



U. S. Department of Housing and Urban Development

Jackson Field Office, Southeast / Caribbean  
Dr. A. H. McCoy Federal Building, Room 910  
100 West Capitol Street  
Jackson, Mississippi 39269-1096

September 8, 2014

Mr. Gus McCoy  
Chief Administrator Officer,  
City of Jackson  
P. O. Box 17  
Jackson, MS 39205

Dear Mr. McCoy:

Subject: Monitoring of Community Development Block Grant (CDBG) Program  
Grant Numbers B-97-MC-28-0003, B-98-MC-28-0003, B-99-MC-28-0003  
B-10-MC-28-0003, B-11-MC-28-0003, and B-12-MC-28-0003

The purpose of this letter is to transmit the results of the compliance monitoring review of the City of Jackson's Community Development Block Grant Program, conducted by Frank Mason, Community Planning and Development (CPD) Representative, from July 28 –August 5, 2014.

The compliance monitoring review began with an entrance conference with Gus McCoy, Chief Administrative Officer, Azande Williams, Deputy City Attorney, Carl Allen, Interim Director of Planning and Development, Norby Harris, Director of Audit Management, Diane Pope, Finance Manager, Vanessa Henderson, Director, Office of Housing and Community Development, Frank Mason, Community Planning Development Representative and me.

Enclosed is a report detailing the results of the monitoring review which identified 6 findings. Findings are violations of handbook, regulatory or statutory requirements which must be addressed and responded to by your office. Please provide documentation of corrective actions taken on all findings within 30 days from the date of this letter.

On August 6, 2014, an exit conference was held with you, Mayor Tony Yarber, Monica Joiner City Attorney, Carl Allen, Interim Director of Planning and Development, Norby Harris, Director of Audit, Diane Pope, Finance Manager, Vanessa Henderson, Director, Office of Housing and Community Development, as well as, Jerrie Magruder, HUD Field Office Director, Frank Mason, Community Planning Development Representative and me. During the final exit conference, the results of the monitoring review were discussed and participants were provided an opportunity to comment on our initial conclusions.

We appreciate your staff's cooperation in beginning the actions necessary to bring resolution to the issues conveyed in the enclosed monitoring report.

***HUD's mission is to create strong, sustainable, inclusive communities  
And quality affordable homes for all***

We greatly appreciate the cooperation and courtesy shown by your staff, particularly Mrs. Vanessa Henderson, who coordinated our review, and Mrs. Diane Pope, and Mr. Norby Harris, who also sat in and observed the entire monitoring review process.

If you have any questions regarding this, please contact Frank Mason, CPD Representative, at 601-608-1795.

Sincerely,

A handwritten signature in black ink, appearing to read 'Donna L. Wickes', enclosed within a large, loopy oval shape.

Donna L. Wickes  
Director  
Community Planning and  
Development Division

Enclosure

cc: Ms. Jerrie G. Magruder, Field Office Director  
Mayor Tony Yarber  
Ms. Azande Williams, Deputy City Attorney  
Ms. Monica Joiner City attorney  
Mr. Norby Harris, Director of Audit  
Ms. Vanessa Henderson, Assistant Manager Development Assistant Division  
Ms. Diane Pope Finance Manager

**MONITORING REPORT**  
**COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (CDBG)**  
**GRANT NOS. B-97-MC-48-0026 through B-13-MC-48-0026**  
**CITY OF JACKSON**  
**JULY 28-AUGUST 5, 20214**

**GRANTEE NAME:** City of Jackson

**PROGRAM REVIEWED:** CDBG – National Objective  
Procurement Procedures  
Subrecipient Agreements

**PURPOSE OF REVIEW:** To examine the City's performance in carrying out its statutorily mandated responsibilities, with the above mentioned program as included in the City's FY 1997 through FY 2012 Action Plans, and to ensure compliance with federal rules and regulations. The monitoring visit consisted of a review of the Farish Street Entertainment District activity in order to determine project eligibility and the project's compliance with a required CDBG national objective.

**HUD MONITOR CONDUCTING THE REVIEW:**

Frank Mason, Community Planning and Development  
Representative

**GRANTEE STAFF:**

Carl Allen, Interim, Director, Department of Planning and  
Development  
Norby Harris, Director, Audit  
Vanessa Henderson, Deputy Director, Office of Housing  
and Community Development  
Gus McCoy, Chief Administrative Officer  
Monica Joiner, City Attorney  
Diane Pope, Finance Manager  
Azande Williams, Deputy City Attorney

**OTHER INDIVIDUALS INTERVIEWED:**

Jason Goree, Interim Director, Economic Development  
Willie Mott, Interim Director, Jackson Redevelopment  
Authority

## **REVIEW OF THE HISTORIC FARISH STREET ENTERTAINMENT DISTRICT PROJECT**

The Farish Street neighborhood is listed on the National Register of Historic Places and is designated as a Jackson historic district. In 1996, the Farish Street neighborhood was listed on the nation's 11 Most Endangered Historic Places. The City of Jackson was planning on developing the area into a downtown entertainment district similar to Beale Street in Memphis, Tennessee.

**Finding No.1:** The City of Jackson failed to enter into the required subrecipient agreement with Jackson Redevelopment Authority

Condition: Instead of the City entering into the required subrecipient agreement, on April 1, 1997, a Memorandum of Understanding (MOU) was entered into between the City of Jackson, Mississippi (the "City") and the Jackson Redevelopment Authority (JRA). The JRA is a public agency formed by Jackson City Council by resolution on August 13, 1968. The JRA is a seven member board authorized to undertake projects on the City's behalf. Those powers were delegated by Jackson City Council in accordance with Section 43-35-1 of Mississippi Urban Renewal Law.

Criteria: 24 CFR 570.501(a), 24 CFR 570:503(a) (b).

In accordance with the CDBG regulations found at 24 CFR 570.503 (a), before disbursing any CDBG funds to a subrecipient, the City of Jackson was required to sign a written agreement with the subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over CDBG funds, including program income. Subrecipients (sometimes referred to as "subgrantees") are entities that are provided CDBG funds by the City for their use in carrying out agreed-upon eligible CDBG activities. At a minimum, the written agreement with the JRA required that the City include the provision found at 24 CFR 570.503(b).

The JRA is a governmental agency that is independent of Jackson City government. However, in accordance with 24 CFR 570.501(a), the JRA is still subject to the same requirements as are applicable to subrecipients when it has entered in to an agreement to carryout CDBG funded projects on behalf of the City

Cause: Failure on the part to the City to provide instructions to the JRA concerning requirements applicable in order for expenditures to be eligible for payment with CDBG funds.

Effect: The JRA implemented a CDBG assisted project without proper direction from the City regarding required compliance requirements that had to be met resulting in a poorly managed CDBG project and the City of Jackson having to reimburse its CDBG account the CDBG acquisition funds expedited on the project.

Corrective Actions: The Chief Executive Officer will provide this office with written assurance that prior to disbursing any CDBG funds to a subrecipient, the City of Jackson will enter into a written agreement with the subrecipient, and that the subrecipient agreement will contain the required provisions found at 24 CFR 570.503(b).



**Finding No. 2:** The City was unable to provide documentation that the subrecipient, JRA, was monitored by the City

Condition: According to the April 7, 1997, MOU between the City of Jackson, Mississippi (the "City") and the JRA, the JRA intended to acquire certain properties in the area bounded by Amite, Mill, Hamilton and Lamar Streets in connection with the proposed Farish Street Entertainment District project. The JRA anticipated leasing such property in accordance with procedures applicable to dispositions of property by the JRA.

The MOU stated that "the City will provide Community Development Block Grant ("CDBG") funds in amounts determined by the City, from time to time, to be appropriate, which CDBG funds shall be used to pay costs of and relating to acquisition of properties and costs incurred in connection with the Project." In connection with the MOU, beginning in 1997, the JRA expended \$2,599,488.71 of CDBG funds to pay for related development activities in the Farish Street Historic District. Of the \$2,599,488.71 in CDBG dollars, JRA expended \$1,510,810 to acquire 17 parcels of land within the historic district three block commercial area, which consisted of turn-of-the-century and early twentieth-century storefronts.

Further, the MOU stated that "the City shall provide instructions to the Authority concerning requirements applicable in order for expenditures to be eligible for payment with CDBG fund and the Authority shall comply with such instructions."

In connection with the Farish Street Entertainment District project, the City failed to maintain in its files and provide HUD with documentation that it had monitored its funded subgrantee Jackson Redevelopment Authority.

Criteria: 24 CFR 85.40(a).

In accordance with 24 CFR 85.40(a), the City is responsible for managing the day-to-day operations of grant and subgrant supported activities. The City must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and ensure that performance goals are being achieved. The monitoring must cover each program function or activity. HUD did not find evidence that the City monitored the JRA and the related Farish Street Project.

Cause: Failure on the part of Office Housing and Community Development (OHCD) management to assign a staff person the oversight management responsibilities for the funded subgrantees, and failure of OHCD to implement its written system or other method to ensure subrecipient compliance.

Effect: The JRA implemented a CDBG assisted project without proper direction from the City regarding required compliance requirements that had to be met resulting in a poorly managed CDBG project and the City of Jackson having to reimburse its CDBG account the CDBG acquisition funds expended on the project.

Corrective Actions: The Chief Executive Officer will provide this office with written assurance that the Office of Housing and Community Development will implement a written system or other method to ensure subrecipient compliance and document its project files regarding the method used in accordance with 24 CFR 85.40.

### National Objective /Acquisition of Private Property

**Finding No. 3:** Acquisition of Historic Farish Street Entertainment District properties did not meet a National Objective - \$1,510,810

Condition: On April 1, 1997, a MOU was entered into between the City of Jackson and the JRA. The Jackson Redevelopment Authority is a public agency formed by Jackson City Council by resolution on August 13, 1968. In 1997, using CDBG funds, the JRA began acquiring properties in the Farish Street area as part of an urban renewal project. The JRA's intent was to acquire certain properties (the "Properties") in the area bounded by Amite, Mill, Hamilton and Lamar Streets in connection with the proposed Farish Street Entertainment District project (the "Project"). The Authority anticipated on leasing such property in accordance with procedures applicable to dispositions of property by the JRA.

The specific categories of eligible activities under which an activity may be carried out by a program participant using CDBG funds are found at 24 CFR 570.201 through 24 CFR 570.206. The eligibility category of Acquisition of Real Property can be found at 570.201(a).

According to HUD's review of the City's Consolidated Annual Performance Evaluation Reports (CAPERS), the City's PR08 Summary Activity Report, and the CPD Integrated Disbursement Information System (IDIS) for the program years 1997 through 2001, the City had expended \$1,510,810 in CDBG funding to carry out the acquisition of private properties.

Our review of the end use of the 17 properties acquired with \$1.5 million in CDBG funds over the past 16 years revealed that in accordance with 24 CFR 570.208, a required national objective was not met.

Beginning in May through June 1997, the City acquired five properties in the Farish Street Historic District at a cost totaling \$460,000. According to the January 15, 1998, letter from HUD's Office of Inspector General (OIG), in response to a June 11, 1997, letter of inquiry from United States Congressman Bennie G. Thompson regarding the possible improper use of \$460,000 in CDBG funds in connection with the City's acquisition of four properties in the Farish Street Entertainment District in May 1997, the OIG determined that for the following four property acquisitions, the City of Jackson carried out the Farish Street acquisitions in compliance with the Uniform Relocation Act, HUD regulations and City requirements:

1. Parcel 83-4 @ \$60,000.00-Check # 431797, 5/27/1997;
2. Parcel 86-49 @\$180,000.00-Check # 431675, 5/27/1997;
3. Parcel 86-50 (1/3 interest) @ \$50,000.00-Check # 431898, 5/27/1997;
4. Parcel 86-50 (2/3 interest)@ \$120,000.00- Check # 431768, 5/27/1997;
5. Parcel 86-52 @ \$50,000.00- Check# 43547, 5/27/1997

HUD staff reviewed the City's acquisition of the following thirteen additional parcels of land that were purchased with \$1,050,810.00 in CDBG funds to determine whether the City violated HUD rules or regulations:

1. Parcel 83-7 @\$43,270.00- Check# 474240, 4/13/1999;
2. Parcels 83-6, 86-29, 86-32, 86-39-3 and 86-42 @\$198,500.00- Check# 493815, 2/29/2000;
3. Parcel 86-39-4 @ \$1,500.00- Check# 493944, 2/29/2000;
4. Parcels 84-16, and 84-31 @ \$500,00.00- Check# 525446, 7/24/2001;
5. Parcel 83-5 (A) and 83-5 (B) @ \$167,540.00- Check# 474239, 4/13/1997;
6. Parcels 86-24 and 86-25-1 @ \$140,000 - Check# 43547, 7/31/2001

HUD staff reviewed the property acquisition records for the above listed properties and determined that all acquisitions were part of the planned creation of a Farish Street Entertainment District. The City claimed eligibility of the activity under the CDBG regulations as acquisition for a public purpose (24 CFR 570.201(a), meeting the national objective of benefits available to all residents of the area, the majority of which are low and moderate income persons (24 CFR 208(a) (1)). The City also based its national objective benefit on the planned use of the property, i.e., economic development creating jobs for low- and moderate-income persons (24 CFR 208(a) (4) (iv) (B) (v)).

In a letter to the City dated December 2, 1997, HUD informed the City that although the City's preliminary determination was that the activity would meet the national objective of low or moderate income benefit on an area basis "be advised that upon the completion of the activity, it is the *documented actual use of the property* that the City's final determination must be based on."

Neither the JRA nor the City maintained adequate documentation necessary for HUD to determine that the acquisition project met the national objectives of the CDBG program or complied with City policy.

Criteria: Under 24 CFR 570.208(a)(1)(i), an activity may be classified as an area benefit activity when the benefits of the activity are available to all residents of a particular area where at least 51 percent of the residents of are low- and moderate income persons.

In accordance with the CDBG regulations found at 24 CFR 570.503(a), before disbursing any CDBG funds to a subrecipient, the City of Jackson was required to sign a written agreement with the subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over CDBG funds, including program income. Subrecipients (sometimes referred to as "subgrantees") are entities that are provided CDBG funds by the City for their use in carrying out agreed-upon eligible CDBG activities. At a minimum, the written agreement with the JRA required that the City include the provisions found at 24 CFR 570.503(b).

Pursuant to 24 CFR 570.203, when assistance is provided to a business for the purpose of creating or retaining jobs, the City must have on file a written agreement with the business in which the business agrees to keep or create a specific number of jobs and identifies each such job by type and whether the job will be full-or part-time. The agreement must also specify the actions the business and the City will take to ensure that at least 51% of the jobs created or retained will benefit low/moderate income persons.

In accordance with 24 CFR 570.503(b)(8), the agreement must be explicit about the use of any real property under the JRA's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000:

1. The real property must be used by the JRA to continue to meet one of the CDBG program's national objectives for at least 5 years after expiration of the subrecipient agreement (or longer time specified by the City in the subrecipient agreement); or
2. If a national objective is not met during this time period, the City must reimburse HUD for the current fair market value, less any portion of the value attributable to non-CDBG funds.

Cause: The City's failure to provide the JRA compliance requirements that must be met relating to the Farish Street Entertainment District Project. The JRA's lack of oversight management of the Farish Street Entertainment District Project, and the JRA's failure to request that the City provide promised CDBG compliance instructions. Failure on the part of both the City and the JRA to document how the project met a required national objective.

Effect: As a result of this deficiency, the Farish Street Project did not achieve the national objective shown in the City's action plan, IDIS and the CAPERS. Therefore, the \$1,510,810 in CDBG funds for project acquisition may not be an allowable cost to the program.

The City's documentation was incomplete because the records submitted did not demonstrate that this activity met one of the criteria stated in 24 CFR 570.208. It has been more than 16 years since the City began acquiring the above listed property and it remains unclear whether or not the activity will ever meet a national objective.

Correction Action: HUD staff asked City staff during the monitoring review what method of reimbursement the City would agree to as it relates to HUD's verbal notification that the City would be asked to reimburse its program account or line of credit \$1,510,810, the amount of CDBG funds that were expended to acquire real property within the Farish Street Entertainment District, and reprogram the funds to another eligible use. The reimbursement options that were presented to the City were:

1. Agree to a voluntary grant reduction because the City has a discernible financial hardship that prevents it from using non-Federal funds to reimburse the line of credit or program account. *HUD staff pointed out while this approach eliminates the financial burden on the City to repay disallowed program costs from local funds, it also reduces the amount of funds available to the City for eligible activities.*
2. A grant reduction of the City's CDBG allocation decreases the amount of program funds available to address the jurisdiction's affordable housing or community development needs. In addition, a grant reduction also decreases the amount of administrative funds the City has available to administer its program. *Citizens would have to be informed of the proposal to reduce the grant in accordance with the consolidated plan regulations at 24 CFR part 91.*

3. Agree to Repayment of disallowed CDBG expenditures to the appropriate program account using local funds. Repayment of disallowed CDBG expenditures to the appropriate program account using local funds would allow the City to maintain the amount of funding available for affordable housing and community development in the City. In contrast, grant reduction results in the loss of CDBG funds in the amount of the reduction, plus the original ineligible CDBG expenditure.

If the City agrees to repay from a non-Federal source, HUD's prevailing position is that the disallowed costs are to be paid back in one year. HUD may authorize a period of up to three years to complete a grant reduction or repayment of CDBG, based on the amount of the ineligible costs and the City's ability to repay when the amount is large or the City can demonstrate a financial hardship.

Per City Director of Administration, Lee Unger's conversation with Jackson Field Office Community Planning and Development Director, Donna Wickes, the City, due to budget restraints, agreed to repay the \$1,510,810 in questioned costs, using non-federal funds, according to the following three year repayment schedule commencing with the City's fiscal year 2016 budget cycle beginning on October 1 2016 through the end of the City's fiscal year 2018 budget cycle which ends on September 30 2018:

1. 1 <sup>st</sup> Payment-December 2016	\$	503,603.34
2. 2 <sup>nd</sup> Payment-December 2017	\$	503,603.33
3. 3 <sup>rd</sup> Payment-December 2018	\$	503,603.33
	\$	1,510,810.00

In order to close this finding, within 30 days from the date of this report, please provide HUD with City Council authorization for the Chief Executive Officer to agree to the above three year repayment schedule.

The City is reminded that CDBG compliance requirements will remain in effect regarding the use of the CDBG assisted Farish Street Entertainment District properties until such time that the above questioned cost has been paid in full.

**Finding No. 4: The JRA failed to follow Federal Procurement Requirements -  
Farish Street Group, LLC**

Condition: According to the April 7, 1997, memorandum of understanding between the City of Jackson, Mississippi (the "City") and the JRA, "the City shall provide instructions to the Authority concerning requirements applicable in order for expenditures to be eligible for payment with CDBG fund and the Authority shall comply with such instructions". The Authority intended to acquire certain properties in the area bounded by Arnite, Mill, Hamilton and Lamar Streets in connection with the proposed Farish Street Entertainment District project. The Authority anticipated leasing such property in accordance with procedures applicable to disposition of property by the Authority.

In connection with the MOU, beginning in 1997 through 2001, the JRA expended \$1,510,810 in CDBG funds to acquire 17 parcels of land within the Entertainment district three block commercial area, which consisted of turn-of-the-century and early twentieth-century storefronts.



In an effort to develop the 17 parcels of land, the JRA formally solicited proposals to provide development services, management and/or leasing services, for the properties owned by the Authority and the City of Jackson in the four block area bisected by Farish Street between Amite and Hamilton (bounded on the West by Mill Street and on the east by Lamar Street).

It appears that in all but one instance, the JRA used the competitive proposal method (commonly referred to as "negotiated procurement"). However, the conditions for using competitive proposals rather than sealed bidding should be established in the JRA's Procurement Policy, and should be carried out in compliance with the procurement requirements found at 24 CFR 85.36(d)(3).

In response to the Request for Proposals, Performa Entertainment Real Estate, Inc. submitted a proposal and, on March 1, 2002, the JRA and Performa Mississippi, LLC entered into Lease Agreement, wherein Performa was granted exclusive leasing and development rights, and interest in CDBG assisted properties located in the Farish Street Entertainment District. Those CDBG assisted parcels of land were Parcels 83-4, 83-5 (A), 83-5 (B), 83-6, 83-7, 84-16, 84-30, 84-31, 84-31, 86-24, 86-25-1 86-29, 86-30, 86-32, 86-39-4, 86-39-3, 86-39-4, 86-42, 86-49, 86-50, 86-50, 86-52, 86-55.

On October 29, 2008, Performa Mississippi, LLC, a Mississippi Limited Liability Company, Performa Entertainment Real Estate, LLC, a Tennessee Limited Liability Company, collectively referred to as "Performa" and Farish Street Group, LLC (FSG), a Mississippi Limited Liability Company, entered into an "Assignment Agreement" transferring to FSG any and all rights which it may have in the JRA lease of August 1, 2005, and any and all other rights which it may have in the District.

According to the assignment agreement, Farish Street Group intended to assume the real estate mortgage in favor of the Mississippi Development Authority in the approximate amount of \$1,000,000.00, in addition to the debts incurred by Performa in pursuance of the development of the District, in an amount not to exceed \$160,000.00, and to further pay unto Performa the sum of \$425,000.00.

Performa and FSG also agreed to the following:

1. Performa agreed to sell and transfer and FSG agreed to purchase all rights that Performa owned in the Farish Street Entertainment District, including any and all property rights, real and personal, of any nature or kind. This conveyance included any tangible or intangible property rights Performa owned or otherwise had rights to as a result of the Lease with the JRA of August 1, 2005, and any amendments thereto, and any rights under any other contracts, including, but not limited to, construction contracts, contracts for professional services, and lease agreements related to or resulting from the Farish Street development activities of Performa to FSG;

2. Purchase Price. FSG agreed to pay Performa, as follows:

- a. Cash payment of \$50,000.00, upon execution of this agreement and an additional \$100,000 upon execution of a Memorandum of Understanding between the Jackson Redevelopment Authority and FSG approving in principle the assignment of the Lease Agreement from Performa to FSG, a copy of which is attached and incorporated herein as Exhibit "B."
- b. Periodic payments totaling \$175,000, payable monthly in the amount of \$4,861.11 for 36 months, with the first payment to begin on June 15, 2009.
- c. A final lump sum payment of \$100,000.00 payable on or before June 15, 2012.

The assignment agreement was signed by representatives of Performa Mississippi, LLC and Farish Street Group, LLC on November 5, 2008. On June 3, 2009 the JRA entered into a Memorandum of Understanding with Farish Street Group, LLC agreeing to the assignment of Performa Mississippi, LLC rights that it had under the Amended and Restated Lease Agreement with the JRA that was effective August 1, 2005.

In the absence of free and open competition, on January 27, 2010, the JRA consented to the assignment of Performa Mississippi, LLC lease agreement to Farish Street Group, LLC giving Farish Street Group, LLC exclusive leasing and development rights of the CDBG assisted Farish Street Entertainment District properties by entering into an Amended and Restated Agreement with Farish Street Group.

HUD did not find evidence that the JRA had a system in place to determine, before entering into an agreement with Performa Mississippi, LLC or Farish Street Group, LLC, if the LLC's were excluded, disqualified or otherwise ineligible (e.g., suspended, disbarred, or limited denial of participation (LDP) for Federal procurement and non-procurement programs.

Neither the City nor JRA provided HUD with an explanation of why proposals were not solicited. Records indicated that the JRA had set a precedent of seeking proposals relating the leasing and development of land. For example:

1. On November 4, 2004, the JRA solicited proposals to purchase or lease property in the Farish Street Entertainment District.
2. On April 27, 2006, the JRA solicited proposals to purchase or lease and redevelopment of property in the Farish Street area.
3. On July 15, 2008, the JRA solicited proposals for redevelopment of property in the Farish Street area. The Request for Proposals stated that "the property was currently subject to a lease agreement (the "Existing Lease") between the Authority and Performa Mississippi, LLC ("Performa"), dated as of March 1, 2002 and restated and amended as of August 1, 2005.

The JRA and the City both failed to provide HUD with documentation that the JRA had solicited and procured the services of the Farish Street Group, LLC in accordance with applicable procurement requirements, and therefore, eliminating potential lessors and developers from participation in the Farish Entertainment District project.

HUD could not determine through their contractual relationship how Farish Street Group, LLC could provide the JRA with impartial advice and assistance regarding the development of the Farish Street project when they had been given what appears to be an unfair competitive advantage relating to the leasing and development of the Farish Street Entertainment District.

Further, HUD did not find that the JRA had a system of contract administration for determining the adequacy of developers' performance.

Criteria: 24 CFR 85.36

In accordance with 24 CFR 85.36 (c), regardless of the method of procurement, the JRA is required to choose the method which, considering matters of economy, provides for full and open competition. The JRA, in its capacity as a governmental agency, is also required to establish and follow a written procurement policy that is consistent with 24 CFR 85.36. Generally, the procurement policy delegates responsibility for procurement functions to the Executive Director, with authority to assign all or a portion of that responsibility to positions or individuals based on the organization and staffing of the JRA.

According to 24 CFR 85.36, all procurement transactions will be conducted in a manner providing full and open competition. According to 24 CFR 85.36(c) (1) (iii) (v), situations restricting competition include noncompetitive pricing practices between firms or between affiliated companies and organizational conflicts of interest.

Conflicts of interest fall into two categories – personal and organizational. Personal conflicts of interest arise when an employee, officer, or agent of the grantee or any member of his/her immediate family, his/her partner, or any organization that employs or is about to employ any of the above has a financial interest in the firm selected for a contract award.

Ethical standards apply not only to City employees and Contracting Officers, but to others with a vested interest in City contracts such as members of Board of Commissioners, other officials and agents of the City, and contractors with whom the City or its subgrantees does business.

Organizational conflicts of interest occur when a firm has a bias or an unfair competitive advantage. Bias arises when a contractor is placed in a situation in which it is potentially unable to render impartial decisions or advice to the grantee (e.g., a firm is hired to evaluate a bid, proposal, or work of a parent or subsidiary company). An unfair competitive advantage results when a contractor that participated in developing specifications or statements of work is permitted to bid on the same work.

Another unfair competitive advantage may result if an incumbent firm has access to information that has not been made public and such information would enhance the incumbent firm's competitive position.



Grantees and subgrantees should ensure that any such information be made publicly available for a reasonable time period before the receipt of bids or proposals.

In accordance with 24 CFR 570.609, before a contract is awarded, the JRA was required to check to determine if HUD has issued an LDP or if the contractor/developer had been disbarred or suspended.

Cause: Failure on the part of the City to provide CDBG regulatory compliance requirements the JRA was to follow in carrying out their management of the Farish Street project. The JRA did not comply with HUD requirements pertaining to (a) competitively procuring service providers, (b) Project budget approvals, and (c) Project accounting. The JRA did not competitively procure and execute a contract with the "for-profit" company, Farish Street Group, LLC (FSG) as the Farish Street Entertainment District project's exclusive development and management agent, and the JRA allowed for-profit affiliates of Farish Street Group and Watkins Development, LLC, to become exclusive developers with leasehold interest in properties purchased with CDBG funds without compensation, and without reasonable compensation to the City of Jackson.

Effect: Potential developers were denied an opportunity to compete on a fair and equitable basis in connection with a federally assisted project.

Corrective Action: Within 15 days from the date of the monitoring letter, the City shall:

1. Provide a copy of the written request from Performa Mississippi, LLC (Performa) requesting the JRA's permission to allow Performa to assign, transfer, or sublease the CDBG assisted properties located in the Farish Entertainment District to Farish Street Group, LLC.
2. Provide a copy of the JRA's response to Performa Mississippi, LLC regarding the request to assign, transfer, or sublease the CDBG assisted properties located in the Farish Street Entertainment District to Farish Street Group, LLC.
3. Provide a copy of the JRA's written procurement policies and procedures.
4. Provide a copy of the City's written procedures to be used to ensure that HUD funded sub-grantees of the City are complying with HUD required procurement procedures.

**Finding No. 5:** Failure to properly manage CDBG assisted properties and guard against the appearance of organizational conflicts of interest

Condition: The JRA did not have a system for tracking property under its control that was acquired or improved with CDBG funds in excess of \$25,000 to ensure national objective compliance (24 CFR 570.503(b)(7), and 24 CFR 85.31).

According to an October 3, 2013, letter from Central Mississippi Planning and Development District (CMPDD) to the Jackson Redevelopment Authority, CMPDD made a series of six loans between January, 2008 and September, 2012 in the total original amount of \$5,481,376.00 with

loan funds from CMPDD Farish Street Redevelopment Loan Fund to be used for the redevelopment and improvement of certain properties located in the Farish Street Entertainment District.

Those loans were made to the following:

1. Loan 2002-Farish Street Group, LLC \$1,000,000.00;
2. Loan 2003-Farish Street Group, LLC \$1,000,000.00;
3. Loan 2004-Farish Street Group, LLC \$1,000,000.00;
4. Loan 2005-Farish Street Group, LLC \$1,000,000.00 ;
5. Loan 2006-Farish Street Group, LLC \$995,133.00;
6. Loan 2007-Farish Street Group, LLC \$486,243.00

In an October 7, 2013, letter to the Farish Street Group, LLC, the JRA notified Farish Street Group, LLC that their final Amended and Restated Lease Agreement was being terminated effective October 5, 2013. Therefore, all Amended and Restated Lease Agreements were now terminated. Prior to issuing the termination letter, JRA took the following significant actions in connection with the Amended and Restated Lease Agreements between the JRA and Performa Mississippi, LLC. Those actions were:

1. On June 3, 2009 the JRA entered into a Memorandum of Understanding with Farish Street Group, LLC consenting to the assignment of Performa Mississippi, LLC's lease agreement to Farish Street Group, LLC, thereby giving Farish Street Group, LLC exclusive leasing and development rights of the CDBG assisted Farish Street Entertainment District properties.
2. JRA entered into an "Amended and Restated Lease Agreement" with Farish Street Group, LLC. The "Amended and Restated Lease Agreement" gave Farish Street Group exclusive development and management rights to CDBG assisted properties within the Farish Street Entertainment District. The management and development rights consisted of the leasing and development of CDBG assisted properties. The agreement did not clearly spell out how the ground lessor(JRA) and the ground Lessee(FSG) would share in the resulting cash flows which was expected to be generated from the development and leasing of CDBG assisted properties.
3. Farish Street Group, LLC (Owner) entered into an Amended and Restated Development Agreement with Watkins Development, LLC (Developer) giving Watkins Development, LLC exclusive development and management rights to CDBG assisted properties within the Farish Street Entertainment District. The manager of Farish Street Group, LLC drafted the "Developer" agreement with Watkins Development, LLC and signed the Developer Agreement as the manager of Farish Street Group, LLC and Watkins Development LLC.

Records provided to HUD shows that the JRA lost control of the CDBG assisted Farish Street properties by allowing the following actions to occur:

1. Entering into a Memorandum of Understanding with Central Mississippi Planning and Development District agreeing to a leasehold security deed on the CDBG acquired properties held under the various Amended and Restated Lease Agreements held with Farish Street Group, LLC.
2. According to Hinds County Mississippi Chancery Court records, Watkins Development, LLC filed a *Notice of Construction Lien in the amount of \$4,757,484.33 against the structure and real property owned by the JRA ("JRA and/or Owner") leased to FSG*. Those properties were acquired with CDBG properties within the Farish Street project area, therefore inhibiting the future development of the area.
3. According to Hinds County Mississippi Chancery Court records, on October 3, 2013, Dale Partners filed a Lien claiming \$322,180.26 for architectural fees *against the structure and real property owned by the JRA ("JRA and/or Owner") leased to FSG*. Those properties were acquired with CDBG properties within the Farish Street project area, therefore inhibiting the future development of the area.
4. The appearance that Watkins Development, LLC was billing its affiliate partner, Farish Street Group, LLC for services it had allegedly performed for FSG.
5. The appearance of organizational conflict of interest on May 1, 2011, when Farish Street Group, LLC, and BSBC-MS Management, LLC entered into a lease agreement for the CDBG assisted property located at 212 and part of 210 Farish Street. According to Mississippi Secretary of State Business Records ID#982614, the registered agent and manager of BSBC-MS Management is also the manager of Farish Street Group, LLC and Watkins Development, LLC located at 300 West Capitol Street, Suite 201.
6. Appearance of a conflict of interest on the part of an employee of Watkins Development, LLC who established a business known as Zac Harmon's Club, LLC, intended to enter into a tenant lease agreement with Farish Street Group for the CDBG assisted properties located at 107 W Griffin Street, 237 and 243 Farish Street in the Farish Street Historic District. Mississippi Secretary of State Business Records ID # 990780 revealed that the employee located at 300 West Capitol Street, Suite 201, was the registered agent and manager of Zac Harmon's Club, LLC. 300 West Capitol Street, Suite 201, is the address for Watkins Development LLC, and Farish Street Group, LLC.
7. Appearance that CDBG assisted property may have been used as security in connection with loans from Central Mississippi Planning District that Farish Street Group, LLC had received.
8. Appearance that family members, partners and other affiliated with Farish Street Group, LLC were allowed to participate and bill Farish Street Group for services rendered in connection with the CDBG assisted Farish Street project.
9. Allowed Farish Street Group, LLC to enter into tenant lease agreements, some of which contain blank notarized and pre-sworn notarized documents. For example:

- Tenant Lease Agreement between Heart Beatz Entertainment, LLC for the rental space located at 113 W. Griffin Street, Jackson, MS. The first page of the agreement as to the date of the lease and who the lessor was blank, but the signature page of the agreement was signed and dated by both parties, Farish Street Group, LLC and Heartbeat at Zac's, LLC. Attached to the lease agreement was a pre-notarized blank "Acknowledgement" form dated October 12, 2011.
- Tenant Lease Agreement between Zac Harmon's Blues Club, LLC for the rental spaces located at 237 and 243 Farish Street and 107 W. Griffin Street, Jackson, MS - the first page of the agreement as to the date of the lease and who the lessor was blank, but the signature page of the agreement was signed and dated by both parties Farish Street Group, LLC and Zac Harmon Blues Club, LLC. The lease agreement document also contained a pre-notarized blank "Acknowledgement" form notarized on October 12, 2011;
- Tenant Lease Agreement between Cool AI's, LLC for the rental space located at 229 Farish Street, Jackson, MS - the first page of the agreement contains the lessor name, but the date of the lease is blank. The signature page of the agreement was signed and dated by both parties Farish Street Group, LLC and contain only a unidentifiable signature in the block which normally lists who the lessor is and the title of the signatory is blank;
- Tenant Lease Agreement between Sage Steakhouse, LLC, for the rental space located at 202 and 206 Farish Street, Jackson, MS. The first page of the agreement contains the lessor name, but the date of the lease is blank. Attached to the lease agreement was a pre-notarized blank "Acknowledgement" form dated October 12, 2011.

**Criteria:** In accordance with 24 CFR 85.40(a), grantees are responsible for managing the day-to-day operations of grant and sub grant supported activities, to ensure compliance with applicable federal requirements and achievement of performance goals.

According to 24 CFR 85.36(c) (1) (iii) (v), situations restricting competition include noncompetitive pricing practices between firms or between affiliated companies and organizational conflicts of interest shall be avoided.

Conflicts of interest fall into two categories – personal and organizational. Personal conflicts of interest arise when an employee, officer, or agent of the grantee or any member of his/her immediate family, his/her partner, or any organization that employs or is about to employ any of the above has a financial interest in the firm selected for a contract award.

Ethical standards apply not only to City employees and Contracting Officers but to others with a vested interest in City contracts such as members of Board of Commissioners, other officials and agents of the City and contractors with whom the City or its subgrantees does business.

Organizational conflicts of interest occur when a firm has a bias or an unfair competitive advantage. Bias arises when a contractor is placed in a situation in which it is potentially unable to render impartial decisions or advice to the grantee (e.g., a firm is hired to evaluate a bid,

proposal, or work of a parent or subsidiary company). An unfair competitive advantage results when a contractor that participated in developing specifications or statements of work is permitted to bid on the same work.

Another unfair competitive advantage may result if an incumbent firm has access to information that has not been made public and such information would enhance the incumbent firm's competitive position.

Cause: Failure on the part of the City to provide instructions to the Authority concerning requirements applicable in order for expenditures to be eligible for payment with CDBG funds.

Effect: The JRA and the City both failed to provide HUD with documentation that the JRA had solicited and procured the services of the Farish Street Group, LLC in accordance with applicable procurement requirements and therefore, all CDBG funding provided to the JRA must be reimbursed.

Corrective Actions:

Upon receipt of this letter, the following parties are suspended from participating in all HUD funded programs until further notice from this office: the Jackson Redevelopment Authority, Farish Street Group, LLC, Watkins Development, LLC and their employees, affiliates, and partners and Jason Goree, current Interim Director of the City of Jackson's Economic and Development Department, former employee of Farish Street Group, LLC, and Watkins Development, LLC.

Within 30 days of the date of this report, provide the following for HUD's approval:

1. The City will develop and implement procedures that require its subgrantees to follow regarding the reporting of the appearance and elimination of organizational conflicts of interest in connection with their carrying out CDBG funded projects.
2. The City shall develop and implement written procedures for funded governmental agencies to follow when they are provided CDBG funds to carry out eligible CDBG activities. The procedures shall include monitoring and enforcing compliance.
3. Prepare and follow a schedule of the actions the City intends to implement for carrying out the use of the CDBG acquired Farish Street Entertainment District Properties, consisting of schedules and timetables for removing all liens and security claims against such property, method to be used to secure and maintain CDBG assisted properties, and method to be used to document, collect and report rental income generated via the use of the CDBG assisted properties.
4. A management plan prepared by the City's Chief Administrative Officer that assigns responsibilities for carrying out the above actions identified in paragraph 3 above;
5. A copy of the written procedures to be used to prevent and mitigate organizational conflicts of interest in the contracting of CDBG funds. The procedures must include the use of Noncollusion Affidavits to be signed by prime bidders, the inclusion of an organizational conflict of interest clause in all solicitations involving HUD funded projects;

6. Copies of all notes, JRA Memoranda and Board minutes regarding the Farish Street Project;
7. Copies of any and all City Council approvals made in connection with the Farish Street Project.
8. Copy of updated physical property assessment of the CDBG acquired properties. The assessment must include supporting documentation that supports your analysis.

**Finding No. 6: The City failed to properly document the receipt of Program Income - Farish Street Project**

Condition: According to the April 7, 1997, MOU between the City of Jackson, Mississippi (the "City") and the JRA, the JRA intended to acquire certain properties in the area bounded by Amite, Mill, Hamilton and Lamar Streets in connection with the proposed Farish Street Entertainment District project. The JRA was the recipient of program income generated via the rental of CDBG assisted properties within the Farish Street Entertainment District project area. HUD records revealed that rental agreements were not executed with businesses which are still operating even though their property was acquired as part of the project acquisition process.

HUD did not find evidence that the JRA had a method to ensure that financial management systems are kept in accordance with HUD regulatory compliance, or maintained financial records that allowed for the adequate accounting of program income that was generated by the rental of properties. HUD further found that the JRA did not maintain system(s) or procedures for ensuring that CDBG funds are used in accordance with program requirements.

Criteria: The City is required to have a method to ensure that the JRA's financial management systems are kept in accordance with 24 CFR 85.20 with the exception of paragraph (a). In accordance with 24 CFR 570.504, the City, as well as its sub-grantee is required to maintained financial records that allow for the adequate accounting of program income. In accordance with (24 CFR 570.506 and 24 CFR 85.40), the City of Jackson and its sub-recipient, the JRA, did not adequately manage and control the Farish Street Entertainment District Project.

The City and its sub-grantees must maintain records that adequately identify the source and application of funds provided to financially assisted activities. These records must identify grant or sub-grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

In accordance with 24 CFR 570.500(a), program income means gross income that is received by either a recipient or subrecipient and has been directly generated from the use of CDBG funds.

The regulations at 24 CFR 85.20(b) require that the City's and subrecipient's accounting records contain information which adequately identifies the source and application of funds provided for any CDBG-assisted activity. Actual expenditures or outlays must be compared with budget amounts for each sub-grant. Furthermore, their financial reporting must be structured to allow for accurate, current, and complete disclosure of financial results of CDBG-assisted activities.



Further, regulations at 24 CFR 85.20 and 85.22 require the City's financial management system to include procedures for determining the reasonableness, allowability, and allocability of costs.

In accordance with 24 CFR 85.42, the City and its sub grantees are required to maintain financial records, supporting documents, statistical records and all other records pertaining to the Farish Street Project for 3 years from the date of final expenditure report or until after all litigation, claims, or audit findings started before the expiration of the 3 year period have been resolved. Federal regulations at 24 CFR 91.520(a), Performance Reports, states that each jurisdiction that has an approved Consolidated Plan shall annually review and report, in a form prescribed by HUD, on the progress it has made in carrying out its strategic plan and its action plan.

Also, in accordance with 24 CFR 570.507(a), the City is required to identify the source and amounts of program income received either by itself or subrecipient during each program year, and report the program income by adding the information in the Plans/Projects/Activities screen which HUD and the public can review as part of the City's CAPER, PR 26 CDBG Financial Summary Report.

**Cause:** The City's failure to enter into a written subrecipient agreement with the JRA specifying whether any program income received by the JRA is to be retained by the JRA or returned to the City, and how to report on program income generated through the CDBG assisted project. Failure on the part of the City to determine the adequacy of the JRA's financial management system prior to funding.

**Effect:** The City cannot adequately account for program income being generated by the CDBG assisted project causing the under-reporting of the same to HUD.

**Corrective Action:**

As of the date of this monitoring letter suspend any additional rental activities involving the use of the CDBG acquired properties.

1. Provide a list of all current occupants of CDBG acquired properties within the Farish Street Entertainment District. The list should also include a copy of the rental agreements and supporting documentation regarding the amount of rental charged and paid from the inception of their occupancy after the JRA acquired the property.
2. Provide a list of all JRA projects that generate CDBG program income for the time period 1997 to present.
3. Provide a copy of the source documents (check, invoice, bank statement, or receipt) for *all* gross program income received from Performa Mississippi, LLC and Farish Street Group, LLC for the time period 1997 to present.
4. Please provide an *itemized* list of adjustments and allowances for *all* gross program income received from Performa Mississippi, LLC and Farish Street Group, LLC for the time period 1997 to present.

5. Provide documentation regarding how the JRA accounts for program income.
6. Provide a copy of the written procedures that the City will implement and require subrecipients to follow regarding the terms and conditions that must be met in connection with the reporting and use of program income is to be used.