state laboratory charges a slightly higher fee, it is more "cost effective" because turnaround time is faster and having a laboratory in-state makes it easier to get results in "emergency" situations.

The OIG obtained invoicing information from the in-state laboratory to the MRA's new inspector. The laboratory charges the inspector \$10 per sample. As a result, based on what the OIG has been told by the MRA, the inspector should only be invoicing the MRA \$10 per sample as a "pass through" expense. However, the inspector is billing the MRA \$15 per sample.

Since each unit inspection, per MRA guidelines, requires seven "swipe" samples, the laboratory testing fee is \$70 per unit (7 x \$10). The inspector invoices the MRA \$15 per sample for an overcharge of \$35 per unit (7 x \$15 = \$105 vs. \$70). Based on information the OIG has for 108 completed units, the potential overcharge is \$3,780 (\$35 x 108). As the inspector has tested more than 108 units, this overcharge may be higher.

Recommendation: The MRA needs to reconsider how it allows vendors to price supposed “pass through” expenses before signing off on vendor agreements. The MRA should also seek to recoup any overcharges from the inspection vendors if the MRA believes that the vendors have submitted false claims. In the future, the MRA should: 1) consider finding out what the actual laboratory charges or any other pass-through charges are before agreeing to vendor price proposals or 2) require the laboratories to direct-bill the MRA so that the MRA can have greater control of payment and cost verification.

5. Contractor bids lack dates.

According to the MRA, when it identifies a property for deleading, it requests that contractors on the MRA's prequalification list submit bids for the work. The OIG reviewed the submitted bids and found many of the documents undated. The MRA informed the OIG that its staff date-stamp the envelopes containing the bids when the bids are submitted. However, MRA staff stated that once the bids are opened, the envelopes are thrown away. As a result, the bids remain undated and any evidence of receipt has been discarded.

Moreover, the OIG identified that the contractors submitted lump-sum rather than itemized bids. According to the MRA, HUD requires itemized bids to differentiate the type of work being performed. This can also assist in the identification of prevailing wage rates – a requirement of state and federal law. The MRA had no explanation why lump-sum bids are accepted when HUD requires itemized bids.

Recommendation: Contractors should be instructed to date their bid submission. The OIG also recommends that the MRA keep the date-stamped envelopes. This will allow the MRA to demonstrate an accurate record of the receipt of sealed bids. The OIG recommends that bids be itemized to provide details and clarity. Costs for major work components and/or different trade work should be described.

6. The MRA spent a significant portion of grant funds on low priority units.

The MRA met 62% of its production goal by deleading 108 units in one project within the first six months of the grant cycle. The project involved the so-called Bryant Terrace Apartments (BTA), a not-for-profit affordable housing development. BTA originally applied to the MRA for a low-interest housing rehabilitation loan that would have included window replacement. With the receipt of the ARRA grant, the MRA suggested, and the BTA agreed, converting the loan to a lead abatement grant. According to MRA staff, BTA met grant requirements because children lived or had the potential to live at the BTA and most tenants met the income eligibility requirements. Under grant guidelines, units with children have high priority for deleading. A unit where a child could potentially live is also considered a priority. The OIG reviewed BTA occupancy information and found that few children live in what is generally considered housing for the elderly. According to the BTA itself, the development has

“very low expectations” that many, if any, more children will be occupying these units in the future.

Also, a number of the BTA units are market rate units and/or have tenants who do not meet the grant’s income eligibility requirements. Grant guidelines allow up to 20% of the units to not meet requirements. MRA chose to include the ineligible units in order to remediate the entire development and to address the potential risks to future eligible occupants.

Recommendation: The OIG believes that grantees should ensure that, whenever possible, high priority units are remediated first. In this case, the opportunity to meet significant production goals given the expenditure pressures of ARRA seems to have unnecessarily outweighed the need to follow priority guidelines. The MRA should have also considered whether the BTA should have taken an MRA loan for the ineligible units. Using loan funds would have made funding available for eligible units elsewhere in Malden as the loan would not have covered all the grant-funded expenses.

7. The MRA may have unnecessarily paid for work.

The grant also paid for window replacement at the BTA because lead paint had been found around the windows. This window replacement also generated change orders that cost the MRA an additional \$269,500 because, the contractor apparently purchased the wrong type of window and this led to added carpentry work to make the windows fit properly. According to BTA staff, the contractor purchased windows that are for new construction rather than replacement. Therefore, the windows would not fit in the existing window frames without additional re-framing/carpentry work. Apparently, the reframing work exposed significant wood rot that then needed to be addressed.

The rotting wood needed to be replaced. However, the cost of this replacement should have been borne by the BTA and not the MRA. While rotting wood may be deemed an “unforeseen hazard” under the construction contract, it is not evident that the MRA considered any underlying contractor responsibility for the purchase of windows for new construction or to have considered seeking BTA financial participation (or transferring these costs to the loan that the BTA originally requested) to replace the rotting wood. The MRA had an opportunity to address the issues early in construction when the contractor installed a “test window” that exposed the window sizing and wood rot issues. The MRA chose to issue a change order and pay for the added work.

Recommendation: Grant funds should not have been used to remediate these problems absent financial participation from the property owner and the contractor. If the contractor ordered the wrong window, then the MRA should not have paid to correct this mistake. The cost should have been borne by the contractor. This error coupled with identifying rotting wood during the window installation dramatically increased costs. There is no evidence that the MRA asked the property owner to contribute to what had blossomed from a routine deleading project to a major

renovation project. For example, the MRA could have issued a lead program loan to the BTA with no or little interest for some of the project cost. According to BTA staff, they had originally approached the MRA about a loan to fund this work, but the MRA offered a grant package instead. The MRA decisions appear to stem, in part, from its long-standing relationship with the contractors and with its desire to achieve production goals and assist a local affordable housing development. Interestingly, the funds spent on this change order could have paid for most of the deleading for the units currently on the MRA's waiting list, some of which are of a higher priority under HUD rules than the BTA units. The MRA has failed to leverage property owner resources to stretch grant funds further and in this case, did not appear to hold a contractor responsible.

8. The MRA may be spending funds on outreach that is no longer needed

The MRA budgeted \$90,000 for client outreach efforts including implementing and securing referral mechanisms for people whose units needed lead abatement. The MRA contracted with local not-for-profits, Tri-CAP and HMI, to conduct this outreach. Since the MRA has informed the OIG that the MRA met grant production goals in October 2010 and already has 30 eligible applicants on a waiting list for the next grant cycle, the MRA should consider halting these efforts and reallocating remaining funding to address the current waiting list. According to MRA staff, continuing outreach efforts will help to increase the pool of eligible applicants for the next grant cycle.

Recommendation: The OIG suggests that the MRA reallocate funding or obtain authorization from HUD to use outreach funding for the support of future deleading construction.

9. In violation of sound business practices, the MRA uses Memoranda of Understanding (MOUs) in lieu of contracts with subgrantees.

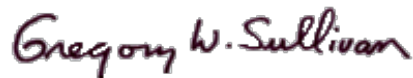
The MRA uses MOUs rather than contracts to codify its agreements with subgrantees. The MOUs discuss the subgrantees' responsibilities in broad general terms but do not discuss: 1) the scope of work, 2) the MRA's responsibilities toward the subgrantees, 3) performance measurement or monitoring procedures, 4) timetables, 5) obligations, 6) oversight and compliance terms, 7) grant/ARRA terms, 8) termination and other standard terms included in contracts. ARRA accountability and transparency provisions as well as basic sound business practices require the use of more comprehensive documents.

Recommendation: The MRA should use written contracts with subgrantees that include more comprehensive terms and conditions, as outlined above, to protect MRA interests and to ensure that grant funds are used appropriately.

Stephen M. Wishoski
August 1, 2011
Page 11 of 11

Please do not hesitate to contact us for further assistance. Our point of contact for your agency is Neil Cohen, Deputy Inspector General. Thank you again for the assistance and cooperation of you and your staff during this review.

Sincerely,

A handwritten signature in dark ink that reads "Gregory W. Sullivan". The signature is written in a cursive, slightly slanted style.

Gregory W. Sullivan
Inspector General

Attachment

cc: Mayor Richard C. Howard (w/o attachment)
Jeffrey Simon, MA Recovery Office (w/o attachment)
Kristen Ekmalian, HUD Office of the Inspector General (w/o attachment)
Michael Wixted, HUD Office of the Inspector General (w/o attachment)