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Acquisition Of Public Housing By  
The Akron Metropolitan Housing  
Authority, Akron, Ohio B-118718

Department of Housing and Urban Development

*BY THE COMPTROLLER GENERAL  
OF THE UNITED STATES*

7-11-71 094050

JUNE 21, 1972,



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON DC 20548

B-118718

Dear Mr Carney

This is our report on the acquisition of public housing by the Akron Metropolitan Housing Authority, Akron, Ohio. The review was made in accordance with your request of August 13, 1971, and with subsequent discussions with you.


The results of our examination are summarized in the digest.

The Department of Housing and Urban Development, the Akron Metropolitan Housing Authority, and the other parties named in this report have not been given an opportunity to review and comment on the contents of the report. This fact should be taken into consideration in any use made of the information presented.

We plan to make no further distribution of this report unless copies are specifically requested, and then we shall make distribution only after your agreement has been obtained or public announcement has been made by you concerning the contents of the report.

We trust that the information furnished will serve the purpose of your request.

Sincerely yours,

  
Comptroller General  
of the United States

The Honorable Charles J Carney  
House of Representatives

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ABBREVIATIONS

AMHA	Akron Metropolitan Housing Authority
GAO	General Accounting Office
HUD	Department of Housing and Urban Development
LHA	local housing authority

D I G E S T

WHY THE REVIEW WAS MADE

At the request of Congressman Charles J. Carney, the General Accounting Office (GAO) reviewed selected aspects of the purchase of public housing by the Akron Metropolitan Housing Authority from the Stirling Homex Corporation. The Department of Housing and Urban Development (HUD) is providing financial assistance for this housing.

GAO reviewed

- the approval of a turnkey housing project in Barberton, Ohio, including the selection of Stirling Homex as the project developer, and
- participation by Stirling Homex in other authority housing projects

FINDINGS AND CONCLUSIONS

In March 1971 the authority agreed to develop and administer low-rent housing within the city of Barberton. HUD subsequently authorized the construction of 230 units of low-rent housing in Barberton under turnkey regulations (See p. 5).

HUD regulations on turnkey projects state that the developer tentatively selected should be one whose proposed price does not exceed the HUD-established upper limit for negotiations. The regulations state also that negotiations will not take place while proposals are evaluated (See p. 8).

Although the approval of the housing project for Barberton was proper, the selection of the developer for the Barberton project was not in accordance with HUD regulations because (1) negotiations were held with the developer while proposals were being evaluated and (2) the developer's proposed price exceeded project cost limitations.

Although Stirling Homex's proposed price exceeded cost limitations and although negotiations had taken place during evaluation of the proposals, the authority concluded that Stirling Homex had submitted the only acceptable proposal and HUD approved the selection. The authority's records showed that, prior to requesting HUD's approval, a reduction of the proposed price to meet the cost limitations was negotiated by the authority (See p. 8).

Because it would be extremely difficult, if not impossible, to assign a monetary value to some of the major elements on which Stirling Homex's proposal

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was considered to be superior and because each developer was proposing to construct units built to different plans and specifications, GAO is unable to express an opinion on whether the higher costs proposed by Stirling Homex were reasonable in relation to costs proposed by other developers

Certain construction firms expressed the opinion that the selection of the developer was not justified. The executive director of the authority told GAO that Stirling Homex had been selected as developer because it had submitted the best total proposal. He also said that proposals of comparable quality are evaluated equally.

HUD's regulations on turnkey projects do not require award to the lowest proposer. At least three State supreme courts held that State competitive-bidding statutes were not applicable to federally assisted turnkey housing and that awards of contracts for such housing were not restricted to the lowest responsible proposer. HUD officials informed GAO that to their knowledge the legality of the turnkey method of providing low-rent public housing had never been questioned in Ohio.

However, in a case where a local housing authority, rather than the developer, owned the site, a New York court held that this did not represent a pure turnkey procurement and therefore was subject to State competitive-bidding statutes. The Barberton project is similar to the New York case because the site is owned by the authority rather than by the developer. (See p 13 )

Stirling Homex has constructed all the new town-house units acquired by the authority since 1969. Most were acquired during 1969 and 1970. In November 1970 HUD advised its regional administrators that the procedure used for acquiring most of the units had not been authorized and that it should not be used because it was inconsistent with the concept of competitive procurement and could be in violation of certain legal requirements. (See p 16 )

## CHAPTER 1

### INTRODUCTION AND SCOPE OF REVIEW

The Housing Act of 1937, as amended (42 U.S.C. 1401), authorized the Department of Housing and Urban Development to conduct a program of housing assistance under which local governments established independent legal entities--known as local housing authorities (LHAs)--to develop, own, and operate low-rent public housing projects.

The General Accounting Office reviewed selected aspects of the acquisition of public housing by the Akron Metropolitan Housing Authority (AMHA), Akron, Ohio, pursuant to a request by Congressman Charles J. Carney, dated August 13, 1971. At subsequent meetings with the Congressman, it was agreed that we would examine the

- approval of a housing project, including the selection of the Stirling Homex Corporation as the developer, in Barberton and
- participation by Stirling Homex in other AMHA housing projects.

Our review was conducted at AMHA headquarters in Akron, the HUD regional office in Chicago, Illinois, and area office in Columbus, Ohio, the Stirling Homex Corporation, Avon, New York, and the office of the consulting firm of Ross-Hostetler & Associates, Inc., Chicago. Our review included a review of records and discussions with persons involved with AMHA projects.

Since 1968 AMHA has purchased 1,325 housing units--693 were new units built for AMHA under a procedure commonly referred to as "handshake" turnkey. Under this procedure the developer acquires a site and designs and constructs buildings, with only informal approval from LHA and without any binding contractual commitment. During 1969 and 1970 Stirling Homex provided 569 housing units, or 82 percent of the new units purchased, under the handshake-turnkey procedure. In November 1970 HUD stated that handshake turnkey was not authorized and prohibited further acquisition of housing under this procedure.

Under the authorized turnkey method, developers submit proposals in response to an LHA invitation. If the proposal is acceptable to LHA and HUD, LHA enters into a contract to purchase the completed development. The contract is backed by a financial assistance commitment of HUD. The Barberton project was the first authorized turnkey project undertaken by AMHA. Proposals for a 230-unit project in Barberton were opened on June 1, 1971, and Stirling Homex was selected by AMHA as the developer.

Proposals for a second turnkey project in Akron were opened on December 6, 1971. This project calls for construction of 80 single-family homes on individual scattered sites and of 180 town houses on at least four scattered sites. Two developers submitted proposals on this project, one was for the 80 single-family homes, and one (Stirling Homex's) was for the 180 town houses. On January 25, 1972, HUD required AMHA to readvertise the project in an attempt to interest additional developers in submitting proposals. Pursuant to the readvertisement, three developers submitted proposals. The proposals were opened on February 22, 1972.

## CHAPTER 2

### APPROVAL OF THE BARBERTON PROJECT

#### AND SELECTION OF ITS DEVELOPER

##### APPROVAL OF PROJECT

On March 11, 1971, the city of Barberton entered into a cooperation agreement with AMHA. A cooperation agreement--a binding contract between LHA and the governing body of the locality in which the housing is to be located--provides for local cooperation with LHA in developing and managing low-rent public housing. Under the terms of the agreement, AMHA was authorized to develop and administer approximately 700 units of low-rent housing in Barberton.

The cooperation agreement was submitted to HUD, and on March 25, 1971, HUD approved the transfer of 230 units of low-rent public housing to Barberton which had been authorized previously for Akron.

##### SELECTION OF DEVELOPER

###### Project plan and request for turnkey proposals

AMHA owned the site selected for the Barberton project. The site contained 206 units of World War II barracks-type housing that were deteriorated. AMHA planned that 230 townhouse units would replace the existing barracks-type housing. The first new units were to be built on vacant areas of the site, then families from the barracks-type housing were to be moved in. The old vacated units were to be demolished, and additional new units were to be built. This internal relocation process was to continue until the project was completed.

AMHA hired a consulting firm, Ross-Hostetler & Associates, Inc., to prepare the project specifications package, to draft a newspaper announcement to be used for soliciting proposals, and to evaluate proposals. The package included HUD forms, general specifications, and a letter to developers which listed the specific requirements for the project.



Before placing the announcement in a local newspaper on May 10 and 17, 1971, HUD reviewed the package and suggested changes, which were made by AMHA. Some of the points stressed in the request for proposals that played a major role in the evaluation of developers' proposals by the consulting firm are listed below.

#### Site location

--All existing structures must be demolished by the developer and replaced with new structures. No families will be displaced, and no services will be discontinued during construction--which means an internal relocation procedure will be established. Proposals must indicate how this will be accomplished.

--All project streets must be designed so that they will be suitable for dedication to the city.

#### Site planning:

--The developer should provide off-street parking stalls in compliance with the city code.

--Areas for clothes drying outside should be provided.

--Tot lots (play areas for children) and recreational areas should be provided.

--Each dwelling unit must be landscaped.

#### Dwelling construction

--Structures with maintenance-free exteriors will be most desirable to the local authority.

#### Affirmative action plan

--Proposals which do not contain an affirmative action program--a contractor's plan to ensure equal employment opportunity in all aspects of employment--will not be considered for selection.

The request for proposal stated that the developers' offerings would be evaluated in accordance with procedures outlined in the Low-Rent Housing Turnkey Handbook dated June 1969, which require

"The LHA and HAO [HUD Area Office] shall evaluate each proposal on the basis of (a) site--its location, cost and other factors pertinent to the site report, (b) construction--its design and cost, (c) credentials of developer, (d) the developer's and/or builder's Statement of Disclosure of Interest.

"Evaluation of the price of the site and of construction will be in terms of whether these prices are within a reasonable range.

"There will be no price negotiation at this stage."

#### Evaluation of proposals

On June 1, 1971, the proposals were opened--seven proposals were submitted by six proposers (one offered two proposals for the project). The following are the prices proposed.

<u>Proposer</u>	<u>Price</u>
Creative Housing, Inc., Los Angeles, California	\$4,367,000 (town-house units) 4,509,855 (detached units)
Dell Corporation, Winnetka, Illinois	4,882,900
Modulage Homes, Inc., Niles, Ohio	4,892,250
Satterfield Development Corp., Hagerstown, Indiana	5,382,500
Stirling Homex Corporation, Avon, New York	5,425,586
Builder's United Enterprises, Inc., South Bend, Indiana	5,839,042

Ross-Hostetler evaluated the proposals and listed their strengths and weaknesses. Included among the major design inadequacies of the Creative, Dell, and Modulage proposals were

- questionable or inadequate relocation plans,
- unsuitably designed streets for dedication to the city,
- poor or unsatisfactory parking arrangements, and
- unclear or inadequate identification of tot lots and clothes-drying areas.

Stirling Homex's proposal was considered superior because it included a well-prepared internal relocation plan and because Stirling Homex had previously demonstrated the capability to perform this type of work. Also sufficient parking spaces in interior lots satisfied parking and street dedication requirements. For example, the planning director for Barberton, after reviewing street drawings submitted by each of the developers, informed us that all the street plans, except Stirling Homex's, were unacceptable for dedication of the streets to the city because the planned streets violated the Barberton code.

On the basis of our review of proposals submitted by the developers, the information contained in the evaluation prepared by Ross-Hostetler appeared to be accurate.

We noted that the evaluation did not mention that Stirling Homex's proposed price had exceeded the cost limitations for public housing in Barberton. Stirling Homex's original proposal included \$3,528,500 for dwelling structures. This amount exceeded the construction cost limits established by HUD by \$90,000. AMHA records showed that, prior to requesting HUD's approval of Stirling Homex as the developer for the Barberton project, the executive director of AMHA had negotiated a reduction in the proposed amount for the dwelling structures with Stirling Homex. Stirling Homex's revised proposal showed a cost of \$3,335,460 for this item, which was within the construction cost limits.

HUD's turnkey regulations provide that no price negotiations take place while proposals are evaluated. The regulations also state that the tentative selection of a developer does not indicate that the developer's prices for the site and construction are acceptable but only that they do not appear to exceed an upper limit for negotiations.

Since Stirling Homex's proposed cost exceeded construction cost limitations, it exceeded the amount that could have been used as an upper limit for negotiations, therefore, according to HUD regulations, Stirling Homex's proposal should have been eliminated.

We discussed the selection of Stirling Homex with a former HUD low-rent housing program manager, who is still employed by HUD but in a different capacity, and with a HUD inspector because they were associated with the Barberton project. They stated that Stirling Homex's proposal should have been eliminated because it exceeded the prototype cost limits. We discussed also this matter with a HUD headquarters official who stated that, if a developer's proposed dwelling construction and equipment cost was over the construction cost limits, the developer's proposal should be eliminated.

On the basis of the above information, the method of selecting Stirling Homex as the developer for the Barberton project was not in accordance with HUD turnkey regulations.

#### Selection of Stirling Homex as the developer

AMHA tentatively selected Stirling Homex as the developer for the Barberton turnkey project because, in its opinion, only Stirling Homex had submitted an acceptable proposal. In a letter dated June 29, 1971, AMHA requested HUD approval of its selection and summarized its position as follows

"As you know, this is a unique project in that it is on a parcel of land owned by the Authority, having on its premises over 200 units of wartime barrack housing. In selecting the Developer, much consideration had to be given to, not only the price factor, but the company that could perform not only the replacement of the 230 units, but the fashion and manner in which it was to be done, including the relocation of the existing 200 families. The consideration of not only the amount of time involved, method of relocation and replacement of the units, but also strong consideration to the integrity and strength of the company that

had experience in doing a project of this type. We are most fortunate in having a company of this type, that is just completing a 204 unit replacement project for the Akron Metropolitan Housing Authority.

"Having been involved in a project of this type, we are familiar with the many problems a developer might run into, not having had the experience in doing a total replacement of an existing project, involving underground utilities, having the ability to relocate without disconnecting services, and also knowing that it would have to be a modular developer in order to complete a project of this magnitude in 9 months or less. In reviewing the proposals that were presented, the only company that had the credentials to fit all the requirements, ended up being Stirling Homex Corporation. I realize they were not the lowest bidder, but in discussing price of their product with them, I was able to bring down the price to \$5,261,000 [\$5,261,250] or \$22,875 per unit.

"Creative Housing, Inc., the lowest bidder, unfortunately is unable to accept this project, due to some errors in their calculations and having visited the site with me and discussing the project in depth, agree it is a little more than they can do, or would care to become involved in, due to the complexities that lie therein.

"Of the remaining bidders Dell Associates, with a total incomplete program, requiring as much as two years to complete, Modulage Homes, knowing their past reputation, being familiar with their product and having stated no time whatsoever, we would be most hesitant to become involved with them, Satterfield Development Corporation and Builders United, were also ruled out due to their inexperience in relocation of people and the amount of time necessary in which to provide the requested development."

In compliance with HUD procedures, two independent cost estimates were obtained by AMHA and were compared with Stirling Homex's proposal. Project Cost Consultants, Inc., Chicago, estimated a total cost of \$5,991,600, and Construction Cost Control, Inc., Chicago, estimated a total cost of \$6,689,000. Both estimates were higher than the \$5,261,250 selling price negotiated with Stirling Homex. These estimates were used to show that Stirling Homex was offering a price within the reasonable range required by HUD turnkey regulations.

HUD made its own analysis of the Stirling Homex proposal and agreed with AMHA's recommendation that Stirling Homex be selected, because it had submitted the only acceptable proposal.

The construction contract was signed on August 26, and construction began during the first week of October 1971. It was estimated that the project would be completed in about 7 months (early in May 1972).

Comments of individuals or firms  
regarding the Barberton project

We contacted four of the unsuccessful proposers--we did not contact the firm submitting the highest proposal--on the Barberton project to obtain their views regarding the awarding of the project to Stirling Homex. Most of them told us that they had not been treated fairly by AMHA. Some proposers expressed the opinions that Stirling Homex had received preferential treatment. They expressed the opinions also that Stirling Homex had received additional information and that the evaluations of proposals had not been fair.

We noted that HUD had investigated the executive director of AMHA in March 1971 for alleged unjust enrichment and conflict of interest. One of the specific allegations was that the executive director was engaged in manipulating Stirling Homex stock. The HUD investigative report concluded that the allegations were groundless.

One of the proposers mentioned that it had heard that Stirling Homex had been so sure of being named developer of the Barberton project that it had stockpiled modules for the Barberton project in Akron for more than a year before the opening of proposals.

In discussing the stockpiling of modules, an officer of Stirling Homex told us that

- Akron had been used as a staging area for modules,
- Stirling Homex had taken a businessman's risk in storing the modules,
- the modules had been originally stored for use on another project, and
- modules were interchangeable and could be used on the Barberton project.

We could not determine whether the modules were stored specifically for the Barberton project prior to the opening of proposals in June 1971. There is no question that modules were stored in Akron before the opening of proposals, but, during the period 1969 and 1970, Stirling Homex was building units for sale to AMHA under the handshake turnkey direct acquisition program and was involved as the proposed builder-seller under another HUD-insured project.

On November 24, 1971, we wrote to Creative Housing, Inc., the low proposer on the Barberton project, to obtain its views on the awarding of the contract, however, after several follow-up inquiries, we still have not received a response to our letter.

The executive director of AMHA stated that Stirling Homex

- had performed well on individual projects using its own funds;
- had demonstrated the capability for completing, on a timely basis, projects requiring internal relocation, and

--had the financial resources and the know-how to build quality housing quickly.

The executive director stated also that Stirling Homex had been selected because it had submitted the best total proposal. He also said that proposals of comparable quality are evaluated equally.

Turnkey method of procurement  
does not require award to lowest proposer

A HUD official informed us that the turnkey method had certain advantages--speed, less paper work, less detailed specifications, and a variety of project plans. However, the flexibility of the procedures, which do not require award to the lowest proposer, provide LHA with wide latitude in selecting the developer.

Legal precedents

The Barberton project was procured not by a Federal agency but by an LHA established under State law. Although Federal financial assistance is contemplated during the procurement, pursuant to the United States Code (42 U.S.C. 1401 et seq.), that statute does not, by express terms or by implication, require that Federal competitive-bidding procedures be followed because of such financial assistance. Moreover the HUD regulations, contained in the Code of Federal Regulations (24 CFR 1520 et seq.), relating to the low-rent housing program do not require that competitive-bidding procedures be utilized in procurement of projects by LHAs.

Also the propriety of the use of the turnkey method, rather than conventional competitive-bidding techniques, by LHAs has been considered by at least three State supreme courts. In all cases the courts held that State competitive-bidding statutes were not applicable to federally assisted turnkey housing and that awards of contracts for such housing were not restricted to the lowest responsible proposer. HUD officials informed us that to their knowledge the legality of the turnkey method of providing low-rent public housing had never been questioned in Ohio.



Although the courts held, in the above cases, that State competitive-bidding statutes were not applicable to federally assisted turnkey housing, a New York court held, in a case where LHA owned the site rather than the developer, that this did not represent a pure turnkey procurement and therefore was subject to the State competitive-bidding statutes. This situation is similar to the Barberton project in that the site is owned by AMHA rather than by the developer.

## CONCLUSIONS

On the basis of our review, the approval of a housing project for Barberton was proper, however, in our opinion, the selection of Stirling Homex as developer for the project violated HUD regulations pertaining to turnkey projects. These regulations (1) preclude the selection of a developer whose proposed price exceeds an upper limit for negotiations and (2) provide that negotiations not take place while proposals are evaluated. Although Stirling Homex's proposed price had exceeded cost limitations and although negotiations had taken place during proposal evaluation, AMHA concluded that Stirling Homex had submitted the only acceptable proposal, and HUD approved AMHA's selection.

Because it would be extremely difficult, if not impossible, to assign a monetary value to some of the major elements on which the Stirling Homex proposal was considered to be superior--such as the early completion of the project and the internal relocation plan--and because each developer was proposing to construct units built to different plans and specifications, we are unable to express an opinion as to whether the higher costs proposed by Stirling Homex were reasonable in relation to costs proposed by other developers.

## CHAPTER 3

### PARTICIPATION BY STIRLING HOMEX IN

#### OTHER AMHA HOUSING PROJECTS

Stirling Homex constructed its first town houses for AMHA in February 1969 and built all the new town houses acquired by AMHA from that time. Stirling Homex has built, or has in varying stages of completion, about 800 town-house units for AMHA. Another project for 180 town-house units and 80 single-family units has been readvertised because only one proposal was received for (1) the town-house units (Stirling Homex) and (2) the single-family units. Three developers submitted proposals in response to the readvertisement. In addition, Stirling Homex and AMHA are collaborating in a proposed section 236 project. (See p. 17 )

#### PUBLIC HOUSING PROGRAM

AMHA worked with the Akron building inspectors and with Stirling Homex to obtain modular housing for Akron's public housing needs. The executive director of AMHA was able to get Stirling Homex to make the necessary changes in construction of its modules to meet the requirements of the area building codes.

Under HUD's direct acquisition program, HUD provides financial assistance to LHAs to purchase existing housing units or units under construction. AMHA bought 569 new town-house units from Stirling Homex under the direct acquisition program using the handshake-turnkey method. AMHA, without a formal contract, agreed to acquire the town-house units from Stirling Homex as they were constructed. The total price for the 569 town-house units acquired between February 1969 and December 1970 was about \$12 million.

HUD's procedures for the direct acquisition program require that the properties offered for sale be appraised by an independent appraiser. HUD evaluated the reasonableness of the prices for the 569 direct acquisition units acquired by AMHA by using an appraisal of the total property (land and buildings) for 22 of the town-house units. For the 547 other town-house units, only the land was appraised and the

buildings were valued using three price elements (1) a fixed site preparation cost for each unit, (2) a fixed erection cost for each unit, and (3) the Stirling Homex catalog price for the modules for each town-house unit HUD compared this pricing data with (1) catalog prices of other modular builders, (2) HUD estimates for conventionally constructed housing, and (3) an independent cost estimate On the basis of these factors, HUD concluded that the Stirling Homex prices were within a reasonable range

We computed the average costs for the direct acquisition programs and found that Stirling Homex town houses had been purchased for about 3 percent less than the value arrived at by the means mentioned above and that properties acquired from other parties had been purchased for about 6 percent less than their appraised value. The Stirling Homex town houses were newly constructed, and the other units were generally older properties.

The records at AMHA and HUD, Columbus, showed that details of the Stirling Homex and AMHA transactions had been reported to HUD and that HUD had approved the transactions.

The Assistant Secretary - Commissioner of HUD, in a memorandum dated November 2, 1970--subsequent to approval of the above-mentioned projects--advised all regional administrators that handshake turnkey was not authorized by HUD and that it should not be used in any form or manner He stated that handshake turnkey

--represented a major deviation from authorized turnkey procedures and was in direct violation of the competitive concept and

--could be in violation of wage and civil rights laws contained in section 16(2) of the Housing Act of 1937, the Civil Rights Act of 1964, and Executive Order 11063

#### SECTION 236 HOUSING

AMHA and Stirling Homex are attempting to obtain HUD's approval of a section 236 project for Akron The 236

program is designed to encourage private enterprise to provide housing to low-income families Under the program, the owner of the housing project obtains a HUD-insured mortgage loan at the market rate of interest and HUD agrees to subsidize interest expenses that exceed 1 percent

Stirling Homex, through its subsidiaries, plans to replace barracks-type housing owned by AMHA with new townhouse units The completed project will be sold to Summit Metropolitan Housing, Inc , a nonprofit corporation formed in April 1968 by the board members and the executive director of AMHA, who serve as the principal officers of the corporation HUD officials advised us on February 11, 1972--at the completion of our fieldwork--that details of the proposed project were being negotiated