

**RESOLUTION 945(20)**


**RESOLUTION APPROVING OCTOBER 2019 COMMUNITY DEVELOPMENT BLOCK GRANT-DISASTER RECOVERY INTERNAL AUDIT REPORT**

**WHEREAS**, the City has hired Deloitte to complete an internal audit for the Community Development Block Grant-Disaster Recovery

**WHEREAS**, Deloitte has provided an internal audit report for the months of April 2019 through September 2019 and the City has responded and prepared a course of action

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and City Council of the City of Moore, Oklahoma, as follows:

**ADOPTED**, this 21<sup>st</sup> Day of January, 2020, at a regularly scheduled meeting of the governing body in compliance with the Open Meeting Act, 25 O.S. SS301-314 (2001).

  
\_\_\_\_\_  
VANESSA KEMP, CITY CLERK

  
\_\_\_\_\_  
GLENN LEWIS, MAYOR

Approved as to form and legality this 21<sup>st</sup> day of January, 2020.

  
\_\_\_\_\_  
RANDY BRINK, CITY ATTORNEY





# City of Moore CDBG-DR Internal Audit Report

This CDBG-DR Internal Audit Report is intended solely for the informational purposes and internal use of the City of Moore, and is not intended to be and should not be used by any other person or entity. No other person or entity is entitled to rely, in any manner or for any purpose, on this CDBG-DR Internal Audit Report.



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January 06, 2020  
Honorable Mr. Glenn Lewis  
Mayor  
City of Moore  
301 North Broadway  
Moore, OK 73160

Dear Mr. Lewis,

We are pleased to provide the attached Internal Audit Report for the period April 1, 2019 through September 30, 2019 with respect to the Housing and Urban Development (HUD) Community Development Block Grant - Disaster Recovery (CDBG-DR) program funding the City of Moore (City) received. This work was performed based on the terms outlined in the engagement letter dated June 20, 2017. The areas covered during the analysis were jointly identified with the City based on a risk-based planning process and are outlined within this report.

Our services were performed in accordance with the Statement on Standards for Consulting Services issued by the American Institute of Certified Public Accountants (AICPA). However, our services did not constitute an engagement to provide audit, compilation, review, or attestation services as described in the pronouncements on professional standards issued by the AICPA, and, therefore, we will not express an opinion or other form of assurance with respect to our services.

In addition, our services did not constitute an examination or compilation of prospective financial information in accordance with standards established by the AICPA. We did not provide any assurance regarding the outcome of any future audit or regulatory examination or other regulatory action; nor did we provide any legal advice regarding our services; the responsibility for all regulatory and legal issues with respect to these matters resides with the City. It is further understood that the City is responsible for, among other things, identifying and ensuring compliance with laws and regulations applicable to the City's financial statement activities.

This report is intended solely for the information and use of City and is not intended to be, and should not be, used by any other party, with the exception of oversight agencies, for the performance of their oversight responsibilities.

The accompanying pages of our report include an executive summary as well as detailed observations, recommendations, and management's responses. Although we have included management's responses to our findings and recommendations, we take no responsibility for their sufficiency or the effective implementation of any corrective action.

We appreciate the cooperation received from management and staff of the City during the performance of this internal audit.

Very truly yours,

Deloitte & Touche LLP

By: 

Shawn Kilchrist, Managing Director

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# Executive Summary

## Background

The City received two rounds of HUD CDBG-DR funding totaling \$52.2 million which are subject to federal compliance requirements. Based on the Capital Plan developed by the City the funds were allocated for infrastructure, housing, and public service projects. In order to manage the spending and oversight of the grant funds received, the City has developed a CDBG-DR organization to manage the on-going spending of the funds received. As needed, contracted professionals are engaged to provide additional technical assistance. Additionally, the City has developed a CDBG-DR Compliance Manual, established internal controls, and implemented systems to govern the use of the funds received.

## Scope & Objectives

The areas of focus for this internal audit included:

- **Assessment of Veolia Construction Invoices** – Invoices paid to Veolia Construction were analyzed to determine whether “cost-plus” sums were paid to the vendor in accordance with the relevant contracts. This assessment was performed due to a combination of “cost-plus” language found in the Veolia Construction contract during a previous internal audit and a Housing and Urban Development review in August 2019, which concurred with Internal Audit Report finding from May 2019. Invoices for the following infrastructure projects were assessed:
  - I-01 W LMA King’s Manor
  - I-02 W Urg Plaza Tower St. N.
  - I-14 E Urg Broadway S. – 4<sup>th</sup> St.\_S. 19<sup>th</sup> St.
  - I-19 W Urg Eagle Drive
- **Procurement and Contract Analysis** – Tested procurement data for compliance with HUD and federal regulations, including, but not limited to, Request for Proposals, advertised notice of bidding, and bid tabulations for the following infrastructure projects:
  - SE 4<sup>th</sup> Street Sidewalk
  - Telephone Road Resurfacing North
  - Eagle Drive Street Repair
  - JD States
- **Down-Payment Assistance Program Compliance** – Applications received for the Down-Payment Assistance Program were analyzed for compliance with the policies and procedures established for the program.
- **Assessment of Cost Certification for the “The Curve”** – Documents, including but not limited to, a Certification of Reimbursed Costs, contracts between multiple parties, invoices, change orders, mobilization costs, schedule of values, project ledger, and proof of payment affidavits, were analyzed to assess whether the Partner-Developer provided adequate documentation to demonstrate contractually obligated incurred costs as part of a Redevelopment Project.

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- **Evaluated Project Closeout Documentation** – Project closeout documentation for the following infrastructure projects were analyzed:
  - South Broadway
  - King’s Manor

Our analysis included assessing the appropriateness of the design and the effectiveness of internal controls for the aforementioned focus areas. In order to evaluate the internal controls, HUD CDBG-DR requirements were evaluated along with the City CDBG-DR compliance manual, City procurement policies, and other relevant federal and state requirements related to the funding received.

We discussed the observations and recommendations with the City on 12/10/2019 and their corresponding management action plans which are included in this report.

## Approach

The internal audit consisted of the following:

- **Step 1:** Held planning meeting with personnel responsible for the managing and oversight of the CDBG-DR funds.
- **Step 2:** Developed an internal audit planning narrative that outlined the activities, scope and procedures to be performed for this CDBG-DR internal audit.
- **Step 3:** Performed testing based on the Scope and Objectives section above. The methodology used for testing was:
  - **Assessment of Veolia Construction Invoices** –Analyzed quotes and work orders for projects: I01 W LMA Kings Manor, I02 W Urg. Plaza Tower St. N., I14 E Urg Broadway S. 4th St. – S. 19th, and I19 W Urg. Eagle Drive. Evaluated cost reasonableness documentation, if applicable. Confirmed invoices were present and there were no mathematical errors. Reviewed each invoice and verified that the necessary approvals were followed as outlined by the City of Moore’s Action Plan and internal policies and procedures, along with the applicable portions of the Federal Code of Federal Regulations. Reviewed invoices to assess whether no “cost-plus” charges were present. Assessed drawdowns represented in the Disaster Recovery Grant Reporting System, Project and General Ledgers to evaluate compliance with the City of Moore CDBG-DR Policies and Procedures and HUB CDBG-DR requirements.
  - **Procurement and Contract Review** - Evaluated the procurement process for the SE 4<sup>th</sup> Street Sidewalk Project, Telephone Road Resurfacing North Project, Eagle Drive Street Repair Project, and JD States Project by analyzing requests for proposals and notices of bidding, evaluations of bids received, and three contracts to determine if policies and procedures were followed in accordance with the City of Moore CDBG-DR Policies and Procedures and HUD CDBG-DR requirements. Each contract was analyzed for compliance with 24 C.F.R. 85.36(i), the federally mandated clauses required within contract, for each of the awarded contractors.

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- **Down-Payment Assistance Program** – Documents from applicants awarded funds from the City’s Down Payment Assistance Program were analyzed for compliance with City of Moore’s Action Plan. Specifically:
  - The City’s Action Plan was analyzed for the required steps, procedures, and rules for eligibility the Down Payment Assistance Program.
  - Third-party documentation from banks was analyzed to help assess whether the loan’s origination fees, estimated closing costs, and actual equity contribution were within program limits.
  - Applicant’s proof of citizenship or legal resident alien status was verified.
  - Documents confirming the Applicants were not receiving a Duplication of Benefits were analyzed.
  - GPS coordinates of the home were located on Google Maps and compared to a map of the tornado impact area to confirm that the property is located within the tornado impact area.
  - Applicant bank records were analyzed to assess whether that the Applicant’s purchase price for the property were within Program limits.
  - Applicant tax returns were analyzed to assess whether the Applicant’s annual income fell within Program limits.
  - Proof of payment to the Applicant was verified.
  
- **Assessment of Cost Certification for “The Curve”** – The Development Financing and Loan Agreement between the lender The City of Moore and borrower NHS Moore Curve, LLC, and the Disposition and Development Agreement Among the City of Moore, The Curve Apartments, LLP, and NHS Moore Curve, LLC were each evaluated for the parties’ rights and responsibilities, especially among funding coming HUD CDBG-DR funds. AIA Document A101 – 2017, The Standard Form Agreement Between Developer The Curve Apartment’s, LLC and General Contractor Rise Residential, LLC Construction Moore OK, LLC was then evaluated for compliance with mandatory HUD CDBG-DR clauses required in contracts using HUD CDBG-DR funds. Additional documents incorporated within the contract were requested and provided by the City of Moore. AIA Document A201 – 2017 and AIA Document E204 – 2013 were also analyzed to understand if the mandatory clauses were contained therein. Next, the Certification for Reimbursement submitted by General Contractor Rise Residential, LLC Construction Moore OK, LLC was analyzed. The packet contained seven Payment Applications. The Payment Applications were tested for HUD CDBG-DR ineligible expenses and actual costs incurred. The rates charged on the Payment Applications were compared against the rate sheet from the contract. Finally, each Payment Application was reviewed for proof of payment.
  
- **Evaluated Project Closeout Documentation** – Analyzed contracts, change orders and financials for two infrastructure projects to determine if federal clauses were in place, if policies and procedures were followed for cost reasonableness and change orders, as well as the accuracy of financials. Assessed drawdowns represented in Disaster Recovery Grant Reporting System (DRGR), Project and General Ledgers to confirm accordance with the City of Moore CDBG-DR Policies and Procedures and HUD CDBG-DR requirements.
  
- **Step 4:** Conducted a closing meeting on 12/10/2019 and discussed the observations and recommendations with City of Moore management.

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## Summary of Observations

- **The contract between the developer, The Curve Apartments, LP, and the general contractor, Rise is missing 10 of the 13 mandatory contract provisions.**
- **Potential Cost-Plus percentage payments**
- **The General Contractor Lien Waiver and Release - Conditional Progress submitted for Pay App 1 is unsigned.**

A detailed outline of the observations and recommendations are included in the **Observations and Recommendations** section of this report.



# Observations & Recommendations

Observation Number	Observation Name	Observation/ Risk	Recommendation/Management Action Plan
1	<p><b>The contract between the developer, The Curve Apartments, LP, and the general contractor, The Rise, is missing 10 of the 13 mandatory contract provisions</b></p>	<p>The City of Moore has entered into a partnership and financing agreement with developer The Curve Apartments, LP to build an apartment complex where a certain percentage of tenants will be LMI residents. The City loaned the developer in excess of \$15 million HUD CDBG-DR funds. Of those funds, \$5,357,143.05 is for work the City has previously expended on the project before entering into the partnership with Developer. Developer is credited with that amount and must show proof that it has spent at least \$5,237,254.96 to draw down the amount.</p> <p>Neither the Developer’s Contract with General Contractor the Rise nor the incorporated documents contain all the mandatory clauses of 24 CFR 85.36(i). The contract between the developer, The Curve Apartments, LP, and the contractor, Rise contains only three of the 13 mandatory contract provisions of 24 CFR 85.36(i).</p>	<p><b><u>Recommendations</u></b></p> <p>The City should let the Developer know of the issue and take any necessary legal rights regarding payment of funds until the Developer amends its contract with the General Contractor and cures this issue.</p> <p><b><u>Management Action Plan</u></b></p> <p>The City will notify the developer, Belmont Development, to make the necessary amendments needed to all contracts. The City is confident that although the clauses are not included in the contract between Belmont and Rise, the requirements are being met.</p>

Observation Number	Observation Name	Observation/ Risk	Recommendation/Management Action Plan
2	<b>Potential Cost-Plus percentage payments</b>	Contract between The Curve Apartments and The Rise and Belmont states in its § 8.7 Other Provisions, Item 1 that "General Contractor has the right to receive general conditions, profit and overhead in equal installments over 24 months." Excel file that documents payments to contractor Belmont shows that General Conditions and Contractor Overhead payments are not all equal installments. Description details General Conditions as 6% and Overhead as 2% <i>Max</i> payments. Clarification regarding the developer role is necessary. If developer is identified as a pass-through entity, these payments may be flagged as cost-plus payments.	<p><b><u>Recommendations</u></b> The City should contact HUD to clarify whether the developer is a beneficiary or a pass-through entity.</p> <p><b><u>Management Action Plan</u></b> It is stated in the Disposition and Development agreement between the City, The Curve Apartments and NHS Moore that the developer is an end user (or beneficiary). The City understands that as a beneficiary, the developer is not subject to 2 CFR 200 regulations as stated in HUD's Community Development Block Grant Disaster Recovery Policy Guidance for Grantees 2019. The City will contact it's CPD Representative for guidance on the potential cost plus percentage for the overhead and profit of the contractor. Note, the potential cost plus percentage is contained in the contract between the developer (beneficiary) and the contractor, not between the City and the developer.</p>
3	<b>The General Contractor Lien Waiver and Release - Conditional Progress submitted for Pay App 1 is unsigned.</b>	The contractor has submitted General Contractor Lien Waiver and Release - Conditional Progress forms in lieu of copies of cleared checks. The Waiver is a notarized document in which the contractor acknowledges receipt of payment from the developer. The Waiver submitted for Pay App 1 is unsigned.	<p><b><u>Recommendations</u></b> The City of Moore should request that the contractor resubmit a signed Waiver and Release for the \$750,000.00 for Pay App 1.</p> <p><b><u>Management Action Plan</u></b> The City will obtain a signed waiver for Pay App 1 from the contractor.</p>

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