



United States
General Accounting Office
Washington, D.C. 20548

Office of Special Investigations

B-283320

August 3, 1999

The Honorable Christopher "Kit" Bond
Chairman
Committee on Small Business
United States Senate

Subject: HUD: Review of Bucklin Report Prepared to Assist HUD in Defending
Against EEO Complaint by HUD's Deputy Assistant Inspector General

Dear Mr. Chairman:

On July 13, 1999, you requested the Office of Special Investigations to conduct a comprehensive review of the report prepared by Donald T. Bucklin of Squire, Sanders & Dempsey for the Department of Housing and Urban Development (HUD). Based on time constraints, your office subsequently agreed to limit the scope of our review to identifying factual inaccuracies. The enclosure identifies several inaccurate statements that we found in the Bucklin Report.

We will make copies of this letter available to others on request. Please contact Assistant Director Ron Malfi or me at (202) 512-6722 if we can be of further assistance in this matter.

Sincerely yours,

Robert H. Hast
Acting Assistant Comptroller General
for Special Investigations

Enclosure

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ERRORS IN THE BUCKLIN REPORT

1. BUCKLIN REPORT: Beginning on or about July 29, 1998, HUD contracted for the services of Liston A. Jackson of Counter Technology, Inc., a contractor included on the General Services Administration's (GSA) Federal Supply Schedule, to conduct the investigation of the allegations in the EEO complaint by the Acting Assistant Inspector General for Investigation (AIGI) (p. 14).

FACT:

- HUD contracted with Counter Technology, Inc. on May 26, 1998.

2. BUCKLIN REPORT: Prior to Counter Technology, Inc. beginning the investigation of the complaint, however, HUD determined that the best interests of the Department required that another contractor be utilized (p. 14).

FACT:

- HUD decided to use another contractor after Counter Technology, Inc. had already begun its investigation.
 - On May 26, 1998, HUD contracted with Counter Technology, Inc.
 - On or about June 10, 1998, Counter Technology, Inc. assigned an investigator who contacted the complainant's attorney.
 - On July 13, 1998, the investigator began arranging his interviews. He conducted a number of interviews prior to HUD directing Counter Technology, Inc., on August 5, 1998, to put the investigation on hold.
 - On August 5, 1998, HUD took action to forward a scope of work to potential contractors.
 - On August 26, 1998, HUD awarded contracts to Day, Berry & Howard, L.L.P. and Williams & Connolly.

3. BUCKLIN REPORT: The EEO complainant, who is African-American and had been serving as AIGI since June 1996, alleges that on December 9, 1997, HUD's Inspector General, Susan Gaffney, did not select him for the AIGI position. She instead chose Philip A. Kesaris (pp. 3,4).

FACT:

- The complainant had been serving as Acting AIGI since June 1997, not June 1996.

4. BUCKLIN REPORT: According to HUD officials, the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) directed Ms. Gaffney to use traditional, objective DOJ/FBI investigation criteria in targeting participants for HUD's Urban Fraud Initiative, declining further involvement in the process until she did so. When HUD's Office of Inspector General (OIG) utilized these new selection criteria, the target areas changed dramatically and no longer focused exclusively on cities with African-American mayors (p. 7).

FACT:

- The HUD OIG had worked closely with the FBI at every stage of the process of selecting the three candidate cities for the Urban Fraud Initiative. They jointly developed the investigative criteria.
- DOJ, the FBI, and the HUD OIG were equally committed to finding a method of selection that would not cause more charges of racism. The FBI and DOJ never declined further involvement.

5. BUCKLIN REPORT: HUD, with the full approval of its Chief Procurement Officer, nevertheless decided to utilize an open-bid, expedited procurement procedure pursuant to applicable Federal Acquisition Regulations (FAR) and the Housing and Urban Development Acquisition Regulations (HUDAR). See 48 C.F.R. section 2401.104 (applicability of FAR to HUD procurement); 48 C.F.R. sections 6.302-2, 6.302-3, 13.602 (FAR requirements relating to sole-source acquisitions and contracting for expert services) (pp. 15,16).

FACT:

- Neither the current version of the C.F.R. nor the version in effect in 1998 contains a section 13.602. The 1995 version of the C.F.R. contained a section 13.602, but it addressed micro-purchase policy and had nothing to do with either sole-source acquisitions or expert services.

6. BUCKLIN REPORT: On or about March 17, 1998, Congressman Elijah Cummings (D-MD) wrote a letter to Robert Bryant, Assistant Director, FBI, Criminal Investigation Division, expressing concern over a “pattern of racial bias and discrimination in HUD’s Office of Inspector General.” (Footnote) It is unclear what, if any, action the President’s Council on Integrity and Efficiency (PCIE) has taken regarding Mr. Cummings’ concerns (p. 6).

FACT:

- Had Mr. Bucklin inquired, he could have learned that PCIE had referred the case to DOJ on July 13, 1998. On August 24, 1998, DOJ concluded that there was insufficient information to open a criminal investigation; and the matter was referred back to PCIE for any necessary action.

7. BUCKLIN REPORT: On or about March 12, 1997, Ms. Gaffney testified regarding HUD’s Indian housing programs before the U.S. Senate Committee on Indian Affairs. In his letter, Senator Ben Nighthorse Campbell said that he found “very troubling” Ms. Gaffney’s testimony that abuse and mismanagement in Indian housing authorities were worse than in public housing authorities and that rent collection in Indian country was more difficult because of “cultural factors.” Senator Campbell requested that Ms. Gaffney provide “specific documentary evidence” to support the assertions made in her testimony. We are unaware of any evidentiary support the OIG has provided to Senator Campbell (p. 8).

FACT:

- Ms. Gaffney responded to Senator Campbell in a letter dated April 18, 1997, explaining that the Senator had misheard and misunderstood her testimony.

8. BUCKLIN REPORT: The law firm Williams & Connolly has no conflict with HUD in investigating the complaint. HUD reviewed the allegations against the HUD Official, Helen Dunlop, in the matter styled Ervin and Associates, Inc. v. Helen Dunlap, et al., (D.D.C. 96-1253 (WBB)), and referred the case to DOJ for its review. On or about July 25, 1996, DOJ, finding no wrongdoing, offered to provide Ms. Dunlop with representation in the matter. Ms. Dunlop accepted the representation, which Williams & Connolly is providing under DOJ's authority and supervision. Therefore, there is no conflict between Williams & Connolly and HUD relating to this issue (p. 31).

FACT:

- The HUD OIG did not assert that Williams & Connolly's representation of Ms. Dunlop in Ervin and Associates, Inc. v. Helen Dunlap, a civil suit, created a conflict of interest for Williams & Connolly. Rather, the OIG complained that Williams & Connolly's representation of Ms. Dunlop in a HUD OIG criminal investigation, at the same time that Williams & Connolly was investigating allegations of racial discrimination by the HUD OIG, created a conflict of interest.

9. BUCKLIN REPORT: According to the EEO Complaint Inventory Summary (10/93-9/98), EEO complaints for the OIG totaled 48 during the past 5 years (p. 15).

FACT:

- Using figures that HUD provided through Mr. Bucklin, the number of complaints totaled 41.

10. BUCKLIN REPORT: The Office of General Counsel, which is approximately the same size as the OIG, registered 27 complaints for the same period (p. 15).

FACT:

- Using figures that HUD provided through Mr. Bucklin, the number of complaints totaled 26.

11. BUCKLIN REPORT: The Office of Community Planning and Development, which is almost twice the size of the OIG, registered 43 complaints (pp. 15,16).

FACT:

- Using the figures that HUD provided through Mr. Bucklin, the number of complaints totaled 39.

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