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Audit Report Number	2005-BO-1003
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TO: Donna J. Ayala, Director, Office of Public Housing, 1APH

FROM: 
John Dvorak, Regional Inspector General for Audit, 1AGA

SUBJECT: Audit of Milford, CT, Housing Authority's Capital Fund Program, Development Grants for Scattered Sites, Section 8 Voucher Program, and Specific Administrative Policies and Procedures

HIGHLIGHTS

What We Audited and Why

As part of our annual plan, we audited the Milford Housing Authority (Authority) of the City of Milford, CT, to determine whether the Authority's Capital Fund program was operating in an effective and efficient manner and in compliance with its U.S. Department of Housing and Urban Development (HUD) Annual Contributions Contract, applicable laws, and contractual requirements. Our initial survey results identified additional risk areas. Therefore, we expanded the scope of our audit to include the Authority's public housing development grants for scattered sites, Section 8 Voucher program, and specific administrative policies and procedures.

The audit was conducted between June 2003 and February 2004 and covered the period January 1, 2000, through December 31, 2003. When appropriate, the audit was extended to include other periods.

We conducted our audit in accordance with generally accepted government auditing standards.

What We Found

Our audit identified eight findings, resulting in questioned costs and opportunities for funds to be put to better use totaling \$1,525,796 (see appendix A). We determined that the Authority failed to:

- Address exigent health and safety issues at its Foran Towers project;
- Manage its Harrison Avenue Renovation Project in an effective and efficient manner;
- Use development funds for scattered site units on necessary and needed expenditures, maintain an inventory for the prematurely replaced or newly purchased scattered site equipment, and comply with Section 504 handicapped requirements for the development of scattered site units;
- Comply with Federal requirements and its own contracts for legal services incurred;
- Implement adequate management controls and procedures over Section 8 inspections;
- Lease-up Section 8 units at an acceptable rate;
- Comply with HUD procurement regulations and its own procurement policy; and
- Obtain the required HUD approval for the Executive Director's 5-year employment contract and establish performance measurements and execute performance evaluations for the Executive Director, properly charge HUD programs for personal use of the Executive Director's automobile, comply with requirements for executive sessions, and perform employee evaluations for staff.

The above conditions occurred because the Executive Director and Board of Commissioners failed to establish policies and management controls necessary to comply with the Annual Contributions Contract. As a result, the Authority did not provide safe, decent, and affordable housing for many families, made questionable expenditures, and lost opportunities to put funds to better use.

What We Recommend

We recommend that the Authority:

- Prioritize the repair and/or replacement of the brick façade and sanitary piping at Foran Towers using available operating reserves and Capital Funds;
- Reimburse the Scattered Site Development fund \$135,824 from nonfederal funds for the premature replacement of kitchen appliances, kitchen cabinets and countertops, furnaces, and roofs;
- Comply with the Section 504 handicapped-accessible regulations covering the development of scattered sites;
- Reimburse its applicable programs from nonfederal funds for the ineligible legal costs and develop adequate management controls over legal expenditures, including the requirement to obtain the concurrence of HUD's Regional Counsel before incurring any legal costs related to matters involving litigation;
- Reimburse HUD \$26,280 from nonfederal funds for the Section 8 administrative fees collected by the Authority when its Section 8 program units did not meet housing quality standards;
- Implement an effective system to ensure all outstanding housing quality standards deficiencies are monitored and corrected within the required time. This will result in future housing assistance payments being put to better use than the \$280,628 paid for substandard housing;
- Submit a monitoring plan to ensure they use all available Section 8 funding;
- Implement controls to ensure it complies with HUD regulations and its own procurement policy in awarding competitive and noncompetitive contracts;
- Submit the Executive Director's current contract for HUD approval and establish specific goals and measurements to evaluate the Executive Director's performance; and
- Reimburse its applicable programs from nonfederal funds \$25,347 for the Executive Director's personal use of vehicle.

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-3. Please furnish us copies of any correspondence or directives issued because of the audit.

Auditee's Response

We held an exit conference with the Milford Housing Authority (Authority) on January 20 and 21, 2005. We provided the Authority our discussion draft report during the exit conference.

On January 27, 2005, we requested the Authority to provide comments on our draft audit findings by February 11, 2005. At the Authority's request, we provided an 11-day extension for submission of comments. The Authority's written response to the draft report was received on February 22, 2005.

The Authority disagreed with the majority of the findings and recommendations, and provided only limited additional factual data over what had been provided during the course of the audit to support their disagreement. However, we withdrew two recommendations related to Finding 2 and modified several others based on the factual data provided in the response. In addition, the Authority has taken corrective action on several recommendations that should correct the cited deficiencies. We included the complete text of the Authority's response, and our comments to the Authority's response in appendix B of this report. The Authority also submitted approximately 250 exhibits with their response, but the exhibits added little support for the responses. The exhibits were not included as part of this report, and will be available to HUD upon request and to the public through a freedom of information request.

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BACKGROUND AND OBJECTIVES

The Milford Housing Authority (Authority) of the City of Milford, CT, was created in accordance with Section 8-40 of the Connecticut General Statutes to provide low-income public housing for qualified individuals. The Authority contracted with the Federal Government, acting through the U.S. Department of Housing and Urban Development (HUD), for financial assistance for low-income public housing pursuant to the United States Housing Act of 1937, as amended.

The Authority also contracted with the State of Connecticut Department of Economic and Community Development for the financial assistance of housing projects for the elderly through capital grants and/or loans pursuant to Sections 8-70 and 8-114a of the Connecticut General Statutes.

At the completion of our audit fieldwork, the Authority owned 313 units of Federal low-income housing and administered a regional Section 8 program with 266 units. The Authority's main office is located at 75 DeMaio Drive, Milford, CT. The daily operations are managed by the Executive Director, who was appointed by a five member Board of Commissioners. The Board of Commissioners was appointed by the City's Mayor. The Authority has a staff of 11 employees. Revenue for fiscal year 2003, the last period for which audit financial statements were available, was \$5.3 million.

Since fiscal year 2000, HUD's Capital Fund program has provided annual funding to public housing authorities. The funds provide for capital and management activities, including modernization, correcting physical deficiencies, financing, and development of public housing. The Capital Fund grants are awarded noncompetitively and are based on a formula that considers the existing and future modernization needs of a public housing authority.

The Authority applied for and received two grants from HUD for \$1,696,950 and \$1,835,900 to develop scattered site low-income public housing in Milford, CT. Efforts to develop the housing with these grants was rejected in 1995 by the Authority's Board of Commissioners. This action resulted in lawsuits filed by the U.S. Department of Justice and the National Association for the Advancement of Colored People in the fall of 1998. Subsequently, a Settlement Agreement was reached between the parties whereby the Authority agreed to develop up to 28 units of low-income public housing over the course of 3 years. HUD agreed to consolidate the development grants into one development program (CT26-P030-009-91F) for \$3,532,850. In addition, \$254,241 of 1998 Capital Grant Program funds were reallocated for development purposes for a total budget of \$3,787,091.

Our overall audit objective was to determine whether the Authority was operating its Capital Fund, Development Fund, and Section 8 Voucher programs in an effective and efficient manner and in compliance with HUD regulations, applicable laws, and contractual requirements. We also reviewed specific administrative policies and procedures at the Authority.

RESULTS OF AUDIT

Finding 1: The Authority Failed To Address Exigent Health and Safety Issues at Foran Towers

The Authority failed to address exigent health and safety issues at the Foran Towers development ¹, as required by the Annual Contributions Contract. We identified \$838,000 in funds that should be put to better use by reallocating the funds from the Authority's Harrison Avenue development ² to Foran Towers, which continues to have a more urgent and immediate need.

These conditions occurred because the Authority's Executive Director and Board of Commissioners gave the Harrison Avenue Phase III renovations priority over Foran Towers. The Executive Director and the Authority's General Legal Counsel continually asserted to HUD officials that the Authority had a binding contract for Phase III of Harrison Avenue at a cost of \$838,000. However, the Authority had removed Phase III work from the contract and was in dispute as to the contract credit amount. They also stated that it would cause serious legal problems and cost the Authority a great deal of money if it attempted to break its contract. They further stated that the New Haven, CT, Legal Assistance Branch of the National Association for the Advancement of Colored People would likely sue the Authority if program funds were reallocated from Harrison Avenue to Foran Towers. We found no evidence to support their claims. As a result, the elderly tenants at Foran Towers were exposed to unsafe and unsanitary conditions since 1999.

HUD Requirements

The Annual Contributions Contract requires the Authority to operate each project in a manner that promotes serviceability, efficiency, economy, and stability. The Annual Contributions Contract states in part that the Housing Authority shall at all times develop and operate each project solely for the purpose of providing decent, safe, and sanitary housing.

The health and safety concerns at Foran Towers include a damaged brick façade on the building's exterior and the poor condition of sanitary piping. Both are considered to be emergency repair items and a potential threat to human life. In addition, the roof and windows need replacement.

¹ The Foran Towers development is a housing project for the elderly.

² The Harrison Avenue development is a family housing project.

Harrison Avenue Renovation Contract

On November 2, 2001, the Authority awarded a contract for \$2,340,000 to complete renovations of 45 family units at its Harrison Avenue development. The contract was divided into three phases. Phases I and II were for the renovation of 25 units, and Phase III was for the renovation of the remaining 20 units.

The Authority Failed To Properly Deduct Phase III

The Authority's General Legal Counsel established a two-step process to issue a notice to proceed with the construction because the Authority did not have sufficient funds to complete the entire project. The Authority requested HUD approval to issue bonds by pledging future Capital Fund program grants as collateral. The two step-process was intended to provide the Authority with time to deduct Phase III and its \$838,000 cost if HUD did not approve the issuance of bonds. The last date on which the Authority could exercise the deduct option without penalty was February 28, 2002. If the bonds were approved, there would be a second step, meaning a notice to proceed for Phase III would be issued. HUD did not approve the bonds, and the Authority failed to exercise the option to deduct Phase III in writing before the expiration date.

The Authority's General Legal Counsel stated that he notified the contractor by telephone, leaving a voicemail on February 28, 2002, that the Authority was exercising the option to deduct Phase III. However, the contractor disputed this assertion. This resulted in a contract dispute for \$91,938 and legal costs incurred by both parties. Although the dispute was settled in favor of the Authority we maintain that had the Authority exercised the option in writing by February 28, 2002, there would have been no dispute (see finding 2).

We asked the Executive Director to explain his involvement in notifying the contractor that the Authority would not be going forward with Phase III. The Executive Director did not respond to our inquiries.

Serious Health and Safety Issues at Foran Towers not Addressed

Serious health and safety issues at Foran Towers were not addressed. The Authority must prioritize repairs at Foran Towers before considering renovations at other projects. There are serious health and safety issues at Foran Towers such as a damaged brick façade and poor sanitary piping that have not been properly addressed by the Authority. Based on the Real Estate Assessment Center's inspections dating back to 1999 and four engineering studies, the poor condition of the brick façade is considered to be a major concern, and at least three of the engineering studies showed that the conditions were a threat to human life. In addition to a chain link fence installed as a result of the first engineering study, the U.S. Army Corps of Engineers (Corps) determined that the front of Foran Towers was an area of particular concern. As an interim measure, the Corps requested that a protective canopy be installed along the front of the building to protect residents and visitors. The Corps stated that this measure was intended as only a temporary solution since the condition of the brick façade would continue to deteriorate, suggesting that permanent replacement or repairs be completed as soon as possible. The following photograph of Foran Towers shows the protective canopy and fencing.



The most recent engineering study, completed on February 11, 2004, recommended that additional safety measures be initiated within the next 12 months. This study estimated costs to correct the overall masonry construction deficiencies, including window replacement, ranging from \$829,615 to

\$1,171,200. The study did not evaluate the condition of the building's sanitary piping. However, a previous engineering study estimated the cost of replacing the piping at \$134,200.

HUD officials have repeatedly requested that the serious health and safety issues at Foran Towers be addressed. The Authority has continually asserted the lack of funds due to a binding contract for Harrison Avenue renovations. However, as stated above, the Authority removed Phase III work from the contract in 2002 but is in dispute as to the contract credit amount (see finding 2). As a result, the elderly tenants at Foran Towers were exposed to unsafe and unsanitary conditions.

Since Phase III is no longer an option, the \$838,000 set aside for Phase III could realistically be used for repairs at Foran Towers. In a letter, dated March 27, 2003, the Director of the New England Office of Public Housing informed the Authority that in addition to Capital Funds, funding sources for Foran Towers could include operating reserves, excess Section 8 administrative fees, and other unrestricted cash.

Available Funds of \$1,234,595

To determine Operating Reserves available for Foran Towers, we used an analysis of the availability of operating reserves performed by the Authority's Fee Accountant and updated information from the Independent Public Accountant's report for fiscal year 2003. According to our analysis, the Authority would have approximately \$388,373 for general purposes as of December 31, 2003.

As of December 31, 2003, the Authority had \$1,321,387 in unexpended Capital Funds program funds. The estimated amount required to complete Phases I and II at Harrison Avenue was \$475,165. As a result, available Capital Funds were estimated to be \$846,222 (\$1,321,387 minus \$475,165). Therefore, the Authority had a total of \$1,234,595 (\$388,373 plus \$846,222) available to make necessary repairs at Foran Towers.

Conclusion

The Authority's Executive Director and Board of Commissioners prioritized the Harrison Avenue Phase III renovations over the more urgent needs at Foran Towers. The Executive Director misled HUD by asserting that the Authority had a binding contract for Phase III and by indicating that the National Association for the Advancement of Colored People would sue the Authority if funds were

reallocated from Harrison Avenue to Foran Towers. As a result of the current conditions at Foran Towers, the project's elderly tenants are exposed to unsafe and unsanitary conditions.

Recommendations

We recommend that HUD's Director of Public Housing, Boston Regional Office, assure that the Authority:

- 1A. Prioritize the repair and/or replacement of the brick façade and sanitary piping at Foran Towers, using available operating reserves and Capital Funds. If the available Authority funding is exhausted, the Authority may apply for emergency funding.

Finding 2: The Authority Failed To Manage Its Harrison Avenue Renovation Project in an Effective and Efficient Manner

The Authority did not adequately address important matters related to construction activities at its Harrison Avenue development in an effective and efficient manner. The Authority failed to:

- Provide timely written notification to a construction company hired for Harrison Avenue renovations of its decision to deduct Phase III (costing \$838,000) from the contract,
- Ensure the timely completion for Phases I and II of Harrison Avenue renovations, and
- Repair and reoccupy vacant units for Phase III at Harrison Avenue.

These problems occurred because the Executive Director did not make timely decisions and the Board of Commissioners failed to monitor the Executive Director's actions. In addition, because there were significant delays in completing the construction work at Harrison Avenue, individuals were deprived of housing.

Phase I and II Not Completed in a Timely Manner

The Authority failed to ensure that Phases I and II for Harrison Avenue were completed in a timely manner. According to the contract, allowing 324 days for completion, Phases I and II should have been completed by January 15, 2003. Change orders added 164 days, resulting in a revised completion date of May 19, 2003. However, Phases I and II were not completed until February of 2004.

We determined that the large number of change orders, a total of 16, and the Executive Director's failure to make decisions and approve change orders in a timely fashion contributed to the delays. It took the Authority an average of 43 days to approve change orders once the construction company submitted its final change order proposals even though the construction company had already worked out the change orders with the Authority's Modernization Coordinator and Architect.

The Architect and the construction company stated that the Executive Director had difficulty approving change orders. For example, the project's laundry room was redesigned three times, and the Executive Director was slow to decide on interior

doors and tub surrounds for bathroom renovations. Both the Architect and the Authority's Modernization Consultant stated that the construction company incurred staffing problems due to the Authority's failure to make timely decisions.

We used the Architect's analysis, which showed a completion date of May 19, 2003, to project lost rental income of \$55,390 for unoccupied units from May 19, 2003, through January 31, 2004. In addition to the lost rental income, there were lost housing opportunities for individuals on the Authority's waiting list, which consisted of 175 applicants.

The Authority Failed To Ensure Completion of Work

We found no evidence that the Authority aggressively monitored construction progress, quantified delays, or took appropriate action to complete Phases I and II on schedule even though the contract contained a liquidating damages clause for contractor-caused delays. The construction company reported in the Construction Minutes as early as August 16, 2002, that the work was behind schedule. However, the Authority took no action.

We asked the Executive Director what measures he took to ensure that the construction company completed Phase I and II renovations in a timely manner and requested any letters, e-mails, or other evidence to show the actions taken. The Executive Director has not responded to our request.

Vacant Units Not Rehabilitated and Reoccupied

Once the Authority made the decision to deduct Phase III from the contract in April 2002 (see finding 1), it should have immediately planned to rehabilitate and reoccupy the vacant units. In a February 15, 2002, letter to HUD headquarters, the Executive Director stated that the last 20 units (Phase III) of family housing would not be available for reoccupancy due to noncompliance with uniform physical condition standards—unless HUD approved the bond issuance. The Executive Director further stated that there would be insufficient funds to bring the units into compliance with uniform physical condition standards for a very long time, if ever.

We determined that the Authority could have renovated most of the units at minimal cost. The Authority could have used \$20,330 in lost rental income to fund these repairs. In addition to the lost rental income from the vacant units,

families are being deprived of needed housing. The Authority has approximately 175 families on its waiting list.

Currently, 13 of the 20 units in Phase III remain unoccupied. Inspections performed by the Authority's Work Maintenance Supervisor in October 2003 showed that 9 of the 13 unoccupied units in Phase III could be brought up to uniform physical condition standards for the estimated cost of \$19,200. The nine units include 156B, 156C, 156D, 158A, 158C, 162A, 162B, 162C, and 164A. The Office of Inspector General (OIG) and the local HUD Office of Public Housing inspected the units in December 2003 and concurred that the units did not require extensive rehabilitation and could be brought on line at minimal cost.

Vacant Units in Unsanitary Condition

The remaining four unoccupied units in Phase III will require more extensive work. However, the Authority should make every effort to bring these units on line. Although the Authority may not be able to make immediate repairs to those units, it should clean them. An example of the units' current condition follows (Unit 162D).



Conclusion

The Executive Director's failure to make timely decisions and the Board of Commissioners' failure to monitor the Executive Director's actions regarding construction activities at Harrison Avenue led to a serious dispute with the

construction contractor. Also, the significant delays in completing the construction work in Phases I and II and the Authority's failure to occupy units initially designated for rehabilitation in Phase III deprived individuals of housing.

Recommendation

We recommend that HUD's Director of Public Housing, Boston Regional Office, assure that the Authority:

- 2A. Rehabilitate and prepare vacant units in Phase III at Harrison Avenue for occupancy.

Finding 3: The Authority's Use of Development Funds Was Unnecessary and Wasteful

The Authority used \$135,824 of development funds on unnecessary and premature replacement of equipment and other items at its scattered site properties. The Authority also failed to maintain an inventory of the newly purchased or replaced equipment that included new stoves, refrigerators and furnaces. HUD requires a cost-benefit analysis whenever early replacement of equipment is planned as cited in Public Housing Modernization Standards Handbook 7485.2, REV-1, Section 1-4. Weak management controls allowed the Authority to purchase and replace appliances, kitchen cabinets, furnaces, and roof tiles prematurely. Weak management controls also resulted in the Authority's failure to maintain an inventory for the newly purchased and prematurely replaced equipment. Without an inventory of new equipment, the Authority has no accounting of what it owns and cannot readily plan its future maintenance needs or determine the disposal of the replaced equipment. The Authority's failure to manage the scattered site program in an economical and efficient manner has resulted in fewer development funds being available for other public housing needs. In addition, the Authority did not resell any of the equipment they replaced that was saleable and reusable.

The Authority also did not provide a handicapped-assessable unit required under Section 504 of the Rehabilitation Act, and by the Settlement Agreement between the Authority, the U.S. Department of Justice and the National Association for the Advancement of Colored People. The Authority's Executive Director said that he was unaware of requirements specified in the Settlement Agreement for the scattered sites. As a result, handicapped individuals were denied access to a handicap accessible unit.

Eight Properties Acquired

The Authority acquired eight properties containing 18 units. As of January 2004, 16 units had been rehabilitated and reoccupied.

Milford Housing Authority Replaced All Appliances and Made Unnecessary Renovations

The Authority replaced kitchen appliances, refrigerators, ranges, kitchen cabinets, and countertops regardless of their physical condition (see appendix C). In

addition, the Authority replaced furnaces at five properties and roof tiles at one property without consideration of the physical condition of the items. Our review of the Appraiser's reports and the Architect's existing condition reviews, performed for each of the properties, showed that it was not necessary to replace these items.

The Architect and the Authority's Consultant stated that the Authority decided to replace all ranges with electric stoves and to replace all refrigerators regardless of their condition. The Architect stated that the Authority's Executive Director preferred gas heat furnaces to oil. Therefore, if the scattered site unit's furnace used oil, it was converted to gas regardless of the condition of the furnace. We determined that for at least three properties, the furnaces were only 2 years old and were in good physical condition, yet they were replaced.

The Authority was unable to provide the cost benefit analysis as required by HUD's Public Housing Modernization Standards Handbook 7485.2, REV-1, Section 1-4, concerning premature replacement. Accordingly, we questioned the cost (see appendix C) of premature replacement as unnecessary and wasteful. The Authority's management decisions have resulted in less funding being available for other housing needs.

Lack of Inventory for Scrapped Appliances and Furnaces

The Authority did not maintain an inventory of scattered site equipment, such as stoves and refrigerators that were either discarded or purchased. The construction company estimated that approximately 50 percent of the refrigerators and stoves and 25 percent of the cabinets that were discarded were in good condition. Furthermore, the contractor stated that his construction company was not required to maintain an inventory of scrapped or replacement items. The Authority claimed to have relied upon the Architect, the Consultant, and Clerk of Works to make disposal determinations on the replaced items. However, the Authority's senior management could not provide documentation to support the delegation of authority.

The Authority is not performing one of its critical functions, which is to safeguard its assets. As a result, it received no money on record when it disposed of its excess equipment that was saleable and/or reusable. In addition, without an inventory of new equipment, the Authority has no accounting of what it owns, nor can it plan for future maintenance.

The Authority Failed To Modify Units for Handicapped Accessibility

The Authority did not comply with 24 Code of Federal Regulations, part 8.23b, which requires that a minimum of 5 percent of the units be handicapped accessible. Based on this requirement, at least one of the scattered site units should have been made handicapped accessible. According to the Architect's update in May 2001 and our inspection of the property, no modifications were made to make these units handicapped accessible.

The Authority's Executive Director claimed to be unaware of the Section 504-handicapped accessibility requirements. The Authority's plan for the development of scattered site units stated that the Authority intended to satisfy the Section 504 requirement that 5 percent of all newly developed, acquired, or rehabilitated units be accessible or adaptable to accommodate mobility impaired individuals. Furthermore, the Settlement Agreement stated that the Authority's subsidized housing units would comply with the Fair Housing Act, Section 504 of the Rehabilitation Act, and HUD's accessibility guidelines set forth in 24 Code of Federal Regulations, parts 40 and 100.205. We determined that the Authority did not comply with these requirements. As a result, handicapped individuals were denied access to a handicap accessible unit.

Conclusion

The Authority's use of development funds for scattered site properties was unnecessary and wasteful. Management did not properly monitor the purchase and replacement of items acquired for the scattered sites and failed to maintain an inventory for prematurely replaced or newly purchased scattered site equipment. The Authority's failure to manage the Scattered Site program in an economical and efficient manner resulted in fewer development funds being available for its public housing needs. In addition, handicapped individuals were denied access to the scattered site units because the Authority did not provide a handicapped-assessable unit as required by the Settlement Agreement.

Recommendations

We recommend that HUD's Director of Public Housing, Boston Regional Office, assure that the Authority:

- 3A. Reimburse \$135,824 to its Scattered Site Development program from nonfederal funds for the premature replacement of kitchen appliances, kitchen cabinets and countertops, furnaces, and roofs.
- 3B. Update and maintain an inventory of scattered site equipment including the date of purchase, cost, serial number and useful life.
- 3C. Comply with the handicapped-accessible Section 504 regulations required by the Settlement Agreement.

Finding 4: The Authority Failed To Comply with Federal Requirements and Its Own Contracts for Legal Services

The Authority did not comply with Federal requirements and its own contracts for legal services and incurred questionable costs of \$219,717 (\$215,982 in ineligible costs and \$3,735 in unsupported costs) as follows:

- Litigation services were procured without the required HUD Regional Counsel concurrence;
- Payments for legal services were improperly made to defend against a lawsuit that the Authority erroneously thought HUD might bring against it;
- Separate payments were made to the Authority's General Legal Counsel for services already included and paid for in his annual retainer contracts;
- Payments for legal services were not supported by sufficient documentation to justify the reasonableness of the costs; and
- The Authority failed to follow proper procedures in procuring legal counsel (see [Finding 7](#)).

These violations of HUD requirements and Federal cost principles occurred because the Executive Director, the Board of Commissioners, and the General Legal Counsel disregarded Federal regulations and contractual requirements. In addition, the Board of Commissioners failed to exercise its leadership and oversight of the Executive Director's actions and establish adequate management controls over legal expenditures. As a result, the Authority had fewer funds available for safe, decent, and affordable housing. A summary of legal costs paid and questioned follows:

<i>Type of Legal Expense</i>	<i>Amount Paid</i>	<i>Ineligible</i>	<i>Unsupported</i>	<i>Total</i>
General Counsel	\$168,673	\$100,266		\$100,266
Special Counsel	119,451	115,716	\$3,735	119,451
Total	\$288,124	\$215,982	\$3,735	\$219,717

Ineligible Costs of \$100,266 Paid to General Counsel

For the period October 1, 2000, through December 11, 2003, the Authority incurred \$168,673 in costs for the General Legal Counsel. We questioned \$100,266 of these costs as ineligible because the services performed were already included and paid for in the General Legal Counsel's annual retainer contract.

General Legal Counsel Contract Provisions

The Authority's contract for the General Legal Counsel recognized HUD regulations and contained provisions governing the conditions and process for the General Legal Counsel to follow to request and obtain payment for extraordinary services and services beyond the scope of those included in the \$7,500 per year retainer contract.

The General Legal Counsel's retainer contract stated in part that the General Legal Counsel was to represent the Authority in matters in connection with the business of the Authority and the conduct of its affairs and the management of its properties and construction projects. The scope of services to be provided are outlined under item 2 of the General Legal Counsel's contract.

The General Legal Counsel's contract further provides: "said attorney shall, whenever he is of the opinion that any certain matter of litigation exceeds the scope of the legal services contemplated by section 2.j or is extraordinary and beyond the scope of Paragraph 2. of this Agreement, he is to prepare a proposal for additional fees and submit the proposal and supporting documentation to the Authority." The contract further states that the Authority will immediately submit the request to the HUD Regional Office for approval before execution and payment of any fees. In the event that there is a question of whether litigation or other matters are considered extraordinary or extra services, the contract provides that HUD's Regional Counsel will make a final determination on the matter.

Based on our review of General Legal Counsel invoices, we identified \$100,266 of ineligible charges. We determined that the retainer already covered the services provided. For example, the Authority made numerous payments for union and personnel related matters, which are covered in the retainer under "specific services," described there as "advice and assistance provided to members and employees of the Authority with respect to Authority business" and "rendering legal advice with regard to union grievances on behalf of employees of the Authority." Another example of charges that related to advising and assisting the Authority regarding Authority business, also covered in the retainer, pertains to various meetings and telephone conferences regarding project renovations.

We found no evidence that the General Legal Counsel prepared and submitted proposals for extraordinary services except for the implementation of the Scattered Sites Settlement Agreement. We took no exception to those costs as shown in the schedule below.

We calculated our questioned costs by deducting charges pertaining to the General Legal Counsel's separate contract for implementation of the Settlement Agreement, annual retainers, and amounts charged to State accounts from the General Legal Counsel's total charges.

The following table summarizes the calculation for determining the ineligible costs.

<i>Schedule of Ineligible Legal Costs</i>	
Total charges	\$168,673
Less Settlement Agreement	(34,749)
Less retainer	(28,767)
Less State charges	(4,891)
Ineligible costs	<u>\$100,266</u>

As a result of paying these ineligible costs, the Authority had fewer funds available to provide safe, decent, affordable housing.

Ineligible Costs of \$115,716 and Unsupported Costs of \$3,735

The Authority hired Special Legal Counsel when litigation matters arose for which its General Legal Counsel did not have the expertise. The Authority incurred a total of \$119,451 for services incurred by the Special Legal Counsel from October 22, 2002, through December 31, 2003. Of the \$119,451, \$115,716 was for ineligible costs, and the remaining \$3,735 was for unsupported costs. The following table lists the use of the funds and whether the use was for ineligible or unsupported costs.

<i>Schedule of Questioned Special Legal Counsel Costs</i>			
Use of Funds	Ineligible	Unsupported	Total
Foran Towers	\$25,287		\$25,287
Employee lawsuit	86,688		86,688
Contract dispute	3,741		3,741
Labor relations		3,735	3,735
Grand Totals	<u>\$115,716</u>	<u>\$3,735</u>	<u>\$119,451</u>

**Public Housing Authority Shall
Not Defend Against Litigation
Without Written HUD
Concurrence**

HUD's Litigation Handbook, 1530.1, REV-4, requires that a public housing authority not initiate or defend litigation, other than routine eviction actions, without obtaining the prior written concurrence of HUD's Regional Counsel. In addition, the public housing authority must receive the Regional Counsel's concurrence before expending program funds for the Authority's defense.

The Handbook also requires that the Regional Counsel not approve the expenditure of program funds for a public housing authority's defense if he or she finds that the Authority has clearly violated HUD requirements or is otherwise at fault. HUD policy and Federal cost principles as established by the Office of Management and Budget do not permit a public housing authority to use project or program funds to pay the costs of litigation against HUD.

**Milford Housing Authority
Must Send Copy of Litigation
Complaint to HUD Regional
Counsel**

HUD requires that a public housing authority engaged in litigation promptly send a copy of the complaint to the Regional Counsel. An authority that is threatened with litigation must also promptly notify HUD's Regional Counsel of the name, title, and address of the complainant; the nature of the complaint; and a factual statement of the authority's involvement in the subject of the complaint. Threatened litigation includes any communication, oral or written, announcing an intention to institute litigation against an authority or other HUD-assisted recipient.

Office of Management and Budget Circular A-87 states that a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. It further provides that a cost is reasonable if it is recognized as ordinary and necessary for the performance of a Federal award and if the entity acted with prudence, considering its responsibilities to its employees, the taxpayers, and the Federal Government.

The OIG Program Integrity Bulletin dictates that Commissioners are responsible for the actions and decisions made by the Executive Director to ensure that the

public housing authority is properly managed and is acting legally and with integrity.

Health and Safety Deficiencies Reported at Foran Towers

The Authority paid its Special Legal Counsel \$25,287 to serve as counsel to protect the Authority and its Commissioners and staff against a possible lawsuit from the New Haven, CT, Legal Assistance Branch of the National Association for the Advancement of Colored People and against HUD, related to a controversy involving the proposal to reallocate funds from Harrison Avenue to Foran Towers. The Special Legal Counsel made the statement that HUD preferred that the Authority address health and safety deficiencies at Foran Towers before completing renovations at Harrison Avenue. The Executive Director expressed concern that the New Haven, CT, Legal Assistance Branch of the National Association for the Advancement of Colored People would likely sue the Authority if funds were reallocated from Harrison Avenue to Foran Towers. In a March 11, 2003, letter, addressed to the Authority's Board of Commissioners, the Special Legal Counsel stated, in part, that it was retained by the Authority to provide advice and counsel with respect to the Harrison Avenue and Foran Towers properties.

Use of Federal Funds for Litigation Against HUD Not an Allowable Cost

We determined that there was no immediate threat of a lawsuit from the National Association for the Advancement of Colored People. The Authority's belief that the Association might initiate litigation if the Authority did not complete the Harrison Avenue development on schedule was based solely on a newspaper article in which an attorney from New Haven Legal Assistance indicated concern about the completion of the project. However, the belief about possible litigation was misguided and contrary to the facts known at the time. On March 10, 2003, the Litigation Director at New Haven Legal Assistance informed the Executive Director that she did not represent the Greater New Haven Branch of the National Association for the Advancement of Colored People regarding the current dispute over Foran Towers and Harrison Avenue and did not have any authority to sue on behalf of the Association or anyone else. Consequently, there was no reasonable basis on which to use Federal funds to hire outside litigation counsel to defend the Authority against a threatened lawsuit.

As previously stated, using Federal funds for the costs of litigation against HUD are not an allowable legal cost. The Special Legal Counsel's statement that HUD

claimed the Authority was diverting money from Foran Towers toward the Harrison Avenue rehabilitation was not accurate. While HUD's Regional Director made known his concerns that the Authority was not properly protecting the safety of the elderly tenants at Foran Towers, HUD never threatened to sue the Authority and never alleged that the Authority had improperly diverted funds from Foran Towers.

Milford Housing Authority Defended Against Litigation Without HUD Concurrence

The Executive Director incurred an additional \$86,688 for the Special Legal Counsel to defend the Authority in a Federal "whistle blower" lawsuit involving a former employee of the Authority without obtaining prior written concurrence from HUD's Regional Counsel. We considered these costs to be ineligible. The Executive Director failed to inform the Regional Counsel regarding the litigation between the Authority and the former employee and did not promptly send pertinent documents, such as the complaint in the case, along with the anticipated defenses and pleadings filed to the Regional Counsel. The Authority did not submit the required information until being instructed to do so by the Regional Counsel on April 3, 2003. This was approximately 5 months after the Authority began receiving services pertaining to this lawsuit.

OIG asked the General Legal Counsel why the Authority expended funds for litigation without concurrence of the Regional Counsel. The General Legal Counsel responded that he did not hire the Special Legal Counsel but, rather, advised the Authority that he could not provide the required expertise since he did not have litigation experience.

In a letter dated, March 19, 2003, the Regional Counsel requested that the Authority submit a copy of the legal service contract between the Authority and its Special Legal Counsel, along with a description of the scope of services for which the firm was hired, a detailed account of the procurement methods used in selecting the Special Legal Counsel, and any Board of Commissioners resolutions regarding such procurement. The Regional Counsel also requested an accounting of how much the Authority had paid the Special Legal Counsel, what funds were being used, and copies of any bills from the firm. The Authority failed to comply with the Regional Counsel's request that this documentation be provided within a specified timeframe. Pursuant to part A, section 15B, of the Annual Contributions Contract between the Authority and HUD, the Authority is required to provide HUD with any program-related information and at such times as HUD requires. After repeated requests by the Regional Counsel, the Authority provided information that was not sufficient.

On November 13, 2003, the Board of Commissioners authorized the Executive Director to negotiate and enter into a retainer agreement to engage the services of the Special Legal Counsel to provide construction litigation services for the Harrison Avenue Project. There is no evidence that the Authority received the Regional Counsel's concurrence before the use of \$3,741 in program funds. Therefore, we determined that the \$3,741 incurred was ineligible.

Law Firm Hired To Clarify Bargaining Agreement

We classified \$3,735 as unsupported for Special Legal Counsel to represent the Authority in matters related to union negotiations with its staff. The Special Legal Counsel was hired specifically to assist the Authority in clarifying the bargaining unit makeup, including three employee members.

The Authority's contracted Human Resources Consultant indicated that he would have the capability of performing a portion of the services related to union negotiations provided by the Special Legal Counsel. The Consultant stated that he routinely competes against attorneys for these types of services he provides to other housing authorities. Since the Human Resources Consultant was already on retainer, there may have been a duplication of services. Therefore, we classified the \$3,735 in legal services as unsupported, pending receipt of further documentation.

Board of Commissioners Failed To Monitor Executive Director

There is no evidence that the Authority's Board of Commissioners questioned any of these legal services. The Board of Commissioners is responsible for the review and approval of the Authority's payments. A disbursement report with a listing of all checks is submitted to the Board of Commissioners monthly for approval. Certain Members of the Board of Commissioners said that they were not aware of the requirement that HUD's Regional Counsel's concurrence was required before a public housing authority expended program funds for its legal defense. The record demonstrates that the Board of Commissioners routinely approved legal bills, which were submitted by the Executive Director on behalf of the General Legal Counsel and Special Legal Counsel, without any question or concern about the necessity of the services provided or the reasonableness of the costs for those services.

As a result of incurring questionable legal costs, the Authority has fewer funds available for safe, decent, and affordable housing.

Conclusion

The Authority's Executive Director and General Counsel disregarded Federal regulations and contractual requirements pertaining to legal expenditures. In addition, the Board of Commissioners failed to exercise its leadership and oversight of the Executive Director's actions and establish adequate management controls over legal expenditures. This resulted in questioned costs of \$219,717 with fewer funds available to provide safe, decent, and affordable housing for individuals.

Recommendations

We recommend that HUD's Director of Public Housing, Boston Regional Office, assure that the Authority:

- 4A. Reimburse \$115,716 to its public housing program from nonfederal funds for the ineligible payments made to its Special Legal Counsel.
- 4B. Reimburse \$100,266 to its public housing program from nonfederal funds for the ineligible payments made to its General Legal Counsel.
- 4C. Provide documentation to support the \$3,735 of unsupported legal costs. If documentation cannot be provided, the Authority should reimburse its public housing program the appropriate amount from nonfederal funds.
- 4D. Implement procedures and controls to ensure that its procurement of legal expenditures is performed in accordance with Federal requirements.

Finding 5: The Authority Lacked Adequate Management Controls and Procedures Over Section 8 Inspections

The Milford Housing Authority did not have adequate procedures and controls in place for Section 8 Inspections. The Authority failed to ensure that:

- Housing quality standards deficiencies were corrected in a timely manner;
- Quality control procedures were implemented to verify the reliability of inspection reports;
- Section 8 inspection reports, including failure notification letters, were maintained in Milford Housing Authority files; and
- All units were inspected to verify that they were decent, safe, and sanitary.

These conditions occurred because the Executive Director failed to monitor the Section 8 Inspector hired to perform Section 8 inspections, and did not ensure that the Section 8 program was adequately staffed and properly supervised. Also, the Authority's failure to establish proper abatement procedures and require prompt corrective actions for cited violations provided landlords with little incentive to correct deficiencies. As a result, Federal funds were used for housing that was not decent, safe, and sanitary. A total of \$280,628 (see appendix D) in Federal subsidies was expended for 63 substandard housing units. Therefore, we questioned \$26,280 (see appendix E) in administrative fees the Authority billed HUD to manage these substandard units.

Goal of Section 8 Program To Provide Safe and Sanitary Housing

The goal of the Section 8 program is to provide decent, safe, and sanitary housing at affordable cost to lower income families. HUD regulations set basic housing quality standards that all units must meet. The primary objective of these standards is to protect tenants receiving assistance under the program by guaranteeing a basic level of acceptable housing.

HUD Required Prompt and Vigorous Action To Correct Housing Quality Standards

Public housing authorities must inspect each unit before occupancy, at least annually, and at other times as needed to ensure the minimum standards are met. Quality control inspections must be conducted to ensure that the inspection program provides an accurate assessment of housing conditions. HUD requires that public housing authorities implement a system to promptly identify units for which deficiencies have not been corrected within required timeframes. Exigent or life-threatening violations must be corrected within 24 hours, and other defects must be corrected within 30 calendar days. Potential sanctions to force corrective action include abatement of rent and/or termination of assistance to the family. To ensure proper program management, HUD may reduce or offset any administrative fee to the public housing authority if it fails to adequately perform its administrative responsibilities.

Milford Housing Authority Outsourced Inspection Services

On March 14, 2001, the Authority entered into an agreement with a private Section 8 Inspector to perform its Section 8 inspections. The Section 8 Inspector agreed to (1) perform annual inspections, (2) document inspection results on the Inspector's web site, (3) inform tenants and landlords of any housing quality standards violations, (4) perform follow-up inspections as needed, and (5) provide the Authority completed inspection reports and abatement lists for units that failed to meet the housing quality standards.

Serious Deficiencies Not Corrected in a Timely Manner for 70 Section 8 Units

We reviewed a total of 159 failed inspections identified on the private Inspector's web site, covering a 27-month period from October 2001 through December 2003. We observed that 114 of the 159 inspections clearly showed that dwelling units failed to meet the housing quality standards. Our review showed that 70 of the 114 had serious and life-threatening deficiencies that were not corrected in a timely manner. Of the 70 failures,

- 32 failed due to missing, inoperable, or improperly installed smoke detectors, and
- 38 failed for serious deficiencies including infestation, serious structural damage, electrical hazards, and furnace flues in disrepair - a carbon monoxide hazard.

It took an average of 146 days before the Section 8 Inspector confirmed that serious and life-threatening violations were corrected. The Authority's average of 146 days for corrective action is contrary to HUD's requirements that exigent or life-threatening deficiencies be corrected within 24 hours and other housing quality standards deficiencies be corrected within 30 days. A total of 15 units out of the 114 with outstanding housing quality standards deficiencies that were not repaired within the required time remained uncorrected as of December 31, 2003.

Serious Water Leak Left Uncorrected Led to Collapse of Roof

The Authority's failure to take aggressive action to correct deficiencies had severe consequences. For example, the failure to correct a water leak in one unit eventually resulted in the roof collapsing on the property 1 year later. The unit failed inspection for the water leak on September 19, 2001. Inspection reports from April 15 and May 31 of 2002 showed that the water leakage had become more severe with evidence of sheetrock falling from the ceiling. On September 5, 2002, the Section 8 Inspector reported a large hole in the ceiling caused by rain coming through the roof of the building. However, the Authority did not abate the subsidy payment until October 1, 2002, approximately 13 months after the deficiency was first observed. On October 12, 2002, the roof of the property collapsed while three of the four units were occupied. The City of Milford's Building Inspector attributed the collapse to extensive water damage.

Milford Housing Authority Failed To Adequately Monitor Inspections

We determined that these deficiencies went uncorrected because the Authority did not properly monitor the Section 8 Inspector to ensure that he performed the duties required by his contract. The Authority did not receive inspection reports and abatement lists on a consistent basis.

Inspection Reports Not Maintained

The Independent Public Accountant reported in its annual audited financial statements for fiscal years 2001 to 2003 that the Authority's Section 8 inspection files were not properly maintained because many inspection reports were missing from the files. Our review of the Authority's files showed that the Authority retained inspection reports for only 123 of the 159 failed inspections we reviewed. The Authority's visibility of inspection reports was further limited because the Section 8 Inspector also did not update his web site and post completed inspections on a consistent basis.

Section 8 Inspector Failed Units for Minor Deficiencies

The Authority's employees informed the Executive Director that the Section 8 Inspector was failing units for minor or non-housing quality standards deficiencies. As a result, the Authority's Section 8 Coordinator was reluctant to take action on reported failures. Our review confirmed the Coordinator's concerns and showed that 45 of the 123 inspections on file cited questionable housing quality standards deficiencies. For example, the Section 8 Inspector failed one unit based solely on the fact that there were unregistered vehicles in the building's parking lot and the front lobby was missing tiles. Also, the Section 8 Inspector failed two units because the shower required recaulking.

Quality Controls Were Not Implemented for Inspections

The Authority failed to perform quality assurance inspections, as required by HUD, pertaining to the 123 inspection reports on file. The Section 8 Coordinator stated that she received little assistance and direction from the Executive Director, particularly regarding her responsibilities for conducting quality assurance inspections. During our review of Section 8 files, we observed that some quality assurance inspections were contained in the files. However, there was no evidence that the Authority maintained a record of the quality assurance inspections performed or used the results to ensure that inspections were conducted in accordance with HUD's requirements.

Abatement Procedures Not Implemented for Uncorrected Deficiencies

The Authority did not implement rent abatement procedures for landlords that failed to correct deficiencies within timeframes established by HUD. This occurred primarily because the Authority did not have an effective tracking system to monitor deficiencies. The current Section 8 Coordinator stated that she relied on the Section 8 Inspector to track deficiencies and ensure they were corrected. The current Section 8 Coordinator and the former Section 8 Manager also stated that the Section 8 Inspector failed to provide abatement reports on a consistent basis. The Section 8 Inspector confirmed that the reports were not always provided and did not send reports for a few months starting in July of 2003.

The Section 8 Coordinator said that she did not rely on the failure notifications to enforce housing quality standards because she had little confidence in the Section 8 Inspector's performance. Also, because she questioned the quality of the inspections, she was reluctant to abate payments even when the Section 8 Inspector provided abatement reports. The Authority abated only two payments during the period of June 2002 through December of 2003.

\$280,628 in Housing Assistance Payments Required Abatement

We identified 391 subsidy payments for 63 housing units that required abatement. Payments totaling \$282,545 should have been abated because inspection reports clearly showed that the units failed to meet the housing quality standards, and deficiencies were not corrected within the required time. However, the Authority abated only two payments totaling \$1,917, resulting in \$280,628 (\$282,545 minus \$1,917) being disbursed for substandard housing. Because the Authority failed to properly administer its program, we questioned the \$26,280 in Section 8 administrative fees received but not earned to manage housing units that failed to meet HUD's housing quality standards.

The Authority Failed To Annually Inspect All Units

The Authority has failed to ensure that 20 of its subsidized units were inspected within the past year. The Section 8 Inspector failed to perform 18 inspections that the Authority requested, and the Authority failed to request the additional two inspections. The Authority was not aware of the error because it did not have a system in place to ensure that all required inspections were conducted. Therefore, it could not verify that these 20 units were in decent, safe, and sanitary condition.

Executive Director Failed To Take Appropriate Action on Section 8 Deficiencies

We determined the Executive Director did little to monitor known Section 8 inspection deficiencies and did not take appropriate action as the Contracting Officer to ensure compliance of the Authority's contracted Section 8 Inspector. The Executive Director was responsible for monitoring, detecting, and correcting Section 8 program deficiencies. As a result of the Executive Director's failure to fulfill his assigned duties, tenants were living in unsafe and unsanitary conditions.

Conclusion

The Executive Director failed to monitor the Section 8 Inspector hired to perform Section 8 inspections, and did not ensure that the Section 8 program was adequately staffed and properly supervised. As a result, tenants did not receive decent, safe, and sanitary housing, and \$280,628 in Federal subsidies was expended for 63 substandard housing units.

Recommendations

We recommend that HUD's Director of Public Housing, Boston Regional Office, assure that the Authority:

- 5A. Reimburse \$26,280 to HUD from nonfederal funds for the Section 8 administrative fees collected by the Authority.
- 5B. Establish an effective system to ensure all outstanding housing quality standards deficiencies are monitored and corrected within the required time. This will result in future housing assistance payments being put to better use than the \$280,628 paid for substandard housing.
- 5C. Implement quality control procedures to ensure inspections are accurate and reliable and are performed in a timely manner.
- 5D. Abate subsidies for landlords that fail to correct housing quality standards deficiencies within the required time.
- 5E. Properly supervise and adequately staff its Section 8 program.

Finding 6: The Authority Failed to Lease Section 8 Units at an Acceptable Rate

The Authority's utilization rate for Section 8 Vouchers is currently at 75 percent, which is significantly below the 95 percent level required by HUD. The lease rates for fiscal years 2001, 2002, 2003, and a portion of 2004 are listed in the following table:

<i>Period</i>	<i>Vouchers Available</i>	<i>Vouchers Leased</i>	<i>Lease Rate</i>	<i>Unused Vouchers</i>
Fiscal year 2001	266	187	70%	79
Fiscal year 2002	266	187	70%	79
Fiscal year 2003	266	180	68%	86
4/1/03 – 12/31/03	266	199	75%	67

The Authority did not make sufficient efforts to issue more vouchers. In addition, we determined that the Authority was not using the correct rents for Section 8 units. The Authority's Family Section 8 Program Assistant did not acknowledge the most recent increases in fair market rents. Offering lower rents to prospective landlords and low voucher utilization rates resulted in reduced opportunities for families to obtain housing. In addition, the Authority lost \$114,090 in potential administrative fees by not leasing 100 percent of its allocated vouchers. Most importantly, needy families are being deprived of housing.

HUD Requirements

In accordance with HUD Handbook 7420.3m, REV-2, section 5-16(a), authorities are required to use 95 percent of their available units. The Authority must work with HUD to identify and correct needed adjustments in administration, such as landlord outreach methods or use of staff.

HUD Oversight

On April 23, 2002, the local HUD Office of Public Housing conducted an onsite review of the Authority's Section 8 Management Assessment Program. Based on the review, HUD requested that the Authority submit a corrective action plan to

address its low utilization rate. The Authority did not provide the corrective action plan.

Insufficient Number of Applicants Shopping for Units

During the past 9 months, the Authority has had an average lease rate of two units per month with nine applicants shopping for a unit over that period. The Authority should strive to increase its number of applicants shopping for units.

Section 8 Program Not Sufficiently Staffed

The Authority's Fee Accountant stated that the Authority could benefit by increasing its Section 8 staff. The Section 8 Program Assistant stated that she did not have the time to work toward improving the utilization rate with her current workload. In addition to her duties as Program Assistant, she took over the duties of the Section 8/Family Housing Manager when that person retired on June 28, 2002. Currently, only a part-time person assists the Section 8 Program Assistant.

The Section 8 Program Assistant stated that she asked the Executive Director for assistance in reducing her workload. The Executive Director has not complied with her request.

The Authority Did Not Use Correct Payment Standards for Section 8

The Authority did not use the correct payment standards for Section 8. The Authority's fair market rents increased on October 1, 2003. However, the Authority continued to base its exception payment standards on the fair market rents from the September 30, 2002, Federal Register for new tenants in January and March 2004. The Authority's Family Section 8 Program Assistant did not acknowledge the most recent increases in fair market rents. Offering the lower payment standards to potential landlords reduced the Authority's opportunity to increase its utilization rate.

The Authority Lost \$114,090 in Potential Administrative Fees and Is Understaffed

During the 21-month period of April 2002 through December 2003, the Authority lost \$114,090 in potential administrative fees. Total administrative fees earned by the Authority over the same period was \$264,808. Since the Authority earned substantial administrative fees over this period and has the potential to earn significantly more, the Authority should study the effect of having more staff in the Section 8 program, based on the Section 8 program's current workload and poor performance.

Chairman of Board of Commissioners Questioned High Number of Unused Vouchers

The Chairman of the Authority's Board of Commissioners expressed concern regarding the Authority's low utilization rate and indicated that the Authority would strive for improvements in this area. Questions regarding the Authority's low Section 8 utilization rate were frequently raised at Board of Commissioners meetings. For example, at a Board of Commissioners meeting conducted on January 15, 2002, the Board of Commissioners asked questions regarding the high number of unused Section 8 Vouchers. An adequate response was not provided. The Executive Director only indicated that issues regarding the Housing Choice Voucher program would be addressed in the future.

Outreach Efforts to Landlords Needed

The Authority can improve its Section 8 utilization by including more landlords in the Section 8 program. One way of accomplishing this is to periodically conduct landlord workshops to educate new landlords on the benefits of the Section 8 program. According to the Section 8 Program Assistant, the last time the Authority conducted a landlord workshop was in May 2002. The Section 8 Program Assistant stated that when there were two full-time employees, including herself and the former Section 8/Family Housing Manager, the Authority conducted landlord workshops monthly. The Section 8 Program Assistant could not continue to conduct these monthly workshops because she did not have sufficient time.

As a result of the Authority's underuse of Section 8 Vouchers, low-income families are being deprived of affordable housing. In addition, the Authority is losing opportunities to earn significant administrative fees.

Conclusion

The Authority did not make sufficient effort to lease Section 8 units at an acceptable rate. In addition, we determined that the Authority was not using the correct rents for Section 8. Offering lower rents to prospective landlords and low voucher utilization rates resulted in reduced opportunities for families to obtain housing. The Authority lost \$114,090 in potential administrative fees by not leasing 100 percent of its allocated vouchers. Most importantly, needy families are being deprived of housing.

Recommendations

We recommend that HUD's Director of Public Housing, Boston Regional Office, assure that the Authority:

- 6A. Submits a monitoring plan to ensure they use all available funding.
- 6B. Is using the correct payment standards for Section 8.

Finding 7: The Authority Failed To Comply with HUD Procurement Regulations and Its Own Procurement Policy

The Authority's procurement practices did not comply with HUD regulations and its own procurement policy. The Authority failed to:

- Award contracts competitively,
- Justify emergency procurements,
- Execute or update service contracts and/or written agreements,
- Compete contracts fairly,
- Adequately evaluate competitive proposals, and
- Perform cost/price analysis.

As Contracting Officer, the Executive Director did not fulfill his responsibility to establish and implement effective management controls over the procurement process. HUD has no assurances that the Authority's procurement process is fair and equitable and results in the best quality and/or priced services obtained. In addition, without formal contract documents, the Authority was at risk for overbilling and paying for unauthorized services.

Procurement To Provide Full and Open Competition

The Authority's Annual Contributions Contract requires it to comply with all applicable regulations issued by HUD. The Federal procurement regulations are contained in the Code of Federal Regulations. These regulations require the Authority to:

- Conduct all procurements in a manner that provides full and open competition and
- Maintain a contract administration system, which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. These records should also include the rationale and justification for the method of procurement, the type of contract, the selection of the contractor, and the basis for the contract price.

The Authority's procurement policy states that the Authority will comply with HUD's Annual Contributions Contract; HUD Handbook 7460.8, Procurement Handbook for Public Housing Agencies; and the procurement standards of 24 Code of Federal Regulations, part 85.36. The term "procurement" includes both contracts and modifications - including change orders - for construction or

services, as well as purchase, lease, or rental of supplies and equipment. All contracts and modifications should be in writing, clearly specifying the desired supplies, services, or construction and supported by documentation regarding the method of selection, the procurement chosen, the rationale for selecting or rejecting offers, and the basis for the contract price.

The Authority’s procurement policy provides that a cost or price analysis shall be performed when only one offer is received or for other procurements as deemed necessary by the Authority.

The Authority’s procurement policy also requires that for small purchases, no less than three offerors shall be solicited to submit price quotations, which may be obtained orally, by telephone, or in writing. The quotations shall be recorded and maintained as a public record. Award shall be made to the offeror providing the lowest acceptable quotation.

HUD Handbook 7460.8, REV-1, paragraph 4-23A, provides that when procuring services by competitive proposals, a written plan for evaluating technical and cost proposals and an evaluation review process shall be established before the request for proposal is issued. This plan shall include a rating sheet for each offeror, which lists each of the evaluation criteria and the weight assigned. The rating sheets should require the technical evaluator to assign both numerical ratings and narrative justifications to support the ratings given.

20 Violations Found for Eight Procurements

We reviewed 14 procurements. The cost of procurements totaled \$4,249,579. For 8 of the 14 procurements, we identified a total of 20 violations of HUD regulations and/or the Authority’s procurement policy. The following table lists the contract reviewed, cost of the contract, and whether any deficiencies existed in the procurement.

#	Contract	Cost	Deficiencies
1	Harrison Avenue A&E Contract	\$150,000	None
2	Harrison Avenue Construction Contract	2,340,000	None
3	Scattered Sites A&E Contract	51,640	None
4	Scattered Sites Construction Contract Phases I and II	903,900	None
5	Clerk of Works	42,897	2,3,4,5
6	Human Resources Consultant	60,553	1,3
7	Scattered Site Implementation Development Program Manager	136,000	3,4,5
8	Modernization Program Manager	262,500	4,5
9	Section 8 Annual Unit Inspections	17,700	None
10	Special Legal Counsel – Employee Lawsuit	86,688	1,3,6
11	Special Legal Counsel – Capital Project Funding Issues	25,287	2,6
12	Special Legal Counsel – Contract Dispute	3,741	3
13	General Legal Counsel	133,849	1,3,6
14	General Legal Counsel – Fair Housing Settlement Agreement	34,824	None
	Total	\$ 4,249,579	20 deficiencies

Legend

- 1 Awarded contracts without evidence of competition.
- 2 Lacked justification for emergency procurements.
- 3 Did not formally execute contracts or update contracts.
- 4 Did not fairly compete contracts.
- 5 Failed to adequately evaluate competitive proposals.
- 6 Did not perform cost/price analyses.

Clerk of Works

The Authority could not justify soliciting for the Clerk of Works services based on a noncompetitive emergency procurement. We do not agree that this qualified as an emergency procurement. The Authority's procurement policy states that noncompetitive awards may be used only when an emergency exists that seriously threatens the public health, welfare, or safety or endangers property or would otherwise cause serious injury to the Authority, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. Our review disclosed that the Authority paid the Clerk of Works a total of \$42,897. The Clerk of Works assisted the Project Manager and Architect to make changes on plans and specifications and assisted in verifying change order costs, including quantity and quality for justifications of an increase in the construction contract.

The Authority's former Modernization Coordinator performed Clerk of Works duties before his termination on March 8, 2002. Four months passed between the termination of the former Modernization Coordinator and the date the Authority awarded the Clerk of Works contract on July 8, 2002. Therefore, the Authority had ample time to advertise the contract. The Board of Commissioners authorized the Authority's Work Center Supervisor to function as the acting Clerk of Works. Our discussions with the Authority's Modernization Consultant disclosed that the Work Center Supervisor was capable of providing satisfactory Clerk of Works services. Therefore, the Authority's rationale for this noncompetitive award did not meet its emergency procurement criteria.

One year later, the Executive Director advertised the Clerk of Works position. However, the Executive Director limited competition by advertising and closing the contract within 7 days instead of the 25 days required by the Authority's procurement policy. The policy requires that the Authority give public notice for each procurement at least 10 days before issuing the solicitation. The policy also requires the Authority to provide a minimum of 15 days for preparation and submission of the bids.

The Authority did not complete a narrative justifying the scoring for the proposals. The narratives could show that the evaluation process was fair and reasonable. In addition, the Authority did not execute the contract, dated July 8, 2003, until October 10, 2003. Therefore, the Clerk of Works worked for 3 months without a formal written contract.

Human Resources Consultant

The Authority provided no evidence that the contract for the Human Resource Consultant was ever competed. The Authority's former Executive Director awarded the initial contract without competition for \$85 per hour in 1997. The current Executive Director renewed the contract without competition for the period April 1998 to April 1999. From April 1999 through March 2001, no contract or agreement was provided. In April 2002, the 1998 contract was converted, without competition, from \$85 per hour to a fixed amount of \$1,500 per month plus out-of-pocket costs. A new agreement was not in place until the Board of Commissioners' approval was received on May 22, 2002. In February 2003, the contract was increased, without competition, to \$2,000 per month, retroactive to January 1, 2003. The reason given for the increase was additional responsibilities brought on by the certification of the International Association of Machinists union. Therefore, the consultant has worked for the Authority for 7 years without competing for a contract.

Scattered Site Implementation Development Program Manager

The Executive Director contracted with a Consultant in September 1999 to provide management and relocation assistance services for scattered sites. The contract was not fairly competed. The request for proposal was advertised for 18 days with only two proposals received.

Only one Board member evaluated the proposals, and narrative reports were not issued to explain how the scores were determined. There was no explanation as to why the Consultant's \$136,000 proposal was selected over a lower proposal bid of \$135,000. Also, we determined that the contractor signed the contract in blue ink. However, the effective date of September 15, 1999, was written in blue felt tip marker. The Consultant acknowledged on February 2, 2000, that he started work before a written contract was established. Therefore, it appears that this contract award may have been predetermined.

Modernization Program Manager

The Executive Director awarded the same Consultant a \$262,500 contract on September 5, 2002, to provide modernization management and consulting services. The request for proposal was advertised for only 12 days instead of the required 25 days. Therefore, contractors not privy to the impending award had little time to prepare and submit competitive proposals. The Authority's files lacked a narrative evaluation report to show how the scores were determined and failed to show that the Consultant's proposal provided the best value for the Authority. Finally, the Executive Director awarded the contract 5 days before the Board of Commissioners evaluated the Consultant's proposals, indicating that the award may have been predetermined.

Special Legal Counsel – Employee Lawsuit

The Authority did not solicit bids or quotes for \$86,688 in legal services it received from the Special Legal Counsel. The Authority received legal services to defend against a Federal whistle blower retaliation lawsuit. The Executive Director provided no evidence that the services were properly competed or quotes solicited.

Also, the Executive Director did not maintain a contract or agreement for the \$86,688 paid to defend the Authority in the lawsuit. The Authority's Special Legal Counsel eventually provided a signed engagement letter specifying the scope of services and rates to be provided. However, there was no written documentation indicating the Authority's acceptance. In addition, no cost/price analysis was performed to ensure price reasonableness.

Special Legal Counsel – Capital Project Funding Issue

The Authority could not justify soliciting for legal services as a noncompetitive emergency procurement. The Authority paid the Special Legal Counsel \$25,287 for legal advice related to the funding of capital projects and to assess its legal position regarding a potential lawsuit with National Association for the Advancement of Colored People. The Executive Director stated that competition was not required due to emergency repairs at Foran Towers. However, we determined that there was insufficient evidence that the procurement was an emergency. Under these conditions, prospective vendors were improperly denied access to federally funded contracts. In addition, no cost/price analysis was performed to ensure price reasonableness.

Special Legal Counsel – Contract Dispute

The Executive Director did not execute and maintain a contract for legal services regarding a construction contract dispute handled by the Special Legal Counsel. The Special Legal Counsel started work in November of 2003. However, the Special Legal Counsel and the Executive Director did not sign and formally execute a contract until 3 months later in February of 2004. Therefore, a formal contract or agreement establishing the services provided was not in place.

General Legal Counsel

The Authority provided no evidence that the procurement for General Legal Counsel was ever competed, and the General Legal Counsel did not always have a contract in place. The General Legal Counsel was first hired on September 30, 1994, for the period of October 1, 1994, to September 30, 1995, for \$6,300. The General Legal Counsel continued to work for the Authority without a contract for an additional 6 years through September 30, 2001. The General Legal Counsel's

contract was noncompetitively renewed for each of the next 2 years through September 30, 2003, for \$7,500 per year. Since the most recent agreement expired September 30, 2003, the General Legal Counsel continued to work for the Authority without a contract.

We note that for the period October 17, 2000, to December 17, 2003, the General Legal Counsel was paid \$168,673 for legal services of which we questioned \$100,266 (see finding 3).

The Authority's Procurement Policy complies with HUD's Annual Contributions Contract; HUD Handbook 7460.8, Procurement Handbook for Public Housing Agencies; and the procurement standard of 24 Code of Federal Regulations, part 85.36. However, as shown above, the Authority did not follow Federal procurement regulations and its own policy in all cases of procured services. Therefore, vendors were not provided an equal chance to obtain publicly funded contracts, and the Authority was not assured that the best price and quality of services available were received.

Conclusion

The Authority's Executive Director did not fulfill his responsibility to establish and implement effective management controls over the procurement process. HUD has no assurances that the Authority's procurement process is fair, equitable, and results in the best quality and/or priced services obtained. In addition, without formal contract documents, the Authority was at risk for over billing and paying for unauthorized services.

Recommendation

We recommend that HUD's Director of Public Housing, Boston Regional Office, assure that the Authority:

- 7A. Implement procedures and controls to ensure that its contracts are awarded in a manner providing full and open competition as required by HUD's regulations and its procurement policy.

Finding 8: The Authority Had Deficiencies in Several Administrative Policies and Procedures

The Authority had deficiencies in several administrative areas relating to the Executive Director's employment contract and performance evaluations, the Authority's handling of personnel functions and employee benefits, and compliance with requirements for executive sessions conducted during Board of Commissioner meetings. The deficiencies noted in these areas included:

- The Authority did not obtain HUD approval for Executive Director's long-term contract,
- The Authority did not establish performance measurements and execute performance evaluations for the Executive Director to justify his long-term employment contract,
- HUD programs were improperly charged for the personal use of the Executive Director's vehicle,
- Board of Commissioners meeting minutes did not state the reasons for going into executive sessions, and
- Employee evaluations were not performed for staff.

The deficiencies were caused by weak management controls and managements' lack of awareness of HUD requirements and State laws.

As a result:

- The Executive Director's employment contract requires the Authority to pay the Executive Director's salary and benefits for the full contract term even in the event of involuntary termination of employment.
- HUD programs were charged \$25,347 for the Executive Director's personal use of an Authority vehicle.
- Board of Commissioners did not publicly disclose its executive sessions, ensuring that there was not improper business being conducted.
- Authority did not periodically evaluate employee performance.

Executive Director's Contract

The Authority failed to obtain written approval from HUD for the Executive Director's 5-year contract. HUD Handbook 7460.8, REV-1, paragraph 4-27, part B(3), states that an Executive Director may be hired as an employee or retained under an employment contract and requires HUD approval in writing for Executive Director employment contracts exceeding 2 years.

Executive Director's Performance and Long-Term Employment Contract

On April 1, 1998, the Authority's Board of Commissioners approved the Executive Director's employment contract with an initial 5-year term. The contract contained a "golden parachute" renewal clause. In the event of an involuntary termination of the Executive Director, the Authority shall pay the Executive Director:

- The Executive Director's annual salary multiplied by the unexpired term of the Agreement including any extensions in the Agreement,
- Severance pay in an amount of money equal to 2 weeks current salary for each year of the Executive Director's service to the Authority,
- An amount of money equal to the Executive Director's accumulated sick leave benefits based on his current salary,
- An amount of money equal to the Executive Director's accumulated vacation time based on his current salary,
- Recognized retirement status with medical benefits and life insurance benefits identical to all retired Authority employees under the present policy of the Authority, and
- Payments to any defined payment plans the Executive Director may have earned based on plan parameters.

Board of Commissioners Unfamiliar With HUD Requirements

Our interpretation of the "third anniversary" clause contained in the Executive Director's contract with the Authority is that once the third anniversary passes, the Executive Director has 3 years remaining on his employment contract unless the Board of Commissioners votes not to extend his contract. This places the

Authority in the position of paying the Executive Director's salary and benefits for another 3 years or having to buy out the Executive Director's contract. HUD programs are at risk since the vast majority of the Authority's funding is received from HUD. The current Board of Commissioners members were not on the Board in 1998, at the time the contract was executed. Therefore, they could not provide any information regarding the basis for approving the Executive Director's contract.

**Two Board of Commissioner
Members Considered Executive
Director's Contract
Unacceptable**

On December 12, 2002, the Authority's Chairman of the Board of Commissioners initiated a resolution not to grant a 1-year extension on the Executive Director's employment contract beyond April 1, 2005, for the purpose of affording the Board of Commissioners the ability to renegotiate that contract at its formal conclusion in 2004. The Chairman did not understand why Board members would make a long-term commitment that would bind future members. In addition to the Chairman, a second Board of Commissioner voted not to grant the 1-year extension through April 1, 2005, because she concluded that the contract was unacceptable.

The remaining three Commissioners voted against this resolution. Therefore, the Executive Director's contract was extended. The three Commissioners voted against the resolution because they believed that the Executive Director was deserving of such a contract, although no specific performance documentation was provided.

The Board of Commissioners did not vote in 2003. Therefore, on April 1, 2004, the contract was automatically extended through April 1, 2007.

The Board of Commissioners did not act prudently in approving and continuing to renew a contract that could put the Authority's funds at risk. Such a long-term lucrative contract should contain specific objectives and performance goals that are used to measure the Executive Director's performance to justify the continued renewal of the contract.

The Executive Director's contract is not valid from HUD's perspective because the Authority failed to obtain prior written approval of the contract from HUD. Therefore, HUD should not assume any risk that could occur from involuntary termination of the Executive Director's employment.

HUD Criteria

HUD programs were charged \$25,347 for the personal use of the Executive Director's vehicle. According to his contract, the Executive Director is entitled to the use of an automobile and related expenses. However, prudent practice dictates that the personal use of the vehicle should not be charged to HUD programs. The Authority's Board of Commissioners failed to establish sufficient guidelines for the Executive Director's personal use of an Authority vehicle.

Part A, section 2. of the Annual Contributions Contract stipulates that operating expenditures shall include all costs incurred by the Housing Authority for administration, maintenance, and other costs and charges that are necessary for the operation of the public housing authority.

The Finance Director said the Authority had not calculated and withdrawn the value provided by the Executive Director's personal use of the automobile. In fact, the Finance Director was not aware of the value of benefits provided to the Executive Director for the use of the vehicle. According to the Finance Director, the Authority's Fee Accountant planned to calculate the benefits for personal use of Authority vehicles in April of 2004 when compiling the Authority's year-end accounting statements.

Executive Director Received Benefits of \$25,347

The Authority paid the Executive Director for driving 79 miles per day to and from work as well as the personal use of the vehicle on weekends, vacations, and holidays. Therefore, HUD programs are charged with the costs associated with the Executive Director's personal use of the Authority's vehicle. We estimated that the Executive Director received \$25,347 in benefits. The following table explains the method used to calculate the amount of benefit derived by the Executive Director. We excluded personal use on weekends, vacations, and holidays from our computations.

Year	Daily Commuting Miles	Work Days (52 wks @ 5 days/wk less 20 vacation days & 10 holidays)	Total Commuting Miles	Internal Revenue Service Mileage Rate	Benefits (Miles x Rate)
2000	79	230	18,170	\$ 0.360	\$ 6,541
2001	79	230	18,170	\$ 0.365	\$ 6,632
2002	79	230	18,170	\$ 0.345	\$ 6,269
2003	79	230	18,170	\$ 0.325	\$ 5,905
Total					\$ 25,347

Reasons for Going into Executive Sessions Not Established

The minutes of the general meetings for the Authority's Board of Commissioners did not contain the reason(s) why the Board went into an executive session. The Board's minutes only show the times that the motions were made to adjourn to executive sessions and the time the executive sessions were completed. The Executive Director was not aware of any specific disclosure requirements related to executive sessions.

Prudent practice dictates that the Board minutes should provide an adequate reason for going into executive session. Otherwise, the public cannot be assured that the Authority's Board is conducting business properly. Also, section 1-225 of the State of Connecticut's Freedom of Information Act states that public meetings, such as Board of Commissioners meetings, must state the reasons for such executive sessions. Executive sessions cannot be used to shield public employees from disclosure of substance of Board votes taken as result of nonpublic discussions.

Personnel Issues

The Authority did not perform employee evaluations for staff. We interviewed five key employees, and all expressed concern that they failed to receive an annual performance rating in writing. The Authority's failure to perform periodic employee performance appraisals was unfair to employees. It also created confusion among employees as to their eligibility for promotions or salary increases and could lead to employee grievances and disputes. The Authority failed to follow its personnel policies, which state that employees shall receive an annual performance rating in writing and performance ratings shall be included in employee service records.

Conclusion

Weak management controls and lack of familiarity with HUD requirements and State laws created deficiencies related to the Executive Director's performance evaluations and related employment contract, the Authority's handling of personnel functions and employee benefits, and compliance with requirements for executive sessions conducted during Board of Commissioner meetings.

The impact of these deficiencies includes the fact that the Executive Director's current employment contract places the Authority in the position of having to pay the Executive Director's salary and benefits for several years in the event of involuntary termination of the Executive Director's employment. HUD's programs are at risk because the vast majority of the Authority's funding is from HUD programs. In addition, the Authority's Board of Commissioners' failure to enforce proper guidelines for the Executive Director's personal use of an Authority vehicle resulted in HUD programs being charged with ineligible costs of \$25,347. This resulted in fewer funds available for the Authority to provide affordable housing to tenants.

In addition, without proper disclosure of executive sessions, the public cannot be assured that the Authority's Board of Commissioners is not conducting improper business.

The Authority's failure to perform periodic employee performance appraisals was unfair to employees. It created confusion among employees as to the eligibility for promotions or salary increases and could lead to employee grievances and disputes.

Recommend

We recommend that HUD's Director of Public Housing, Boston Regional Office, assure that the Authority:

- 8A. Submit the Executive Director's current contract for HUD approval.
- 8B. Establish specific goals and measurements to evaluate the Executive Director's performance.
- 8C. Reimburse the applicable HUD programs \$25,347 from nonfederal funds for the Executive Director's personal use of the Authority's vehicle.

- 8D. Establish a policy to identify charges for personal benefits and withdraw amounts to ensure that HUD programs are not charged.
- 8E. Ensure that Board of Commissioners' minutes state the reason(s) for going into an executive session.
- 8F. Ensure that all staff receive annual performance evaluations.

SCOPE AND METHODOLOGY

Our overall audit objective was to determine whether the Authority was operating its Capital Fund program, Development Fund program, and Section 8 Voucher program in an effective and efficient manner and in compliance with HUD regulations, applicable laws, and contractual requirements. We also reviewed specific administrative policies and procedures at the Authority.

To accomplish the audit objectives, we

- Reviewed Federal requirements including HUD Handbooks and Public and Indian Housing Notices and Directives. In addition, we reviewed the Housing Authority's organizational and administrative structure, administrative plans, and personnel policies; 24 Code of Federal Regulations, part 941 - Public Housing Development; and recorded minutes of the Board of Commissioner meetings.
- Interviewed Massachusetts and Connecticut State Office of Counsel and Public Housing personnel to obtain information relating to the Authority's operations and management controls.
- Reviewed independent public accountant audit reports, as well as monitoring reviews conducted by the HUD Field Office, to determine the status of the Authority's management and financial operations.

For the Capital Fund program, we

- Determined whether the Authority's procurement practices complied with HUD regulations and its own procurement policy.
- Interviewed the Harrison Avenue construction company related to the contract dispute for Phase III.
- Examined a nonrepresentative sample of Capital Fund program contracts. A nonrepresentative selection was appropriate because the items of interest that had a high degree of risk were readily apparent. We did not project the sample results to the universe.

For the development of scattered sites, we

- Evaluated the Authority's development procurement practices related to architectural and construction services, appraisals, program management and relocation assistance, legal service, and acquired real estate to determine whether procurements were conducted in accordance with requirements of 24 Code of Federal Regulations, part 85.36.
- Evaluated 100 percent of income and related expenses for the Scattered Site Development program because we considered this a high-risk area.
- Performed physical inspections to determine if units were occupied and work completed and if at least one unit was handicapped accessible as required by the Settlement Agreement.

For the Section 8 program, we

- Evaluated the Authority's management controls and overall performance of its Section 8 program.
- Evaluated the Section 8 inspections for assurance that housing quality standards deficiencies were corrected in a timely manner and whether subsidy payments were abated when deficiencies were not corrected within the required period. We limited testing to Section 8 inspection reports performed by an independent contractor during the period of October 15, 2001, to December 31, 2003. We used the contractor's web site as our source document for inspection because the Authority's files were incomplete. The period tested was limited to inspections conducted after October 15, 2001, because the web site only listed inspections after that date.

To evaluate the Authority's administrative policies and procedures, we

- Conducted interviews with the Board of Commissioners, Executive Director, and Authority's employees.
- Reviewed 100 percent of legal payments (\$168,673) made to the Authority's General Legal Counsel covering the period from October 2000 to December 2003 and 100 percent of legal payments (\$119,451) made to the Authority's Special Legal Counsel covering the period from November 2002 through February 2004. We reviewed 100 percent because we considered this a high-risk area.

- Reviewed the Executive Director's employment contract and fringe benefits. Also, we reviewed the Authority's compliance with its personnel policies and executive sessions.

We analyzed the Authority's computer system to ensure accurate and reliable data were maintained for its Federal programs and to determine at a minimum, 1) the type of computers the Authority used, 2) how the computer system was organized, 3) the main characteristics of the system and environment, 4) how management controlled computer system activities, and 5) any known problems with the system.

The audit was conducted between June 2003 and February 2004 and covered the period January 1, 2000, through December 31, 2003. When appropriate, the audit was extended to include other periods.

We conducted our audit in accordance with all generally accepted government auditing standards.

INTERNAL CONTROLS

Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved:

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined the following internal controls were relevant to our audit objectives:

- Administrative controls to assure proper management,
- Financial controls to assure proper accounting,
- Management controls over program receipts and expenditures,
- Management controls over procurement and contract administration, and
- Safeguards over assets; records; and compliance with applicable laws, regulations, and contractual agreements.

We assessed the relevant controls identified above.

Significant Weaknesses

A significant weakness exists if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet the organization's objectives.

Our review identified significant weaknesses in the management control areas we assessed. Specific control weaknesses related to HUD programs are described in the findings sections of this report.

FOLLOWUP ON PRIOR AUDITS

Prior Independent Public Accountant Report Findings

The Annual Audit Financial Statements for fiscal years 2001 to 2003 contained findings that the Authority's Section 8 tenant files were not properly maintained. Our audit determined that this condition had not been corrected. We focused our review on the lack of housing quality standards inspection reports. (see finding 5)

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS AND FUNDS TO BE PUT TO BETTER USE

Recommendation Number	Ineligible 1/	Unsupported 2/	Unnecessary 3/	Funds To Be Put to Better Use 4/
1A				\$838,000
3A			\$135,824	
4A	\$115,716			
4B	\$100,266			
4C		\$3,735		
5A	\$26,280			
5B				\$280,628
8C	\$25,347			
Total	\$267,609	\$3,735	\$135,824	\$1,118,628

- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.
- 2/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.
- 3/ Unreasonable/unnecessary costs are those costs not generally recognized as ordinary, prudent, relevant, and/or necessary within established practices. Unreasonable costs exceed the costs that would be incurred by a prudent person in conducting a competitive business.
- 4/ “Funds to be put to better use” are quantifiable savings that are anticipated to occur if an OIG recommendation is implemented, resulting in reduced expenditures later for the activities in question. This includes costs not incurred, deobligation of funds, withdrawal of interest, reductions in outlays, avoidance of unnecessary expenditures, loans and guarantees not made, and other savings.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Refer to OIG Evaluation

Auditee Comments

Comment 1

Milford Housing Authority

February 18, 2005

Mr. John A. Dvorak
Regional Inspector General, Office of Audit
U.S. Department of Housing and Urban Development
Thomas P. O'Neill, Jr. Federal Building
Room 370
10 Causeway Street
Boston, MA 02222-1092

Dear Mr. Dvorak:

Attached is a copy of the Milford Housing Authority's response to your draft audit report dated Thursday, January 27, 2005, and received on Friday, January 28, 2005.

We have reviewed the draft report and are forwarding a three-ring binder with our response and associated exhibits.

If you have any questions, please feel free to contact me.

With best regards, I am

Sincerely,



ANTHONY J. VASILIOU
Executive Director

Commissioners:
John Amenta
Salvatore A. D'Iorio
John P. Fowler
Hilary Haig Holowink
Jack J. Tucciarone

Executive Director:
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Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Refer to OIG Evaluation

Auditee Comments

Comment 2

Comment 3

Comment 4

Comment 5

Comment 6

Comment 7

Milford Housing Authority

HIGHLIGHTS

The Milford Housing Authority (MHA) was incorporated in the state of Connecticut in November of 1948. The Agency has provided safe, decent, sanitary affordable housing continuously for more than 56 years. The Agency is proud of its accomplishments and feels very strongly that even in the face of drastic reductions in funding for affordable housing it is continuing to meet its obligations and commitments to effectively and efficiently serve families, elderly and non-elderly disabled program participants.

What We Found

A final draft audit report for written comment was received by the MHA on Friday, January 28, 2005. Our review and remarks were formulated over the last twenty-one days and respond to eight draft management review comments authored by the Regional Inspector General (OIG), Office of Audits. The performance audit was initiated almost twenty months ago in June 2003.

- The Agency agrees that there were no accounting irregularities or improprieties in the operation of the MHA. The accounting system ensures accurate and reliable data that was effectively used in managing federal housing programs.
- The Agency accepts the findings of its engineers and disagrees with OIG that exigent health and safety issues exist at Foran Towers. The performance audit failed to properly weigh the findings of the definitive study of Natcomm, LLC, an engineering firm, that concluded, "No evidence of loose damaged brick units was found" and "At this we are of not of the opinion that the veneer is in eminent danger of collapse. We therefore accept the observations and conclusions of Natcomm and disagree with OIG's comments pertaining to the condition of Foran Towers. The MHA also expended considerable funds to construct a canopy and fencing to provide an additional level of safety to the residents and visitors.
- The Agency and Board of Commissioners began assessing in the mid-1990's the continued deterioration of the Harrison Avenue development. The 45 unit low income housing development began accommodating the housing needs of eligible families in 1972. After 30 years of heavy use by families with children, the development required substantial rehabilitation. In response to the deteriorating conditions of Harrison Avenue, the Agency properly contracted for major renovations to be undertaken in 2002. The substantial rehabilitation work was efficiently and effectively completed in the spring of 2004 on 24 units. Additionally, a community room and central laundry facility were added to the development to serve the needs of its residents. Recently, the MHA successfully defended itself in a legal proceeding initiated by the general contractor and protected and preserved the assets of the Agency.

Commissioners:

John Amenta
Salvatore A. D'Iorio
John P. Fowler
Hillary Haig Holowink
Jack J. Tucciarone

Executive Director:

Anthony J. Vasilou



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Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Refer to OIG Evaluation

Auditee Comments

- The Agency successfully implemented a scattered site housing project that acquired and rehabilitated 18 new units of lower income family housing. The activities of the Agency were repeatedly and thoroughly scrutinized by the U.S. Department of Housing and Urban Development, the U.S. Department of Justice, the U.S. Corp. of Engineers, Connecticut Legal Services, the Connecticut Civil Liberties Union Foundation, the media and by the citizens of the City Milford. The development complied with the Settlement Agreement entered into by the Milford Housing Authority and U.S. Department of Justice and HUD regulations.
- The Agency and its Board of Commissions deliberatively and in consultation with General Legal Counsel, appropriately acquired the services of Special Legal Counsel to respond to various legal matters in a highly litigious environment. The Agency has successfully defended itself and positively addressed and resolved a variety of legal issues in the best interests of the MHA.
- The Agency and Board of Commissioners undertook extensive discussions in considering the most efficient and effective manner and organizational structure to manage the Section 8 Program. The Agency published a competitive, unique and forward-thinking Request for Proposal (RFP) that initiated a collaborative relationship with another Public Housing Authority to administer its Section 8 Program. The MHA's Section 8 Program is currently utilizing 99.7% of its budget authority to administer the program and is serving 211 eligible lower income families. Additionally, we disagree with the OIG's management improvement comments and assert that the Executive Director adequately staffed and properly supervised the Section 8 Program.
- The Agency asserts that the Executive Director and Board of Commissioners continuously worked to manage its procurement policy. The Agency obtained services of highly regarded professionals with specific expertise that was required to augment the ongoing administrative work of the organization. In addition to administrative oversight, the Chairman of the Board of Commissioners appointed a Contract Committee to work with the Executive Director to evaluate and to make recommendations to the full Board of Commissioners before entering into contracts. The Agency provided extensive evidence that the organization procured goods and services in a manner that resulted in the best quality and/or prices for services obtained.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Refer to OIG Evaluation

Auditee Comments

Comment 5

Finding 1:

Recommendation 1A: Prioritize the repair and/or replacement of the brick façade and sanitary piping at Foran Towers, using available operating reserves and capital funds. If the available authority funding is exhausted, the authority may apply for emergency funding.

Response: MHA obtained a Building Envelope Evaluation of Foran Towers prepared by NATCOMM LLC and presented to the Board of Commissioners (the "Study") See Exhibit A. This Study, unlike prior studies, included invasive interior inspection of large sections of brick facade and video camera inspection inside these walls. Based upon these invasive reviews of the interior of the building's exterior walls, OIG's assertion that the condition of the building was life threatening is unsupported.

Comment 5

OIG asserted that "the health and safety concerns at Foran Towers included a damaged brick facade on the buildings exterior and the poor condition of sanitary piping. Both are considered to be emergency repair items and a threat to human life." The Study found that "**No evidence of loose or damaged brick was found**". It further concluded that "**At this [time] we are not of the opinion that the veneer is in imminent danger of collapse**". The engineer further stated that "**the failure of the brick masonry veneer does not appear to be an immediate concern or probability**". The Study recommended as an additional safety measure that anchors be installed on the east elevation at a horizontal and vertical spacing of 32 inches on center. The engineer recommended that this work be initiated within a year. MHA retained an architect to prepare appropriate bid documents to implement this recommendation. The bid documents will be completed and ready to advertise by on or about March 15, 2005. MHA will award a contract for this work on or about April 15, 2005. The work will take approximately 45 days to complete. Therefore this work will have been completed on or about June 1, 2005.

Comment 5

MHA has consistently included funds for modernization and repairs at Foran Towers in its five-year capital plan. The current five-year plan prepared and approved by the MHA Board of Commissioners as part of the 2005 Agency Plan assigns approximately \$1.4 million of funding for various improvements at Foran Towers.

Exhibits:

A. Building Envelope Evaluation of Foran Towers prepared by NATCOMM LLC

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Refer to OIG

Comment 7

Finding 2:

Recommendation 2A. Settle the \$91,938 Harrison Avenue contract dispute and pay any settlement costs and related legal expenses from non-federal funds.

Response: The Housing Authority cannot comply with the recommendation of the auditors to settle the Harrison Avenue contract dispute by paying Hayes Construction 'non-federal moneys' to settle the matter, since the dispute was resolved in favor of the Housing Authority following a full and fair hearing with both parties represented by counsel. Accordingly, the recommendation to pay such sums is moot and would have been wasteful even if the dispute had not been finally resolved. As a result of the Authority's defeating the claims against it in the arbitration, the Housing Authority successfully defended federal programs and the fees incurred were reasonable and necessary. The Housing Authority's prudent defense of the arbitration matter resulted in the Housing Authority incurring less in legal fees than likely would have been incurred to settle the matter, which consisted of claims of almost \$400,000. See Exhibit Q

Comment 7

The construction contractor made claims for substantial payments to which it was not entitled. MHA was obligated to dispute and defend these claims. The disputed issues were fully tried before the arbitrator on the merits. In November 2004 each of the contractor's claims including breach of contract for delay and claims for Extended Field Office Overhead Costs, Extended Home Office Costs and Interest were rejected. The arbitrator found that MHA legally and properly deducted Phase III of the Harrison Avenue construction contract in a timely manner. MHA received full contract credit of \$838,000 for the deduction of Phase III of the contract. These claims taken together amounted to substantial sums, which necessitated a full defense to protect the interest of MHA and HUD.

Comment 7

Construction litigation counsel was procured pursuant to the MHA procurement policy. Legal fees did not exceed the threshold sum \$100,000. MHA was advised by Regional Counsel that, unless the agreement exceeded \$100,000, concurrence of the Regional Counsel in the contract is not required. See Exhibit B The engagement of litigation counsel contained adequate and customary language to protect against fraud and abuse. The fees for the services provided were reasonable and competitive within the legal industry.

The MHA disputes the assertions of the draft report that there is no evidence that construction progress was monitored, that timely decisions were made and that the board failed to monitor the actions of the Executive Director. MHA engaged a contract administrator, a modernization coordinator and a Clerk of the Works. The Clerk of the Works monitored construction activities on a daily basis and notified the contract administrator and modernization coordinator of any problems. The clerk of the works filed written reports of his observations and took photographs of the construction progress. The Executive Director, contract administrator, modernization coordinator, clerk of the works and representatives of the construction company met at regular intervals during the course of construction. Minutes of each of these meeting were prepared by the contract administrator (architect) and reviewed and approved by all attendees of these meetings. The commissioners were advised of the progress at Harrison Avenue including

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Refer to OIG Evaluation

Auditee Comments

Comment 8

issues with the contractor when they arose. Commissioners conducted site visits and received progress reports.

In addition, the Army Corp of Engineers monitored the construction activities as well and filed physical inspection reports with HUD, copies of which were also forwarded to MHA. These reports addressed areas including but not limited to general development data, contract data, inspection information, performance progress, construction quality, deficiencies and problems, oversight control, quality control, reasonableness of change orders, and resulted in recommendations and comments. The written reports reflect that the results were discussed with housing authority representatives.

Exhibits; Exhibit B letter from Regional Counsel advising MHA of \$100,000 threshold amount prior to concurrence.

Recommendation 2B: Attempt to recover \$15,511 of increased costs incurred for asbestos missed by the architect.

Comment 9

Response: MHA disagrees that there is any overpayment to be recovered from the architect for asbestos removal. It is MHA's belief that the change order for removal of additional asbestos was reasonable. In the Army Corp of Engineers' physical inspection report dated August 14, 2002, they concluded in Section IV entitled Recommendations and Comments that "...the change order [for additional asbestos removal] was negotiated at a fair and equitable price. The change order was reviewed and found to be acceptable".

The Authority did not attempt to recover the alleged increased costs due to the fact the Authority exercised due diligence in achieving a reasonable price for the additional work performed. The Authority believes the basis from which the Auditor formulated his finding was flawed; subsequently the Authority emphatically denies the merit of this claim

Comment 9

The Authority does recognize the fact that the Architect inadvertently omitted a portion of the required asbestos abatement from the project specifications. The Architect's Environmental Consultant estimated that 11,522 square feet of floor tile containing asbestos was required to be abated, however the Architect made a clerical error including only 4,071 square feet in the contract specifications. The aforementioned error resulted in change order number (2) to the contract in the amount of \$75,918.00. Additionally contained within the change order amount is an allowance of \$5,500.00, which would be used for any unknown additional abatement work that may have been encountered beyond the specified quantities. Effectively the Authority paid \$70,418.00 for the abatement of 11,522 square feet of asbestos floor tile.

In light of the situation the Authority was pleased that the auditor acknowledged *"that given the error, the change order was necessary and properly negotiated."* The Authority will also offer the favorable Contract Administration Review Reports performed by the Army Corps of Engineers, on HUD's behalf, on August 14, 2002, See Exhibit C, which state, *"There are 12 change orders. They appeared to be within scope, and reasonable in cost."* and also

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"I reviewed the change order and found it to be acceptable in the amount of \$75,918.00 for additional units in phase I and II."

In order to respond to the referenced finding the Authority requested a copy of the OIG's calculations that supported the auditor's discovery. Upon review of the "Audit Work Paper" the Authority noted the Auditor "estimated that Hayes Construction included \$30,000.00 to abate the 4,071 square feet in their construction bid." The auditor further estimated the incremental costs incurred by assuming Hayes's average unit cost for abatement in the amount of \$7.37 per square foot. ($\$30,000.00 / 4,071 = \7.37). Thus the Auditor determined the basis for his claim by multiplying the presumed estimated average square foot cost by the revised total square feet of abatement, ($\$7.37 \times 11,522 = \$84,908$) resulting in a difference of \$15,510.00 from the amount that was actually negotiated ($\$100,418.00 - \$84,908.00 = \$15,510.00$) say \$15,511.00.

As previously stated the Authority believes that the method the Auditor utilized to support this claim was flawed due to the fact that there are further variables that were not taken into consideration.

What the Auditor failed to take into consideration was the fact that the credited amount of \$30,000.00 only represented 83% of the total scheduled value, being that the balance of 17% was designated for phase III work that was not to be performed. Therefore the effective square foot unit price, which was utilized as a basis for negotiations, was in fact \$8.84 per square foot ($\$36,000.00 / 4,071 = \8.84). The change order that was executed was established on the basis of ($\$8.715 \times 11,522 = \$100,418.00 - \$30,000.00 = \$70,418.00$)

In closing, in lieu of the Architects omission the Authority exercised due diligence in the negotiating procedures which effectively resulted in a cost that was reasonable for the worked performed as also confirmed by the Army Corp of Engineers.

Exhibits; Exhibit C Physical Inspection Report, Army Corp of Engineers

Recommendation 2C: Rehabilitate and prepare the vacant units in Phase III at Harrison Ave. for occupancy.

Comment 10

Response: It is asserted that MHA could rehabilitate 9 separate units to a standard fit for occupancy by families with children for \$19,200. No support for this estimate was made available to MHA. Based upon the study of the units that have been rehabilitated at this complex, and the costs incurred to modernize these units, MHA disagrees with the premise of the assertion that 9 of 13 unoccupied units in Phase III of the Harrison Ave. complex could be brought to Uniform Property Condition Standards for \$19,200.

MHA has found from actual renovation costs of identical units that the cost to abate asbestos in each of the units alone would be in excess of \$4,000 per unit. Therefore, the cost to address just the asbestos in 9 units is in excess of \$36,000. The material that must be abated is in the flooring and subflooring. In addition the cost of abatement, once the flooring has been

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removed, it must then be replaced. These costs are clearly not taken into consideration in the sum of \$19,200. MHA has not been provided with information that would permit it to evaluate the feasibility of the proposed cost estimate stated in the draft audit report.

The Harrison Avenue complex has not undergone a major revitalization and modernization in over 30 years. Based upon the review of licensed architects and engineers, MHA is proceeding with a comprehensive, cost effective approach to the rehabilitation of those units at Harrison Avenue, which have yet to be renovated.

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Comment 11

Finding 3:

The Authority's use of development funds was unnecessary and wasteful.

Recommendations 3A:

Reimburse \$135,824.00 to its Scattered Sites Development program from nonfederal funds for the premature replacement of kitchens appliances, kitchen cabinets and countertops, furnaces, and roofs.

Response 3A: MHA disagrees with the assertion of the draft report that fixtures and equipment were replaced prematurely during the renovation of the scattered sites. The charts on page 62 and 63 of the draft report are analyzed below. MHA believes that the decision to replace certain fixtures and equipment were both adequately supported and were prudent.

136 Merwin Ave.

Refrigerator and Range:

Due to the unknown age, condition, and efficiency of all the appliances in the scattered Sites Developments the MHA commissioners made the determination to replace and standardize all appliances with energy star appliances.

Reference: Photograph of wall mounted oven.

Kitchen Cabinets and Countertop:

The original cabinets were old low grade plywood custom built cabinets with failing hardware. In an effort to save money the MHA and project architect specified the replacement of the base cabinets only. Once under construction further invasive investigation by the contractor and the clerk of works determined that the upper cabinets also warranted replacement.

Reference: Proposal for Change 3-A

Furnace:

During the building permit process the Milford Planning and Zoning Department directed the MHA to relocate the furnace from the crawl space due to the fact that the property was located in a flood plane. The existing horizontal furnace had to be replaced with a vertical type and installed on the first floor.

Reference: Photograph of horizontal furnace on dirt floor in crawl space and picture of replacement on first floor.

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Response 3A:

176-178 Platt Street

Refrigerators and Ranges:

Due to the unknown age, condition, and efficiency of all the appliances in the scattered Sites Developments the MHA commissioners made the determination to replace and standardize all appliances with energy star appliances.

Kitchen Cabinets and Countertop:

The MHA made the determination to replace the kitchen cabinets and countertops due to the age of the cabinets (approx. 44 years). Each kitchen was reconfigured to remove the dishwasher to eliminate the potential for ongoing maintenance.

Reference: Photograph of kitchen cabinets.

Furnaces:

The existing furnaces and cooling system were determined to be approximately 15 to 20 years old and were replaced due to the fact that they were reaching the end of their useful life expectancy. The existing heating and cooling equipment was also modified by the previous tenant for an illegal apartment in the basement.

Reference: Photograph of condensing units and furnace.

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Response 3 A:

20 White Oaks Terrace:

Refrigerator and Range:

Due to the unknown age, condition, and efficiency of all the appliances in the scattered Sites Developments the MHA commissioners made the determination to replace and standardize all appliances with energy star appliances.

Reference: Photograph of wall mount stove and cook top.

Kitchen Cabinets and Countertop:

The MHA made the determination to replace the kitchen cabinets and countertops due to the age of the cabinets (approx. 58 years). Each kitchen was reconfigured to remove the existing cook top and wall type oven to eliminate the potential for ongoing maintenance.

Reference: Photograph of kitchen cabinets:

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Response 3A:

86-88 West Town Street:

Refrigerators and Ranges:

Due to the unknown age, condition, and efficiency of all the appliances in the scattered Sites Developments the MHA commissioners made the determination to replace and standardize all appliances with energy star appliances.

Kitchen Cabinets and Countertop:

The MHA made the determination to replace the kitchen cabinets and countertops due to the age of the cabinets (approx. 31 years)
The MHA determined it would be more cost effective to replace the cabinets then to try to make the necessary repairs.

Reference: Photographs of kitchen cabinets.

Furnaces:

The furnaces (age unknown) appeared to be reaching the end of their useful life expectancy, in addition to sharing the same flue with the water heaters. The Architect for safety concerns recommended replacing the furnaces and hot water heaters with separate direct vented units.

Reference: Photograph showing pre existing condition of furnaces and water heaters.

Photographs showing single flue with penetration to both apartments, which vented (4) appliances.

Photographs of direct vented furnaces and water heaters for both apartments.

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Response 3A:

76-78 Atwater Street:

Refrigerators and Ranges:

Due to the unknown age, condition, and efficiency of all the appliances in the scattered Sites Developments the MHA commissioners made the determination to replace and standardize all appliances with energy star appliances.

Kitchen Cabinets and Countertop:

The initial contract documents specified that the existing cabinets were to remain, however a change order was executed to reconfigure the kitchen to accommodate a 30" range in lieu of the existing 24" range. The MHA determined that the change was warranted to reconfigure the cabinets for the range, in addition to providing adequate space to prepare food for a family that would tenant this (3) bedroom unit.

Reference: Photograph of pre existing gas stove and photograph of microwave adjacent to sink.

PCO No. 95 and CO No. 13

Furnaces and Water Heaters:

The furnaces (approx. 10 years old) shared the same flue with the water heaters in both units. The Architect for safety concerns recommended replacing the furnaces and hot water heaters with separate direct vented units.

Reference: Photograph showing pre existing condition of furnace and water heater.

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Response 3A:

22-24 Casco Street:

Refrigerator and Ranges:

Due to the unknown age, condition, and efficiency of all the appliances in the scattered Sites Developments the MHA commissioners made the determination to replace and standardize all appliances with energy star appliances.

Reference: Photograph of dishwasher and cracked door on dishwasher

Kitchen Cabinets and Countertop:

The original contract documents specified for the removal of existing dishwasher and infill to match existing condition. See provided PCO from contractor stating "Based on contractors review with Architect and the Clerk of Works the existing kitchens require extensive rework/repair, therefore, contractor requested to provide quote for replacement"

Reference: PCO No. 43 and photographs of existing kitchens.

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Response 3A:

79-81 Elaine Road:

Refrigerators and Ranges:

Due to the unknown age, condition, and efficiency of all the appliances in the scattered Sites Developments the MHA commissioners made the determination to replace and standardize all appliances with energy star appliances.

Reference: Photograph of old range.

Furnaces and Water Heaters:

The furnaces and water heaters were replaced as part of an oil to gas conversion. The new specified units were direct vented due to code restrictions and safety concerns of the Architect.

Reference: Photographs of pre existing furnaces.
Photographs of new direct vent units.

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Response 3A:

10 Housatonic Ave.

Refrigerators and Ranges:

Due to the unknown age, condition, and efficiency of all the appliances in the scattered Sites Developments the MHA commissioners made the determination to replace and standardize all appliances with energy star appliances.

Kitchen Cabinets and Countertop:

In order to accommodate bedrooms the kitchens were relocated to the lower level of the building. The cost associated with the relocation and reconfiguration of the (10) year old cabinets was not practical.

Roofing:

The roof was determined to be at least (10) years old, (more than 50% of its expected life). During the interior demolition the contractor noted that all of the make up air pipes penetrated the ceiling to the rafter space and not to the outside as intended. A change order was executed to correct the venting situation; however it required additional penetrations through the roof. Further inspections were performed of the roof by the Architect and Clerk of the Works for accommodation of the new penetrations and recommendation was made to the MHA to replace the roof.

Reference: Photographs of roof.
PCO No. 96 and CO. No. 14

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Comment 12

Recommendation 3B: Update and maintain an inventory of scattered site equipment including the date of purchase, cost, serial number and useful life.

Response: Upon completion of the renovations to all scattered site units, the contractor is obligated to deliver to MHA all operating manuals and evidence of manufacturer's warranties with regard to all equipment in the renovated units. MHA will use these materials to create an inventory of all equipment installed pursuant to the renovation contract. The inventory will include at a minimum: date of purchase (contract completion date), cost, serial number, and estimated useful life.

Recommendation 3C: Comply with the handicapped –accessible section 504 regulations required by the settlement agreement.

Comment 13

Response: MHA asserts that it has complied with HUD PIH Notice 2003-31. Pursuant to Article I, Section B entitled 504/24 CFR-8 – Major Provisions, subparagraph 3, (the "Notice") (See Exhibit D) MHA is required to provide an additional handicapped accessible unit only if there are 15 or more units *and* the cost of alterations is 75% or more of the replacement cost of the completed facility.

Comment 13

The scattered sites did not constitute "New Construction" under subparagraph 1 of the Notice, nor "Substantial Rehabilitation" under subparagraph 2. The project is appropriately considered to be "Other Alterations" under subparagraph 3. New construction under subparagraph 1 requires "5% or at least one unit" to be handicapped accessible. Substantial alterations under subparagraph 2 require compliance with subparagraph 1 ("5% or at least one unit"). However in the language of subparagraph 3, the requirement of "at least one unit" is specifically omitted. When "other alterations" are performed as contemplated by subparagraph 3, the Notice states that alterations are required to be handicapped accessible "up to a point where at least 5% of the units" are accessible. There is no rounding up to a minimum of one unit as required by the two previous sections.

Comment 13

Five percent of the scattered site units acquired by MHA did not constitute one unit. Therefore MHA was operating under the assumption, supported by the Notice that its development was fully in compliance. All plans and specifications for the project were submitted and approved at HUD and MHA received no notice of alleged non-compliance with Section 504 prior to receipt of the draft audit report.

Notwithstanding MHA's belief that it complied with the applicable regulatory guidance, MHA will investigate the costs of making one of its scattered site units 504 compliant in response to OIG's recommendation.

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Finding 4:

Recommendations:

4A. Reimburse \$115,716 to its public housing program from non-federal funds for the ineligible payments made to its Special Legal Counsel.

4B: Reimburse \$100,266 to its public housing program from nonfederal funds for the ineligible payments made to its General Legal Counsel.

4C. Provide documentation to support the \$3,735 of unsupported legal costs. If documentation cannot be provided, the Authority should reimburse its public housing program the appropriate amount from nonfederal funds.

4D. Implement procedures and controls to insure that its procurement of legal expenditures is performed in accordance with federal requirements.

Responses: COMMENTS TO FINDINGS 4A, 4B, 4C & 4D:

A. The Authority disputes the auditor's assessment that no evidence exists that General Counsel prepared and submitted proposals for services to be charged outside of the base retainer agreement with the exception of the Scattered Site Program. In disagreeing with this conclusion, the Authority relies upon (i) the monthly review by both commissioners and Executive Director of itemized time records and billings prior to approval and payment, (ii) the periodic review of written case summaries outlining status, legal issues and likely outcomes, (iii) the annual budget workshops utilizing written legal fee summaries, estimates and projections, (iv) the fact that the assignment of matters and the authorization to expend time and resources is directed by the Authority and not General Counsel, and (v) the reasonableness and consistency of billing practices employed and rates charged throughout the entire period of representation.

General Counsel advises and represents the Authority in connection with the business of the Authority. The base retainer amount is \$7,500 annually, which sum represents payment for 50 hours of legal services per year, or about 4.2 hours per month. In certain months, depending on the workload of the Authority, 4 or more hours were expended just in attending the regularly scheduled commissioners meetings. The hourly rate charged to the Authority is reasonable and well known to the Authority. It has remained constant since 1994 and has not been increased through the tenure of five different chairmen of the Board of Commissioners, three Executive Directors and the appointment and departure of numerous individual commissioners. The comments to finding four appear to confuse the type of services provided with the amount of such services that may be purchased for \$7,500 in any 12 month period.

General Counsel regularly advised the Authority of all expenses and charges exceeding the scope of services encompassed by the base \$7,500 retainer agreement. As a threshold matter, the hourly rate charged to the Authority is a discounted municipal rate in the amount of \$150 per hour. Paralegal and staff time is included in this rate and is not charged for separately. This rate

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has not changed since the inception of the engagement in 1994 and represents both a reasonable and competitive hourly rate for attorneys of comparable background and experience within the Connecticut market. Market rates for legal services, as with most other costs, have moved up dramatically in the last ten years while the rate for legal services charged to the MHA has remained constant.

The base annual retainer agreement has been \$7,500 since the 1995-1996 fiscal year. In the approximately 34 months between January 1, 2001 and November 13, 2003 440.85 hours were billed to MHA's retainer account. At \$625 per month that translates into an effective hourly rate of under \$49.00. Summary process evictions, lease enforcement actions, contract and other matters which by their nature become ongoing or long term projects requiring the devotion of time and firm resources beyond those allocated in the basic retainer are billed for on an hourly basis at the municipal rate. The requirements of HUD's Litigation Handbook, 1530.1, REV-4 with regard to extraordinary litigation are addressed below.

Detailed hourly bills are presented to the Authority on a monthly basis and placed on a list of accrued payables for review by the entire board every 30 days at the regularly scheduled meeting of the Board of Commissioners. All disbursements, including but not limited to legal fees, are broken out and reviewed as line items monthly and these payables are disbursed only if and when approved, and after a vote of the board. The Executive Director discussed with counsel and with members of the Board legal fees, whether included within the retainer or provided outside the scope of the base \$7,500 agreement. The board and the Executive Director are apprised of all services rendered. The \$7,500 base retainer amount is just that: a base. This sum represents 50 hours of services at the municipal rate. Due to the expanding needs of the Authority and its limited resources, General Counsel provided annual services up to double the number of hours covered by this base sum in any 12 month period. The effective hourly rate charged to the Authority within the base retainer has therefore been substantially less than the municipal rate. The board was advised of both the number of hours contracted for and the number of hours provided.

Comment 14

Legal fee projections and estimates were prepared and submitted for review by the Executive Director and board members during facilitated budget workshops conducted with the commissioners and certified public accountants annually during the budgeting and agency planning cycle. See Exhibit M. These annual budgeting memos and written projections specifically addressed what services are included within the base retainer amount and addressed what services are outside of the base retainer amount. The projections have included the Harrison Avenue renovation project, the tax exempt bonding proposal, the annual Agency Planning process, labor and personnel issues, lease enforcement and evictions, and also included an estimated contingency recommended to be budgeted for additional services if required.

The audit period covered January 2000 through December 2003. Numerous and substantial legal challenges were faced by the Authority during this period as outlined below, many or most of which are known to the auditors and were reviewed during the conduct of the audit. The base retainer amount over this three year period totaled \$22,500. The board acted appropriately to protect and defend the Authority's legal rights and programs. Such expenses are reasonable and ordinary expenses of operating these programs. The ongoing interaction with the commissioners, as well as the monthly review and oversight of counsel's activities by the Board of Commissioners and the Executive Director calls into question the validity and reasonableness

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of the conclusion that all fees in excess of \$7,500 per year are "ineligible". Finding 4B in effect concludes that the Authority should receive an additional \$100,266 in services over and above the hundreds of hours provided by General Counsel within the base retainer during the audit period. The authority disputes this conclusion for the reasons stated and finds it to be unreasonable. The Authority will revise the language of its base retainer agreement to specifically address each of these issues going forward.

I. The Authority complied with Federal Requirements concerning engagements of its General Counsel and Special Counsel and all fees deemed ineligible and support should be considered eligible expenses.

B. All fees paid to Special Counsel were eligible expenses, as they were reasonable, necessary and appropriate operating expenses.

The audit identifies costs paid to Special Counsel in defending the Housing Authority and its Board of Commissioners in the face of multiple legal challenges and providing them legal advice in the face of competing external interests as ineligible. The Housing Authority denies this finding and submits that services rendered by Special Counsel and fees paid were essential to allowing the Housing Authority to carry out its obligations under federal law and programs, and were reasonable in amount. The audit report concerns four matters for which Special Counsel was retained: (1) advice and counseling with respect to HUD's attempt to require the Housing Authority to reallocate funds earmarked to bring multiple units of low-income housing on line to non-emergency repairs to an elderly housing complex in possible contravention of a federal court consent agreement; (2) defense of a federal court litigation brought by a former employee against the Housing Authority and its officials claiming retaliation and violation of civil rights pertaining to the Authority's alleged non-compliance with the consent agreement; (3) defense of an arbitration proceeding brought against the Housing Authority by a contractor engaged to completed the multiple units of low income housing described above; and (4) advice and representation with respect to labor relations matters, including a unit clarification petition, defense of municipal prohibited practice charges and a delay in resolving a contract dispute between a newly certified union and the Authority.

Comment 14

In the introduction to its findings with respect to fees and costs paid to Special Counsel, the audit cites HUD's Litigation Handbook, 1530.1, REV-4, for the proposition that a PHA shall not initiate or defend litigation without obtaining prior written concurrence from HUD. For the reasons fully set forth below, the Housing Authority disagrees with this audit finding and submits that the costs of litigation were reasonable, ordinary and necessary and fully in keeping with applicable publications.¹

¹ The Housing Authority submits that the sources cited in the draft audit report are non-regulatory guidance. As a local entity that receives funding from various federal programs and state programs, the Housing Authority must comply with a number of laws and regulations, and consults with its counsel on navigating these sometimes conflicting requirements. As an employer and public entity, the Housing Authority has at all times acted prudently, as any public or private business, to seek such advice and to defend itself from litigation and administrative

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The Authority cites to Section 1-1(b) of the Litigation Handbook which defines the term "Litigation" in the following manner: "Litigation shall include any civil action at law or proceeding in equity involving a program, project or activity receiving HUD assistance, but does not include administrative or criminal proceedings." By definition, litigation only concerns court matters, and the term does not encompass administrative proceedings or legal advising. By its terms, concurrence of HUD's Regional Counsel is only required by the Handbook where the litigation is expected to cost in excess of \$100,000. See HUD Litigation Handbook, 1530.1, REV 4 and Notice PIH 2003-2004 (Issued September 26, 2003). Where a PHA defends litigation, Regional Counsel shall not approve the expenditure of program funds for a PHA's defense if he/she finds that the PHA has clearly violated HUD requirements or is otherwise at fault. However in such cases, the Regional Counsel may authorize that the agency to use program funds for defense to facilitate settlement.

While the federal retaliation lawsuit filed by a former employee is litigation as defined in the Handbook, the other engagements are not litigation as that term is defined in the handbook. Accordingly, in determining whether or not engagements and fees for professional services of special counsel are ordinary and necessary for the performance of federal programs, HUD is bound to apply the criteria of OMB Circular A-87. The Housing Authority submits that, despite receiving all relevant information concerning the various engagements of Special Counsel almost two years prior to the release date of this audit, HUD has not applied the appropriate criteria to the engagements of Special Counsel and has not apprised the Housing Authority of any concerns it might have concerning costs incurred by Special Counsel. If such concerns exist, the Housing Authority should have been informed of such a determination at an earlier date, whether or not there were any issues with the eligibility of such fees and costs, or whether the Regional Counsel believed that the Authority clearly violated HUD requirements. Nevertheless, had the Regional Counsel applied the applicable criteria for determining eligibility of such engagements and expenses, the Regional Counsel would have had to approve them. The applicable criteria are set forth below:

In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

- (1) The nature and scope of the service rendered in relation to the service required.
- (2) The necessity of contracting for the service, considering the governmental unit's capability in the particular area.
- (3) The past pattern of such costs, particularly in the years prior to Federal awards.
- (4) The impact of Federal awards on the governmental unit's business (i.e., what new problems have arisen).

challenges in order to allow it to carry out its overarching purposes of providing affordable housing opportunities to housing to families, elderly and young disabled residents. Even if the non-regulatory guidance applies to the Housing Authority, the Housing Authority, its Commissioners and Director have complied with such guidance.

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(5) Whether the proportion of Federal work to the governmental unit's total business is such as to influence the governmental unit in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal awards.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

- a. In addition to the factors in subparagraph b, retainer fees to be allowable must be supported by available or rendered evidence of bona fide services available or rendered.

OMB Circular A-87 (32)(b) & (c).

In addition, Attachment B of OMB Circular A-87 provides:

- b. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

OMB Circular A-87, Attachment B, Item (10)(B).

In response to the draft audit findings, the Housing Authority asserts that the legal expenses incurred in the use of Special Counsel were required to administer federal programs. The labeling of such expenses as ineligible is inconsistent with the applicable principles for determining eligibility. The Housing Authority submits that the draft audit report does not apply the above criteria, and claims that legitimate and necessary costs are ineligible as federal expenses. Furthermore, all Special Counsel fees incurred by the Housing Authority during the audit period, including those stemming from the so-called "Whistleblower" federal court litigation discussed below, were reasonable and necessary, ordinary expenses that are properly eligible for payment out of federal funds. See Arizona Oddfellow-Rebekah Housing Inc. v. United States Department of Housing and Urban Development, 125 F. 3d 771 (9th Cir. 1997) (declaring, contrary to HUD's position, that legal expenses incurred in defending discrimination suits are operating expenses, despite allegations of unlawful conduct). See Exhibit P

The application of the criteria and the Housing Authority's explanation of each as they apply to the matters performed by Special Counsel are set forth below. In summary, all fees paid by Special Counsel should be determined eligible expenses.

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1. Special Counsel was appropriately procured and engaged to provide advice and counseling to the Housing Authority in the face of HUD's report of health and safety deficiencies reported at Foran Towers that would require reallocation of funds earmarked for the ongoing modernization and occupancy of unoccupied low-income family units.²

The Housing Authority retained Special Counsel in March 2003 to assist it in the face of an increasingly complicated legal situation brought about by HUD's initiative to change modernization priorities. At the time of the retention, the Authority was faced with various competing legal matters that could be implicated by a change in priorities of the two projects. Retention of legal counsel to provide advice and counseling was reasonable and necessary and is a legitimate, ordinary cost related to both the Foran Towers and Harrison Avenue projects.

First, the Housing Authority Special Counsel's compliance with the federal settlement agreement requiring it to make efforts to increase low-income opportunities became an issue in the face of HUD's initiative to stop the ongoing modernization project at Harrison Avenue. In the summer of 2002, the Housing Authority had been investigated by the plaintiffs in the federal fair housing lawsuit to determine its continued compliance with the 1998 settlement agreement several months before HUD attempted to change the modernization priorities. Concerns regarding potential legal challenges were exacerbated by serious, albeit baseless allegations of retaliation, in the federal lawsuit brought by the former employee against the Housing Authority and its officials in the fall of 2002. Because Special Counsel is a large Connecticut based law-firm with practice areas in defending public employee litigation, construction disputes and was familiar with the Housing Authority, it was natural to retain Special Counsel on an emergency basis to obtain assistance in managing the various legal issues in the situation, since the Housing Authority could draw upon appropriate expertise as needed.

Second, Special Counsel's advice was needed to assist the Housing Authority in minimizing prejudice to its position in a developing contract challenge by its general contractor engaged to rehabilitate and bring on line the Harrison Avenue properties. HUD's attempt to change modernization priorities lent leverage to the contractor in the developing dispute. In part because of the shift in priorities, the contract dispute later blossomed into an arbitration proceeding between the Housing Authority and the contractor. Special Counsel was later procured and engaged to defend the dispute at arbitration, and successfully defended the Housing Authority. See Comment to Finding 1.

Third, the Housing Authority was the subject of a potential investigation by the City of Milford into claims that it misspent money by allegedly delaying repairs to Foran Towers and putting money into other projects. See Connecticut Post, March 7, 2003, p. A5. The investigation never materialized as Town officials were satisfied with the Authority's use of

² As discussed with respect to Finding 1, the Housing Authority denies that health and safety deficiencies at Foran Towers were of such a nature as to have justified a reallocation of the substantial funds earmarked for the unoccupied low-income family housing properties at Harrison Avenue.

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funds, modernization priorities, and repairs and protective measures implemented to protect passersby from cosmetic deterioration of the façade of Foran Towers.

The audit report properly characterizes the scope of the representation by Special Counsel as providing, "advice and counsel with respect to the Harrison Avenue and Foran Towers Properties." As is evident from the matters that followed or were exacerbated by HUD's attempt to have the Housing Authority change its modernization priorities, the Housing Authority badly needed advice and counsel to ensure that the Housing Authority proceeded in a manner that would assist it in defending existing or potential administrative challenges. Realizing that the Housing Authority was faced with multi-faceted and potentially costly challenges, Special Counsel and the General Counsel approached Regional Council to set up a meeting to discuss the possible liabilities to the Housing Authority if priorities were changed. Unfortunately, Regional Council was not receptive to the Housing Authority's attempt to minimize the risks of an upset in modernization priorities, but rather became hostile toward the Housing Authority's General and Special Counsel for opening dialogue. The discussions proved fruitless and the Housing Authority was left to protect itself and its federal programs without HUD's assistance. It was shortly after this attempt at conciliation that the instant audit was commenced and it is within this context and for this reason that Housing Authority believes that the purpose and tone of the audit are punitive rather than constructive.

2. The Housing Authority never threatened litigation against HUD.

At no time did the Housing Authority threaten HUD in connection with the Foran Towers or Harrison Avenue. The \$25,287 in fees paid to Special Counsel relative to the projects were incurred to best position the Housing Authority in the midst of a number of anticipated and potential legal matters (as described above). Some were ongoing and some of which were likely to occur in the event project priorities were affected. This engagement was not a Litigation engagement as defined in the Litigation handbook.

The Housing Authority was concerned that an order to reallocate funds from the Harrison Avenue project to perform non-emergency repairs on Foran Towers would expose the Housing Authority to liability. This concern was well-founded. The Housing Authority considered the press report concerning New Haven Legal Assistance Association, Inc. cited in the audit, but was more concerned that a change in priorities could be perceived to violate the 1998 Settlement Agreement. The Housing Authority had good reason to be concerned. The provisions of the Settlement Agreement are summarized above in the Comments to Finding 1. The Housing Authority received a Freedom of Information Act request from Shelley White, Director of Litigation for New Haven Legal Assistance on or about March 5, 2003 concerning the renovation of Harrison Avenue and repairs to Foran Towers. The letter stated in relevant part:

... I am deeply concerned that, as a result of HUD's action, MHA may stop the critical work that is in place to renovate and fill the vacancies that presently exist in the approximately 40 family units at Harrison Avenue. My office and the CCLU did not spend three years and valuable resources litigating the obligation of MHA to develop scattered site units, only to lose the existing

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family units. Other than these relatively few family public housing units, there is virtually no affordable housing for low income families in Milford. Section 8 is simply unable to place most families in private units, making it imperative that long overdue renovations at Harrison Avenue be completed and every one of those unit (sic) filled as soon as possible by needy families."

The Housing Authority agreed with Attorney White.

In a subsequent letter clarifying her position on March 10, 2003, Attorney White stated that although New Haven Legal Assistance has no plans *at this time* to sue MHA or HUD on behalf of the NAACP or any other party", "I offered my opinion, as the Litigation Director for NHLAA, that *any abandonment of the effort to renovate or occupy the Harrison Avenue apartments might raise Fair Housing Act issues and violate the duty of both MHA and HUD to affirmatively further fair housing.*"(emphasis added) (Letter S. White to Anthony Vasiliou dated March 10, 2003).

In fact, in the summer of 2002, the Department of Justice and NHLAA audited the Housing Authority to determine whether or not it was complying with the terms of the Settlement Agreement. It was determined that the Housing Authority was in compliance with the settlement agreement. It was reasonable to assume, however, that the Housing Authority and possibly HUD- could be subject to a second investigation or litigation by NHLAA or other civil rights groups in the face of changed priorities.

The Housing Authority was also concerned that a change in priorities would affect its legal rights and liabilities with respect to the construction contractor who had been engaged to rehabilitate Harrison Avenue. The contractor later commenced arbitration, and the arbitration engagement is discussed above in Comments to Finding and Recommendation 1. At the time, the Housing Authority made the determination that it needed legal advice concerning a possible change in priorities, as it could affect its ability to negotiate a conclusion to the dispute. Ultimately, the construction dispute resolved in the Housing Authority's favor, as the Housing Authority was determined to have properly cancelled phase 3 of the Harrison Avenue project and was entitled to full credit for the cancellation.

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While overt litigation had not been threatened at the time of the retention to assist with legal matters arising out HUD's shift of modernization priorities, but, as it played out, the Housing Authority was prudent in retaining Special Counsel to assist it in managing the situation. NHLAA did not seek to reopen the Settlement Agreement, and the Housing Authority prevailed in the contract challenge by its construction contractor.

In addition to these matters, the Housing Authority was in the midst of defending a federal court lawsuit brought by a former employee, claiming that he was terminated for making statements concerning the Housing Authority's compliance with the 1998 Settlement Agreement. The Housing Authority denied and continues to deny the claims. The legal services were reasonable and necessary to guide the Housing Authority through a difficult period, and

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combined the expertise of a sophisticated multi-disciplinary law firm in construction law, employment law and representation of government entities to manage the risks.

Because of the diverse legal needs of the Housing Authority, the Housing Authority needed counsel with experience and specific practice concentrations.

Finally, the Housing Authority did not and has not considered initiating litigation against HUD. There is simply no basis for this finding. As is apparent from Attorney White's May 10, 2003 letter, the MHA was concerned about the potential of litigation against HUD and MHA in the event HUD was successful in reallocating the priorities. At no time has MHA initiated litigation against HUD or considered HUD to be a potential litigant against it. With the exception of a reference in one of Special Counsel's engagement letter's to possible litigation with "various parties", the auditors identified no other source for this assertion.

The Housing Authority strongly disagrees with the draft audit finding that the fees were not allowable costs, and submits that the fees and costs were essential to prevent potential legal liability and risk to the Housing Authority. The Housing Authority's retention of counsel was prudent and protected the federal programs and funding under the Housing Authority's control. Because of Special Counsel's unique qualifications, familiarity with the Housing Authority, its previous retention for the whistleblower litigation, and the fact that matters were developing quickly and publicly on the proposed reallocation of priorities, the Housing Authority needed to have competent counsel and was prudent in engaging Special Counsel. As it has played out, the Housing Authority's prudent course has enabled it to successfully defend itself in multiple legal and administrative matters.

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3. The Housing Authority engagement of Special Counsel complied with federal law, and the expenses paid to Special Counsel were reasonable and necessary ordinary expenses.

As discussed above, litigation, as that term is defined in the Litigation Handbook, only concerns court litigation matters, and the term does not encompass administrative proceedings or legal advising. By its terms, concurrence of HUD's Regional Counsel is only required the Handbook where the litigation is expected to cost in excess of \$100,000. See HUD Litigation Handbook, 1530.1, REV 4 and Notice PIH 2003-2004 (Issued September 26, 2003).

The Litigation Handbook also recognizes the obligation of a Housing Authority to defend itself in the face of litigation. The Housing Authority's retention of Special Counsel was necessary and appropriate, and consistent with the duties imposed on the Housing Authority under HUD Litigation Handbook, 1530.1, ch. 5-2, which reads:

Every HUD Assistance Recipient has the responsibility to initiate or defend diligently all litigation involving such program, project or activity to insure the proper use of federal funds.

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There is no question that the Housing Authority met its obligations under the HUD Litigation Handbook and OMB Circular A-87 in procuring and retaining outside counsel to assist it in defending its programs.

a. At the time the federal retaliation lawsuit was commenced, the Housing Authority was not required to obtain concurrence.

In April, 2003, Regional Counsel sent a letter to the Housing Authority's General Counsel stating that the Housing Authority had to comply with the requirements of the Litigation Handbook, as amended. See letter from HUD Regional Counsel to the Authority, dated April 3, 2003. Concurrence, however, was not required. First, the original allegations of the complaint were baseless and were, in the opinion of the Housing Authority, likely subject to dismissal through summary judgment. As it turns out, *all* of the original counts of the whistleblower lawsuit were withdrawn or dismissed at summary judgment. Accordingly, the threshold for requiring prior approval by HUD's regional counsel was not expected to be met and the case has played out to support that reasonable expectation. Concurrence by Regional Counsel was, therefore, not required because at the time the litigation commenced, it was uncertain whether fees would in fact exceed \$100,000. Although the Complaint was later amended to include 4 new counts, the audit findings merely raise a hyper-technical requirement with the handbook.

As discussed above, defense of a retaliation lawsuit, like discrimination lawsuits, is properly eligible for payment out of federal funds. See Arizona Oddfellow-Rebekah Housing Inc. v. United States Department of Housing and Urban Development, 125 F. 3d 771 (9th Cir. 1997) (declaring, contrary to HUD's position, that legal expenses incurred in defending discrimination suits are operating expenses, despite allegations of unlawful conduct). See Exhibit P

b. HUD Regional Counsel was provided with additional information and did not analyze the engagement of outside counsel in accordance with the criteria set forth in OMB Circular.

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The Housing Authority provided the Regional Counsel with the information he requested—including the original pleadings in the case -- in a timely manner following Regional Counsel's request in April of 2003. At the time the Housing Authority provided this information to Regional Counsel, the fees incurred in the case were approximately \$25,000. Had Regional Counsel taken issue with the selection of the Housing Authority's Special Counsel or the legal services agreement and engagement letter that was also provided, the Regional Counsel could have directed the Housing Authority to settle the litigation. At that time in the litigation, the Housing Authority could have sought to procure alternative counsel without prejudice to its position in the litigation.

Regional Counsel did not communicate any position relative to the litigation or the Housing Authority's contract for litigation services with Special Counsel in connection with the federal lawsuit, after receiving the documents requested, nor did the Regional Counsel state a position concerning Special Counsel or the whistleblower litigation as of the date of this letter. Further, although the audit report contends that the information provided to the Regional Counsel

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was insufficient, the audit report is the first indication that the information provided was claimed to be insufficient. The Housing Authority submits that, were the Regional Counsel to ensure compliance with the authorities applicable to hiring outside counsel, the Regional Counsel would have provided constructive guidance to the Housing Authority in the Spring of 2003 to perfect the retention or obtain a substitute firm to represent it, rather than waiting almost two years for the Housing Authority to continue to incur fees without such guidance. Regional Counsel did not seek clarification from the Housing Authority, the General Counsel or Special Counsel. If one were to conclude that the Handbook is applicable in this case, the Regional Counsel is also bound by the terms of the Handbook, in considering concurrence, to determine whether the contract complies with applicable law and the OMB Circular.

The Housing Authority submits that the fees charged by outside counsel were reasonable, as senior level attorneys at one of Connecticut's largest law firms were assigned to matters. The retention of outside counsel was also necessary as the federal court lawsuit is a federal employment law matter for which the General Counsel does not have specific expertise. Special Counsel is a law firm of over 220 attorneys, with approximately 30 labor and employment lawyers. General Counsel is a partner in a small, general practice law firm who, in keeping with his ethical obligations, prudently and appropriately sought the assistance of counsel with specific expertise required to advise and defend his client.

Further, Special Counsel provided the Housing Authority with a discount well below the regular rates charged for its responsible attorneys, even for work performed for other Housing Authorities, the State and its private clients. The Housing Authority's General Counsel, Special Counsel, and Executive Director kept the Board of Commissioners apprised of fees incurred in the litigation. Special Counsel has also provided detailed and itemized billing records (in 1/10 of an hour increments) and has provided these with its billing invoices to the Housing Authority, consistent with the way it bills other public entities. These are available to the Commissioners for inspection, upon request of the Executive Director.

The Housing Authority's General Counsel has kept Regional Counsel informed as to the amended pleadings in the case and fees incurred, although Regional Counsel has not specifically requested them. Finally, the success of the Housing Authority in achieving the withdrawal or dismissal by summary judgment of *all* counts of the original complaint filed against the Housing Authority demonstrates conclusively that the fees incurred were reasonable and necessary to defend the Housing Authority and programs receiving federal assistance that could have been significantly affected or compromised by an adverse finding on the original counts.

c. The Housing Authority was not obligated to obtain prior concurrence from the Regional Counsel for hiring Special Counsel to defend it in the construction arbitration matter.

The litigation handbook only requires concurrence from the Regional Counsel for approval of the use of federal funds to hire outside counsel to defend litigation. The construction proceeding, by definition, is excluded from litigation as an administrative matter. See HUD Litigation Handbook, Section 1-1(b) ("Litigation shall not include any civil action at law or proceeding in equity involving a program, project or activity receiving HUD assistance, but does

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not include *administrative* or criminal proceedings.”). The arbitration proceeding was an administrative proceeding, and therefore is not covered by the litigation handbook. Furthermore, fees incurred in connection with defending the arbitration were less than \$100,000 and therefore, prior concurrence for such an agreement was not required.

3. The Housing Authority’s retention of Special Counsel relative to labor relations matters, including a petition to clarify the collective bargaining unit, defense of municipal prohibited practice charges and to settle on terms of an initial contract, are supported.

The Housing Authority engaged Special Counsel to assist it relative to increasingly acrimonious labor relations between the Housing Authority and a newly certified union representing its “white collar” employees. The bargaining unit was certified in November of 2002 following a union organizing drive and negotiation of an agreement for an election supervised by the Connecticut State Board of Labor Relations. The Housing Authority utilized the services of a non-attorney labor relations consultant during the course of the union campaign, election, and, at the inception, negotiations for an initial agreement.

In the fall of 2003, the Union and the Housing Authority had not reached terms on an initial collective bargaining agreement. The Union had filed charges with the State Board of Labor Relations against the Housing Authority claiming bullying and retaliation by officials, in an opportunistic effort to pressure concessions on the agreement in view of the ongoing litigation and audit. Further, Special Counsel observed that the bargaining unit consisted of supervisory and non-supervisory employees in violation of Conn. Gen. Stat. § 7-471(3) (providing “no unit shall include both supervisory and non-supervisory employees ...”). The Housing Authority, albeit small, had virtually no management infrastructure as a result of the certification of the bargaining unit, which even included the Confidential Assistant to the Executive Director. Accordingly, the limitations on management infrastructure and the need for a confidential assistant were particularly acute in the context of the legal and collective bargaining challenges. Since Special Counsel was familiar with the situation and could provide legal advice concerning the charges in the context of the overall legal situation, the Housing Authority expanded its engagement to retain Special Counsel to assist in the negotiations and the labor board proceedings.

As a result of Special Counsel’s involvement, the position of confidential administrative assistant was removed from the bargaining unit by agreement of the parties, all charges against the Housing Authority were withdrawn, the Housing Authority obtained a waiver of legal claims from former bargaining unit employees (one of whom had threatened suit), and settled the agreement within reasonable cost parameters with significant operational flexibility, including the right to subcontract programs. Special Counsel was also essential since the Union retained a prestigious union attorney to represent it in the negotiations and in connection with the administrative proceedings.

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The Housing Authority submits that its retention of Special Counsel was necessary in view of HUD's Organization, Management and Personnel (OMP) Monitoring Guidebook. The Guidebook provides in relevant part:

Labor Relations. A constructive and mutually respectful relationship between employer and employee is necessary for the productive and effective functioning of the PHA. The purpose of the review is to determine whether or not the PHA's ability to operate efficiently and effectively and to properly serve its residents is facilitated by labor relations. While HUD does not generally question provisions agreed to by management and labor in collective bargaining agreements, the reviewer should determine if any agreement provisions materially interfere with the effectiveness and efficiency of PHA operations. It may be appropriate to recommend that the PHA obtain outside assistance in negotiating future agreements.

HUD Organization, Management and Personnel ("OMP") Monitoring Guidebook, Directive No. 7460.9G, c. 2, 2-1(2)(d).

Accordingly, the Housing Authority appropriately obtained outside legal counsel to assist it in navigating labor relations matters, including its petition concerning the bargaining unit, defense of the municipal prohibited practice charges and collective bargaining to foster settlement of the first contract, to free management from the distraction of having to negotiate an agreement and defend charges, and to achieve management flexibility.

4. The Housing Authority appropriately monitored and supervised its Executive Director.

The Housing Authority denies the finding that it failed to monitor or supervise its Executive Director. The Housing Authority submits that it acted prudently as steward of federal funds and federal programs on the local level and stands by its use of fees as reasonable and necessary expenses. With respect to the Commissioners approval of legal bills, the Commissioners are regularly apprised by the Executive Director, Special Counsel and General Counsel concerning the status of ongoing matters. The Housing Authority Commissioners have been apprised of the risks and liabilities associated with various legal matters and the fees have not exceeded reasonable amounts for the expertise and services delivered by counsel. At all times, detailed billing records are available to the Commissioners for inspection, and the Commissioners can address any concerns regarding legal bills with the Executive Director or directly with Special or General Counsel.

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C. Conclusion.

The Housing Authority denies the finding that these fees and expenses are ineligible or unsupported and therefore denies Recommendations 4A, 4B, 4C and 4D.

Finding 5.

Recommendation 5A. Reimburse \$26,280 to HUD from nonfederal funds for the Section 8 administrative fees collected by the authority.

The MHA does not agree with the calculation of \$26,280.00. Based on our review of appendices D and E we believe that in many instances the auditor did not take into account the 30 days in which the owner had to make the required repairs. The MHA will require additional information from the auditor to determine this. See Exhibit E – Analysis of Appendix D to Draft Audit, with backup information.

Recommendation 5B: Establish an effective system to ensure all outstanding housing quality standards deficiencies are monitored and corrected within the required time frame. This will result in future housing assistance payments being put to better use than the \$280,628 paid for substandard housing.

Comment 16

Response: A more effective system of checks and balances to monitor inspection issues and abatement procedures will be established between MHA, its new Section 8 administrator, (the Ansonia Housing Authority) and the inspection firm of Kelson Associates. MHA believes that an appropriate system was in place to insure that all housing quality standard deficiencies were monitored and corrected. The previous Section 8 staff did not follow the established procedures that were in place that resulted in housing assistance payments being provided for units that did not currently meet housing quality standards (HQS). The Section 8 staff took actions that had the effect of concealing the non-abatement from the Executive Director. The inspection firm did supply abatement lists to the Section 8 staff. These abatement lists were not acted upon in compliance with the established policies and procedures leading to housing assistance payment being made to landlords whose units did not meet HQS. MHA disagrees with the general characterization of a unit that exhibited an inspection deficiency as "substandard housing".

Recommendation 5C: Implement quality control procedures to ensure inspections are accurate and reliable and are performed in a timely manner.

Comment 17

Response: MHA has implemented quality control procedures to assure inspections are accurate, reliable and performed in a timely manner. MHA has contracted for the administration of the Section 8 program with the Ansonia Housing Authority (AHA). MHA has worked with AHA to implement a number of quality control procedures that are already in place. AHA performs quality control inspections and HQS enforcement in strict compliance with SEMAP

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requirements. AHA maintains a recertification log which records in detail the date when all inspections are scheduled and/or re-scheduled, the date when an inspection is actually conducted, whether the unit passes or fails, the date it passed, the date it failed, and if failed, the re-inspection date and the results of the re-inspection. If a unit fails re-inspection the unit is abated.

Recommendation 5D: Abate subsidies for landlords that fail to correct housing quality standards deficiencies within the required time frame.

Response: The above described system will allow MHA to abate subsidies for units that do not meet HQS. A unit is abated as of the first day of the month following a failed re-inspection.

Recommendation 5E: Properly supervise and adequately staff its Section 8 program.

Response: The program is properly supervised and adequately staffed through the AHA. To assist MHA in its supervision of AHA's performance MHA's will require AHA to provide copies monthly of the HAP registers, abatement lists, check registers, utilization reports, copies of recertification logs, occupancy reports and a reporting of portables in and out. MHA will review this data in order to assure proper program compliance and performance of the contractor.

Exhibit E – Analysis of Appendix D to Draft Audit, with backup information.

Finding 6:

The MHA would like to make some general comments in addition to responding to recommendation 6A and 6B with regards to finding #6. The comments are as follows:

1.) HUD oversight – The MHA did respond to a letter generated by Betty Jones on May 17, 2002 that resulted from the April 23, 2002 onsite review by HUD. On May 28, 2002 the Executive Director of the MHA requested a 119% payment standard and also explained the difficulty in leasing units. The May 28, 2002 letter is attached as Exhibit F. In September of 2003 the MHA drafted a Section 8 Project Based Assistance Program Request for Proposal. This was put on hold due to funding constraints. See Exhibit G

2.) Section 8 Program not sufficiently staffed – The MHA believes that the program was sufficiently staffed and that the staff was appropriately trained. Both individuals working with the Section 8 Program attended training by NAHRO and have their S.H.M. Certifications. For Fiscal Year 2001, 2002 and part of 2003 there were two full time employees managing the

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Section 8 Program. For the remainder of Fiscal Year 2003 and from 4/1/03 to 12/31/03 there were 1.5 employees in the Section 8 Department. The MHA believes that this staffing is more than adequate for a total maximum program of 266 units. The leased number of vouchers during the audit period was between 180 and 199. With regards to staffing at other housing authorities the average number of vouchers administered by a Certification Specialist for the State of Connecticut Department of Social Services' Program and the Ansonia Housing Authority's Program is in excess of 325 cases. The Certification Specialist's duties were similar to the duties of MHA Section 8 Staff.

Chairman of the Board Questioned High Number of Unused Vouchers.

MHA agrees with the OIG assertion that the Board of Commissioners questioned the low utilization rate. At the January 15, 2002 meeting the Board approved an organizational structure as part of the Agency Plan that acknowledges the Section 8 Administration would be "contracted and deployed as required". The Executive Director and members of the Board fully discussed the reorganization of the Section 8 Program during the preparation of the Agency Plan.

The Authority did not use the correct payment standards for Section 8.

The MHA disagrees with the OIG's assertion that the Section 8 Program Assistant was not aware of changes in Fair Market Rents (FMR) for existing housing. The Executive Director sent office e-mails to the Section 8 Program Assistant with regards to the annual changes required by HUD in the FMR's. They are enclosed collectively as Exhibit H.

Recommendation 6A: Submit a corrective action plan to address its low utilization rate.

Response: The Authority is currently at 99.7% of its monthly budget authority for the month of January 2005. The MHA will monitor this on a monthly basis.

Recommendation 6B: Ensure it is using the correct payment standards for Section 8

Comment 21

Response: The Payment Standards have been reviewed with the MHA's new subcontractor, the Ansonia Housing Authority. The correct Payment Standards are now being used. The October 1, 2003 Payment Standard was used consistently beginning in January of 2004. The recertification for the month of October, November and December of 2003 would have already been completed using the 2002 Payment Standard. This is in compliance with HUD recommended practice for the timely completion of annual certifications.

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Exhibit F – May 28, 2002 letter to Betty Jones
Exhibit G – Section 8 Project Base Assistance Program RFP (draft)
Exhibit H - Executive Director's email messages to the Section 8 Program Assistant with regard to Fair Market Rents

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Finding 7.

Clerk of the Works:

Response:

The Executive Director consulted with the board of commissioners during a regular monthly meeting regarding the lack of a clerk of the works while so much construction work was occurring on multiple projects at multiple sites. The board members expressed the belief that MHA was at great financial risk with no clerk making the necessary observations during this critical period. The Executive Director and the Modernization Coordinator concurred in the belief that the authority was at immediate risk. The Executive Director, after consultation with legal counsel, determined that MHA's options included (i) leaving the position unfilled; (ii) filling the position via the competitive proposal process by conducting a standard procurement procedure for the needed services, which was estimated to take over two months and up to three months to complete in the ordinary course of business, or (iii) obtaining one or more noncompetitive proposals for services to be provided on an interim basis until competitive proposals could be solicited.

It was concluded that given the level of construction activity, the option of leaving the position permanently unfilled or unfilled in the near term while an RFP was prepared, advertised, responses awaited, received and evaluated posed too great a threat to the proper safeguarding and administration of federal program funds, modernization funds and the scattered site grant. Therefore it was concluded that the interests of the authority would be best served, and federal dollars best protected, by an immediate interim hire to be followed by the solicitation of competitive proposals for the position.

The authority conducted an emergency procurement of the interim services and documented it as such as called for by the MHA procurement policy. A procurement justification to this effect was signed by the Executive Director as contracting officer as called for by the procurement policy.

The rates that the Clerk of the Works proposed were reviewed by the Project Manager in consultation with the Executive Director and the Board of commissioners and determined to be fair and reasonable. This was further confirmed by the competitive proposal process later conducted. The rates charged were equal to the lowest bid even the following year.

MHA intended at the time of the interim hire to publish an RFP and conduct the competitive process in or about November of 2002. Due to the volume of administrative, planning and finance work requiring the attention of the executive director and the authority's staff, the RFP for clerk of the works services was not in fact prepared for publication in 2002 as was planned. The RFP was published in the second quarter of 2003. The winning proposal was selected by the contracts subcommittee and a contract was prepared for signature by both parties.

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The initial 2002 contract obligated the contractor to provide services for up to one year from on or about July 8, 2002. It provided the authority however with the right to terminate his services for material misfeasance, malfeasance, completion of the project, or upon 30 days notice if after competitive bids, his was not selected. As it happened, the competitive process anticipated at the time of the interim hire to be complete in the first quarter of 2003, was in fact concluded by selection of Schukoske's proposal in July 2003. The commencement date of the proposed contract drafted after the competitive process therefore ran from the expiration date of the initial contract, July 8, 2003.

Human Resources Consultant:

Response:

The Authority does not have records related to procurement of Mr. Dunn's original services that took place prior to the tenure of the current Executive director. Mr. Dunn was able to provide to the auditors for their review his full response to the RFP published by MHA, including his resume, qualifications, references and responses to the rating and ranking criteria. See Exhibit I. This response referenced the RFP specifically as well as each of the rating and ranking criteria contained therein. Therefore the auditors have evidence of the competitive procurement procedure that was conducted prior to Mr. Dunn's initial selection and engagement. The MHA is not in possession of these old procurement records.

A current agreement is in place with Mr. Dunn. A subcommittee of the Board of Commissioners met on May 22, 2002 to review and assess the financial and practical aspects of continuing MHA's retainer arrangement with its labor consultant. The committee recommended renewal of the retainer at the rate of \$1,500 per month, which sum represented a substantial savings over application of an hourly rate structure. See Exhibit J. Subsequently Mr. Dunn delivered a letter of renewal dated as of April 1, 2002 for the period April 1, 2002 through March 31, 2004. Finally, after certification of a new union, the board authorized an increment to the retainer to include the increased scope of work resulting from the formation of a new collective bargaining unit. Board discussed and approved additional compensation of \$500.00 per month to D. Dunn until completion of negotiations and signing of a collective bargaining agreement with new union, at which time the retainer would revert to its previous level..

Scattered Site Implementation Development Program Manager

J. D'Amelia Associates worked with MHA on an interim basis to comply with the court's mandates and to demonstrate to the federal court, DOJ & HUD MHA's good faith, full The Settlement Agreement entered into on or about September 30, 1998. The terms and provisions of the Settlement Agreement, upon adoption, became an order of the federal court. These orders required MHA to develop a plan to acquire, acquire with rehabilitation, or to develop up to 28 units of family housing. Once this plan was approved by HUD, MHA was obligated to have 7 units identified, inspected, negotiated, placed under contract, purchased, renovated, and occupied by fully screened tenants meeting all court mandated guidelines within one year willingness and

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intent to implement required provisions of the Fair Housing Implementation Plan with all deliberate speed.

On June 25, 1999 an RFP was issued for Program Management and Relocation Services for the scattered site development. Two proposals were received. One from J. D'Amelia & Assoc, LLC, and one from Secour Associates, LLC. Both firms were interviewed and were rated and ranked. J. D'Amelia & Associates received a score of 88 out of 100. Secour received a score of 85 out of 100. See Exhibit K. Pursuant to the published RFP, price is worth just 10 point out of the possible 100 point score. As shown on Exhibit K, D'Amelia received 7 points for price while Secour received the maximum 10 points.

The purpose of the reference in the draft report to the use of a blue felt tip pen to fill in the date on the first page of the contract is unknown.

Commissioner Anderson was present and conducted the interview of the responding firms. Also present were the Executive Director and General Counsel. Exhibit K reflects the scoring awarded by the commissioner. Commissioner Cannelli reviewed both proposals and the scores awarded in detail and agreed with Commissioner Anderson's written evaluation. The responses to the RFP were reviewed by all board members and discussed in a public meeting. The board voted unanimously to hire J. D'Amelia & Associates. The assertion that the consultants contract may have been predetermined is totally unfounded.

Modernization Program Manager:

On August 26, 2002 an RFP was issued for Modernization Consulting Services. Three proposals were received. Proposals were received from J. D'Amelia & Assoc, LLC, Ameri National Community Services, Inc. and Gelband Architects, AIA. Each of these firms was interviewed and was rated and ranked. Rating and ranking sheet were signed and filed in the procurement file by both commissioners present. See Exhibit L.

J. D'Amelia & Associates received the highest score. Scores of 95 and 97 were awarded by the commissioners who conducted the interviews.

The contract was approved by the board of commissioners on September 10, 2002 by unanimous vote. The assertion that the contract was predetermined is false. The contract was not even drafted until after the vote of the board. A scrivener's error resulted in the date of September 5, 2002 being inserted in the date block of the contract. The nature of this error and specifically how it occurred was demonstrated in detail to the audit team during the exit interview.

Special Legal Counsel-Employee Lawsuit:

The Housing Authority disputes this recommendation. In accordance with the provisions of MHA procurement policy, MHA obtained three proposals from qualified employment law firms to respond to the complaint of a former employee. The Authority disputes the assertion that no evidence was provided that these services were competed. Copies of the competing firms' marketing proposals for their employment law practices were submitted to the audit team. Interviews with each of the three firms were scheduled. Two commissioners conducted the interviews. The individual attorneys who would provide these services were interviewed. The interviewing commissioners recommended Robinson & Cole as the most qualified and as a result of their interdisciplinary approach to defense of the action. The full board received and reviewed

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the recommendation of the interviewing board members at the next regularly scheduled meeting of the board. Special Counsel was then engaged.

Special Counsel-Capital Project Funding Issue:

The Housing Authority disputes this recommendation. See discussion concerning Findings and Recommendations 4 for a full discussion of the rationale for this noncompetitive emergency procurement.

Special Legal Counsel- Contract Dispute

The Housing Authority competitively procured the services of Special Counsel who began to provide services after the board voted to award the contract. Services were provided pursuant to the terms of Special Counsel's customary form of engagement letter. At MHA's request, Special Counsel agreed to provide to MHA an additional form of agreement entitled "Agreement for Legal Services". This form of legal services agreement is favored by HUD. The additional form of agreement was dated as of February, 2004.

General Legal Counsel

The Authority does not have records from an earlier administration during which General Counsel was competitively procured. Counsel responded to a solicitation in 1992 and was interviewed by MHA's full board at that time. Counsel was not engaged at that time. Counsel responded to a second solicitation in 1994 and was again interviewed by the full board and later awarded the contract commencing in October, 1994. The contract has been renewed on an annual basis since the initial award. Previous to, and during the audit period, the board of commissioners annually scrutinized and approved General Counsel's fees and continuing engagement. See Exhibit M. MHA disputes that a contract with General Counsel has not always been in place. Copies of annual renewal addendums to the initial contract were available for review by the audit team. The procurement policy provides that services are to be procured "efficiently, effectively and at the most favorable prices available to the MHA..." MHA believes that General Counsel's fees are very favorable and competitive.

Based upon the facts and circumstances, MHA disputes the conclusion that it was at risk for over billing or that it paid for unauthorized services.

Recommendation 7A: Implement procedures and control to ensure that its contracts are awarded in a manner providing full and open competition as required by HUD's regulations and its procurement policy

Response: The Authority has implemented procedures and controls to ensure that its contracts are awarded in a manner providing full and open competition in accordance with HUD regulations and its procurement policy.

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Auditee Comments

Comment 24

Finding 8:

The Housing Authority takes issue with the alleged deficiencies listed in Finding 8, as specified below:

The audit report provides that the Authority did not obtain HUD approval for the contract of the Executive Director, establish performance measurements and execute performance evaluations, charged HUD programs for personal expenses, properly state the reasons for the Board of Commissioners going into executive sessions and not performing employee evaluations.

The audit report claims that the authority had weak management controls and that management lacked awareness of HUD requirements and State laws. The Housing Authority denies these findings and submits it's rating as a high performing authority and its successes in increasing low income housing opportunities in support of its position.

Recommendation 8A: Submit the Executive Director's current contract for HUD approval.

Response- : Executive Director's contract was not subject to HUD review and approval under Handbook §7460.8 REV-1. .

The Housing Authority sought legal advice from a well-known Milford employment law firm as well as MaryAnn Russ, the former Deputy Assistant Secretary (DAS) at HUD when the ACC was revised in 1995 concerning whether an employment agreement like the one covering the Executive Director required HUD approval. The legal opinion concluded that:

... Based upon the foregoing, we are of the opinion that a multi-year contract for the Executive Director of a Housing Authority does not violate any federal statute, or regulation of HUD. See Exhibit N.

The DAS concluded that "the Procurement Handbook is not applicable or germane to his employment, nor are the underlying procurement regulations at 24 CFR part 85.36. Both of these documents deal with procurement. The Executive Director's contract is a matter of employment not procurement and the procurement materials issued by HUD plainly do not apply."

"When MHA or any other housing authority needs to hire a new ED it is not a matter of procurement, and the process is governed by the Personnel Policy not the Procurement Policy."

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Under the old ACC (rev. 1969) HUD form 53011, the Section on Personnel (Section 307) formerly provided:

" (A) The local Authority shall adopt and comply with a statement of personnel policies comparable with pertinent local public practice. Such statement shall cover job titles and classifications, salary and wage rates for employees other than those whose salaries or wages are determined pursuant to Section 115 and 211 (the FLSPA employees and union employees), weekly hours of work, qualification standards, leave regulations and payment of expenses of employees in travel status.

(B) The Local Authority may charge contributions for participation in a retirement plan for its employees to Development or Operating costs where such plan has been approved by the Government or is required by law.

(C) The Local Authority shall maintain complete records with respect to employees' leave, authorization of overtime and official travel, and vouchers supporting reimbursement of travel expense.

(D) No funds of any Project may be used to pay any compensation for the services of members of the Local Authority (the Board)

"HUD's only guidance on the subject of Personnel is in the current ACC (rev. 1995), Part II, Section 14, which says, in toto: 'The HA shall comply with all tribal, State and Federal laws applicable to employee benefit plans and other conditions of employment'."

"That's it. We concluded, when we were rewriting the ACC that HUD had no jurisdiction over the subject."

The Housing Authority submits that the audit's cited authorities concerning the approval of certain employment contracts are not applicable. The audit cites a provision of the HUD Handbook, §7460.8 REV-1 that deals with procurement. The section states that an Executive Director may be hired as an employee or pursuant to an employment contract and, if such agreement exceeds two years, approval from HUD is required. Because this section of the Handbook deals with procurement and distinguishes employment from a personal services contract arrangement, an employee hired under an agreement is not subject to the two year approval provision. The Housing Authority submits that the Executive Director was hired as an employee and not as a contractor, as such, his status is defined by applicable law.

Finally, the handbook section as cited incorporates by reference in §7460.8 REV-1 the discontinued Personnel Policies Handbook, 7401.7, dated 10/87, c. 2. As evidenced below, this section of the Handbook was abolished by a January 31, 1997 transmittal as "part of the Department's movement deregulating and decontrolling HAs." Part 1 of such handbook was replaced by the Annual Contributions Contract. With respect to the section entitled "Employer Requirements" under the ACC, the ACC simply states, "The HA shall comply with all tribal, State and Federal laws applicable to employee benefit plans and other conditions of

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Auditee Comments

Comment 25

employment," and that "No funds may be used to pay any compensation for the services of members of the HA Board of Commissioners."

Recommendation 8B Establish specific goals and measurements to evaluate the Executive Director's performance.

Response The Housing Authority established specific goals and measurements to evaluate the Executive Director's performance, and disputes the findings of the report that suggest that the Executive Director has not been adequately supervised. The Executive Director's performance has been subject to annual and periodic review concerning benchmarks indicating the Housing Authority's performance. During the budget preparation process each year, the Executive Director's budget is scrutinized line-by-line and is reviewed in relation to prior year comparisons. The Executive Director has been tasked with increasing reserves to handle expenses and has been accountable to the Board in doing this. The Executive has also been subject to evaluation by the Commission in terms of the Housing Authority's PHAS scores, including management indicators of vacancy preparation and turnaround, physical inspection, financial indicators and anonymous resident surveys.

Comment 26

Recommendations 8C: Reimburse the applicable HUD programs \$25,347 from nonfederal funds for the Executive Director's personal use of the Authority's vehicle.

The Housing Authority disputes the finding and recommendations concerning the use by employees of Company vehicles. The Housing Authority submits that the Executive Director and the Work Center Supervisor had unrestricted use of the vehicles. Maintenance employees had only use of vehicles to drive to and from work, and to respond to on-call emergencies. The audit unfairly singles out the Executive Director when other employees have been provided the same perquisite of employment. The Housing Authority submits that use of a vehicle is necessary because the Executive Director is on-call 24 hours a day, seven days a week. The Executive Director and the Work Center Supervisor must respond to emergencies that may occur at the Housing Authority and MHA submits that the expenses identified as ineligible should be deemed eligible.

The Housing Authority has issued to all applicable employees a W-2 for "other income" based upon the value of personal use of a vehicle.

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Auditee Comments

Comment 27

Recommendation 8D: Establish a policy to identify charges for personal benefits and withdraw amounts to ensure that HUD programs are not charged.

Response: The Housing Authority will continue to accurately prorate and allocate expenses between federal and non-federal activities and W-2's will be issued to all applicable employees who have the personal use of a vehicle. As part of its annual agency planning process, the board of commissioners adopted a revised the Personnel Policy which includes the following provision:

Employer-Provided Vehicle.

"For purposes of complying with Internal Revenue Service regulations, employees and officials who are granted the use of MHA vehicles for commuting to their residences are required to report this service as other income. The commuting valuation method shall be used by the MHA and will appear on the employees W-2 form. The Executive Director shall be offered the option of unrestricted use of MHA vehicles. If this option is exercised the annual lease value method shall be used." See Exhibit O

Recommendation 8E: Ensure that Board of Commissioners minutes state the reasons for going into executive session.

Comment 28

Response: The Housing Authority will continue to comply with the Connecticut Freedom of Information Act. The Housing Authority disputes the finding and implication that it has not followed the FOIA with respect to documenting the reasons for executive sessions. The Housing Authority submits that the auditors did not review the meeting agendas to determine the reasons why the Housing Authority went into executive sessions. The Housing Authority will continue to consult with General Counsel concerning FOIA requirements and act upon his advice.

Recommendation 8F: Ensure that all staff receives annual performance evaluations.

Comment 29

Response: The Housing Authority will comply with the requirements of the terms of collective bargaining agreements and will perform evaluations with unrepresented staff in accordance with its personnel policy.

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AUDITEE COMMENTS AND OIG'S EVALUATION

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Comment 1	The Authority submitted a three-ring binder containing the response and approximately 250 associated exhibits. Due to their volume, we did not include the Authority's exhibits in the report. However, we will make the exhibits available to HUD upon request and to the public through a freedom of information request.
Comment 2	The Authority's assertion of drastically reduced subsidies is incorrect. The subsidies have remained constant over the past 5 years.
Comment 3	The Authority's statement on the amount of time spent conducting the audit is an incorrect statement. We were only on-site at the Authority for a period of 8 months.
Comment 4	The statements on the Authority's operation and accounting system are misleading and give the impression that OIG made these representations in the report. We did not make any representations on the Authority's accounting system in the report, and did not express any opinion regarding the existence of irregularities or improprieties in the operation, or on the accuracy and reliability of data, or on its effective use of the data in managing its programs.
Comment 5	We strongly disagree with the Authority's statements that the life threatening conditions of the building were unsupported. The life threatening conditions at Foran Towers were supported by three engineering studies performed at the building. The life threatening conditions identified in the studies were the poor condition of the building's sanitary piping and the poor condition of the building's outer structure. The studies also point out that the temporary solution of the canopy and fence did not eliminate the life threatening condition of the building's outer structure, and the building's condition would continue deteriorate until permanent replacement or repairs to the brick facade were completed. In addition, we did consider the NATCOMM study on the outer structure of the the building completed over one year ago. The Authority tries to use the NATCOMM's "Envelope Study," to discount the life threatening conditions described in the previous engineering studies. The Authority points to the statement made by NATCOMM that there was "no evidence of loose damage brick units" and "at this we are not of the opinion that the veneer is in eminent danger of collapse". However, NATCOMM noted major deficiencies in the masonry construction, similar to those identified in the three previous engineering studies. The NATCOMM study stated "This condition (Façade Repair) must be addressed within the next 12 months." Since the study was completed over one year ago, we believe our assertions are supported and this work must be addressed immediately.

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AUDITEE COMMENTS AND OIG'S EVALUATION

OIG Evaluation of Auditee Comments

**Comment 5
(Continued)**

We believe the NATCOMM study supported that Foran Towers be prioritized ahead of the Harrison Avenue redevelopment due to the masonry construction deficiencies, and necessary window and roof replacements. The Authority needs to address and eliminate all of the poor conditions and the threats to human life at Foran Towers.

In addition, we disagree with the Authority's statement that it has consistently included funds for modernization and repairs at Foran Towers in its five-year Capital Plan. The Authority failed to fund renovations at Foran Towers when serious health and safety issues first became evident. The Authority reallocated 2000 and 2001 Program funds that were designated for repairs of the brick facade at Foran Towers to Harrison Avenue. In fact, the Authority did not allocate any funding for Program Years 1996 through 2003 for repairs of the damaged brick facade or the sanitary piping at Foran Towers. Instead, the Authority funded a construction contract for modernization at Harrison Avenue. The Authority continues to disregard HUD program officials and OIG recommendations to prioritize Foran Towers poor conditions, and recently the Authority decided to vacate Harrison Avenue and go forward with additional renovations estimated to cost \$1.5 million for phase III. These costly renovations will leave little funding for the elimination of Foran Towers' life threatening conditions for several years.

Comment 6

The Authority states that the continued deterioration of the Harrison Avenue Development resulted from the heavy use of residing families for over thirty years. However, the Authority needs to accept the responsibility for the deterioration of the housing stock which is the result of the Authority's failure to enforce the lease and conduct periodic rehabilitation efforts of its housing stock during the thirty years. In addition, the heavy use by families does not warrant the diversion of funds needed to address the exigent health and safety conditions at Foran Towers.

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OIG Evaluation of Auditee Comments

Comment 7

The dispute and Authority's need to defend itself was the result of the Authority's failure to notify the Harrison Avenue Construction Company of its decision to deduct Phase III in writing. In fact, the Authority's General Counsel informed OIG that it was his mistake that the Contractor was only notified orally, and was not notified in writing regarding the elimination of Phase III. The Authority was responsible for the litigation and the legal expenses incurred are considered unnecessary. However, the dispute was settled, and we withdraw our recommendation. Our position regarding counsel's litigation fees is that the fees were unnecessary, ineligible program costs and should be repaid from nonfederal funds (Recommendation 4A).

We maintain that the Authority's failure to monitor construction activities and make timely decisions contributed to significant delays in completing Phase I & II. We disagree with the Authority's statement that rehabilitation work on Phase I & II was completed efficiently and effectively since the work was not completed until approximately 8 months past the revised completion date of May 19, 2003. Further evidence of the Authority's inefficiency and ineffectiveness were the failure to obtain required construction progress schedules and timely enforce the liquidating damages clause of the contract for contractor caused delays during the construction period. This is further supported by the arbitrator's decision not to award liquidating damages clauses that the Authority ultimately sought.

Comment 8

The Authority's representation that HUD imposed a \$100,00 threshold requirement due to their effective procurement practices is incorrect. The threshold requirement is a limit established for everyone and is not reflective of how good the Authority's practices are, or how well they were being followed. In addition, the procurement was not in accordance with the Authority's procurement policy because a formal contract was not in place until 3 months after legal work was started. (See [Finding 7](#)) We do concur that HUD Regional Counsel concurrence is required prior to the award of litigation services contracts expected to exceed the \$100,000 threshold. However, the issue here is not the award of the contract that required the HUD Regional Counsel concurrence but rather that concurrence was required before expending funds for litigation.

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Comment 9

We disagree with the Authority's statement that OIG's method was flawed because certain variables there were not taken into consideration. The Architect committed an error and a change order was necessary to correct the error. The Authority acknowledged that the Architect omitted a portion of the required asbestos abatement from project specifications, and is misrepresenting our statement on the need for a change order. If the Architect had properly computed the area for asbestos replacement, the original bid may have been lower due to the normal volume discount for the replacement. If the Authority believed that the Architect was at fault, it should have attempted to recover the increased cost from the Architect. The Army Corp stated that the change order was acceptable and cited the 30% reduction achieved through negotiations. We believe this supports our original premise that the omission may have resulted in excessive costs bid for the change order. In addition, the Authority failed to provide documentation in support of its statement that the cost to abate asbestos would be in excess of \$4,000 per unit at the time of our audit. However, based on the additional factual data submitted in the Authority's written response, we removed recommendation 2B regarding the overpayment.

Comment 10

The Authority stated that OIG did not provide any support for its estimate of \$19,500 required to bring the 9 units in Phase III up to Uniform Property Condition Standards. We maintain that 9 vacant units in Phase III of Harrison should be prepared for occupancy. We consider the estimate to repair units as reliable based on the input received from two qualified sources. In fact, one of the Authority's own staff (Work Center Supervisor) provided us the \$19,500 estimate to bring the 9 units on line. OIG, and two employees from the local HUD field office, including a Construction Analyst, concurred that the units could be brought up to Uniform Property Condition Standards at a minimal cost. These units have been vacant for two years and the Authority has lost significant rental income and the opportunity to house families. We note that seven of the adjacent units were occupied during our review. Therefore, we do not understand the need for complete asbestos removal. We contend that the units can be brought up to physical conditions standards at minimal cost until the Authority has the funding for major renovations.

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OIG Evaluation of Auditee Comments

Comment 11	<p>The Authority states in the response that “the decision to replace certain fixtures and equipment were both adequately supported and prudent.” The Authority provided approximately 40 photographs, and several change order documents as evidence that they did not prematurely replace capital assets. However, the photographs provided with the Authority’s response were difficult to view or not clearly marked, dated, or traceable to the properties in question. During the audit, the Architect and Appraiser provided extensive photographs that indicated that the fixtures did not have to be replaced. In addition, the Authority repeatedly stated, “Due to the unknown age, condition, and efficiency of all appliances MHA commissioners made the determination to replace and standarize all appliances.” The response clearly supports our determination that the capital assets were replaced regardless of their physical condition and that no cost benefit analysis was performed as required by HUD’s Public Housing Modernization Standards Handbook 7485.2, concerning premature replacement. The Authority’s response also fails to clearly present the condition of capital assests that were known. For example, the Authority’s response cites 3 locations (136 Merwin Ave, 76-78 Atwater St, and 79-81 Elaine St.) but fails to include the appraiser and architect reports which indicated that the furnaces were only 2 years old, yet they were replaced. The Authority’s response only provided anecdotal evidence, pictures, and a few change order proposals prepared by the renovations contractor. They did not provide any factual data to change our position.</p>
Comment 12	<p>We acknowledge the Authority’s intent to comply with our recommendation to update and maintain an inventory for the scattered site equipment.</p>
Comment 13	<p>The Authority contends that scattered site units are not subject to the handicapped accessible rule. The Authority also stated that all project plans and specifications submitted were approved by HUD, and received no notice of alleged Section 504 non-compliance prior to receipt of the draft audit report.</p> <p>We disagree. The governing criteria is contained in the Authority’s Plan for the Development of Scattered Site Properties (Part II, Section A) that stated “The MHA intends to satisfy the section 504 requirement that 5% of all newly developed, acquired, or rehabilitated units (in this case, 2 of the 28 units) be accessible or adaptable to the mobility impaired.”</p>

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AUDITEE COMMENTS AND OIG'S EVALUATION

OIG Evaluation of Auditee Comments

**Comment 13
(Continued)**

In addition, the Settlement Agreement between the Authority, the Department of Justice and the National Association For the Advancement of Colored People states that the Authority is “to ensure that persons with disabilities have equal opportunity to live in the Authority’s subsidized housing units for families, those units will comply with the Fair Housing Act, Section 504 of the Rehabilitation Act, and HUD’s accessibility guidelines set forth in 24 CFR Part 40 and 24 CFR Part 100.205.” These guidelines also contain the 5% requirement. Furthermore, HUD is not responsible for detecting Section 504 violations. Compliance with Section 504 is the responsibility of the Authority. We also disagree with the Authority’s response that they are in compliance with Section 504. The Authority contends that scattered site units do not constitute new construction and are not subject to the 5% handicapped accessibility requirement based on the PIH notice. In this case, the Settlement Agreement between the Authority, the Department of Justice and the National Association For the Advancement of Colored People takes precedence.

Comment 14

The Authority contends that the legal costs are eligible and supported, but no additional documentation was provided with the response. In addition to the costs being ineligible and unsupported, we continue to maintain that the services were not properly procured (See [Finding 7](#)). Since we coordinated this finding with HUD Regional Counsel, we have forwarded the Authority’s response to them for final analysis and resolution.

The Authority contends that the hourly rate paid to General Counsel is reasonable. However, OIG’s concern is not whether the hourly rate is reasonable, but whether the Authority is contractually obligated to pay for these services and whether documentation is adequate to support the billings for legal services outside of the retainer contract to determine eligibility.

The Authority contends that they complied with federal regulations for General and Special Legal Counsel, and the legal charges are eligible because the attorney advised the Authority of all charges exceeding the scope of the services contract. We disagree. The legal charges are not eligible because they were not supported by proper documentation. The Authority improperly paid for additional costs for services contained in General Counsel’s annual retainer contract and did not comply with the requirements of the HUD Litigation Handbook for litigation services.

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AUDITEE COMMENTS AND OIG'S EVALUATION

OIG Evaluation of Auditee Comments

**Comment 14
(continued)**

The Authority contends that fees paid to legal counsel were eligible because of the HUD litigation handbook criteria, HUD's requirement for allowable expenses, OMB Circular A-87 attachment B item 10(B), HUD's Settlement Agreement, and potential investigation by the City. In addition, the Authority contends that budgetary and actual costs and billings were provided to the Executive Director and discussed and approved by the Board of Commissioners. This response is not relevant to our findings because it gives the impression that the Board was fully informed. We interviewed the Board of Commissioner's and determined that they were unaware of the requirements contained in HUD's Litigation Handbook requiring prior HUD approval for expenditures. In addition, the Board was not familiar with what was contained in General Legal Counsel's retainer contract but rather relied on the Executive Director's and General Counsel's assertions.

The Authority contends that litigation HUD does not allow is limited to court litigation and they (Authority) were not involved in court litigation. We disagree. HUD policy and Federal cost principles as established by the Office of Management and Budget do not permit a public housing authority to use project or program funds to pay the costs of litigation against HUD.

The Authority contends that they never threatened litigation against HUD. The finding states that the Authority paid for legal services to defend against HUD because they erroneously believed that HUD was going to bring suit against them. Regardless of the Authority's misintrepretation of the facts in the finding, the legal service cost they spent under the erroneous belief of possible litigation against HUD are not an allowable program cost.

The Authority is responsible for managing the program to ensure that costs are allowable program costs. The Authority cannot transfer this responsibiltiy to HUD by claiming that HUD Regional Counsel did not communicate to the Authority that the Authority was not in compliance or by claiming that they (Authority) did not have to comply with the litigation handbook because they intrepreted the handbook differently. The Authority did not comply with HUD requirements for procuring the services of an attorney.

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AUDITEE COMMENTS AND OIG'S EVALUATION

OIG Evaluation of Auditee Comments

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| Comment 15 | <p>The Authority feels that an appropriate system was in place but not followed and is taking steps to implement a more effective system. Also, they did not agree with our calculation of \$26,280 for administrative fees. The Authority stated that they did not believe we took into account the 30 days in which the owner had to make repairs.</p> <p>Management should have realized that procedures were not followed, and by their own admission, these deficiencies “resulted in housing assistance payments being provided for units that did not currently meet housing quality standards”. We contend that our calculation did provide the 30 day grace period. In addition, we offered to provide support and further discussion for any of our findings at the time the discussion draft report was transmitted as well as at the exit conference. In fact, data was requested and provided to the Authority for another finding (asbestos omission). Detailed computations will be furnished upon request.</p> |
| Comment 16 | <p>The Authority feels that it had an appropriate system in place. However, the Authority has taken steps to implement a more effective system by subcontracting this effort to the Ansonia, Connecticut Housing Authority and working with its inspection firm, Kelson and Associates. In addition, the Authority states that the Section 8 staff took actions that had the effect of concealing the non-abatement from the Executive Director.</p> <p>We strongly disagree with the Authority’s statement that it had an appropriate system in place. We contend that the Executive Director did little to monitor known inspection deficiencies and did not take appropriate action when he was apprised by his Section 8 staff. We found no evidence that the Section 8 staff took actions to conceal non-abatelements from the Executive Director. In conclusion, it is ultimately the responsibility of the Executive Director to ensure that the Section 8 staff follows established procedures.</p> |
| Comment 17 | <p>The Authority stated that a new system has been implemented that should improve the quality control procedures over inspections and abatements. We concur.</p> |
| Comment 18 | <p>The Authority stated that with the assistance of its Section 8 Administrator, the new system should allow the Authority to abate subsidies for units that do not meet housing quality standards. We concur.</p> |

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Comment 19	<p>Prior to its hiring Ansonia Housing Authority, the Authority stated that the Section 8 Program was adequately staffed and that the staff received appropriate training. We disagree with the Authority's assessment. Our report did not comment or question whether or not staff received appropriate training. However, we contend that the Authority's Section 8 Program could have benefited by having more staff available to process Section 8 applicants and have more applicants out shopping for units.</p>
Comment 20	<p>The Authority states that it is currently at 99.7% of its monthly budget authority and will monitor this on a monthly basis. The Authority also stated that on May 28, 2002, the Executive Director requested a 119% payment standard from HUD due to difficulty in leasing units. In addition, in September 2003, the Authority drafted a Section 8 Project Based Assistance Program Request for Proposal that was put on hold due to funding constraints.</p> <p>In fiscal year 2005, HUD revised its method of funding the Section 8 Program due to budgetary constraints. Because the Authority historically underutilized its authorized funding, HUD significantly reduced its FY05 funding to its historical baseline. As a result, the Authority is leased at 99.7% of its monthly budget authority and is serving 211 eligible families.</p> <p>We maintain that had the Authority made sufficient efforts to lease Section 8 Program units at an acceptable rate their current funding would not have been reduced. As a result, we estimate that the Authority has lost the ability to house approximately 55 additional families (266 – 211) in the City of Milford.</p> <p>In addition, we disagree that the Authority was proactive to the April 23, 2002 onsite review by HUD. The Authority's May 28, 2002 letter requesting a 119% payment standard was in direct response to the local HUD field office's May 3, 2002 e-mail informing the Authority that they could increase rents to 119% of the published Fair Market Rents without completing a survey.</p> <p>Based on the Authority's response, we revised our recommendation to require the Authority to submit a monitoring plan to ensure they use all available funding.</p>

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AUDITEE COMMENTS AND OIG'S EVALUATION

OIG Evaluation of Auditee Comments

Comment 21	<p>The Authority stated that they reviewed the payment standards currently in use in conjunction with its new Section 8 contract administrator and is now using the correct standards. In addition, the Authority stated they complied with HUD's recommended practice for annual re-certifications. Although our finding and recommendation referred to using proper payment standards for new tenants, not re-certifications, the Authority's corrective actions should result in the use of proper payment standards.</p>
Comment 22	<p>We agree with the Authority that the Section 8 Program Assistant was made aware of changes in Fair Market Rents for existing housing. The Executive Director recently provided OIG emails sent to the Section 8 Program Assistant with regard to the annual changes required by HUD in the FMR's. Based on the emails, OIG agrees with the Authority's assertion and has removed the statement from the report.</p>
Comment 23	<p>The Authority asserted that the Executive Director and Board of Commissioners worked continuously to manage its procurement policy. The Authority states that it provided extensive evidence that the organization procured goods and services in a manner that resulted in the best quality and/or prices for services obtained. The Authority stated that the procurement of Clerk of Works was an emergency procurement. The Authority added that the procurement resulted in fair and reasonable rates.</p> <p>We strongly disagree. Based on our review, it was evident that the Authority's procurement practices did not comply with HUD regulations and its own procurement policy. The Authority's response contained no more factual data than what we obtained during the course of our audit. Contrary to the statements made by the Authority, the evidence we received was not sufficient to assure that the Authority procured goods and services in a manner that resulted in the best quality and/or prices for services. Therefore, our recommendation remains unchanged.</p> <p>We disagree that the procurement of Clerk of Works qualified as an emergency procurement. Consideration of rates is not the main focus in this situation. The Authority did not comply with HUD regulations and its own procurement policy which states that noncompetitive awards may be used only when an emergency exists that seriously threatens the public health, welfare, or safety or endangers property or would otherwise cause serious injury to the Authority, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event.</p>

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Comment 24	<p>The Authority stated that the Executive Director's 5-year employment contract was not subject to HUD review and approval under Handbook 7640.8 Rev-1. Also, the Authority stated that multi-year contracts for Executive Directors do not violate any federal statute or regulation of HUD. The Executive Director utilizes Part II, Section 14 of the ACC, applicable to conditions of employment and benefit plans, to contend that HUD has no jurisdiction over the employment contract. The Authority stated that the procurement Handbook is not applicable to employment contracts nor are the procurement regulations at 24 CFR 85.36.</p> <p>We disagree. HUD requirements limit multi-year contracts for the Executive Directors to 2 years. We believe that the Handbook is applicable, and states that an Executive Director may be hired as an employee or retained under an employment contract and, if such agreement exceeds two years, approval from HUD is required. OIG utilized handbook criteria, handbook 7460.8, Section 4-27B, as criteria without reference to the ACC. Therefore, there is no conflict between the handbook and the ACC. Contrary to Authority's assertions, HUD does have authority over the employment contract. The Executive Director is correct that HUD did abolish the Personnel Policies handbook containing the criterion being used in the finding. However, the provision in the Handbook was reinstated in the procurement handbook when it was revised. The revision to the handbook does address employment contracts for executive directors of housing authorities with more than 250 units and this Authority is subject to this provision. We confirmed our understanding with HUD legal in Hartford, Connecticut who had contacted HUD Legal in headquarters for an opinion.</p>
Comment 25	<p>The Authority stated that it established specific goals and measurements to evaluate the Executive Director's performance. We disagree with the Authority's response. Other than anecdotal evidence, no documentation was provided to support this statement.</p>
Comment 26	<p>The Authority stated that since the Executive Director is on call 24 hours a day, seven days a week the use of a vehicle for commuting to and from work should be an eligible expense. We disagree. We consider the Executive Director's normal commute to be a personal expense and any reasonable method to calculate the expense amount to be withdrawn for the period is acceptable. In those rare instances when the Executive Director uses the vehicle to respond to emergencies, we would consider the cost to be an eligible business expense.</p>

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| Comment 27 | The Authority stated that it will continue to accurately prorate and allocate expenses between activities and W-2's will be issued to employees who have personal use of a vehicle. We concur these personal costs should be reported on employee W 2's. However, the personal costs should not be charged to programs. |
| Comment 28 | The Authority stated that it will continue to comply with the Freedom of Information Act and that the reasons for the executive sessions were included on their agendas. We disagree. Agendas are planned events that may not occur. The Board Minutes are a permanent record of what actually transpired. Therefore, the minutes need to reflect the reasons for going into executive session. |
| Comment 29 | The Authority stated it will comply with its union agreements and provide evaluations in accordance with its personnel policy. Although the Authority's prior personnel policy dictated that all employees of the Authority were to receive annual performance ratings in writing and they did not, the policy needs to be enforced. |

Appendix C

SCHEDULE OF PREMATURE REPLACEMENTS FOR SCATTERED SITES

<i>Property Address</i>	<i>Refrigerators/ Ranges</i>	<i>Kitchen Cabinets & Countertops</i>	<i>Furnaces</i>	<i>Roofs</i>	<i>Hot Water System</i>	<i>Total Costs</i>
136 Merwin Avenue (single family)	1,300	3,300	4,750			9,350
Appraiser's Report 4/6/2000, Property has new appliances. The furnace and oil tank were replaced in 1998. Architect's Report 2/8/2000, Kitchen cabinets and appliances were in good condition. The Mechanical and Electrical Report indicated that the oil-fired furnace was 2 years old.						
176-178 Platt Street (two family)	2,600	9,200	6,100			17,900
Appraiser's Report 4/6/2000, Property is in average/good condition overall. All appliances, mechanicals, and utilities are in average condition. Current condition has no adverse effect on marketability of property. Architect's Report 1/28/2000, Kitchen cabinets and countertops were in good condition. The Mechanical and Electrical Report indicated that the two gas-fired furnaces used are 12 to 15 years and 15 to 20 years old, respectively.						
20 White Oaks Terrace (single family)	1,300	4,500				5,800
Appraiser's Report 4/12/2000, No obsolescence noted for property and no repairs or improvements are recommended at this time. The effective age of the property reflects regular maintenance and repairs of the improvements. Architect's Report 2/3/2000, Kitchen cabinets were in good condition.						
22-24 Casco Street (two family)	2,600	12,318				14,918
Appraiser's Report 4/10/2000, Property is in good overall condition. All appliances, mechanicals, and utilities are in average condition. Current condition has no adverse effect on marketability of property. No repairs or upgrades were required. Architect's Report 1/28/2000, Kitchen cabinets and countertops were in good condition.						
86-88 West Town Street (two family)	2,600	4,600	4,600			11,800

Appendix C

SCHEDULE OF PREMATURE REPLACEMENTS FOR SCATTERED SITES

<i>Property Address</i>	<i>Refridgerators/ Ranges</i>	<i>Kitchen Cabinets & Countertops</i>	<i>Furnaces</i>	<i>Roofs</i>	<i>Hot Water System</i>	<i>Total Costs</i>
Appraiser's Report 12/15/2000, Property in good condition overall. All appliances, mechanicals, and utilities in average condition. Current condition has no adverse effect on marketability of property. No needed repairs or upgrades. Architect's Report 10/13/2000, Kitchen cabinets and countertops were in good condition. Mechanical and Electrical Report indicated heating supplied by two furnaces; age of which are unknown.						
76-78 Atwater Street (two family)	2,600	4,222	5,000		1,100	12,922
Appraiser's Report 1/2/2000, Unit was remodeled within the past 2 years. Kitchens, including cabinets, and furnaces are 2 years old. All appliances, mechanicals, and utilities are reported in good condition. No repairs or upgrades are required. Architect's Report 11/14/2000, Kitchen cabinets and countertops were in good condition. Architect indicated property was remodeled within the past 2 years.						
79-81 Elaine Street (two family)	2,600		5,000		2,300	9,900
Appraiser's Report 1/2/2000, Unit was remodeled within the past 2 years. Property reported to be in good condition. Kitchens and furnaces are only 2 years old, and property has new kitchen cabinets/countertops. No needed repairs or upgrades noted. Architect's Report 11/14/2000, Kitchen cabinets and appliances reported in good condition. Mechanical and Electrical Report indicated that the furnace was installed in 1998.						
10 Housatonic Avenue (6 units)	7,800	27,000		18,434		53,234
Appraiser's Report 12/22/2000, Property is in great condition. Appraiser reported that property is approximately 10 years old and has new appliances. Architect's Report 2/5/2001, Kitchen cabinets/countertops and appliances were in good condition.						
Grand Totals	\$23,400	\$65,140	\$25,450	\$18,434	\$3,400	\$135,824

Appendix D

SCHEDULE OF FEDERAL SUBSIDIES EXPENDED FOR SUBSTANDARD HOUSING

Address	Date Failed	Date Passed	Months Lapsed	Total HAP Assistance Payment Amount	Exigent? Yes/No
27 Lansdale Avenue	3/20/02	6/7/02	2	\$ 674	No
27 Lansdale Avenue	4/10/03	9/12/03	4	1,956	No
71 Bridgeport Avenue	3/21/02	6/7/02	3	978	Yes
27 Wildwood Avenue	5/9/02	4/8/03	11	8,965	Yes
27 Broadway 2 nd	1/29/02	4/8/02	2	2,087	No
27 Broadway 2 nd	5/20/03	*	6	6,150	No
52 A Locust Street	8/20/02	11/15/02	2	1,536	No
52 A Locust Street	4/21/03	*	7	5,376	No
43 Laurel Avenue	9/19/01	11/1/02	13	9,571	No
12 Bridgeport Avenue	4/9/03	6/2/03	1	456	No
180 Melba Street #218	9/13/02	12/13/02	2	608	No
308 Meadowside #201	3/18/02	5/10/02	1	603	No
308 Meadowside #201	4/22/03	5/23/03	1	725	Yes
137 Edgefield Avenue	4/18/02	7/10/03	15	11,760	Yes
757 Milford Point Road	4/15/02	5/31/02	1	422	Yes
152 Broad Street Rear	12/13/02	5/19/03	5	1,830	Yes
118 Naugatuck Avenue 2 nd	11/18/02	4/1/03	5	3,975	Yes
22 Darina Place	11/19/02	12/31/02	1	694	Yes
22 Darina Place	5/28/02	*	19	12,878	Yes
68 Cooper Avenue	7/19/02	11/18/02	4	3,992	Yes
101-103 Bridgeport Ave	4/9/03	*	8	7,800	Yes
155 West Main Street	3/20/02	6/11/02	3	1,470	Yes
183 Broadway 1st Floor	1/14/02	4/8/02	3	882	Yes
33 Broadway #3	9/19/01	10/30/02	12	8,424	No
33 Broadway #3	4/23/03	5/29/03	1	1,144	Yes
33 Broadway #3	9/23/03	*	2	2,288	No
92 Opal Street	3/21/02	1/21/04	22	6,525	Yes
95 Naugatuck Avenue	1/30/02	4/15/02	2	1,550	No
4 Elm Street #1	4/18/02	6/11/02	2	1,924	Yes
4 Elm Street #1	4/23/03	*	7	7,875	No
300 Meadowside #208	4/21/03	*	7	5,915	No
58 Laurel Avenue	12/13/02	3/13/03	2	2,088	No
121 Seemans Lane #14	5/19/03	8/11/03	2	958	No
82 West Town Street	4/21/03	8/11/03	3	3,000	No
180 Melba Street #303	3/25/02	6/11/02	2	492	No
180 Melba Street #303	4/7/03	8/11/03	3	861	No
218 West Main Street 1 st	4/21/03	6/2/03	1	683	No
107 Bridgeport Avenue	4/15/02	7/19/02	3	2,050	Yes
19 James Street	11/18/02	4/10/03	4	3,608	No

*An asterisk indicates that deficiencies have not been corrected as of December 31, 2003.

Appendix D

SCHEDULE OF FEDERAL SUBSIDIES EXPENDED FOR SUBSTANDARD HOUSING

Address	Date Failed	Date Passed	Months Lapsed	Total Assistance Payment Amount	Exigent ? Yes/No
138 Melba Street 1 st	3/25/02	6/11/02	2	710	No
105 Bridgeport Avenue	4/9/03	9/23/03	4	3,300	No
44 Harkness Avenue	1/28/02	9/23/03	19	17,822	No
49 A Fairwood Avenue	4/8/02	*	19	13,129	No
601 Milford Point Road, 1 st	4/10/03	*	8	6,496	Yes
27 Peck Street	4/21/03	7/10/03	2	2,588	No
1 Park Circle #2	3/21/02	6/11/02	2	1,138	No
33 Broadway, Rear	1/14/02	4/8/02	2	1,144	No
54 A Naugatuck Avenue	11/18/02	*	12	5,376	No
92 B Robert Treat Drive	4/22/03	*	8	4,216	Yes
194 A Cherry Street	4/21/03	6/2/03	1	251	No
216 Naugatuck Avenue, 1 st	1/28/02	5/31/02	3	1,791	No
91 C Robert Treat Drive	3/20/02	5/10/02	1	351	No
91 C Robert Treat Drive	4/22/03	*	7	5,505	No
27 Broadway, 1 st	1/14/02	4/8/02	3	2,700	Yes
27 Broadway, 1 st	4/23/03	9/12/03	5	4,500	Yes
122 Naugatuck Avenue	1/28/02	6/7/02	4	2,500	No
122 Naugatuck Avenue	5/20/03	*	7	4,995	Yes
273 Seaside Avenue, 2 nd	4/19/02	8/20/02	3	936	No
27 Kittery Street, 1 st	11/18/02	3/13/03	4	3,300	Yes
106C Merwin Avenue	4/19/02	*	19	11,006	No
52 Hawley Avenue #6	4/19/02	7/19/02	2	822	No
76 Dunbar Road	3/21/02	9/12/02	6	6,768	Yes
76 Dunbar Road	4/8/03	*	8	9,024	Yes
308 Meadowside #103	4/22/03	8/11/03	3	2,127	No
180 Melba Street #301	4/7/03	10/21/03	5	3,260	No
180 Melba Street #301	3/20/02	9/12/02	5	4,000	No
16 Wall Street 2 nd Floor #2	3/25/02	6/11/02	2	862	No
36 Beechland Avenue	3/25/02	7/8/02	3	3,351	No
36 Beechland Avenue	4/7/03	7/15/03	2	1,184	No
180 Melba Street #309	9/13/02	12/13/02	2	1,614	No
519 Naugatuck Avenue 2 nd	3/20/02	6/7/02	2	1,162	No
24 Lenox Avenue 2 nd Fl	3/21/02	5/9/02	2	1,086	Yes
24 Darina Place	3/20/02	9/12/02	5	5,000	No
1070 New Haven #76	4/8/03	6/2/03	1	851	No
106B Merwin Avenue	7/19/02	3/13/03	8	6,992	Yes
180 Melba Street #105	9/13/02	12/13/02	2	1,650	No
27 Broadway 3 rd Floor	5/20/03	9/12/03	4	2,348	Yes
Grand Total			391	\$280,628	

*An asterisk indicates that deficiencies have not been corrected as of December 31, 2003.

Appendix E

SCHEDULE OF QUESTIONED ADMINISTRATIVE FEES AUTHORITY RECEIVED TO MANAGE SUBSTANDARD HOUSING

Address	Months of Abatement	Admin. Fees	Questioned Fees
27 Lansdale Avenue	2	\$65.67	\$131
27 Lansdale Avenue	4	67.83	271
71 Bridgeport Avenue	3	65.67	197
27 Wildwood Avenue	11	67.83	746
27 Broadway, 2 nd	2	65.67	131
27 Broadway, 2 nd	6	67.83	407
52 A Locust Street	2	67.83	136
52 A Locust Street	7	67.83	475
43 Laurel Avenue	13	65.67	854
12 Bridgeport Avenue	1	67.83	68
180 Melba Street #218	2	67.83	136
308 Meadowside #201	1	65.67	66
308 Meadowside #201	1	67.83	68
137 Edgefield Avenue	15	65.67	985
757 Milford Point Road	1	65.67	66
152 Broad Street Rear	5	67.83	339
118 Naugatuck Avenue 2 nd	5	67.83	339
22 Darina Place	1	67.83	68
22 Darina Place	19	67.83	1,289
68 Cooper Avenue	4	65.67	263
101-103 Bridgeport Avenue	8	67.83	543
155 West Main Street	3	65.67	197
183 Broadway Street	3	67.83	203
33 Broadway #3	12	65.67	788
33 Broadway #3	1	67.83	68
33 Broadway #3	2	67.83	136
92 Opal Street	22	67.83	1,492
95 Naugatuck Avenue	2	65.67	131
4 Elm Street #1	2	65.67	131
4 Elm Street #1	7	67.83	475
300 Meadowside #208	7	67.83	475
58 Laurel Avenue	2	67.83	136
121 Seemans Lane #14	2	67.83	136
82 West Town Street	3	67.83	203
180 Melba Street #303	2	65.67	131
180 Melba Street #303	3	67.83	203
218 West Main Street 1 st	1	67.83	68
107 Bridgeport Avenue	3	65.67	197
19 James Street	4	67.83	271
138 Melba Street 1 st	2	65.67	131

Appendix E

SCHEDULE OF QUESTIONED ADMINISTRATIVE FEES AUTHORITY RECEIVED TO MANAGE SUBSTANDARD HOUSING

Address	Months of Abatement	Admin. Fees	Questioned Fees
105 Bridgeport Avenue	4	\$67.83	\$271
44 Harkness Avenue	19	67.83	1,289
49 A Fairwood Avenue	19	67.83	1,289
601 Milford Point Road 1 st	8	67.83	543
27 Peck Street	2	67.83	136
1 Park Circle #2	2	65.67	131
33 Broadway, Rear	2	65.67	131
54 A Naugatuck Avenue	12	67.83	814
92 B Robert Treat Drive	8	67.83	543
194 A Cherry Street	1	67.83	68
216 Naugatuck Avenue 1 st	3	65.67	197
91 C Robert Treat Drive	1	65.67	66
91 C Robert Treat Drive	7	67.83	475
27 Broadway 1 st Floor	3	65.67	197
27 Broadway 1 st Floor	5	67.83	339
122 Naugatuck Avenue	4	65.67	263
122 Naugatuck Avenue	7	67.83	475
273 Seaside Avenue 2 nd	3	65.67	197
27 Kittery Street 1st Floor	4	67.83	271
106 C Merwin Avenue	19	67.83	1,289
52 Hawley Avenue #6	2	65.67	131
76 Dunbar Road	6	65.67	394
76 Dunbar Road	8	67.83	543
308 Meadowside Road 103	3	67.83	203
180 Melba Street #301	5	67.83	339
180 Melba Street #301	5	65.67	328
16 Wall Street 2 nd Floor #2	2	65.67	131
36 Beechland Avenue	3	65.67	197
36 Beechland Avenue	2	67.83	136
180 Melba Street #309	2	67.83	136
519 Naugatuck Avenue 2 nd	2	65.67	131
24 Lenox Avenue 2 nd Floor	2	65.67	131
24 Darina Place	5	65.67	328
1070 New Haven Ave #76	1	67.83	68
106 B Merwin Avenue	8	67.83	543
180 Melba Street #105	2	67.83	136
27 Broadway 3 rd Floor	4	67.83	271
Total	391		\$26,280