UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
BOARD OF CONTRACT APPEALS
Washington, D. C.

In the Matter of:		
WAYNE C. SELLERS AND SELLERS AND COMPANY	HUDBCA Nos.	89-3484-D1 89-4260-D8
	Docket Nos.	88-1295-DB(LDP) 88-1305-DB
Respondents		

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DETERMINATION BY ADMINISTRATIVE JUDGE JEAN S. COOPER

August 2, 1989

Statement of the Case

By letter dated July 27, 1988, Wayne C. Sellers and Sellers and Company (Respondents), were notified by the Kansas City Regional Office, U.S. Department of Housing and Urban Development (HUD), that a one-year Limited Denial of Participation (LDP) had been applied to them, based on adequate evidence of deficiencies found by the Regional Inspector General for Audit (RIGA) in Respondents' treatment of cash, interfund receivables and payables, and total assets in its audit report for the Housing Authority of Kansas City, Missouri (HAKC) for the 24-month period ending December 31, 1985. An informal conference regarding the LDP was held on August 26, 1988. The LDP was sustained on September 19, 1988, and a request for a hearing on the propriety of the LDP was made on September 23, 1988.

By letter dated October 18, 1988, HUD suspended Respondents pursuant to 24 C.F.R. Subpart D (Effective October 1, 1988), and notified them that HUD intended to debar them from participation

in departmental programs, as well as all programs throughout the Federal government, for a period of three years pursuant to 24 C.F.R., Subpart C. The proposed debarment and suspension are based on the same deficiencies alleged in the LDP. The complaint, filed November 28, 1988 and amended on December 20, 1988, alleges that Respondents' mistreatment of cash, accounts receivables and payables, and total assets failed to meet generally accepted accounting principals, in violation of requirements in their contract with the HAKC, establishing cause for suspension pursuant to 24 C.F.R. §24.405 and cause for debarment pursuant to 24 C.F.R. §24.305(b)(1) and (d). Respondents made a timely request for a hearing on the suspension and proposed debarment. HUD moved to consolidate the LDP with the suspension and proposed debarment. The consolidation motion was granted on November 22, 1988. Pursuant to 24 C.F.R. §24.613, the LDP was, in fact, superceded by the suspension and this decision is limited by regulation to consideration of the propriety of the suspension and proposed debarment only.

This decision is based on the pleadings, hearing record, and legal arguments presented in post-hearing briefs and reply briefs.

Findings of Fact

1. The HAKC is a public housing authority doing business with HUD. Pursuant to HUD Handbook 7476.1, Audits of Public Housing Agencies by Independent Public Accountants (Change 4 dated August 16, 1983), public housing authorities doing business with HUD are required to undergo biennial audits of their accounting and bookkeeping systems. An independent certified public accountant may perform the biennial audit. In such cases, the accountant prepares the audit report and distributes it to the public housing authority and RIGA. The purpose of the audit is to show HUD the financial health of the housing authority and to accurately reflect its financial condition. It is also to prevent fraud. (Answer Para. 1, 2; JE-6; Tr. at 31-33, 65.)

2. Audits must be made in accordance with the standards set forth in OMB Circular A-102, Attachment P ("OMB standards"), the General Accounting Office Standards for Audit of Governmental Organizations, Programs, Activities, and Functions ("GAO Standards"), and generally accepted auditing standards established by the American Institute of Certified Public Accountants ("AICPA standards"). (Answer Para. 1; JE-7.)

3. AICPA and OMB standards require the auditor to express in the opinion statement of the audit report a qualified or an adverse opinion when the audited entity omits from financial statements information that is required by generally accepted accounting principles. (JE-4 at AU §431.03; JE-7 at 4; Tr. at 123.)

4. On October 22, 1985, Sellers and Company, a partnership of independent certified public accountants, entered into a contract with the HAKC to perform an audit of the books and records of the HAKC for the two-year period ending December 31, 1985. It had performed the same service in 1983. Paragraph 1 of the contract incorporated by reference applicable HUD audit guidelines and OMB Circular A-102. It also required that the audit be conducted in accordance with generally accepted accounting standards. (Answer Para. 1, 2; Tr. at 262-263, 613-615.)

5. The audit manager for Sellers and Company was Louis Davis. Davis and the audit team completed the planning, orientation, and field work for the audit. Davis wrote the report. Wayne Sellers (Sellers), the managing partner of Sellers and Company, was the audit partner responsible for final approval of the audit. Davis prepared monthly summaries for Sellers throughout the actual audit and preparation of the audit report. Sellers reviewed the audit to ensure its compliance with AICPA, OMB, and GAO standards. The audit report, signed by Sellers, was issued by Sellers and Company on or about June 16, 1986. (Answer Para. 1; Tr. at 604-608, 652, 663.)

6. Beginning sometime prior to 1982, HAKC personnel devised a hybrid system of accounting and bookkeeping, combining use of a "master account" and a "revolving fund." The system was neither designed nor condoned by Respondents. The system was based on the use of one main account, the "master account," as the source of payments of obligations of all of the individual public housing programs. Each individual program then reimbursed the master account when sufficient proceeds were available from that individual program.

The HAKC used the account for public housing programs, identified by the HAKC as account number 1042, as the master account. HAKC witnesses gave no reason for selection of the 1042 account as the master account. The 1042 account is the only account from which HUD would be entitled to any reimbursement of excess funds and interest not used during the fiscal year. By designating the 1042 account as the master account, HAKC's balance for that account rarely, if ever, reflected the actual amount of public housing (1042) funds in the account. This system made it all but impossible to determine at any given time if there were excess funds due back to HUD, and more importantly, obscured the financial condition of the HAKC.

The HAKC also invested cash receipts from various other programs in short-term investments and certificates of deposit. These investments included funds that would be used to reimburse the master account. The HAKC reclassified these transactions, including the interest earned on them, as "accounts receivable -

other" and not as "cash." At the time of the audit, the HAKC had in excess of $2.1 million cash or cash investments in various program accounts. According to Larry Cole and Kenneth Wulser, both employees of the HAKC at the time in question, all of the cash was Section 8 housing assistance payments funds, not funds that belonged to the 1042 public housing account. Cole and Wulser also explained that the classification system used by the HAKC was designed to show the fiscal status of each program account but was not designed to show the fiscal status of the HAKC. (JE-3, R-36 at 3; Tr. at 38, 72-73, 78, 147-150, 213, 384 483-495, 518, 551-553, 557-558, 664.)

7. The audit report submitted by Sellers and Company on June 16, 1986 reported a deficit cash balance of $10,330 and an "accounts receivable - other" balance of $1,537,113 for the 1042 account. This report information was identical to that reported by the HAKC in monthly financial reports to HUD. No reference was made in the audit report to the short-term cash investments, the considerable cash on hand, or where they appeared in the financial records of the HAKC, despite the fact that the cash and investments are documented in detail in the audit work papers. The opinion statement in the audit report contained no statement of qualification regarding the HAKC treatment of cash and accounts receivables. The report did contain in its introduction a general statement that the HAKC utilized accounting procedures that "differed in some respects" from generally accepted accounting principles. No further reference was made to these differences or where they occurred.

Sellers admitted at the hearing that he knew the accounting system used by the HAKC was not in accordance with generally accepted accounting principles, and that the audit report should have contained a more specific disclaimer. Sellers was familiar with the HAKC's unusual accounting system because it had been in effect at the time Sellers and Company performed the 1983 audit. Sellers believed that, at the time he signed the 1985 audit report, both the 1983 and 1985 audit reports treated cash in the same way. He also believed that Jim Mann at HUD had directed Sellers' audit team in 1983 to use that treatment. Therefore, he assumed that HUD was sufficiently familiar with the HAKC's system, so as to render a detailed opinion statement unnecessary. The testimony on whether cash was treated the same in both audit reports was conflicting. At least one HUD witness familiar with both audit reports believed that Sellers and Company had showed cash in a "1111.1 cash account" in 1983. The 1983 report was not submitted in evidence, and it is not possible to determine the presentation method used in the 1983 report from witness recollection alone. (JE-1, 3, R36; Tr. at 44-45, 613-614, 694.)

8. Subsequent to acceptance of the audit report by HUD, a quality control review (QCR) was conducted by Jerry Hoeven of RIGA to determine whether the audit report was in compliance with

AICPA guidelines. QCR procedures required that Hoeven examine the work papers for the audit. Hoeven found that the auditor's work papers showed over two million dollars in cash and short-term cash investments which were not reflected in any fashion audit report. Hoeven believed that Sellers and Company should have tested the HAKC reclassifications of cash in the work papers and challenged them. He concluded that a statement of qualification on the HAKC's accounting system was necessary. He further concluded that Sellers and Company's failure to report accurately the amount of cash on deposit in HAKC accounts and a failure to issue a statement of qualification regarding the HAKC's accounting system was improper. (Tr. at 125-127, 133, 147, 162.)

9. Sellers, Davis, representatives from HUD, and HAKC met and communicated numerous times between August 1986 and April 1987 in an attempt to resolve the problems with the audit report. HAKC representatives maintained that their accounting system was valid and that no major changes should be made in the audit report. The HUD representatives did not agree among themselves about the seriousness of the problems in the audit report or what actions Sellers and Company should take to correct it. At one point, Sellers was led to believe by Jerry Saale of HUD RIGA that a cover letter explaining the HAKC's accounting system would be sufficient. Ultimately, Sellers and Company was directed by Saale to obtain additional information and to make changes in the report itself before HUD would accept it. Sellers and Company sent auditors to the HAKC to obtain additional data regarding the reclassification of cash and interest allocation. Throughout this period, the HAKC resisted Sellers and Company's efforts to issue a revised audit report or to add to it a qualification statement regarding the reclassification of cash and allocation of interest earned from investments. Sellers kept HUD informed of developments through status reports and was at all times extremely cooperative. (JE-9; G-37-42, 44, 45-46; Tr. at 131-133, 151, 168, 216-220, 303, 308.)

10. On or about March 23, 1987, Louis Davis temporarily disappeared. Prior to his departure, Davis had prepared a draft version of a revised report incorporating all of the changes HUD had requested. HAKC representatives refused to authorize the revised report. Davis returned approximately one month later for a period of three days. Without Sellers' knowledge or approval, Davis provided the revised report to HUD on April 17, 1987. By that date, Davis' employment with Sellers and Company had terminated. The revised report reflected the $2.1 million in cash the HAKC had on deposit and also contained a statement of qualification regarding the accounting system. HUD accepted the revised report despite the fact that it was not signed by Sellers. Sellers first became aware of the issuance of the report in May 1987 and received a copy of the report in June 1987. (JE-2 at 3, 15, 45; G-48; Tr. at 238-240, 637, 678, 684, 693.)

11. Although HUD accepted the revised report prepared by Davis, RIGA was still concerned about the problems that it had found in the original report. By letter dated May 22, 1987, Phillip Whitaker of RIGA expressed HUD's position that Sellers and Company had failed to exercise due professional care in the performance of the audit or in the preparation of the original report. In that letter, Whitaker stated that Sellers and Company had violated AICPA standards. Sellers prepared a detailed response to Whitaker's letter dated June 18, 1987, essentially setting out the reasons why he believed the original audit report was adequate. For unexplained reasons, Whitaker did not actually receive Seller's response until January 19, 1988. (JE-11-13; Tr. at 436.)

12. HUD apparently assumed that Sellers did not intend to respond to Whitaker's letter. On December 17, 1987, HUD filed a written complaint against Sellers and Company with the Missouri State Board of Accountancy (MSBA), based on the deficiencies it had cited in the original audit report. Bryan J. Gruber, an independent certified public accountant conducted the initial investigation and prepared a report for the MSBA. Gruber testified that he considered the treatment of cash in the original audit report to be a violation of AICPA standards but only a technical violation. He was more concerned with Davis' apparent failure to consider the materiality of the cash in planning the audit. He and another colleague found the HUD audit standards in the handbook to be ambiguous, and concluded that they did not clearly prohibit the system used by the HAKC. The MSBA concluded that the deficiencies in the original audit report were technical in nature and were based partially upon communications problems with HUD. The MSBA decided against any further actions and closed the complaint against Sellers and Company. (Admissions; G-1 at 17; G-22; R-34; Tr. at 385-390, 395-397, 407-410.)

13. By letter dated July 27, 1988, an LDP was imposed on Respondents by the Kansas City Regional Office of HUD. The LDP was based on the original 1985 audit. At the informal conference on the LDP, held on August 26, 1988, Sellers stated that the revised report prepared by Davis was not authorized for submission to HUD by either the HAKC or Sellers. By letter dated September 14, 1988 he confirmed that statement. Based on Sellers' oral and written statements, HUD concluded that the revised audit report had been repudiated by Sellers. That left the original audit report, which was not acceptable to HUD, as the only report that had been filed under the contract between the HAKC and Sellers and Company. As of the hearing on the proposed debarment, Respondents had made no further attempt to

revise, correct or amplify the original audit report. [1] (JE-14, 18, 19; Tr. at 190-193, 695.)

14. HUD did not direct the HAKC to change its accounting system so that cash would be treated as cash until late 1986 (Tr. at 549).

Discussion

The purpose of debarment is to ensure that the Government does business only with responsible participants. Debarment is not to be used for punitive purposes, but to protect the public interest. 24 C.F.R. §24.115(b). Responsibility is a term of art in Government contract law. It refers not only to the ability to perform a contract satisfactorily but to the honesty and integrity of the contractor or grantee. 48 Comp. Gen. 769 (1969). Although the test for the need for debarment is present responsibility, a finding of lack of present responsibility may be based on past acts. Schlesinger v. Gates, 249 F. 2d 111 (D.C. Cir. 1975). Furthermore, even if cause for debarment exists, debarment may not be warranted. The seriousness of the acts or omissions and mitigating factors must be considered in making a debarment decision. 24 C.F.R. §§24.115(d) and 24.300.

Respondents admit that Sellers is a "principal" and Sellers and Company is a "participant" within the scope of the HUD regulations applicable to suspension and debarment. HUD cites Respondents' failure to exercise due professional care in the preparation of the original audit report as cause for their suspension pursuant to 24 C.F.R. §24.405. It also charges Respondents with willful failure to perform in accordance with the terms of the contract with the HAKC, based on the original audit report. This charge is founded on HUD's understanding that the revised audit report had been repudiated by Sellers, which left only the original report, unacceptable to HUD. Willful failure to perform in accordance with the terms of a contract is a ground for debarment pursuant to 24 C.F.R. §24.305(b)(1). HUD also relies on 24 C.F.R. §24.305(d) as a cause for debarment, citing Respondents' failure to exercise due professional care in so serious and compelling a manner that it affects their present responsibility.

The standard of proof for establishing cause for suspension is adequate evidence. 24 C.F.R. §24.405(a). Inasmuch as HUD had justifiably concluded that Sellers had effectively withdrawn the revised audit report by his repudiation, I find that there was adequate evidence that HUD was provided with an uncorrected audit report that had been prepared without due professional care and

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[1] Respondents subsequently advised the HUDBCA in writing that an amended report had been filed sometime after the hearing.

that violated generally accepted accounting principles because of the treatment of cash in that report. The complete lack of any qualification, reference to, or description of the cash status of the HAKC anywhere in the audit report constituted a failure on the part of Respondents to submit an acceptable, reliable audit report. Moreover, the investigative report for the MSBA concluded that the original audit report was not in accordance with AICPA standards for these reasons. Respondents' failure may not have been sufficiently serious for the MSBA to convene a peer review or sanction Respondents, but HUD's concerns are more limited, and also more specific than that of the MSBA. Suspension is a temporary sanction that protects the Government and the public pending completion of an investigation and any legal or debarment proceedings as may ensue. 24 C.F.R. §24.405(d). On that basis, I find that the suspension was imposed in accordance with the applicable regulations.

The standard of proof to establish cause for debarment is preponderance of the evidence. 24 C.F.R. §24.313(b)(3). I find that Sellers' oral and written statements after imposition of the LDP did constitute a repudiation of the revised audit report. It is irrational to argue that the report was "not authorized" but that it represented satisfaction of a contractual requirement. An "unauthorized" report cannot also be the official sanctioned report filed by Sellers and Company in accordance with the contract. Admittedly, Sellers was extraordinarily frustrated with HUD at that point. He could not understand why, after all of his cooperation, HUD had imposed the LDP on him and his company. To his mind, he had tried in every reasonable way to satisfy HUD's concerns, while at the same time trying to satisfy the HAKC, which had contracted with Sellers and Company for the audit.

I find that Sellers and Company had professional options that it did not exercise, beyond Wayne Sellers' cooperation. Sellers himself admitted that he could have disclaimed the audit report and made a statement of reasons. He also could have amended the report by adding a description of the system used by the HAKC and a clear opinion statement that would have identified where the HAKC's system departed from generally accepted accounting standards. Even if the HAKC did not "like" those options, an independent auditor must be just that, independent. If the accounting system used was peculiar, it was the independent auditor's duty to say not only that it was peculiar, but how so.

The system used by the HAKC accurately treated each program as a separate financial entity, but did not provide data that would show the financial status of the housing authority as a whole. The assets and liabilities of each <u>program</u> are presented accurately, in general. However, the assets, or "accounts payable - other," were never broken down by either the HAKC or

Sellers and Company to indicate the cash component of the assets. Even if the cash was all Section 8 housing assistance payments funds, that fact should have been reflected in both the accounting system of the HAKC and in the audit report by Sellers and Company. Indeed, had there been a qualification statement with sufficient detail of reference to make clear what the anomalies in the HAKC system were, the original audit report would have been acceptable. By reporting only the HAKC's reclassification program by program, Sellers and Company compounded the deficiencies in the HAKC's accounting system by memorializing it in the audit report without comment. The comment was what was needed. The comment was missing.

Sellers and Company did not suggest, create, or condone the HAKC's system. The HAKC was adamant in defense of its system, refusing to allow even simple comments to be made in the audit report that might appear derogatory. HUD did not confront the HAKC directly about the problems its accounting system was causing until 1986. The HAKC was HUD's contractor. HUD's attack on the messenger, Sellers, without dealing with the cause of the problem, the HAKC, until 1986 was a failure that HUD must accept as its own. Sellers and Company presented HAKC's system in the audit report without comment because Sellers believed that Jim Mann from HUD had directed Sellers and Company to prepare the audit report with the figures and system used by the HAKC. Enough HUD personnel knew about the HAKC's accounting system from the prior audit to attribute that knowledge to the Department. If HUD was that concerned with the system itself, it should have taken corrective action with the HAKC years before.

Nonetheless, in this case, the original audit report was not complete. I find that AICPA standard §431.03 required that Sellers and Company express in its opinion statement a qualification because the HAKC omitted any reference to the cash and cash investments in its monthly accounting reports to HUD. It may have been a "technical" deficiency, as found by the State Board of Accountancy, but it did result in unsatisfactory performance. The contract required that the report be prepared in accordance with AICPA standards. On this basis, I find by a preponderance of the evidence that Sellers and Company failed to satisfactorily perform in accordance with a public agreement, a ground for debarment at 24 C.F.R. §24.305(b)(2).

HUD cited Respondents for a willful failure to perform in accordance with the terms of a public contract pursuant to 24 C.F.R. §24.305(b)(1). Sellers and Company's only willful failure centered on Wayne Sellers' emotional and ill-considered repudiation of Davis' revised audit report, which left HUD with a less-than-adequate report. Sellers' conduct at his LDP informal conference is the basis for this charge. It is also significant that between the time of that informal conference and the hearing in this case, Sellers and Company did not attempt in any way to

rectify the problem, or file an amended audit report. By that time, it would have been long overdue, and contract performance must be timely, but it would have mitigated the charge of willfulness. Apparently, an amended audit report was filed sometime after the hearing in this case, but it was not presented in this case and there is no indication whether it was accepted. I find that between the date of the informal conference of the LDP until some unspecified date after the hearing in this case, Respondents had willfully failed to perform in accordance with a public contract.

HUD also cited 24 C.F.R. §24.305(d) as a cause for debarment, which provides as follows:

> (d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.
>
> (1) These causes include but are not limited to:
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> (i) Failure to comply with Title VIII of the Civil Rights Act of 1968 or Executive Order 11063, HUD's Affirmative Fair Housing Marketing regulations or an Affirmative Fair Housing Plan;
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> (ii) Violation of Title VI of the Civil Rights Act of 1964, section 100 of the Housing and Community Development Act of 1973, section 504 of the Rehabilitation Act of 1973, or the Age Discrimination Act of 1973;
>
> (iii) Violation of any law, regulation, or agreement relating to conflict of interest;
>
> (iv) Violation of any nondiscrimination provisions included in any agreement or contract.

HUD contends that this ground for debarment is applicable to Respondents, although there is not a shred of evidence to support a finding under any of the causes enumerated at (i) through (iv) of the regulation.

It is a principle of statutory and regulatory construction that the express mention of a specific thing or things is an implied exclusion of other things not mentioned, commonly referred to by the Latin phrase expressio unius est exclusio alterius." see generally, Bloemer v. Turner, 281 Ky. 832, 137 S.W. 2d 387 (1939). The corollary to that principle is that of "ejusdem generis," meaning when specific enumerated things are followed by a general inclusory phrase, such as "and other things," the general phrase is to be construed as limited to

things of the same kind and nature as those specifically enumerated. See, U.S. v. Alpers, 338 U.S. 680 (1950). Thus, the specific examples of causes expressed within 24 C.F.R. §305(d) appear to substantially limit the meaning of the broader phrase "include but are not limited to" at (d)(1). It should be noted that there is not a (d)(2) in the regulation, which may signal an inadvertent omission changing the scope of the regulation without intent to do so. The plain reading of the regulation certainly leads to the logical and reasonable conclusion that HUD intended to make violations of civil rights and conflicts of interest causes for debarment. However, a conclusion that failure by an auditor to put a sufficiently detailed qualification in an audit report is to be grouped with violations of civil rights as a cause for debarment under the amorphous phrase "include but are not limited to" strains reason.

Rules of statutory and regulatory construction go beyond a particular phrase or provision to assure that the regulation read as a whole makes sense. I cannot conclude that it does not. The HUD debarment regulations in effect from 1977 until October 6, 1988, including the "Interim Rule" published October 2, 1987, provided that "any other cause ... of so serious or compelling a nature that it affects the present responsibility of a contractor ..." would be a ground for debarment. See 24 C.F.R. §24.5(a)(4), (1977) and 24 C.F.R. §24.6(c)(13), (1987). In the introductory portion of the "Interim Rule," no longer in effect and not applicable to the suspension and proposed debarment actions in this case, there was a comment discussed in which HUD stated that it would retain the "any other cause" as a ground for debarment. In both the 1977 regulation and the 1987 Interim Rule, violations of enumerated civil rights and conflicts legislation were listed as completely separate causes for debarment not related structurally or textually to the "any other cause" ground. The summary section of the revision of the debarment regulation in 1988 stated that it was written to adopt a final common rule on debarment and suspension that would "conform HUD's debarment procedures to those applicable to other departments and agencies..." The summary noted that changes had to be made in previous publications to effect this purpose. There is no discussion of the "any other ground" cause at 24 C.F.R. §305(d)(1) except to note that "Section 24.305 is amended by adding paragraphs (d)(1), (e) and (f) to read as follows." 24 C.F.R. §24.300(i).

The amendment of the debarment regulation apparently became quite complex and confused in 1988, as evidenced by the new extended format and major changes in text. The "any other cause" provision was not the only ground for debarment that was altered substantially in 1988. For example, making a false statement for the purpose of influencing the Department was omitted as a separate ground for debarment in 1988 unless it was established by a conviction, a major change from both the 1977 regulations

and the Interim Rule. See 24 C.F.R. §24.6(a)(6), (1977), and 24 C.F.R. §24.6(b)(12), (1987). Because HUD had to make changes to conform its debarment regulation to those of 26 other agencies and departments, I cannot conclude that the change in the "any other cause" provision was either inadvertent or unintended. Therefore, if HUD intended for the "any other cause" provision to be unlimited and unmodified by reference within it to specific civil rights and conflicts laws, HUD will need to amend 24 C.F.R. §305(d)(1) to separate the "any other cause" provision from the specific references that now limit its application. Absent evidence of a clear and contrary regulatory intent, the only reasonable interpretation of 24 C.F.R. §(d)(1) is that it is limited to the types of causes listed in §(d)(1)(i)-(iv). See 73 Am Jur. 2d. Statutes §§212, 214 and cases cited therein. Inasmuch as the activities of Wayne Sellers and Sellers and Company do not fall remotely within the present scope of 24 C.F.R. §305(d)(1) as written, I find that cause for debarment has not been established under that section.

In summary, I find that cause for debarment has been established under 24 C.F.R. §24.305(b)(1) and that cause for suspension has been established under 24 C.F.R. §24.405. However, the mitigating circumstances present in the record are compelling. First, the Missouri State Board of Accountancy and even HUD personnel could not agree on the seriousness of these deficiencies in the original audit report. The State Board concluded they were "technical" and did not merit a peer review. HUD, after much internal floundering and giving of mixed signals to Sellers, took dramatic action by first referring the matter to the State Board and then imposing an LDP when the State Board declined to take action after its review. Second, Sellers had cooperated fully with HUD from the time he was first notified of problems with the original report until the informal hearing on the LDP. It was only at that point that Sellers' attitude changed. Third, Sellers and Company did not create the offending accounting system. HUD did nothing to confront the source of the problem, the HAKC, until years after it knew about the problem. Fourth, Sellers and Company only had to comment on, and make a clear qualification statement, to have satisfied its contract, not change the HAKC's system.

On balance, I find that debarment is warranted but in no way is three years justified by the record in this case. Rather, I find that a period from this date, up to and including October 31, 1989 is sufficient to protect HUD and the public interest. Sellers and Company, through Wayne Sellers as its managing partner, "stonewalled" a legitimate process, the LDP at a critical time. That established the need for debarment, as opposed to the much more limited LDP. It was not until the end of the hearing in this case that Wayne Sellers had another change

of heart and decided to again cooperate. To ensure future cooperation and properly prepared audit reports, this greatly reduced sanction is necessary.

CONCLUSION

For the foregoing reasons, Sellers and Company and Wayne Sellers shall be debarred from this date up to and including October 31, 1989.

Jean S. Cooper
Administrative Judge