

City of Detroit
Office of Inspector General
Investigative Report
OIG Case No. 18-0028-INV, et al.
DLBA
June 3, 2024



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Inspector General

**CITY OF DETROIT
OFFICE OF INSPECTOR GENERAL
INVESTIGATIVE REPORT**

**DLBA INVOLVEMENT WITH DEN-MAN BACKFILL ISSUES
OIG FILE NO. 18-0028-INV, ET. AL.
June 3, 2024**

I. Summary

a. OIG Investigation

On September 7, 2018, the City of Detroit Office of Inspector General (OIG) initiated Case No. 18-0028-INV based on information received that indicated Den-Man Contractors, Inc. (Den-Man) invoiced the Detroit Land Bank Authority (DLBA) for backfill it received for free from various dirt haulers.¹ The OIG opened the investigation to determine if Den-Man’s actions were a violation of the Hardest Hit Fund (HHF) contracts and whether such actions constitute waste, abuse, fraud, or corruption. The HHF contracts under which Den-Man performed its work for the City stated “[a]t the time of invoice, the Contractor will be required to substantiate all costs associated with backfill (dirt) and must provide any and all documentation related to backfill (dirt) costs. Documentation must include but is not limited to: invoices and trip/load tickets.²” During the course of this investigation, the OIG found evidence that indicated that the DLBA failed to collect backfill substantiation invoices as required by the contract. Therefore, the OIG’s investigation was expanded to include whether the DLBA abused its authority by neglecting to collect the contractually required documentation.

Shortly thereafter, the OIG was made aware that the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), who has jurisdiction over HHF funds, was also investigating the DLBA’s actions for potential criminal or civil violations. Therefore, the OIG placed its investigation of the DLBA on hold pending the conclusion of SIGTARP’s investigation. After SIGTARP completed its investigation of the DLBA, on February 10, 2023, the DLBA “agreed to pay the United States \$1,503,000 to resolve allegations related to unsubstantiated backfill dirt costs invoiced by demolition contractors and paid by the DLBA from December 2016 through June 2022, in connection with the DLBA’s blight elimination program.³” However, the OIG decided not to finalize its investigation pending the outcome of the Den-Man investigation because information related to Den-Man’s prosecution overlapped with information related to the DLBA’s actions.

¹ OIG Case No. 18-0017-INV. The full report may be found on the OIG’s website at

<https://detroitmi.gov/sites/detroitmi.localhost/files/2021-03/Final%20DenMan%20Report%2018-0017-INV.pdf>

² Exhibit A *Scope of Services* (Revised 05/05/2017), Section IX: Submittals, Part 3: Request for Payment (C)(9), pg. 26. This information was also incorporated into the HHF Request for Proposals (RFP) and *Scope of Services*.

³ Press Release, United States Attorney’s Office Eastern District of Michigan, *The Detroit Land Bank Authority Pays \$1.5 Million to Resolve False Claims Act Allegations Relating to Blight Elimination Costs*, February 10, 2023.

b. DLBA Response to the OIG's Draft Report

On April 2, 2024, the OIG sent the draft report with its recommendations and conclusions to Ms. Daniels and Ms. Chittick to give them an opportunity to dispute our findings by presenting testimony and any supporting documentation relevant to their responses.⁴ On April 16, 2024, DLBA Board Chair Erica Ward Gerson submitted a letter in writing on behalf of Ms. Daniels and Ms. Chittick.⁵ Ms. Gerson disputed all of the OIG's recommendations and conclusions. Her letter stated, in part, that MSHDA never required the DLBA to collect backfill substantiation documentation. Ms. Gerson further stated that the "fact is that MSHDA was well aware, in real time, at every moment of the HHF program, that DLBA was not collecting invoices."⁶

However, we note that on November 7, 2018, the OIG spoke with Ms. Daniels over the phone regarding backfill. The purpose of the call was to verify that contractors could not charge for free dirt before proceeding with OIG Case No. 18-0028-INV. Ms. Daniels stated that contractors could not charge for free dirt. She explained that backfill is a reimbursable cost and that if a contractor gets backfill for free they cannot charge the DBA or the DLBA. As such, she stated that contractors must be able to produce a receipt to show their actual expenses.⁷ It was essentially based on this representation made by Ms. Daniels, the OIG and SIGTARP proceeded with the various investigations of demolition contractors, including Den-Man. What is troublesome is that the DLBA's subsequent non-action and position taken on collecting invoices are in direct contradiction to the representation made by Ms. Daniels on November 7, 2018.

Additionally, on September 13, 2023, MSHDA unequivocally confirmed to the OIG that the DLBA was required to collect backfill invoices. In fact, MSHDA believed that the DLBA was collecting all required backfill documentation, including invoices, "from 2017 onward."⁸ MSHDA Blight Elimination Team Lead Roxy Eaton stated that she had conversations with Ms. Daniels about the requirement to collect backfill invoices beginning in 2017 and going forward. Ms. Eaton also stated that she had conversations with Ms. Chittick on the same topic. According to Ms. Eaton, the "DLBA had been indicating to [MSHDA] that it was complying with documentation requirements since May 2017."⁹ The fact that MSHDA employees who were at the DLBA in real time does not change Ms. Eaton's statement. Moreover, the DLBA's response letter does not identify how or which of the MSHDA employees who were at the DLBA in real time knew that the DLBA was not collecting invoices.

⁴ Letter from Inspector General Ellen Ha to DLBA Executive Director Tammy Daniels regarding OIG Case no. 18-0028-INV Involving the Detroit Land Bank Authority, April 2, 2024 and Letter from Inspector General Ellen Ha to Deputy Director Demolition Department Michele Chittick regarding OIG Case no. 18-0028-INV Involving the Detroit Land Bank Authority, April 2, 2024.

⁵ DLBA Response to the OIG Draft Report from Chair of the DLBA Board Erica Ward Gerson to Inspector General Ellen Ha, Letter and Attachment, April 16, 2024

⁶ DLBA Response Attachment, pg. 2.

⁷ Meeting Notes taken by OIG Attorney Jennifer Bentley of Phone Call between Ms. Bentley and DLBA Director of Demolition Tammy Daniels regarding Backfill, November 7, 2018.

⁸ Email from MSHDA Blight Elimination Team Lead Roxy Eaton to OIG Attorney Jennifer Bentley, copied to MSHDA Attorneys Geoffrey Ehnis-Clark and Amanda Curler regarding Detroit Backfill Questions, September 13, 2023.

⁹ *Id.*

Throughout this report, the OIG incorporates and addresses other statements from the written response submitted to the OIG on behalf of Ms. Daniels and Chittick. Additionally, the DLBA response, in its entirety, is attached at the end of this report.

c. Findings and Recommendations

Based on the evidence reviewed by the OIG and detailed in this report, the OIG makes the following findings and recommendations.

1. The OIG finds that Tammy Daniels, in her role as DLBA Demolition Director and DLBA Deputy General Counsel, abused her position and authority by failing to enforce all provisions of the HHF Request for Proposals (RFPs), contracts, and *Scope of Services*. Specifically, she neglected her responsibilities by failing to ensure that the DLBA collected contractually required documentation including backfill cost substantiation invoices. Therefore, the OIG recommends that Ms. Daniels be disciplined in accordance with DLBA policies for her disregard for the legally binding contractual requirements set forth by Michigan State Housing Development Authority (MSHDA) and U.S. Treasury Department (Treasury).
2. The OIG finds Michele Chittick, in her role as DLBA Deputy Demolition Director, also abused her position and authority by failing to collect the contractually required backfill cost substantiation invoices. As the deputy, she was responsible for ensuring contractor compliance in invoicing by reviewing contractor submissions prior to approving the payment of their submitted invoices.¹⁰ However, she never required the contractually mandated documentation prior to authorizing payment. Therefore, the OIG recommends that Ms. Chittick be disciplined in accordance with DLBA policies for neglecting her duty to collect and review all contractually required documentation set forth by MSHDA and Treasury.
3. The OIG finds that the DLBA and Ms. Daniels' failure to enforce the contract with Den-Man resulted in financial waste. The failure to collect backfill invoices to verify that contractors incurred costs resulted in fraudulent reimbursements and financial losses to the HHF Demolition Program.
4. The OIG finds that the DLBA and Ms. Daniels' failure to collect contractually required documentation also resulted in the DLBA's waste of time and resources. The City of Detroit and DLBA expended a lot of time and/or resources to test and remediate the properties where unapproved backfill was used. The use of this unapproved material could have been prevented if Ms. Daniels mandated that the DLBA collect the contractually required backfill substantiation documentation.
5. Lastly, the OIG finds that the DLBA and Ms. Daniels abused their position and authority by failing to conduct quality control audits as mandated by Treasury in 2016. Therefore, the OIG recommends that Ms. Daniels, as the person in charge

¹⁰ See <https://www.linkedin.com/in/michele-c-894a494/>, accessed on September 5, 2023.

of the HHF Demolition Program and ensuring proper reimbursements as required by MSHDA and Treasury, be disciplined in accordance with DLBA policy.

II. Background

a. HHF Blight Elimination Program

The HHF Blight Elimination program was funded by the federal government through the Treasury. Treasury approved MSHDA to allocate funds under the Michigan Homeowner Assistance Non-Profit Housing Corporation (MHA) to eligible Michigan cities.¹¹ Under the HHF program, the DLBA demolished 15,083 properties. In total, the DLBA received approximately \$265 million in HHF funds.¹²

Treasury tasked SIGTARP to investigate waste, abuse, and fraud in the HHF program.¹³ Therefore, SIGTARP had jurisdiction over all HHF funds expended in Detroit. As such, SIGTARP, with the assistance of the Detroit OIG, conducted investigation into the DLBA's failure to collect all contractually required documentation under the HHF Program. During its investigation, SIGTARP's federal agents conducted interviews with representatives from the DLBA, MSHDA, and the Detroit Building Authority (DBA). It is important to note that while the OIG jointly investigated this matter with SIGTARP, the OIG intentionally did not participate in the SIGTARP interviews so as not to interfere with any potential criminal matters. Information obtained from these interviews is referenced throughout the report. In addition to working closely with SIGTARP during the investigation, the OIG reviewed all of the evidence collected and spoke directly with MSHDA and as well as Ms. Daniels to reach its own conclusion on this matter.

b. Michigan State Housing Development Authority

MSHDA, under the MHA, (collectively referred to as MSHDA throughout this report) administered the HHF Blight Elimination program funds pursuant to a contract with Treasury. MSHDA provided guidance and oversight to all land banks and non-profits in the State of Michigan that received HHF funds. This included specifying the documents land banks were required to collect to justify program costs and receive reimbursement from the HHF program.¹⁴

Detroit received the largest allocation of funding totaling \$265 million.¹⁵ Therefore, MSHDA worked closely with the DLBA throughout the course of the HHF program. MSHDA had frequent communications with the DLBA and DBA about program requirements and regularly updated policies pertaining to the program requirements. Additionally, MSHDA

¹¹ MSHDA and MHA are collectively referred to as MSHDA throughout this report.

¹² DLBA Press Release Detroit Land Bank Authority settles federal government claim that it failed to collect certain invoices for backfill dirt in the HHF program; ends 2019 SIGTARP investigation, February 10, 2023.

¹³ <https://www.sig tarp.gov/>, accessed on November 17, 2023.

¹⁴ https://www.michigan.gov/-/media/Project/Websites/leo/Documents/Land_Bank2/HHF_FAQs_9_5_13_External.pdf?rev=9cc919f4dee84485935006fcaab6b833, accessed on September 18, 2023.

¹⁵ DLBA Press Release Detroit Land Bank Authority settles federal government claim that it failed to collect certain invoices for backfill dirt in the HHF program; ends 2019 SIGTARP investigation, February 10, 2023.

required all blight partners, including the DLBA, to sign a *Letter of Attestation for Blight Partner*, which stated in part that “[a]ll invoices submitted with respect to the Property, such as bid packages and invoices, were true, correct and complete as of the date submitted.”¹⁶ Further, MSHDA representatives attended bi-weekly contractor meetings which allowed them to update the contractors, DLBA, and other attendees on specific areas of focus and to identify potential issues with the program.¹⁷

MSHDA explained that it had always been the policy that contractors could only invoice for backfill if they had incurred an expense in obtaining the dirt. Under no circumstance was a contractor allowed to invoice for reimbursement if the backfill was obtained for free or if the contractor was paid for the excavation and removal of the dirt by a third party.¹⁸ Further, a contractor would be expected to do a change order deduct if the original bid contained a cost for the purchase of backfill.¹⁹

c. Detroit Building Authority

The DBA acted as the program manager for the City of Detroit and DLBA demolition programs throughout the HHF program.²⁰ Under the HHF Demolition Program, the DBA was responsible for drafting and modifying the *Scope of Services* and the DLBA was responsible for drafting the HHF contracts. The *Scope of Services* specified program requirements and what contractors had to do to be compliant with the HHF contracts. For example, it detailed the specific parameters and expectations required by the contractors related to abatement, demolition, invoicing, and paperwork.²¹ According to DBA Assistant Director of Field Operations Tom Fett,²² HHF contracts and the *Scope of Service* were under constant review and discussion by the DBA and DLBA. The language in both documents could not contradict each other. In instances where a requirement in the HHF contracts or *Scope of Services* was no longer acceptable, the DBA and DLBA would discuss a potential to change in language.²³

The DBA also reviewed invoices submitted by contractors.²⁴ However, their review was limited to verifying that the work in the field had been performed and did not include reviewing

¹⁶ MSHDA Blight Elimination Program Operation Manual, May 2018, pgs. 24, 27-29.

¹⁷ U.S. Department of Treasury Office of the Special Inspector General for the Trouble Asset Relief Program (SIGTARP) Memorandum of Investigative Activity (MOIA), Interview of MSHDA Director of Homeownership Mary Townley and MSHDA Blight Elimination Team Lead Roxanne Eaton conducted by SIGTARP Special Agent Daniel Esmond, December 4, 2018.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Demolition Management Agreement By and Between the City of Detroit Building Authority and Detroit Land Bank Authority, February 2, 2015.

²¹ U.S. Department of Treasury Office of the Special Inspector General for the Trouble Asset Relief Program (SIGTARP) Memorandum of Investigative Activity (MOIA), Interview of Assistant Director of Field Operations for the Detroit Demolition Department Tom Fett conducted by SIGTARP Special Agents Daniel Esmond and Brian McCarthy, January 22, 2021.

²² Mr. Fett now performs this role for the Detroit Demolition Department which took over managing the City of Detroit Demolition program from the DBA in early 2021.

²³ SIGTARP MOIA of Tom Fett, January 22, 2021.

²⁴ DBA Deputy Director Tim Palazzolo reviewed the invoices. It should be noted that he is now performs the Deputy Director for the Detroit Demolition Department which took over managing the City of Detroit Demolition program from the DBA in early 2021.

supporting documentation required by the contract and *Scope of Service* to be included with the invoice. The DLBA was the party responsible for approving the payment of contractor invoices, including verifying that all required documentation was included with the invoice submission. As such, all checks for payment were authorized and signed by the DLBA pursuant to review by DLBA staff.²⁵

The language in the RFPs, *Scope of Services*, and HHF contracts “mirror each other” and instruct contractors on how and what to submit.²⁶ All parties to a contract, including demolition contractors and the DLBA, must be compliant with its provisions.²⁷ It was the responsibility of the DLBA to collect and verify the documentation because of their role in reviewing invoices submitted by the contractors.²⁸

Both Mr. Fett and DBA Deputy Director Tim Palazzolo explained that the *Scope of Services* required contractors to submit invoices to substantiate backfill costs.²⁹ Mr. Palazzolo noted that the RFP Price Sheets contained asterisked language that stated “[a]t the time of invoice, Respondents will be required to substantiate all costs associated with backfill (dirt) and must provide any and all documentation related to backfill (dirt) costs.³⁰” This statement was added by the DBA to be consistent with the HHF Contract and *Scope of Services* language. Mr. Palazzolo explained that it was his “understanding that (dirt) is parenthesized to reflect the intent to document and identify material costs versus the costs associated with transportation, labor and equipment.³¹”

He also stated that if a contractor “did not pay for backfill dirt [they] would not be able to invoice for it.³²” Additionally, if a contractor received free dirt they should have submitted a change order deducting that cost.³³ Therefore, “invoices, and not load tickets, would be the only way to verify the costs and support reimbursement.³⁴”

²⁵ U.S. Department of Treasury Office of the Special Inspector General for the Trouble Asset Relief Program (SIGTARP) Memorandum of Investigative Activity (MOIA), Interview of Deputy Director for the Detroit Demolition Department Tim Palazzolo conducted by SIGTARP Special Agents Daniel Esmond and Brian McCarthy, January 28, 2021.

²⁶ SIGTARP MOIA of Tim Palazzolo, January 28, 2021.

²⁷ SIGTARP MOIA of Tom Fett, January 22, 2021.

²⁸ SIGTARP MOIA of Tim Palazzolo, January 28, 2021.

²⁹ SIGTARP MOIA of Tom Fett, January 22, 2021 and SIGTARP MOIA of Tim Palazzolo, January 28, 2021.

³⁰ *Detroit Land Bank Authority Abatement and Demolition of Residential Properties Agreement RFP 5.26.17M*, Exhibit B Project Areas/ Locations and Reimbursable Costs Abatement and Demolition of Residential Properties, pg. 49.

³¹ SIGTARP MOIA of Tim Palazzolo, January 28, 2021.

³² *Id.* See also U.S. Department of Treasury Office of the Special Inspector General for the Trouble Asset Relief Program (SIGTARP) Memorandum of Investigative Activity (MOIA), Interview of Deputy Director for the Detroit Demolition Department Tim Palazzolo conducted by SIGTARP Special Agents Daniel Esmond and Bill Tindall, December 11, 2018.

³³ SIGTARP MOIA of Tim Palazzolo, January 28, 2021.

³⁴ *Id.*

d. Detroit Land Bank Authority

Currently, Tammy Daniels is the Executive Director of the DLBA. She was appointed as the interim Executive Director in January 2022 and became the fulltime executive director in June of that same year. Ms. Daniels started with the DLBA as a staff attorney in 2015 and shortly thereafter was promoted to Deputy General Counsel. In August 2017, she also became the DLBA Demolition Director. During her time as DLBA Deputy General Counsel and Demolition Director, Ms. Daniels was responsible for the “overall program responsibilities” which included the “legal aspects of the contracts,” modifications to the *Scope of Services*, change order requirements, and final contract approval.³⁵

Ms. Daniels explained during an interview with SIGTARP that the HHF contracts were a cost reimbursement contract which meant that a contractor could not artificially drive up prices to make an excessive profit.³⁶ Her statement is further confirmed by the *HHF Contract Fee Schedule* which required contractors to breakdown the cost of demolition for each property into abatement costs, demolition, backfill (dirt), grade, and seed to show how the total demolition cost was determined.³⁷ The *Fee Schedule* also specified that “[p]ayment for the proper performance of the Services shall be contingent upon receipt by DLBA of a complete and correct invoice.³⁸” More importantly, the disclaimer in the *Fee Schedule* states that “[a]t time of invoice Respondents will be required to substantiate all costs associated with backfill (dirt) and must provide any and all documentation related to backfill (dirt) costs.³⁹” Ms. Daniels explained that a contractor’s profit primarily came from the demolition column where the contractor could minimize their expenses, thus increasing their profit.⁴⁰ Contractors were also permitted to mark up any work given to a subcontractor by 10% which was an additional area of profit.⁴¹

e. HHF Contracts

The HHF Demolition *Scope of Services*⁴² details the requirements contractors must adhere to when they are awarded a *Detroit Land Bank Authority Abatement and Demolition of*

³⁵ U.S. Department of Treasury Office of the Special Inspector General for the Trouble Asset Relief Program (SIGTARP) Memorandum of Investigative Activity (MOIA), Interview of Deputy Director of Demolition for the Detroit Land Bank Authority (DLBA) Michele Chittick, conducted by SIGTARP Special Agents Daniel Esmond and Brian McCarthy and Assistant United States Attorney Andrew Yahkind, January 21, 2021. Ms. Chittick was represented by counsel.

³⁶ U.S. Department of Treasury Office of the Special Inspector General for the Trouble Asset Relief Program (SIGTARP) Memorandum of Investigative Activity (MOIA), Interview of Deputy Executive Director for the Detroit Land Bank Authority (DLBA) Tammy Daniels conducted by SIGTARP Special Agents Daniel Esmond and Brian McCarthy, December 4, 2020.

³⁷ *Detroit Land Bank Authority Abatement and Demolition of Residential Properties Agreement RFP 5.26.17M*, Exhibit B Project Areas/ Locations and Reimbursable Costs Abatement and Demolition of Residential Properties Fee Schedule, pg. 49.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ SIGTARP MOIA of Tammy Daniels, December 4, 2020. The interview was also attended by Assistant United States Attorney Andrew Yahkind. Ms. Daniels was represented by counsel.

⁴¹ *Id.*

⁴² The *Scope of Services*, which is incorporated by reference into the executed contract, at Section II: General Requirements, pg. 1, states that “in case of a discrepancy between the requirements of this Scope of Services and any applicable laws, regulations, ordinances, rules, or protocols, the most stringent requirements must apply. It also

Residential Properties Agreement (the contract). The *Scope of Services*, which is incorporated into all HHF contracts as Exhibit A, states that “compensation is based on the approved prices and costs submitted in response to the Request for Proposals, satisfactory completion of work, and the submission of a properly executed, correct, and completed request for payment form with all necessary and contractually required supporting documentation.⁴³” Additionally, the *Scope of Services* states that at the “time of invoice, the Contractor will be required to substantiate all costs associated with backfill (dirt) and must provide any and all documentation related to backfill (dirt) costs. Documentation must include, but is not limited to, invoices and trip/load tickets.⁴⁴”

The HHF contracts state at Section 5.01 that the “DLBA agrees to pay the Contractor on a cost reimbursement basis, the amount as prescribed in Attachment 1 of Exhibit B, attached hereto and incorporated by reference for the complete and proper performance of services.⁴⁵” The contract at section 6.01 also states that the contractor must “submit an invoice for payment consistent with and pursuant to all requirements” of the contract.⁴⁶ Price sheets are also incorporated into the HHF contracts as Exhibit B and show the itemized costs associated with each demolition. Categories include asbestos abatement; additional hazmat; total abatement costs; demolition; backfill (dirt); grade; and seed.⁴⁷ All price sheets submitted by contractors during the Request for Proposal (RFP) process and subsequently incorporated into the contracts state “[a]t the time of invoice, Respondents will be required to substantiate all costs associated with backfill (dirt) and must provide any and all documentation related to backfill (dirt) costs.⁴⁸”

The DLBA’s response to the OIG draft report states that the “DLBA was obligated to award lump sum contracts based on the lowest bid for the total service for each property, including all demolition costs, fill dirt, etc.⁴⁹” This response however is contrary to the language contained in the contract which clearly states that it is a “cost reimbursement” contract.⁵⁰ A cost reimbursement contract is defined as contracts in which the contractor is reimbursed for the actual cost incurred in performing the work, plus a profit margin. In this type of contract, the contractor has less risk because they can submit a change order to ensure their expenses are covered.⁵¹ A lump sum contract is defined as a “contract requiring no cost breakdown. The

states that “in the case of any discrepancy between this Scope of Services and the executed contract, and in the case of any discrepancy between this Scope of Services and the executed contract for the abatement and demolition work, the most stringent requirements must apply.”

⁴³ *Detroit Land Bank Authority Abatement and Demolition of Residential Properties Agreement RFP 5.26.17M*, Exhibit A *Scope of Services* (7/21/2017), Section II: General Requirements (D), pg. 21.

⁴⁴ Exhibit A *Scope of Services* (7/21/2017), Section IX: Submittals, Part 3: Request for Payment, pg. 46.

⁴⁵ *Detroit Land Bank Authority Abatement and Demolition of Residential Properties Agreement RFP 5.26.17M*, 5. Compensation, 5.01, pg. 3.

⁴⁶ *Detroit Land Bank Authority Abatement and Demolition of Residential Properties Agreement RFP 5.26.17M*, 6. Methods of Payment and Use of Funds, 6.01, pg. 3.

⁴⁷ *Detroit Land Bank Authority Abatement and Demolition of Residential Properties Agreement RFP 5.26.17M*, Exhibit B Project Areas/ Locations and Reimbursable Costs Abatement and Demolition of Residential Properties, pg. 49.

⁴⁸ *Id.*

⁴⁹ DLBA Response Letter, pg. 2.

⁵⁰ *Detroit Land Bank Authority Abatement and Demolition of Residential Properties Agreement RFP 5.26.17M*, 5. Compensation, 5.01, pg. 3.

⁵¹ Key Differences between Fixed-Price and Cost-Reimbursement contracts, <https://www.linkedin.com/advice/0/what-key-differences-between-fixed-price-cost-reimbursement>, accessed on

principal, either customer or owner, agrees to pay a specified amount for work a contractor completes.⁵²” However, the HHF contract price sheets require contractors to specify the itemized costs associated with each demolition.⁵³

The DLBA response also states that it “was further obligated under its contracts to pay only the exact amount from the original bid.⁵⁴” However, the DLBA’s response does not account for the change orders permitted by MSHDA and as outlined in the MSHDA Blight Elimination Program Operation Manual (Blight Manual). The Blight Manual provides a process in which contractors can invoice for an amount different from the original bid.⁵⁵ In fact, we note the DLBA has paid contractors on numerous invoices which contained change orders and thus deviated from the original bid.⁵⁶

III. Timeline of Events

The following timeline evidences that the DLBA was made fully aware that MSHDA and SIGTARP required the DLBA to enforce the terms of HHF contracts that requires contractors submit invoices for dirt. It is this knowledge that the DLBA possessed but failed to act on that ultimately results in abuse of authority by the DLBA. Sections IV and V of this report will refer back to the various events referenced in this timeline to show that the DLBA had multiple opportunities to correct their actions which could have prevented the DLBA from paying back over \$1.5 million to Treasury.

It should be noted that the DLBA’s response to the OIG’s draft report alleges that the OIG’s conclusions are based on “cherry-picked email communications from January 2017 to May 2017.⁵⁷” However, the DLBA did not provide any additional email communications or other documented communications to show a different context to the emails. If additional email communications were provided by the DLBA, the OIG would have been able to review the additional information to determine if any of our draft findings should have been amended. Therefore, without any additional documentation from the DLBA, the OIG is unable to reconsider its draft conclusions and recommendations..

April 22, 2024. See also Cost Reimbursement Contract: A Quick Guide, <https://www.projectmanager.com/blog/cost-reimbursement-contract>, accessed on April 22, 2024.

⁵² Lump Sum Contract Definition and Legal Meaning, The Law Dictionary, Featuring Black’s Law Dictionary, 2nd Ed., <https://thelawdictionary.org/lump-sum-contract/>, accessed on April 22, 2024.

⁵³ *Detroit Land Bank Authority Abatement and Demolition of Residential Properties Agreement RFP 5.26.17M*, Exhibit B Project Areas/ Locations and Reimbursable Costs Abatement and Demolition of Residential Properties, pg. 49.

⁵⁴ DLBA Response Letter, pg. 2.

⁵⁵ MSHDA Blight Elimination Program Operation Manual, May 2018, pgs. 22, 24, 39-40.

⁵⁶ For example, see change orders related to HHF contracts 5.29.18D and 5.29.18E.

⁵⁷ DLBA Response Attachment, pg. 3.

2015

- **July 1, 2015**

MSHDA identified high greening costs submitted by contractors during 2014 and 2015. Greening costs include grading, seeding, dirt, and the replacement of sidewalks and curbs. On July 1, 2015, in email communication with Treasury officials, MSDHA developed new guidance to improve the process of collecting and reporting “greening” expenses. Moving forward, all land banks and non-profit partners receiving HHF funds through MSHDA were “required to provide per address itemized expenses of acquisition, demolition, and greening.”⁵⁸

2016

- **August 15, 2016**

Treasury officials suspended demolition activities in the City of Detroit. According to the suspension memorandum, Treasury’s decision to suspend funding was based on information provided by MSHDA concerning their investigation and audit of HHF expenditures. The expenditures in question included questionable backfill change orders.⁵⁹

- **October 14, 2016**

The DLBA was permitted to resume HHF demolitions. Treasury authorized the resumption of activities after the City and DLBA agreed to (1) conduct quality control audits to ensure compliance; (2) establishing a \$5 million escrow fund to cover any costs deemed ineligible by Treasury; (3) a Fifty (50) property limit on new bid requests; and (4) a requirement for contractors to disclose all subcontractors and cap their markup at 10%.⁶⁰ As a part of the agreement, MSHDA reserved the right to initiate additional oversight measures.⁶¹

2017

- **January 19, 2017**

MSHDA sent a series of emails to the DLBA. MSHDA Blight Elimination Team Lead Roxy Eaton sent an email to City of Detroit and DLBA employees, including DLBA Deputy General Counsel Tammy Daniels, that stated

⁵⁸ Email from U.S. Treasury Homeownership Preservation Officer Erin Quinn to MSHDA Director of Homeownership Mary Townley regarding Greening Expenses Reporting, July 1, 2015. See also SIGTARP DLBA Timeline created SIGTARP Special Agent Daniel Esmond.

⁵⁹ Memorandum from Auditor General Mark Lockridge to Honorable City Council regarding Suspension and Reinstatement of the Hardest Hit Fund Program with the Detroit Land Bank Authority, October 31, 2016. See also SIGTARP DLBA Timeline created SIGTARP Special Agent Daniel Esmond.

⁶⁰ Memorandum from Auditor General Mark Lockridge to Honorable City Council regarding Suspension and Reinstatement of the Hardest Hit Fund Program with the Detroit Land Bank Authority, October 31, 2016. See also SIGTARP DLBA Timeline created SIGTARP Special Agent Daniel Esmond.

⁶¹ MSHDA Blight Staff Memo, October 14, 2016.

We are seeing some very high costs for dirt- so I am putting you guys on notice that we are sending the files back with a note asking the contractor to supply a copy of the load ticket and a copy of the invoice showing they really paid for dirt. We are receiving conflicting stories about where and how dirt is being acquired, so this is [how] treasury wants us to address it.⁶²

In a subsequent email from Ms. Eaton to City of Detroit and DLBA employees, including Ms. Daniels, Ms. Eaton stated that

When we have a property that has a high dirt amount such as \$3,750- that is a large dollar amount. We are now being required to prove that the dirt was actually paid for by an invoice, etc. There [are] many contractors that received dirt for free or just the trucking charges and now we have to prove that these are legitimate costs. If they are legitimate costs it should be no issue at all to obtain the documentation.⁶³

- **March 1, 2017**

DLBA Deputy General Counsel Tammy Daniels sent an email to MSHDA Blight Elimination Team Lead Roxy Eaton and copied DLBA Director of Demolition Rebecca Camargo. The email stated, in part, that the DLBA shares

the same concerns about high greening costs... Moving forward, the DLBA proposes that we will modify all RFPs, Scope of Services, and Contracts to reflect that contractors will be required to provide backup documentation to support any dirt costs that exceed \$3,000.00. We believe that this directive will satisfy the concern that contractors are inflating greening costs. Please advise in writing if we can proceed with this course of action.⁶⁴

Shortly thereafter, Ms. Eaton responds “This is the direction we need to head towards and with all RFP’s, Scope of work and contracts, this new directive will have to be completed as a true cost.⁶⁵”

⁶² Email from MSHDA Blight Elimination Team Lead to DLBA and City of Detroit employees Rebecca Camargo, Pura Bascos, Tom Fett, Tim Palazzolo, Lorna MacFarlane, Laura McManaman, and Carlos Hernandez (MSHDA Contractor), copied to Tammy Daniels regarding heads up, July 19, 2017.

⁶³ Email from MSHDA Blight Elimination Team Lead Roxy Eaton to MSDHA Contractor Alessandro Bozo, copied to DLBA employees Patrick Clemons, Rebecca Camargo, Pura Bascos, and Tammy Daniels regarding D2-11066-3118 Concord, January 19, 2017.

⁶⁴ Email from DLBA General Counsel Tammy Daniels to MSHDA Blight Elimination Team Lead Roxy Eaton, copied to DLBA Director of Demolition Rebecca Camargo regarding Backfill Costs, March 1, 2017.

⁶⁵ Email from MSHDA Blight Elimination Team Lead Roxy Eaton to DLBA General Counsel Tammy Daniels, copied to DLBA employee Rebecca Camargo and MSHDA Director of Homeownership Mary Townley regarding Backfill Costs, March 1, 2017.

- **March 14, 2017**

The DLBA Board of Directors passed Resolution 03-01-2017 “clarifying and defining the authority granted to the executive director to implement the Hardest Hit Fund Blight Program and adopting a revised policy.”

- **April 24, 2017**

Via email, Ms. Camargo proposed adding the following to the HHF RFPs, contracts, and *Scope of Services*: “All dirt costs over \$3,000 will be subject to required documentation. Any cost under \$3,000 may be subject to documentation, depending on the size of the house.⁶⁶” To which Ms. Eaton responded “Don’t we need to spell out required documentation. And what about the ones that freely admit they get ‘free’ dirt.⁶⁷”

In response, Ms. Camargo suggested the following language: “Documentation for any and all dirt charges must be provided upon DLBA request.⁶⁸” She further noted that the “issue becomes that contractors can no longer break out dirt in their bids because they won’t know in advance what the actual cost will be. Will that be a problem?⁶⁹” Ms. Eaton indicated that contractors “can still break out a reasonable amount, every other partner is doing it with no problem.⁷⁰”

- **April 25, 2017**

Ms. Daniels emailed Ms. Eaton and Ms. Camargo, among others, stating

Roxy: Further to the comments in today’s demo meeting, please consider and advise regarding the proposed language for inclusion in our RFPs:

‘Respondents will be required to substantiate all costs associated with backfill (dirt), and must provide any and all documentation related to backfill (dirt) costs. Documentation must include, but is not limited to, invoices and/or dirt trip/load tickets.’⁷¹

⁶⁶ Email correspondence involving DLBA Director of Demolition Rebecca Camargo, MSHDA Blight Elimination Team Lead Roxy Eaton, DLBA General Counsel Tammy Daniels, DBA Deputy Director Tim Palazzolo, and MSHDA contractor Laura McManaman regarding Dirt, April 24, 2017.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Email from DLBA Deputy General Counsel Tammy Daniels to MSHDA Blight Elimination Team Lead Roxy Eaton and DLBA Director of Demolition Rebecca Camargo, copied to MSHDA Contractor Laura McManaman and DBA Deputy Director Tim Palazzolo regarding Dirt, April 25, 2017.

- **May 1, 2017**

Ms. Camargo sent an email to Ms. Eaton and MSHDA Director of Homeownership Mary Townley, which was also copied to Ms. Daniels and Mr. Palazzolo. The email stated

Good morning ladies – here is the latest draft of proposed language regarding backfill. Let us know what you think as soon as you get a chance. Thanks!!!

At the time of invoice, Respondents will be required to substantiate all costs associated with backfill (dirt) and must provide any and all documentation related to backfill (dirt) costs. Documentation must include, but is not limited to, invoices and/or dirt trip/load tickets.⁷²

Ms. Townley responded that this “topic has been of great concern in our office. The RFP bid should already include dirt and transportation of dirt. Can we somehow insert additional language stating this and for any additional charges (change orders) should be justified?⁷³”

Later that day, Ms. Camargo responded via email stating

“How about this?”

At the time of invoice, Respondents will be required to substantiate all costs associated with backfill (dirt) and must provide any and all documentation related to backfill (dirt) costs. Documentation must include, but is not limited to, invoices and/or dirt trip/load tickets. Additionally, any change orders must be approved and accompanied by proper documentation justifying any increase in expense.⁷⁴

- **May 3, 2017**

In response to the May 1, 2017 communications, Ms. Townley sent an email saying that “[a]fter yesterday’s conversation I now understand your proposed language. The only addition I would add to this is language that costs associated with backfill are included in the total demolition build cost. Thanks.⁷⁵”

⁷² Email from DLBA Director of Demolition Rebecca Camargo to MSHDA Blight Elimination Team Lead Roxy Eaton and MSHDA Director of Homeownership Mary Townley, copied to DBA Deputy Director Tim Palazzolo, DLBA Deputy General Counsel Tammy Daniels, and DLBA Interim Executive Director Irene Tucker regarding Proposed RFP Language, May 1, 2017.

⁷³ Emails correspondence between MSHDA Director of Homeownership Mary Townley, DLBA Director of Demolition Rebecca Camargo, MSHDA Blight Elimination Team Lead Roxy Eaton, DBA Deputy Director Tim Palazzolo, DLBA Deputy General Counsel Tammy Daniels, and DLBA Interim Executive Director Irene Tucker regarding Proposed RFP Language, May 1, 2017.

⁷⁴ *Id.*

⁷⁵ Email from MSHDA Director of Homeownership Mary Townley to DLBA Director of Demolition Rebecca Camargo and MSHDA Blight Elimination Team Lead Roxy Eaton, copied to DBA Deputy Director Tim Palazzolo, DLBA Deputy General Counsel Tammy Daniels, and DLBA Interim Executive Director Irene Tucker regarding Proposed RFP Language, May 3, 2017.

- **May 5, 2017**

The revised backfill language was finalized and included in the *Scope of Services*. Therefore, all HHF contracts signed on or after May 5, 2017 included the following language:

At the time of invoice, the Contractor will be required to substantiate all costs associated with backfill (dirt) and must provide any and all documentation related to backfill (dirt) costs. Documentation must include, but is not limited to: invoices and trip/load tickets.⁷⁶

- **May 12, 2017**

The DBA held a bi-weekly contractor meeting. The meeting was attended by employees from the DLBA, DBA, and MSHDA as well as demolition contractors. The handwritten notes from the meeting stated that contractors asked for clarification regarding dirt. The notes stated “dirt/ backfill was discussed as to if contractor gets it for free they have to remove it but if it costs more they can’t. Lump sum package so why does it matter if one house not charged and another is. It balances out. Dirt/ backfill costs do we put in labor, gas, trucking, etc.” “MSHDA” said “yes. Be reasonable.” The then DLBA Demolition Director Rebecca Camargo said “need to charge a reasonable fee and if not buying dirt must no[t] charge DLBA for it.”⁷⁷

2018

- **November 7, 2018**

The OIG had a phone call with Ms. Daniels regarding backfill. The purpose of the call was to verify that contractors could not charge for free dirt. The OIG and SIGTARP were in the early stages of their investigations and did not want to continue to devote time and resources to this aspect of the investigation if contractors were permitted to charge for free dirt. Meeting notes written by the OIG at the time described that Ms. Daniels stated that

backfill issues have been discussed at a number of contractor meetings...However, Ms. Daniels knows that backfill came up a number of times. She stated that she knows backfill came up in early January 2017. MSHDA thought backfill costs were too high. Contractors were put on notice that if MSHDA thought backfill costs were excessive that contractors would be required to provide documentation related to the costs. She said that MSHDA was aware that contractors were getting dirt for free or that dirt costs were excessive relative to the size of the hole to be filled.

⁷⁶ Email from DLBA General Counsel Mike Brady to OIG Attorney Jennifer Bentley, copied to DLBA Deputy General Counsel Tammy Daniels regarding OIG Questions- Backfill, January 18, 2019.

⁷⁷ Detroit Building Authority Contractor’s Meeting Agenda and Notes, dated May 12, 2017.

Backfill is a reimbursable cost. If a contractor gets backfill for free they cannot charge the DBA or DLBA. Contractors must be able to produce a receipt to show their actual expenses. Contractors cannot charge for anything they did not pay for. For example, if a contractor is paid by a builder to haul dirt away from a site, the contractor cannot charge trucking costs as the builder paid the contractor for those.⁷⁸

- **December 5, 2018**

The DBA held a bi-weekly contractor meeting. The meeting was attended by employees from the DLBA, including DLBA Deputy Director Michele Chittick, DBA, and MSHDA, as well as demolition contractors. The handwritten notes indicated that MSHDA Blight Elimination Team Lead Roxy Eaton noted dirt was a “hot issue.” She explained that SIGTARP was looking at change orders. Therefore, “if [contractors] got free dirt and did not tell [contractors should do a] change order deduct.⁷⁹” Ms. Eaton told the contractors to tell MSHDA now if they did not do a change order deduct for free dirt so “it can be addressed prior to SIGTARP getting involved.⁸⁰”

- **December 5, 2018**

Den-Man’s owner David Holman sent an email to Ms. Eaton asking what he needed to do to “help [Den-Man] get compliant.” She responded that “for any contracts that you bid and you then incurred less costs than originally bid, please do a spreadsheet indicating the original costs, the incurred costs and the difference.” Ms. Eaton also informed Mr. Holman that “there is nothing wrong for charging for labor- because that is not a free item, but if something is free – then the savings must be passed on in the form of a deduct change order.⁸¹”

2019

- **January 15, 2019**

Mr. Holman provided Ms. Eaton with a spreadsheet purporting to show Den-Man’s “anticipated cost” versus “actual cost” of backfill for various properties. Based on his calculations, as outlined in OIG Case No. 18-0028-INV Den-Man Debarment Report, Mr. Holman voluntarily returned \$65,878.50 back to MSHDA.⁸² However, as stated in

⁷⁸ Meeting Notes taken by OIG Attorney Jennifer Bentley of Phone Call between Ms. Bentley and DLBA Director of Demolition Tammy Daniels regarding Backfill, November 7, 2018.

⁷⁹ Detroit Building Authority Contractor’s Meeting Agenda and Notes, dated December 5, 2018, pg. 7.

⁸⁰ *Id.* at 8.

⁸¹ Email correspondence between Mr. Holman and Ms. Eaton, copied to Gail Holman regarding “Denman,” dated December 5, 2018.

⁸² Den-Man Backfill Deduct Reports.

the Debarment Report, Den-Man actually received approximately \$1,148,513.61 in free dirt.⁸³

- **January 15, 2019**

DLBA submitted its quarterly report to Detroit City Council. The section regarding the Demolition Department, of which Ms. Daniels was Director, stated

The DLBA continues to work diligently with the demolition contractors to ensure their invoices and supporting documents are correct, complete, and processed in a timely manner. As a result of the restructuring of the demolition department along with the numerous process improvements that were implemented in late 2017, the demolition department was able to significantly increase its productivity.⁸⁴

- **January 18, 2019**

Then DLBA General Counsel Mike Brady sent an email to the OIG in response to a request for information regarding the requirement for contractors to provide specific costs for backfill. The response, which was also copied to Ms. Daniels, stated

The 5.5.17 Scope of Services, which was included beginning with RFP Series 5.5.17, is the start date for contractors to do the following:

9. **At the time of invoice, the Contractor will be required to substantiate all costs associated with backfill (dirt) and must provide any and all documentation related to backfill (dirt) costs. Documentation must include but is not limited to invoices and trip/load tickets.**

This section was added under Section IX Submittals, Part 3 Request for Payments, Item C, Sub-item 9. I have attached the Scope of Services for your reference.

Thus, any HHF contracts signed on or after 5/5/17 reflect this language. The first executed contract under the 5.5.17 Scope of Services was signed on 7/26/17.⁸⁵

⁸³ Plea Agreement between the State of Michigan and David Holman, March 4, 2024 and Plea Agreement between the State of Michigan and David MacDonald, January 26, 2024.

⁸⁴ Detroit Land Bank Authority, City Council Quarterly Report for the Second Quarter of Fiscal Year 2019, January 15, 2019.

⁸⁵ Email from DLBA General Counsel Mike Brady to OIG Attorney Jennifer Bentley, copied to DLBA Demolition Director Tammy Daniels regarding OIG Questions- Backfill, January 18, 2019.

Mr. Brady noted that the above write-up was provided by the DLBA's demolition team.

- **July 12, 2019**

Ms. Chittick sent an email regarding Attestation Letters to all contractors, MSHDA, and DLBA representatives. The email read, in part,

Please be advised that the MSHDA HHF contractor attestation letter you submit to DLBA with the demolition invoice and upload into DocuVault, must be signed and dated on or after the demolition invoice date. This is critical as the authorized signer is attesting that the invoice is true and accurate, which would not be the case if the letter was signed prior to the demolition invoice date. Additionally, in the event a revised demolition invoice is submitted due to the original being rejected, a new contractor attestation letter would be required if the invoice date changes on the revised invoice.

Demolition invoices will be placed on hold effective today for failure to comply until we receive the updated document in DocuVault...⁸⁶

- **July 18, 2019**

Ms. Chittick sent an email to all demolition contractors regarding backfill and topsoil documentation. It was also copied to Ms. Daniels, Ms. Eaton, and DLBA General Counsel Tim Devine. The email stated, in part,

We learned yesterday that you were advised to not load any backfill source documentation for the topsoil used to backfill DLBA HHF demolitions. This is incorrect and non-compliant with the DLBA executed HHF demolition and abatement services contract's Scope of Services. **ALL BACKFILL MATERIALS USED TO COMPLETE SITE GRADING UP TO AND INCLUDING THE REQUIRED TOPSOIL to obtain the BSEED Final Grade Approval must be documented on the backfill platform.** All questions or concerns regarding the interpretation or definition of any items contained in a DLBA HHF executed contract should be directed to Tammy Daniels, Deputy Executive Director.

The DLBA executed HHF demolition and abatement services contract identifies in Exhibit A: Scope of Services, Section IX: Submittals, Part 2: Backfill Material Deliverables and Part 3:

⁸⁶ Email from DLBA Deputy Director of Demolition Michele Chittick to demolition contractors, copied to DLBA Director of Demolition Tammy Daniels, etc. regarding Contractor Attestation Letters Must be Dated on or After Demolition Invoice Date, July 12, 2019.

Request for Payment, that the following information be maintained and provided:

1. Documentation of origin of backfill and topsoil sources, and certification or analytical data where appropriate, verifying material is uncontaminated.
2. **Additionally, at the time of invoice, the Contractor will be required to substantiate all costs associated with backfill (dirt, including topsoil) and must provide any and all documentation related to backfill costs. Documentation must include, but is not limited to, invoices and trip/load tickets.** [Emphasis added.]
3. **This documentation must be uploaded into the Salesforce Demo Property Case Page in the DocuVault folder labeled "Backfill Load Ticket."** [Emphasis added.]

This documentation is essential in confirming your compliance with the executed contract's scope of services related to Section VI: Site Finishing. Demolition invoices will be placed on hold for failure to comply until we receive the updated document in DocuVault. Failure to provide any required documentation will result in no payment for services rendered.

- **December 17, 2019**

Ms. Eaton sent an email to all Blight Partners, including Detroit. It read, in part,

Our office is continuously looking at our processes and procedures to ensure we are documenting the spending of the HHF Blight federal funds with the utmost of responsibility. For one area of the file for dirt costs, we felt the need to strengthen our documentation requirements. Effective **January 1, 2020** all files in Stage 2 prior to any funding, must contain a copy of the actual dirt invoices from backfill sources. If contractors obtains a large supply of dirt at one time and uses on multiple sites, we will require copy of invoice for dirt then require documentation on yardage of dirt used for each address.⁸⁷

⁸⁷ Email from MSHDA Blight Elimination Team Lead Roxy Eaton to Blight Partners regarding One More change for everyone, December 17, 2019.

2021

- **June 24, 2021**

SIGTARP Assistant Deputy Special Inspector General Gabriele A. Tonsil sent a letter to the Treasury Department’s Director of the Office of Financial Stability Danielle Christensen. The letter stated that SIGTARP reviewed reimbursement files for the City of Detroit HHF demolition program from 2017 through 2019. SIGTARP auditors found that contactors were paid approximately \$13 million in backfill costs for demolitions that occurred during that timeframe. The letter noted that

All the demolitions occurred under contracts containing the new requirement for contractors to provide documentation to substantiate backfill costs. SIGTARP reviewed 100 reimbursement files the local contractors submitted during this time and found that none of the submissions contain invoices that show the actual amount the local contractors paid for this material. Absent this critical information, the Detroit blight partner could not properly substantiate that backfill payment requests were necessary and reasonable, and it raises questions about how thoroughly the partner reviewed the contractors’ submissions. As a result, an indeterminate amount of the \$13 million the Detroit blight partner paid to its local contractors during this period may have been the result of inflated payment requests. Furthermore, by extension, taxpayers have no assurance that the Michigan state agency did not overpay contractors for blight demolition costs.⁸⁸

- **July 13, 2021**

SIGTARP issued a subpoena to the DLBA demanding the following:

All Quality Control Audits Reports/Recommendations/Responses and/or other related documents prepared by or at the direction of Detroit Land Bank Authority for its benefit as a result of the City of Detroit’s Office of the Auditor General Report dated April 12, 2017. In part one of the reasons the funding was reinstated was due to the DLBA agreeing to conduct Quality Control Audits.

Then DLBA General Counsel Tim Devine responded that the DLBA’s “inquiry has not identified records responsive to the request.”⁸⁹

⁸⁸ Letter from SIGTARP Assistant Deputy Special Inspector General for Audit and Evaluation Gabriele A. Tonsil to U.S. Department of Treasury Office of Financial Stability Director Danielle Christensen, June 24, 2021.

⁸⁹ SIGTARP DLBA Timeline created SIGTARP Special Agent Daniel Esmond.

2023

- **February 10, 2023**

The DLBA “agreed to pay the United States \$1,503,000 to resolve allegations related to unsubstantiated backfill dirt costs invoiced by demolition contractors and paid by the DLBA from December 2016 through June 2022, in connection with the DLBA’s blight elimination program.⁹⁰” The U.S. Attorney’s Office for the Eastern District of Michigan noted that the “United States contends that the claims for payment violated the False Claims Act, 31 U.S.C. §§ 3729-3733.⁹¹” SIGTARP Principal Deputy Inspector General Melissa Bruce stated that the “requirement to substantiate material costs before reimbursing contractors is critical to ensuring that TARP funds are properly spent on costs that are both reasonable and necessary to achieve the goals of this program.⁹²”

IV. Significance of Adding the Backfill Cost Substantiation Language

In 2014 and 2015, MSHDA found that contractors were submitting invoices with high greening costs. Greening costs include grading, seeding, and backfill. Therefore, in July 2015, MSHDA required the DLBA to “provide per address itemized expenses of acquisition, demolition, and greening.⁹³” However, backfill costs remained an issue to SIGTARP and MSHDA. Therefore, on August 15, 2016, Treasury officials suspended all HHF demolitions in the City of Detroit, in part due to questionable backfill dirt change orders.⁹⁴ On October 14, 2016, demolitions were allowed to proceed after the DLBA agreed to various provisions including quality control audits to ensure compliance and a requirement for contractors to disclose all subcontractors and cap their markup at 10%.⁹⁵ As a part of the agreement, MSHDA reserved the right to initiate additional oversight measures.⁹⁶

On January 19, 2017, MSHDA notified DLBA officials that MSHDA was “seeing some very high costs for dirt” and that contractors needed to provide a copy of the “invoice showing they really paid for dirt.⁹⁷” Soon thereafter, MSHDA exercised its right to initiate additional oversight measures and began working with the DLBA to develop backfill cost substantiation language. In early discussions, Ms. Daniels suggested that contractors should be required to

⁹⁰ Press Release, United States Attorney’s Office Eastern District of Michigan, *The Detroit Land Bank Authority Pays \$1.5 Million to Resolve False Claims Act Allegations Relating to Blight Elimination Costs*, February 10, 2023.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Email from U.S. Treasury Homeownership Preservation Officer Erin Quinn to MSHDA Director of Homeownership Mary Townley regarding Greening Expenses Reporting, July 1, 2015. See also SIGTARP DLBA Timeline created SIGTARP Special Agent Daniel Esmond. This requirement was also extended to all land banks and non-profits receiving HHF funds.

⁹⁴ Memorandum from Auditor General Mark Lockridge to Honorable City Council regarding Suspension and Reinstatement of the Hardest Hit Fund Program with the Detroit Land Bank Authority, October 31, 2016. See also SIGTARP DLBA Timeline created SIGTARP Special Agent Daniel Esmond.

⁹⁵ *Id.*

⁹⁶ MSHDA Blight Staff Memo, October 14, 2016.

⁹⁷ Email from MSHDA Blight Elimination Team Lead to DLBA and City of Detroit employees Rebecca Camargo, Pura Bascos, Tom Fett, Tim Palazzolo, Lorna MacFarlane, Laura McManaman, and Carlos Hernandez (MSHDA Contractor), copied to Tammy Daniels regarding heads up, July 19, 2017.

“provide backup documentation to support any dirt costs that exceed \$3,000.⁹⁸” However, after a series of discussions and emails, MSHDA and the DLBA agreed to the following language:

At the time of invoice, the Contractor will be required to substantiate all costs associated with backfill (dirt) and must provide any and all documentation related to backfill (dirt) costs. Documentation must include, but is not limited to: invoices and trip/load tickets.⁹⁹

This language was then incorporated into all RFPs, HHF contracts, and demolition *Scope of Services* as of May 5, 2017. All price sheets submitted by contractors as a part of the RFP process after that date also included the notification that “[a]t the time of invoice, Respondents will be required to substantiate all costs associated with backfill (dirt) and must provide any and all documentation related to backfill (dirt) costs.¹⁰⁰”

In addition, on May 12, 2017, contractors were informed of the new backfill invoicing requirements at the bi-weekly contractor meeting held by the DBA and attended by all demolition contractors, representatives from the DBA, DLBA, BSEED, the Office of Contracting and Procurement (OCP), and MSHDA. Contractors were also told that they could charge a reasonable amount for labor, gas, and trucking costs. However, if the contractors were receiving dirt for free, they could not charge the DLBA for it.¹⁰¹ To highlight its importance, the new backfill cost substantiation language was also typed in red in the RFPs and *Scope of Services* after it was added to those documents as of May 5, 2017. This was done to alert contractors whenever there was a substantial change to program requirements.¹⁰²

As a result, DLBA reimbursed contractors an unknown amount of money for free backfill including Den-Man, who was paid over \$1.14 million in unsubstantiated backfill costs. Further Den-Man, Rickman, and other contractors as stated below, were able to fill hundreds of properties with unapproved and unverified backfill which potentially put the health, safety, and welfare of Detroit residents who live near the backfilled properties at risk.¹⁰³

V. Failure to Collect Required Documentation

a. MSHDA Substantiation Requirement

Ms. Daniels recalled that during 2017, MSHDA and the DBA notified the DLBA about their concerns regarding the high backfill costs that were being invoiced by contractors for

⁹⁸ Email from DLBA General Counsel Tammy Daniels to MSHDA Blight Elimination Team Lead Roxy Eaton, copied to DLBA Director of Demolition Rebecca Camargo regarding Backfill Costs, March 1, 2017.

⁹⁹ Email from DLBA General Counsel Mike Brady to OIG Attorney Jennifer Bentley, copied to DLBA Deputy General Counsel Tammy Daniels regarding OIG Questions- Backfill, January 18, 2019.

¹⁰⁰ *Detroit Land Bank Authority Abatement and Demolition of Residential Properties Agreement RFP 5.26.17M*, Exhibit B Project Areas/ Locations and Reimbursable Costs Abatement and Demolition of Residential Properties, pg. 49.

¹⁰¹ Detroit Building Authority Contractor’s Meeting Agenda and Notes, dated May 12, 2017.

¹⁰² SIGTARP MOIA of Tom Fett, January 22, 2021.

¹⁰³ See OIG Final Report 19-0012-INV Demolition Backfill Issues, March 8, 2021.

reimbursement.¹⁰⁴ As noted above, between January 19, 2017 and May 5, 2017, MSHDA and the DLBA, including Ms. Daniels, exchanged a series of emails in which the parties discussed the “very high costs for dirt¹⁰⁵” and the language to be added to the RFPs, contracts, and *Scope of Services* to combat this issue. On May 5, 2017, after an agreement between MSHDA and the DLBA, the requirement for contractors to substantiate all costs related to backfill by providing an invoice to the DLBA was added to the RFPs, contracts, and *Scope of Services*.¹⁰⁶

MSHDA Blight Elimination Team Lead Roxy Eaton stated that, in 2017, Ms. Daniels “confirmed that the DLBA would be requiring substantiating [backfill] documentation and was party to the exchange of the draft contracts that contained [the backfill invoicing] requirements.” Ms. Eaton also stated that once the language was finalized and added to the RFPs, contracts, and *Scope of Services*, “[t]here was no additional instruction requested nor deemed necessary” from MSHDA since MSHDA had already “provided the DLBA with written direction and training on how to collect documentation and the appropriate documentation to collect.”¹⁰⁷

MSHDA believed that the DLBA was collecting all required backfill documentation, including invoices, “from 2017 onward.”¹⁰⁸ Ms. Eaton stated that she had conversations with Ms. Daniels about the requirement to collect backfill invoices beginning in 2017 and going forward. Ms. Eaton also stated that she had conversations with Ms. Chittick on the same topic. According to Ms. Eaton, the “DLBA had been indicating to [MSHDA] that it was complying with documentation requirements since May 2017.”¹⁰⁹

Ms. Eaton further stated that MSHDA never informed the DLBA they did not have to collect the required documentation. She explained that the DLBA had an

obligation to substantiate contractor dirt costs before submitting invoices to [MSHDA] for payment. This was emphasized to the DLBA and other blight partners in emails, conversations, and training sessions over a period of years. [MSHDA] had the contractual right to inspect such documentation, but not the obligation; blight partners such as DLBA had the contractual obligation to inspect such documentation. Given DLBA's representations of being in compliance, [MSHDA] had no reason to doubt that DLBA was collecting documentation to substantiate costs.¹¹⁰

¹⁰⁴ SIGTARP MOIA of Tammy Daniels, December 4, 2020.

¹⁰⁵ Email from MSHDA Blight Elimination Team Lead to DLBA and City of Detroit employees Rebecca Camargo, Pura Bascos, Tom Fett, Tim Palazzolo, Lorna MacFarlane, Laura McManaman, and Carlos Hernandez (MSHDA Contractor), copied to Tammy Daniels regarding heads up, July 19, 2017.

¹⁰⁶ Email from DLBA General Counsel Mike Brady to OIG Attorney Jennifer Bentley, copied to DLBA Deputy General Counsel Tammy Daniels regarding OIG Questions- Backfill, January 18, 2019.

¹⁰⁷ Email from MSHDA Blight Elimination Team Lead Roxy Eaton to OIG Attorney Jennifer Bentley, copied to MSHDA Attorneys Geoffrey Ehnis-Clark and Amanda Curler regarding Detroit Backfill Questions, September 13, 2023.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

Despite the discussions in 2017, the resulting amendments in the RFPs and the contracts, and the information shared during the bi-weekly meetings, in late 2019, MSHDA learned that the DLBA had not been collecting backfill cost substantiation documentation from contractors.¹¹¹ Therefore, on December 17, 2019, MSHDA sent an email to all Blight Partners, including the DLBA, informing them that they must collect “actual dirt invoices” from contractors starting on January 1, 2020.¹¹² Ms. Eaton confirmed that this directive specifically targeted the DLBA who had failed in their duty to collect the contractually required documentation.¹¹³

More than a year later, on July 14, 2021, SIGTARP issued a subpoena requesting all contractor backfill cost substantiation invoices collected by the DLBA after January 1, 2020. The DLBA responded that their “inquiry indicates that the DLBA does not have the requested records. As you may know, MSHDA did not require the DLBA to collect such invoices and did not require the DLBA to include such invoices in its submissions.¹¹⁴” This statement by the DLBA is further echoed in the DLBA’s written response to the OIG draft report. In fact, the response states “MSHDA was well aware, in real time, at every moment of the HHF program, that DLBA was not collecting invoices.¹¹⁵”

This is concerning, as the DLBA’s response to SIGTARP and to the OIG is in direct contradiction to Ms. Eaton’s testimonies, as well as the supporting documents reviewed by the OIG. The evidence shows that MSHDA provided the DLBA with a clear directive to collect documentation to substantiate the dirt costs on several occasions. First, there were emails and discussions between MSHDA and the DLBA about substantiating dirt costs as early as January 2017. The importance of this directive is clearly illustrated by incorporating the substantiating invoices clause into the RFPs and contracts in May 2017. The directive was also emphasized in red and was further discussed with the contractors during the DLBA’s biweekly meetings in May 2017. Moreover, when MSHDA learned that the DLBA was not enforcing this provision of the contract, MSHDA sent a reminder email in December 2019. Lastly, neither Ms. Daniels or Ms. Chittick deny any of the above-described events or emails in 2017 and 2019.

In fact, when Ms. Eaton was informed by SIGTARP that the DLBA was unable to produce any contractor backfill invoice cost records even after the second directive given in December 2019, Ms. Eaton responded “What!?”¹¹⁶ She added that the DLBA knew this was a requirement and that she had several conversations with DLBA personnel about what documentation would be required. Specifically, Ms. Eaton recalled several face-to-face meetings

¹¹¹ SIGTARP DLBA Timeline created SIGTARP Special Agent Daniel Esmond.

¹¹² Email from MSHDA Blight Elimination Team Lead Roxy Eaton to Blight Partners regarding One More change for everyone, December 17, 2019.

¹¹³ U.S. Department of Treasury Office of the Special Inspector General for the Trouble Asset Relief Program (SIGTARP) Memorandum of Investigative Activity (MOIA), Interview Blight Elimination Team Lead, HHF Blight Elimination Program, Michigan Homeowner Assistance Nonprofit Housing Corporation (MHA), with the Michigan State Housing Development Authority (MSHDA) Roxanne Eaton conducted by SIGTARP Special Agents Daniel Esmond, August 5, 2021.

¹¹⁴ SIGTARP DLBA Timeline created SIGTARP Special Agent Daniel Esmond.

¹¹⁵ DLBA Response Attachment, pg. 2.

¹¹⁶ SIGTARP MOIA of Roxanne Eaton, August 5, 2021.

and conversations on this topic with Ms. Daniels and Ms. Chittick who stated they understood what needed to be collected and that it would not be a problem.¹¹⁷

The DLBA, as program manager of the HHF Demolition Program, also believed that the DLBA was collecting the backfill cost substantiation documentation. When asked by SIGTARP about the collection of the required invoices, Mr. Palazzolo stated that it would “be shocking” if backfill substantiation documentation was never collected by the DLBA.¹¹⁸ He explained that he would have expected that all documentation required by the contract was collected and reviewed by the DLBA. Mr. Palazzolo also noted that if specific language is incorporated into the RFPs, *Scope of Services*, and HHF contracts then “it was important and was considered required compliance by all parties.”¹¹⁹

Mr. Palazzolo further explained that the *Scope of Services* was incorporated into the HHF contract and described it as a “living document” that was constantly changing though revisions were never considered to be retroactive.¹²⁰ He explained that there was a process in place to update and remove any language from the various documents if it was no longer needed. However, there is no evidence that Ms. Daniels, who was responsible for all “legal aspects of the contract,”¹²¹ ever attempted to modify the *Scope of Services* to remove the backfill invoicing requirement. More importantly, post-May 2017 RFPs and HHF contracts reviewed by the OIG contained the invoicing requirement.

The DLBA response to the OIG’s draft report states that the “DLBA was at all times legally required to follow the direction of MSHDA and Treasury.”¹²² DLBA’s response also explained that they were

obligated to follow the MSHDA Blight Manual governing all land banks in Michigan. The Blight Manual clearly directed that payments were to be made on a fixed price basis. There was no change in the Blight Manual in May 2017 (or any time) to require collection of the invoices or to depart from the fixed price approach. The July 2017 Blight Manual specifically states that the standard for reimbursement was “reasonable dirt costs for backfill.”¹²³

However, according to MSHDA, regardless of the Blight Manual, Detroit was specifically required to substantiate dirt costs. MSHDA communicated this requirement to the DLBA in both emails and during the face-to-face trainings. MSHDA also noted that the DLBA was “aware of the requirement in regards to the dirt documents and procedures.”¹²⁴ Yet, despite MSHDA’s clear requirement to collect invoices to substantiate all backfill costs, the DLBA

¹¹⁷ *Id.*

¹¹⁸ SIGTARP MOIA of Tim Palazzolo, January 28, 2021.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ SIGTARP MOIA of Michele Chittick, January 21, 2021.

¹²² DLBA Response Letter, pg. 1.

¹²³ Email from MSHDA Blight Elimination Team Lead Roxy Eaton to OIG Attorney Jennifer Bentley, copied to MSHDA Attorneys Geoffrey Ehnis-Clark and Amanda Curler regarding Detroit Backfill Questions, May 2, 2024.

¹²⁴ *Id.*

failed to meet the required directive. It should also be noted that the DLBA response to the OIG's draft report also states that in November 2021, Treasury declined to impose new reporting requirements and that MSHDA did the same in early 2020.¹²⁵ However, as stated by MSHDA, this was not a new requirement but one that had existed since May 2017.¹²⁶

b. DLBA Failure to Comply with MSHDA's Directive

i. DLBA Demolition Director Tammy Daniels

Evidence reviewed by the OIG showed that the DLBA never required contractors to submit invoices to substantiate their backfill costs. Ms. Daniels, who was included on the email communications between MSHDA and the DLBA, stated that the "the DLBA was waiting for written direction from MSHDA in how to collect documentation from the contractors, but nothing was ever received."¹²⁷ However, the evidence shows that MSHDA and the DLBA came to an agreement in 2017 to collect invoices related to backfill costs. This agreement was memorialized in all RFPs, contracts, and *Scope of Services* after May 5, 2017. Further, the DLBA had a system in place in which all other contractually required documentation was being collected from contractors. Contractors uploaded documentation to the system known as Docuvault for review by the DLBA. Given that a system was already in place, it is unclear why Ms. Daniels needed written guidance from MSHDA on how to collect this documentation.

Ms. Daniels admitted that the RFPs, contracts, and *Scope of Services* contained language that required the DLBA to collect backfill substantiation documentation. However, she stated that these were "words only, and not in practice."¹²⁸ She explained that contractors were only required to "identify if the backfill met the environmental requirements, due to the concern over where the dirt came from."¹²⁹ In fact, according to Ms. Daniels, the DLBA never asked for backfill invoices from contractors.¹³⁰

It is troublesome that Ms. Daniels, an attorney, would state that a provision contained in a legally binding contract was "words only, and not in practice."¹³¹ It is especially concerning that she would say this about a requirement which was mandated by MSHDA and SIGTARP as oversight agencies to lower high backfill costs and to ensure that contractors were not reimbursed for free backfill. Ms. Daniels does not have the authority to ignore mandates from these agencies who provided the HHF funding to the DLBA. While Ms. Daniels explained that she was waiting for MSHDA to provide the DLBA with written guidance, there is no evidence that Ms. Daniels ever sought clarification from MSHDA or directed anyone at the DLBA to collect the contractually required documentation.

¹²⁵ DLBA Response Letter, pg. 2 and DLBA Response Attachment, pg. 4.

¹²⁶ Email from MSHDA Blight Elimination Team Lead Roxy Eaton to OIG Attorney Jennifer Bentley, copied to MSHDA Attorneys Geoffrey Ehnis-Clark and Amanda Curler regarding Detroit Backfill Questions, September 13, 2023.

¹²⁷ SIGTARP MOIA of Tammy Daniels, December 4, 2020.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

Therefore, based on the evidence reviewed, the OIG finds that Ms. Daniels abused her position and authority when she admittedly failed to enforce all provisions of the contract. More importantly, as the Demolition Director, she neglected her responsibilities by failing to ensure that the DLBA collected backfill cost substantiation invoices as previously directed by MSHDA and as required by the RFPs, contracts, and *Scope of Services*.

ii. DLBA Deputy Demolition Director Michele Chittick

Ms. Chittick joined the DLBA in February 2018 as Deputy Director of Demolition and prior to that she worked as DLBA contractor in the Demolition Department. In her role as Deputy Director, she was responsible for the oversight of day-to-day operations of the demolition program and she reviewed invoices submitted by contractors for compliance prior to approving payment of their submitted invoices.¹³² Despite her role in ensuring contractor compliance in invoicing, Ms. Chittick never reviewed backfill substantiation documentation prior to approving contractor invoices under the HHF Demolition Program.¹³³

Ms. Chittick also explained that “MSHDA had suggested the collection of such documents pertaining to backfill and guidance [from them] was expected.¹³⁴” However, she added that “MSHDA never provided the [DLBA] with a detailed plan on how and what to collect other than load tickets.¹³⁵” However, this statement is contrary to the 2017 email exchanges between the DLBA and MSHDA in which MSHDA mandated that backfill cost substantiation invoices be collected. In addition, her statement is also contrary to the mandated language in the RFPs, contracts, and *Scope of Services* which clearly state that contractors are required to substantiate backfill costs by including documentation that “must include, but is not limited to: invoices and trip/load tickets.¹³⁶” The evidence clearly shows that the DLBA was required to collect the invoices.

Ms. Chittick admitted in her SIGTARP interview that the substantiation documentation requirement for backfill costs was included in the RFPs, contracts, and *Scope of Services* and contractors were required to adhere the language in those documents. She was then asked by SIGTARP if the DLBA was also required to follow the language in the *Scope of Services*. She responded, “in general” and clarified that backfill cost substantiation was not a “top 12 issue” for the DLBA.¹³⁷ Ms. Chittick explained that the quality and source of the materials was critical, and the acquisition costs were not. She reiterated her belief that MSHDA never required the substantiation costs.¹³⁸ Even if Ms. Chittick was not aware of the 2017 discussions and subsequent meetings with MSHDA, her response to SIGTARP directly contradicts that fact that she received the 2019 reminder email from MSHDA.

¹³² SIGTARP MOIA of Michele Chittick, January 21, 2021. See also <https://www.linkedin.com/in/michele-c-894a494/>, accessed on September 5, 2023.

¹³³ SIGTARP MOIA of Michele Chittick, January 21, 2021.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Email from DLBA General Counsel Mike Brady to OIG Attorney Jennifer Bentley, copied to DLBA Deputy General Counsel Tammy Daniels regarding OIG Questions- Backfill, January 18, 2019.

¹³⁷ SIGTARP MOIA of Michele Chittick, January 21, 2021.

¹³⁸ *Id.*

Ms. Chittick was responsible for ensuring contractor compliance by reviewing contractors' invoice submissions for compliance prior to approving payment of their submitted invoices.¹³⁹ However, she admitted that she never required the contractors to submit the invoices prior to authorizing payment. She explained that verifying that contractors did not get reimbursed for free backfill was not a "top 12 issue" for the DLBA.¹⁴⁰ Despite Ms. Chittick's claim that collecting the backfill invoices was not a top issue, the evidence shows it was not only contractually required, but MSHDA directed the DLBA to do so. It is important that those who are responsible for ensuring compliance review all documents, including invoices, before reimbursing the contractors. Therefore, the OIG finds that, based on the evidence reviewed, Ms. Chittick abused her position and authority by failing to collect the contractually required backfill cost substantiation invoices.

c. Consequences of Failing to Collect Invoices

i. Financial Impact

The DLBA and Ms. Daniel's failure to collect the backfill invoices to substantiate costs was not without consequences. It resulted in the waste of taxpayer funds and resources. The DLBA should have paid the contractors only after verifying that contractors actually incurred the backfill costs claimed in their invoice submissions. However, because the backfill costs were not substantiated as required by the contract and directed by MSHDA, the DLBA allowed contractors, such as Den-Man, to defraud the DLBA.

Because the DLBA and Ms. Daniels neglected their duty to collect required documentation, they were investigated by the U.S. Attorney's Office for the Eastern District of Michigan (U.S. Attorney's Office) and SIGTARP. During the investigation, SIGTARP determined that the

DLBA intentionally chose to ignore its own demolition contract requirements that it verify/substantiate demolition contractors' costs for backfill materials. Based on [a 2016 SIGTARP audit], SIGTARP determined that the DLBA had agreed to monitor and control program demolition costs specifically associated with backfill. Also, the audit resulted in substantial language being written into the HHF contracts that required contractors to substantiate backfill costs [in early 2017].¹⁴¹

On December 4, 2020, SIGTARP conducted an interview of Ms. Daniels. During the interview,

¹³⁹ SIGTARP MOIA of Michele Chittick, January 21, 2021. See also <https://www.linkedin.com/in/michele-c-894a494/>, accessed on September 5, 2023.

¹⁴⁰ SIGTARP MOIA of Michele Chittick, January 21, 2021.

¹⁴¹ U.S. Department of Treasury Office of the Special Inspector General for the Trouble Asset Relief Program (SIGTARP) Report of Investigation, Case Title: Detroit Land Bank Authority, False Claims Investigation, submitted by Special Agent Daniel Esmond, concurred by Special Agent in Charge James J. O'Connor, approved by Assistant Deputy Inspector General of Investigations Thomas M. Jankowski, August 8, 2023.

SIGTARP was told that the substantiation language added in the contracts had been “in words only and not in practice.” Through the issuance of Civil Investigative Demands (CID) by the [United States Attorney’s Office], depositions and interviews, and the review of documentation, the investigation determined that the DLBA did not follow its own substantiation requirements. The lack of following their own requirements caused the payment of approximately \$14,000,000 in HHF funding for unsubstantiated backfill costs between 2017 and the end of the Treasury program (2019).

The determination of \$14,000,000 was identified by examining Detroit HHF demolition contracts between 2017-2019. The investigation revealed there were 252 HHF contracts that contained this new requirement that had been awarded in that time frame to demolition contractors. Based on the review of all materials related to this investigation, it was determined that the new contract requirements were not enforced, resulting in approximately 6,094 HHF properties with backfill costs that were never substantiated and/or verified by the DLBA.¹⁴²

As a result of the evidence collected by these agencies, on February 10, 2023, the DLBA “agreed to pay the United States \$1,503,000 to resolve allegations related to unsubstantiated backfill dirt costs invoiced by demolition contractors and paid by the DLBA from December 2016 through June 2022, in connection with the DLBA’s blight elimination program.¹⁴³” In fact, the U.S. Attorney’s Office noted that the “United States contends that the claims for payment violated the False Claims Act, 31 U.S.C. §§ 3729-3733.¹⁴⁴”

Additionally, Den-Man owner David Holman pleaded no contest and its former Demolition Director David MacDonald pleaded guilty to false pretenses. Mr. Holman agreed that he submitted invoices for payment on backfill costs he never incurred.¹⁴⁵ Mr. MacDonald admitted to falsifying documentation that identified the source of the dirt, and then invoicing the DLBA and City of Detroit for fictitious sums.¹⁴⁶ Den-Man was reimbursed \$1,148,513.61 for backfill material even though the contractor never incurred those costs.¹⁴⁷ This is a real example in which the collection of invoices would have reduced costs and affected the HHF payments made to contractors.¹⁴⁸ The DLBA’s response to the OIG’s draft report states that “DLBA paid all 6,100 demolitions based on “fixed-price” bid contract, with no adjustment for “true costs from

¹⁴² *Id.*

¹⁴³ Press Release, United States Attorney’s Office Eastern District of Michigan, *The Detroit Land Bank Authority Pays \$1.5 Million to Resolve False Claims Act Allegations Relating to Blight Elimination Costs*, February 10, 2023.

¹⁴⁴ *Id.*

¹⁴⁵ Plea Agreement between the State of Michigan and David Holman, March 4, 2024.

¹⁴⁶ Plea Agreement between the State of Michigan and David MacDonald, January 26, 2024.

¹⁴⁷ Michigan Attorney General Press Release, 2nd Detroit Contractor Pleads to Fraudulently Billing the City over \$1 Million in Demolition Program; Left Dozens of Residential Lots Contaminated, March 5, 2024.

¹⁴⁸ DLBA Response Attachment, pg. 4.

backfill invoices.¹⁴⁹ However, as stated above, Den-Man did a change order deduct on January 15, 2019, for backfill in which the true cost was less than the bid amount.¹⁵⁰ These violations of the RFP, contract, and *Scope of Services* could have been prevented if the DLBA, Ms. Daniels, and Ms. Chittick had enforced the contract as required by MSHDA and SIGTARP.

Therefore, the OIG finds that the DLBA, Ms. Daniels, and Ms. Chittick's actions resulted in waste. The failure to collect backfill invoices to verify that contractors incurred a cost resulted in improper reimbursements and financial losses to the HHF Demolition Program. For example, if Den-Man had not been improperly reimbursed \$1,148,513.61, approximately 65 additional properties could have been demolished given that the average cost of HHF demolitions was \$17,570.¹⁵¹ Further, it is impossible to know if any more of the approximately \$13 million in backfill costs paid to contractors was done so improperly without the invoices to verify the costs.¹⁵²

ii. Use of Unapproved Dirt Sources

Investigations conducted by the OIG and SIGTARP revealed that several contractors have used unapproved backfill at numerous properties throughout the City of Detroit which created a potential health, safety, and welfare issue for residents. Evidence collected by the OIG and SIGTARP found that the following contractors used unapproved backfill from the I-94 project.

- Den-Man- 24 properties¹⁵³
- Adamo- 2 properties
- Rickman- 1 property
- Dore & Associates- 1 property
- Blue Star- 1 property¹⁵⁴

Additionally, the evidence showed that Den-Man used unapproved backfill from various locations at 200 additional properties in the City of Detroit. To date, 151 of the 200 properties have been tested. Based on the results, 90 of the 151 sites require remediation.¹⁵⁵ SIGTARP

¹⁴⁹ *Id.*

¹⁵⁰ Den-Man Backfill Deduct Reports.

¹⁵¹ Detroit News, Detroit Land Bank Authority pays \$1.5M to feds to settle demolition claims, Sarah Rahal, February 10, 2023, [https://www.detroitnews.com/story/news/local/detroit-city/2023/02/10/detroit-land-bank-authority-pays-1-5m-to-feds-to-settle-demolition-claims/69892789007/#:~:text=Since%20then%2C%20Detroit%20has%20received,the%20federal%20program%20was%20%2417%2C570.](https://www.detroitnews.com/story/news/local/detroit-city/2023/02/10/detroit-land-bank-authority-pays-1-5m-to-feds-to-settle-demolition-claims/69892789007/#:~:text=Since%20then%2C%20Detroit%20has%20received,the%20federal%20program%20was%20%2417%2C570.,), accessed on September 11, 2023.

¹⁵² Letter from SIGTARP Assistant Deputy Special Inspector General for Audit and Evaluation Gabriele A. Tonsil to U.S. Department of Treasury Office of Financial Stability Director Danielle Christensen, June 24, 2021.

¹⁵³ OIG Case No. 18-0017-INV. The full report may be found on the OIG's website at <https://detroitmi.gov/sites/detroitmi.localhost/files/2021-03/Final%20DenMan%20Report%2018-0017-INV.pdf>.

¹⁵⁴ See OIG Final Report 19-0012-INV Demolition Backfill Issues, March 8, 2021.

¹⁵⁵ Email from Tim Devine to OIG Attorney Jennifer Bentley and Michigan Assistant Attorney General Melissa Palepu regarding Den-Man Project, March 5, 2024.

also identified 117 additional properties that were demolished by Rickman and then backfilled with unapproved dirt. To date, no testing has been done at these sites.¹⁵⁶

The DLBA's response to the OIG's draft report states that the "DBA, not the DLBA, was primarily responsible for overseeing the dirt quality."¹⁵⁷ However, "overseeing the dirt quality" and collecting invoices are two different things. Therefore, the OIG remains resolute in its conclusion that the collection of the contractually required backfill invoices could have provided an additional level of verification of backfill sources.

In many of the above instances, the contractors submitted load tickets showing that the backfill came from residential addresses. An invoice indicating that the contractor actually purchased backfill from that location could have added an additional layer of verification or otherwise could have discouraged contractors from listing fraudulent sources.

The City of Detroit and DLBA have expended a lot of time and/or resources to test the unapproved backfill used by Den-Man and remediate the properties identified by SIGTARP. To date, the 200 properties in which Den-Man used unapproved backfill has cost the city over \$3,500,000.¹⁵⁸ This does not include the time and resources city employees have had to expend dealing with this issue.

iii. No Quality Control Audits

Finally, it should be noted that the DLBA failed to conduct quality control audits as required by SIGTARP and Treasury. On August 15, 2016, Treasury officials suspended demolition activities in the City of Detroit. According to the suspension memorandum, Treasury's decision to suspend funding was based on information provided by MSHDA concerning their investigation and audit of HHF expenditures which included questionable backfill change orders.¹⁵⁹

On October 14, 2016, the DLBA was allowed to resume HHF demolitions after the DLBA agreed, in part, to conduct quality control audits to ensure compliance with program requirements.¹⁶⁰ On July 13, 2021, SIGTARP issued a subpoena to the DLBA requesting all quality control audit reports. The DLBA responded that their "inquiry has not identified records responsive to the request."¹⁶¹ and no audit report was produced to SIGTARP. The OIG finds this to be an admission by the DLBA that no quality control audits were conducted even after the

¹⁵⁶ Email from Tim Devine to Daniel Esmond, Andrew Fried, James O'Connor, copied to Lajuan Counts, Tim Palazzolo, Tom Fett, Charles Raimi, Tammy Daniels, Ellen Ha, Jennifer Bentley, and Kamau Marable, regarding SIGTARP Follow-up on 117 Rickman Properties, September 29, 2023.

¹⁵⁷ DLBA Response Attachment, pg. 6.

¹⁵⁸ Email from Tim Devine to Jennifer Bentley, copied to David Fink, Douglas Parker, and Philip D.W. Miller, regarding Den-Man's Breaches of Contract, relating to certain demolitions, November 30, 2023.

¹⁵⁹ Memorandum from Auditor General Mark Lockridge to Honorable City Council regarding Suspension and Reinstatement of the Hardest Hit Fund Program with the Detroit Land Bank Authority, October 31, 2016. See also SIGTARP DLBA Timeline created SIGTARP Special Agent Daniel Esmond.

¹⁶⁰ MSHDA Blight Staff Memo, October 14, 2016.

¹⁶¹ SIGTARP DLBA Timeline created SIGTARP Special Agent Daniel Esmond.

DLBA agreed to do so. As such, the OIG also finds that this was an abuse of position and authority by Ms. Daniels who was in charge of the HHF Demolition Program.

VI. Conclusion

The collection of backfill cost substantiation invoices was required by MSHDA and SIGTARP. This requirement was finalized in writing on May 5, 2017, which was then incorporated into the DLBA's HHF RFPs, contracts, and *Scope of Services*. However, the evidence shows and the OIG thus finds that the DLBA failed to collect the required invoices which resulted in some contractors being reimbursed for costs they did not incur and, in some instances, using unapproved dirt sources.

Therefore, the OIG finds that the DLBA and Tammy Daniels, in her role as DLBA Demolition Director and DLBA Deputy General Counsel, abused her position and authority, which resulted in wasted time, resources, and taxpayer funds. The OIG also finds that Michele Chittick, in her role as DLBA Deputy Demolition Director was the person responsible for ensuring compliance in invoicing before making any reimbursement to contractors. Therefore, we find she also abused her position and authority by failing to collect the required backfill cost substantiation invoices.



April 16, 2024

VIA EMAIL

Ellen Ha
Inspector General
City of Detroit Office of Inspector General
615 Griswold Street, Suite 1230
Detroit, MI 48226

RE: OIG Case No. 18-0028-INV involving the Detroit Land Bank Authority

Dear Ms. Ha,

I am the Chair of the Detroit Land Bank Authority Board (the "DLBA"), and have served in that capacity continuously since 2014. I was in the DLBA office throughout the period covered by your report and witnessed what actually occurred. I know first-hand that your report is filled with major factual inaccuracies and fundamental misunderstandings of the legal requirements that governed the DLBA in the demolition program.

It is critical to understand the legal structure: The Hardest Hit Fund program ("HHF") was operated by the U.S Department of Treasury. The Michigan State Housing and Development Authority ("MSHDA") acted as Treasury's agent in its contract with DLBA. As a result, DLBA was at all times legally required to follow the direction of MSHDA and Treasury.

SIGTARP is not a management agency, but merely an after-the-fact auditing agency. The history of the animosity between US Treasury and SIGTARP is legendary. From the beginning, SIGTARP objected to Treasury's decision to allow HHF funds to be used at all for demolition and put out a series of highly critical public reports, which Treasury disputed. As a result, much of our time at the DLBA was spent navigating the ongoing conflicts between Treasury and SIGTARP, between what was actually required and what SIGTARP thought should be. But the DLBA was always clear that it was legally bound to comply with Treasury's directions, not SIGTARP's.

Yet the OIG completely missed this fundamental legal distinction, and seemed to rely entirely on SIGTARP's perspective. I spent 30 years as a senior partner in corporate law at Skadden Arps, a national law firm, so I would have been happy to explain our compliance obligations to your staff. But your office did not conduct a single interview with anyone at the DLBA, not even the two women whom you so unfairly target. Again, as a corporate attorney, I do not understand how you can even call that an "investigation."

Had you done a proper investigation, here is what you would have found:

- Collecting the underlying dirt invoices would not have changed one dollar DLBA paid out. Pursuant to the 2016 DLBA/MSHDA agreement, DLBA was obligated to award lump sum contracts based on the lowest bid for the total service for each property, including all demolition costs, fill dirt, etc. The DLBA was further obligated under its contracts to pay only the exact amount from the original bid.
- The Blight Manual issued by MSHDA, which governed all of our procedures in HHF, never required evidence of the “actual dirt costs” incurred by contractors. It referred only to “reasonable dirt costs.” That made sense to us because the amount in the dirt invoice could not change the amount that we paid the contractor.
- Even after MSHDA and the DLBA became concerned about the escalating dirt costs shown in the bids, the language in the Blight Manual was not changed to require invoices. Instead, late in 2019, MSHDA directed that each of the DLBA and the Genessee County Land Bank separately perform a dirt cost analysis. MSHDA also advised both entities that a proposed new requirement of collecting dirt invoices would not be imposed until after they had reviewed the results of that analysis. That dirt cost analysis showed that as of January 14, 2020, the average dirt costs in the bids in the preceding three years was \$2,240.17, compared to the average market costs of dirt of \$4,757.50, demonstrating that this lump sum bid methodology was saving money on fill dirt for the HHF program. MSHDA then advised both Genessee County and the DLBA that U.S. Treasury had accepted that analysis as proof of the reasonableness of dirt costs. As a result, the proposed new requirement for dirt invoices was not added to the February 2020 Blight Manual revision.
- Despite SIGTARP’s claims to the contrary years later, both SIGTARP and Treasury were clearly aware during HHF that the DLBA was not collecting dirt invoices, a practice that is now at the heart of the OIG’s attack. SIGTARP actually complained to Treasury in a letter dated June 24, 2021, that the Detroit Land Bank was not collecting dirt invoices; SIGTARP asked Treasury to add a new requirement that the DLBA and other HHF grantees be required to “substantiate contractors’ costs for backfill” by doing so. This request clearly acknowledges that SIGTARP knew, during the HHF program, that the DLBA was not collecting dirt invoices. But Treasury denied SIGTARP’s recommendation to “impose new reporting, review and recoupment requirements for the HHF program.” (letter dated November 19, 2021). This is exactly the kind of Treasury/SIGTARP dispute the DLBA constantly had to navigate. Apparently unhappy with Treasury’s decision, SIGTARP issued its report, based on a supposed requirement to collect dirt invoices which had not in fact existed and which Treasury had specifically rejected. Tammy Daniels and Michele Chittick did the right thing – they followed Treasury’s direction.
- I also cannot understand how you can claim that Ms. Daniels and Ms. Chittick were somehow negligent when they were being actively supervised by MSHDA in our office and at our request from 2016 forward. MSHDA embedded 2 to 4 of their employees in the HHF invoice processing office at the DLBA for at least 3 days each week, to ensure that all of their requirements were being met. When I was in the DLBA office, I regularly visited with the MSHDA team embedded there, commiserating on their commute from Lansing and making sure they had whatever they needed. The DLBA and the MSHDA teams had offices next to each other, and talked together constantly about all of the invoices. The MSHDA team reviewed every single demolition reimbursement request and rejected any one that failed to

include each of the more than 40 separate documents required for every property that had been demolished. During this time, MSHDA approved and reimbursed the DLBA for over 6,100 properties, and not one of those submissions included an invoice or other proof of dirt costs. MSHDA had unfettered access to our HHF databases throughout the program and conducted annual audits, which SIGTARP did as well in 2019. Ms. Daniels and Ms. Chittick reasonably relied on the fact that MSHDA approved 6,100 payments without once asking to see a dirt invoice. As the DLBA Board Chair, I also relied on MSHDA to spot any discrepancies so we could correct them. That was the whole point of inviting MSHDA to be continually present in the DLBA offices. It is beyond belief that you can now accuse Ms. Daniels and Ms. Chittick of being negligent for something they were never asked to do, and then, without any independent investigation, try to blame them years after the program was successfully concluded.

The Attachment to this letter provides a more detailed discussion of many of your report's mistaken conclusions.

The demolition of over 15,000 blighted homes was a very heavy lift, but it fundamentally changed the quality of life in many Detroit neighborhoods. We are proud of that accomplishment and will not take action against staff for failing to comply with a requirement that was never imposed. I strongly urge you to revise the inaccuracies in your report so as not to falsely damage the reputations of these fine people, based on such a terribly flawed report. They all, and especially Ms. Daniels and Ms. Chittick, carried out this enormous task with diligence and dedication, complying with every requirement that was imposed during the program by MSHDA or the U.S. Treasury. To suggest that they were negligent or abused their positions or authority in the execution of their duties flies in the face of the facts, most significantly that MSHDA awarded the DLBA 100% of the HHF funds for which it was eligible, in the amount of over \$265 million dollars.

I trust that this response and its attachment will be included when you publish your report. Please do not hesitate to contact me if you have any questions.

Sincerely yours,



Erica Ward Gerson
Board Chair
Detroit Land Bank Authority

Agreed and Accepted as our response by:



Tammy Daniels



Michele Chittick



ATTACHMENT to Erica Ward Gerson Letter dated April 16, 2024, relating to OIG Draft Report in OIG Case No. 18-0028-INV Involving the Detroit Land Bank Authority

The Detroit Land Bank Authority (the “DLBA”), on behalf of itself and its Chief Executive Officer Tammy Daniels, and its Director of Quality and Operational Controls, Michele Chittick, rejects all allegations of wrongdoing in the OIG’s April 2, 2024, draft Investigative Report regarding OIG Case No. 18-0028-INV.

Specifically:

- I. The DLBA rejects the assertion that Tammy Daniels and Michele Chittick abused their positions and authority or were negligent in their responsibilities by failing to enforce the certain provisions in the demolition Request for Proposals, contracts, and Scope of Services. They did not and were not. Instead, they secured demolition services for the safe removal of blighted structures within the City of Detroit at the lowest possible price, fully consistent with the mandate of the Michigan State Housing Development Authority (“MSHDA”) and the United States government as codified in MSHDA’s Blight Manuals and as minutely reviewed and audited by MSHDA. The Detroit HHF Demolition program successfully removed over 15,000 blighted structures.
- II. The DLBA rejects the assertion that Tammy Daniels and Michele Chittick abused their positions and authority or were negligent in any of their responsibilities. They did not and were not. They followed the regulations and practices promulgated by MSHDA and the United States government. They also implemented many proactive process improvements to mitigate operational and financial risks to the blight remediation program in Detroit.
- III. The DLBA rejects the assertion that Tammy Daniels or the DLBA were primarily responsible for the quality of backfill dirt used in HHF demolitions in the City of Detroit. They were not. The Detroit Building Authority (“DBA”), not the DLBA, was the entity principally responsible for managing and monitoring the source and quality of the backfill dirt.
- IV. The DLBA rejects the assertion that Tammy Daniels or the DLBA abused their position and authority by failing to conduct quality control audits supposedly mandated by the United States Department of Treasury. They did not. Quality control audits were MSHDA’s responsibility, not the DBLA’s.

I.

The central assertion in the OIG's draft report is that the DLBA, and specifically Ms. Daniels and Ms. Chittick, failed to collect invoices from demolition contractors for the fill material ("dirt") that the contractors used to fill holes left after demolition of the dangerous houses. The OIG draft report asserts that MSHDA and other parties were surprised to learn at the end of the HHF program that DLBA had not been collecting such invoices, and then goes on to speculate that if only MSHDA had known that the DLBA was not collecting the invoices, MSHDA would have required the DLBA to begin doing so immediately. The draft report goes on to engage in unfounded speculation that collection of the invoices would have impacted cost control or dirt quality. None of that is true.

The fact is that MSHDA was well aware, in real time, at every moment of the HHF program, that DLBA was not collecting the invoices. More importantly, MSHDA knew that the collection of invoices was irrelevant to the success of the program, including containment of costs and quality of dirt.

The U.S. Treasury's HHF program was a federal demolition program in which MSHDA acted as Treasury's authorized agent and ran the program through contracts and policies with various Michigan local land banks embodied in MSHDA's Blight Manual. The land banks, in turn, contracted with private demolition companies. With the DLBA, MSHDA's oversight was extensive. MSHDA staff were literally embedded in the DLBA offices three days a week. They attended all DLBA contractor meetings, approved all bid awards, and approved all DLBA payments of federal funds. They had complete access, at all times, to all the books and records and data of the DLBA. There was nothing the DLBA did on a daily basis that MSHDA did not see in real time.

Throughout the spring of 2017, MSHDA began giving DLBA confusing and conflicting guidance as to whether it would decide to order DLBA to amend the vendor contract to a "true cost" contract where actual payment would be adjusted by the true costs of the backfill or whether it would continue the program based on a "fixed price" contract. The entire 2017 dialogue between MSHDA and the DLBA, which also included the DBA, in its then-designated role managing the procurement process, was confusing at best. The various email communications throughout the entire program reflect the confusion.

As explained below, notwithstanding the confusion and indecision of MSHDA reflected in hundreds of emails throughout that period, the end result was crystal clear: there was no change in the successful "fixed price" contract which held contractors to their winning low bid for the work, and there was no new MSHDA requirement for DLBA to start collecting dirt invoices from contractors. As explained below, review of the governing Blight Manual and the conduct of MSHDA, Treasury, and the DLBA make this indisputably clear.

The OIG Draft Report relies almost solely on two sources for its ill-founded conclusions: (1) cherry-picked email communications from January 2017 to May 2017, and (2) the insertion of the language below into the Scope of Services section of the contracts between the DLBA and its demolition contractors, as the basis for the argument that there was a requirement to substantiate actual dirt costs.

9. At the time of invoice, the Contractor will be required to substantiate all costs associated with backfill (dirt) and must provide any and all documentation related to backfill (dirt) costs. Documentation must include, but is not limited to, invoices and trip/load tickets.

But the OIG draft report fundamentally misunderstands the reality of MSHDA's oversight and management of the HHF program when it asserts that the insertion of this provision constituted a relevant change in the program. MSHDA knew in real time from the moment that provision was inserted into the Scope of Services that it was not implemented and was irrelevant to the program. MSHDA never asked to review invoices. MSHDA never added invoices to its list of documents required before MSHDA signed off on payment for the demolitions. MSHDA never flagged missing invoices on any of its formal or informal audits.

If MSHDA had insisted on the inclusion of invoices by the DLBA as part of the required documents, the DLBA would have collected and provided them if for no other reason than this: MSHDA retained authority to reject any and all reimbursement payments for noncompliance with its requirements. The DLBA was obligated to follow the MSHDA Blight Manual governing all land banks in Michigan. The Blight Manual clearly directed that payments were to be made on a fixed price basis. There was no change in the Blight Manual in May 2017 (or any time) to require collection of the invoices or to depart from the fixed price approach. The July 2017 Blight Manual specifically states that the standard for reimbursement was "reasonable dirt costs for backfill."

To be clear, MSHDA eventually did communicate a requirement to the DLBA to submit dirt sellers' invoices for every file in December of 2019, as OIG's timeline of events in the draft report notes. However, that 'requirement' was never implemented. Instead, MSHDA commissioned a reasonableness study in January 2020 to substantiate Detroit's demolition dirt costs, resulting in the acceptance of the DLBA's analysis as proof of the reasonableness of the dirt costs paid during the prior 3-year period. Switching to a "true cost" regime would have shifted the risk of fluctuating and potentially increasing dirt costs to the government by adopting an approach to fully reimburse contractors. As a result, MSHDA stayed focused on reasonableness, as the Blight Manual directed. MSHDA directed the DLBA to assess Detroit's dirt costs against the size of the holes being filled and the "market cost" of dirt. The result substantiated that the DLBA's dirt costs were reasonable – in fact, they were better than reasonable. The DLBA's average costs per property were more than 50% lower than market rates in the Detroit area.¹ At no time during this assessment by MSHDA of the reasonableness of dirt costs did MSHDA request invoices, as part of its analysis. MSHDA knew that they were not

¹ These communications are notably absent from the timeline in OIG's draft report.

being collected and that they were irrelevant. Based on the cost reasonableness analysis provided by DLBA and GCLB to MSHDA/Treasury, MSHDA and Treasury determined that continuation of the “reasonable” dirt cost approach was justified, and the collection of dirt invoices was – again - *not* implemented as evidenced in the February 2020 MSHDA Blight Manual.

The OIG draft report’s speculation that collection of the invoices would have reduced costs and affected HHF payments is also entirely unfounded. The MSHDA-approved DLBA contracts provided at all times that the payments were to be made according to the fixed price bid. The May 2017 backfill invoice amendment to the Scope of Services did not make any corresponding amendment to the payment section. It would have been simple to amend the payment section (5.01) to indicate that backfill costs were an exception to the fixed bid price payment and would be paid on the true cost, documented in submitted invoices, if that was the parties’ intent. But as explained below no such change was made.

Following the May 2017 inclusion of the backfill invoice provision in the Scope of Services, the DLBA paid all 6,100 demolitions based on “fixed price” bid contract, with no adjustment for “true costs” from backfill invoices. If MSHDA intended to convert the contracts to “true cost” demolition contracts, change orders would have immediately poured in for virtually every demolition. Instead, MSHDA staff approved every one of the 6,100 contract awards and 6,100 contractor payments based solely on the low-bid price. Each MSHDA payment approval came only after MSHDA staff did an exhaustive review of an average of 400 pages of documentation for each house demolished. Not one time in 6,100 payments did MSHDA ever ask for the contractor’s backfill invoices. MSHDA didn’t ask for them because MSHDA had no reason to review them. They weren’t material to the payment amounts.

II.

The language in the MSHDA-approved contract under the heading “Compensation” expressly required the DLBA to pay its contractors the winning low bid contract amounts:

5.01 The DLBA agrees to pay the Contractor, on a cost reimbursement basis, **the amount as prescribed in Attachment 1 of Exhibit B**, attached hereto and incorporated by reference, for the complete and proper performance of the Services (emphasis added).

Attachment 1 of Exhibit B plainly identifies the contractors’ winning low bid dollar figures as the required compensation for completed work, including the low bid amount for backfill (dirt). It makes no reference to any other basis for payment of any of the line items, all of which match the totals in the Fee Schedule in Exhibit B – the winning contractor’s low bid for the subject RFP group. Again, while it would have been easy enough to add a sentence saying, “actual payment to the Contractor will be modified based on the true cost of backfill (dirt),” or something along those lines, that didn’t happen.

It is, frankly, unthinkable that MSHDA would not have required the DLBA to submit its

contractors' dirt supplier invoices along with the hundreds of other pages of documentation MSHDA required to substantiate compliance with its policies if, in fact, MSHDA thought that the DLBA was paying its contractors on that basis. MSHDA simply did not, in any area, "take it on faith" that the DLBA was complying; it required documentation to prove compliance. If it was, in fact, a "true cost" contract, and MSHDA did, in fact, require the DLBA to submit those invoices, everyone would have known it. MSHDA had a very simple and effective way of demonstrating what documentation it required: it refused to reimburse the DLBA on properties where that documentation was missing. MSHDA reimbursed the DLBA on all 6,100 properties, and not a one contained a dirt seller's invoice in its supporting documentation.

Importantly, OIG's draft report also ignores or reflects an unawareness of the many proactive process improvements that the DLBA, under Ms. Daniels' and Ms. Chittick's leadership, implemented to mitigate operational and financial risk. Examples include:

- Restructuring the DLBA demolition department to improve work quality, enhance customer service, and ensure compliance with HHF program requirements and internal audit controls for demolition program payments;
- Updating the backfill platform that was managed by the DBA to align with DLBA scope of services and MSHDA Blight Manual to require both backfill source approval and load ticket transactions for backfill used on properties;
- Reinforcing Fraud, Waste and Abuse Affidavit to ensure that demolition contractor partners sign the Contractor Attestation Letter on or after the property demolition date; and
- Creating Demolition Procurement SharePoint site for all stakeholders to access documents, including DLBA Demolition Department, Contract Specialists, Document Control Manager, MSHDA, and City of Detroit OIG.

The OIG draft report also includes reference to a June 24, 2021, letter from SIGTARP Assistant Deputy Special Inspector Gabrielle Tonsil to Director of the Office of Financial Stability Danielle Christensen. That letter alleges in part, that from 2017 to 2019 contractors were paid approximately \$13 million in backfill costs for demolitions that occurred in the City of Detroit. The letter goes on to state that SIGTARP was concerned that some of those payments may have been inflated by contractors. The OIG draft report refers to this letter, apparently, to support a finding that money was wasted. But the OIG's draft report ignores Treasury's response to the response to SIGTARP's letter.

In fact, US Treasury Director of Homeownership Operations, Christopher Dove, in his November 19, 2021, response, declined to implement SIGTARP's recommendations to require state housing finance agencies (like MSHDA) to "*change their existing procedures* to increase the review of costs of materials used in blight elimination by contracted entities. This would include Treasury imposing *new requirements* for HFAs to determine whether local partners have sufficiently substantiated demolition-related costs, to assess whether any costs are "excessive," and to recoup such costs." (emphasis added) In declining SIGTARP's recommendations, Treasury noted that "imposing *new* requirements on the few remaining active contracts between

HFAs and third parties faces significant practical impediments and could potentially subject Treasury or the HFAs to legal risk. Treasury is also concerned that implementing this recommendation would not use the remaining HHF program resources, which are nearly exhausted, in an efficient manner.” (emphasis added) In other words, Treasury concluded that *implementing SIGTARP’s suggestions* would be a waste of money.

III.

The OIG draft report also relies on an inaccurate belief that the DLBA was primarily responsible for testing or verifying the quality of backfill dirt used for HHF demolitions. That was not the case. The DBA, not the DLBA was primarily responsible for overseeing dirt quality.² The DBA provided detailed guidance on backfill material origin and environmental condition to demolition contractors. The DBA and the DLBA required and retained various detailed documentation from contractors, including load tickets and testing certificates addressing dirt quality. These requirements and responsibilities are spelled out in detail in Exhibit A of the Scope of Services section of the demolition contracts. If a contractor failed to provide a load ticket that meant no payment for the contractor, even if the hole was already filled. Contractors were required to remove the undocumented dirt and replace it with documented dirt at their expense or pay for testing to ensure the dirt was environmentally sound.

MSHDA received hundreds of pages of documents with each reimbursement submission, including support for the environmental quality of the backfill dirt. MSHDA reviewed and completed a detailed check of each package, for each property. To the extent that the OIG draft report attempts to connect what was, at worst, a misunderstanding related to the collection of invoices for dirt costs to a risk that potentially noncompliant dirt was used to fill the blighted property, that attempt fails because there is no connection. The question of whether a demolition contractor paid (or how much they paid) for backfill for a particular property is immaterial to whether they met the promulgated standards for the quality of the dirt. That determination was based on the transparent dirt standards and related processes to ensure compliance with them, all of which were approved by MSHDA. Throughout the HHF program, the DBA, the DLBA, and the City of Detroit investigated every instance of potentially noncompliant fill material and remediated every lot found to be out of line with appropriate DBA standards (and held the demolition contractor responsible).

IV.

Finally, the OIG draft report errs in its conclusion that the DLBA “failed to conduct quality control audits as required by SIGTARP and Treasury.” OIG evidently misunderstands (again) which agency was responsible for a particular task. The DLBA was not responsible for conducting the quality control audits as required as a condition of resuming HHF demolitions in Detroit. Those quality control audits were MSHDA’s responsibility, and they were conducted by MSHDA on every property. OIG’s draft report cites to the October 31, 2016, memorandum from Auditor General Mark Lockridge to the Detroit City Counsel. The memo provides in part:

² See First Amended and Restated Demolition Management Agreement by and Between The City of Detroit Building Authority and Detroit Land Bank Authority, September 20, 2018.

On October 14, 2016, the Treasury authorized MSHDA and MHA to resume the HHF blight elimination activities. According to news reports, required changes to the Land Bank's program activities include:

- Quality-control audits to ensure compliance,
- a \$5 million escrow account established by the Land Bank to cover any costs deemed ineligible by the U.S. Treasury,
- a 50-house limit on new bid requests,
- and a requirement to disclose all subcontractors and cap their markup at 10%.

The OIG's conclusion is flawed in that the requirements stated in the October 31, 2016, memo were items that MSHDA was responsible for, not the DLBA, except for the \$5 million escrow account. In fact, all items besides the escrow account requirement were updates included in MSHDA's October 2016 Blight Manual distributed to all blight elimination partners. MSHDA implemented quality control audits as part of their grant reimbursement documentation that MSHDA was required to complete on every property to be funded. MSHDA completed these audits as evidenced by the completion of a compliance checklist indicating the presence of all required documentation prior to funding the DLBA and its other blight partners.³

Simply put, the reason that the DLBA is not in possession of documentation about quality control audits is that they were never required to conduct them. The quality control audits were to be conducted by MSHDA on DLBA files. The DLBA cannot and will not discipline its employees for not doing something that they were never required to do.

OIG's draft report appears to rely almost exclusively on an investigation conducted and completed over a year ago by the Office of the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP"). Indeed, of the 126 citations in the draft report, approximately 100 refer directly to material prepared by SIGTARP investigators or to information provided to SIGTARP during the course of their investigation. The United States, including SIGTARP, released and walked away from claims relating to allegations about unsubstantiated backfill dirt costs in connection with the DLBA's use of Hardest Hit Fund ("HHF") monies in its blight elimination program, in a settlement concluded more than a year ago. As the OIG is surely aware, generally speaking, settlement agreements are not admissions of liability. This one was no different, as the US Attorney's Office carefully noted in its February 10, 2023, press release: "The claims resolved by the settlement are allegations only; there has been no determination of liability."⁴ The purpose of the settlement, from the DLBA's perspective, was to avoid the delay,

³ Additionally, the October 2016 Blight Manual required that HHF awarded bid packs and contract details would be inserted into MSHDA's electronic documentation system for comparison purposes. This was to ensure that the amount that was contracted equaled what was requested for reimbursement.

⁴ Press Release, United States Attorney's Office for the Eastern District of Michigan, *The Detroit Land Bank Authority Pays \$1.5 Million To Resolve False Claims Act Allegations Relating to Blight Elimination Costs*, February 10, 2023, available at: <https://www.justice.gov/usao-edmi/pr/detroit-land-bank-authority-pays-15-million-resolve-false-claims-act-allegations> (last accessed April 8, 2024).

uncertainty, inconvenience, and expense of protracted litigation. It was an act of expedience. It certainly was not to admit liability or wrongdoing by the DLBA, Ms. Daniels, Ms. Chittick, or any other DLBA team member.

Indeed, it is curious and unfortunate that OIG appears to have picked the SIGTARP perspective on the program as if it were legally binding (it was not) over the rules and requirements of Treasury and MSHDA, which were legally binding. SIGTARP was a controversial after-the-fact auditor, not a rule-maker, which regularly criticized Treasury's administration of the HHF program nationwide. Treasury routinely rebutted SIGTARP's non-binding criticism. OIG's draft report appears to ignore Treasury altogether.

The DLBA, Ms. Daniels, and Ms. Chittick appreciate the gravity of the allegations and recommendations stated in the OIG's draft report. However, for all the foregoing reasons, the DLBA respectfully declines to implement OIG's recommendations. Instead, we suggest that OIG reassess its conclusions that the DLBA, Ms. Daniels, and Ms. Chittick in any way abused their positions, were negligent in performing their duties, or contributed to waste of federal funds.

On the contrary, the \$265M in demolition dollars earmarked for the City of Detroit were fully reimbursed to the DLBA. The DLBA, under Ms. Daniels' and Ms. Chittick's leadership, helped eliminate 15,083 dangerous, blighted structures in the City of Detroit. Their efforts helped to increase residential property values over 400% from 2013 to 2022, and significantly reduced crime in affected neighborhoods. Ms. Daniels and Ms. Chittick consistently performed with integrity, in an efficient and professional manner and should be applauded for the work they and the DLBA, under their leadership, have performed for the benefit of the City of Detroit and its residents.