



Issue Date June 10, 2011

Audit Report Number 2011- BO-1008

TO: Jennifer Gottlieb-Elazhari, Program Center Coordinator, Office of Public Housing, Hartford Field Office, 1EPHP

FROM:

A handwritten signature in black ink that reads "Michael A. Motulski".

For John A. Dvorak, Regional Inspector General for Audit, Region 1, 1AGA

SUBJECT: The Housing Authority of the City of New Haven, CT, Could Not Show That It Always Complied With Environmental and Labor Standards Enforcement Requirements

HIGHLIGHTS

What We Audited and Why

We audited the Housing Authority of the City of New Haven's (Authority) Public Housing Capital Fund (Capital Fund) and American Reinvestment and Recovery Act of 2009 Capital Fund (Recovery Act Capital Fund) projects for compliance with environmental and labor law requirements. We initiated this assignment because a previous Office of Inspector General (OIG) audit of the Authority's Recovery Act Capital Fund¹ activities identified a significant risk of noncompliance with environmental and labor law requirements that could impact all of the Authority's Capital Fund projects. Our objectives were to determine whether the Authority (1) funded Capital Fund projects for eligible activities in

¹ 2011-BO-1003, issued December 17, 2010

accordance with U.S. Department of Housing and Urban Development (HUD) requirements, (2) complied with environmental requirements for proper removal and disposal of asbestos waste for its Capital Fund and Recovery Act Capital Fund projects, and (3) complied with labor standards enforcement requirements.

What We Found

The Authority funded Capital Fund projects for eligible activities in accordance with HUD requirements. However, it did not always comply with environmental law requirements. Specifically, the Authority did not ensure that its abatement contractors complied with contract requirements for the proper disposal of asbestos waste removed from its Federal housing projects in accordance with its contracts. We reviewed nine² abatement contracts with the Authority and found that seven of the contractors could not support proper disposal of asbestos waste removed from the projects in accordance with contract requirements. This condition occurred because the Authority relied on its environmental monitoring contractor to ensure compliance with environmental requirements with no apparent follow-up or oversight of its contractor. As a result, the Authority could not support disposal costs associated with more than \$2 million in abatement costs paid on these contracts.

The Authority also did not always comply with labor standards enforcement requirements. Specifically, it did not

- Complete the required enforcement reports for at least seven contractors, in which at least six violations appeared to have been willful noncompliance;³
- Ensure that all required information reported to HUD in its semiannual enforcement reports was complete and accurate;
- Always document that it performed a review of certified payrolls and followed up on payroll falsification indicators;
- Require contractors to sign a statement of future compliance when underpayment violations were identified;
- Establish an account to hold restitution collected for workers owed restitution but who were not found or for appeals by the contractor; or
- Ensure that its enforcement file system was complete.

This condition occurred in part because the Authority did not have written policies and procedures for labor standards compliance. Additionally, the Authority's contract with a city agency (agency) responsible for identifying noncompliance of labor standards violations was too general and did not detail the Authority's and agency's responsibilities in the area of labor standards administration and enforcement. Lastly, the Authority did not adequately track noncompliance violations of its contractors and resolutions, including restitution amounts determined and collected. As a result, HUD did not have assurance that

² One of the contractors had two different abatement companies perform the abatement.

³ In four of the seven instances, contractors used undocumented workers.

the Authority met its labor standards enforcement requirements. Additionally, there is a risk that the Authority may continue to use contractors that willfully violate labor standards requirements and continue to hire undocumented workers to work on federally funded projects, including Recovery Act-funded projects. Further, if the Authority does not provide complete and accurate enforcement reports to HUD, HUD cannot comply with its requirements to provide this information to the U.S. Department of Labor as required.

What We Recommend

We recommend that the Program Center Coordinator of HUD's Hartford Office of Public Housing ensure the Authority's written policies and procedures comply with requirements for ensuring that hazardous waste is properly disposed of and accounted for. We also recommend that the Program Center Coordinator of HUD's Hartford Office of Public Housing require the Authority to (1) ensure that its staff is trained in environmental monitoring requirements, (2) adequately monitor its environmental monitoring contractors to ensure that they meet the requirements of their contracts, and (3) support that asbestos waste removed from Federal projects was properly accounted for and disposed of or repay from non-Federal funds the disposal costs it cannot support from the more than \$2 million in abatement costs for the projects reviewed.

We also recommend that the Program Center Coordinator of HUD's Hartford Office of Public Housing ensure that (1) the Authority's written policies and procedures comply with requirements and include reporting responsibilities and sufficient management controls and incorporate Davis-Bacon Act streamlining guidance and (2) Authority staff is trained in labor standards compliance. We further recommend that the Program Center Coordinator of HUD's Hartford Office of Public Housing require the Authority to (1) revise its contract with the agency to ensure that it is more specific as to Authority and contractor responsibilities for labor standards administration and enforcement and (2) report cases in which willful intent is apparent and/or in which restitution for a single employer was \$1,000 or more, including those reviewed, and make any needed corrections to its semiannual enforcement reports.

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 provided the Authority the report on May 10, 2011, and held an exit conference with officials on May 12, 2011. The complete text of the auditee's

response, along with our evaluation of that response, can be found in appendix B of this report. We did not include in the report the attachments provided with the Authority's response due to the volume of documents provided, however, it is available upon request. The Authority agreed, in part, with our findings and recommendations and has begun implementing some of our recommendations.

TABLE OF CONTENTS

Background and Objectives	6
Results of Audit	
Finding 1: The Authority Could Not Support Proper Disposal of Asbestos Waste	8
Finding 2: The Authority Did Not Always Comply With Labor Standards Enforcement Requirements	12
Scope and Methodology	18
Internal Controls	19
Appendixes	
A. Schedule of Questioned Costs	20
B. Auditee Comments and OIG's Evaluation	21
C. Violations That Appeared To Have Been Willful Noncompliance	40

BACKGROUND AND OBJECTIVES

The Housing Authority of the City of New Haven, CT (Authority), was incorporated under the laws of the State of Connecticut. The Authority operates under a five-member board of commissioners, appointed by the mayor, and an executive director to provide safe and decent housing to low- and moderate-income families and elderly individuals.

In 2001, the Authority was awarded “moving to work” status as part of the Federal Moving to Work Demonstration program (MTW). As an MTW grantee, the Authority is required to submit annual MTW annual plans to the U.S. Department of Housing and Urban Development (HUD) that articulate its policies, objectives, and strategies for administering its Federal housing programs. During our audit period, the Authority owned and operated 2,422 public housing units.

President Obama signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) on February 17, 2009. This legislation included a \$4 billion appropriation of capital funds, with \$3 billion distributed as formula grants and \$1 billion distributed through a competitive grant process. On March 18, 2009, HUD awarded the Authority a \$6 million formula grant.⁴

The Authority also received more than \$14.9 million in Public Housing Capital Fund (Capital Fund) grants from 2007 to 2010 and had expended more than \$7.9 million as of February 1, 2011.⁵

Year	Awarded	Expended
2007	\$3,905,501	\$3,845,574
2008	\$3,727,135	\$3,727,135
2009	\$3,702,981	\$370,298
2010	\$3,568,717	\$0
Total	\$14,904,334	\$7,943,007

The Authority contracted with a city agency (agency) to conduct preconstruction meetings with the prime and second-tier contractors regarding enforcement of Federal labor standards laws and Davis-Bacon Act laws. The agency also was responsible for reporting to the Authority any contractors that did not comply with all labor standards and other regulations.⁶ The agency recommended enforcement actions to be taken by the Authority.

Our objectives were to determine whether the Authority (1) funded eligible Capital Fund activities in accordance with HUD requirements, (2) complied with environmental requirements

⁴ HUD also awarded the Authority \$22.2 million in Recovery Act competitive Capital Fund grants; however, we limited this review to formula grant funds.

⁵ Only administrative expenses were paid from the 2009 grant.

⁶ The requirements shown relate to our audit objectives; however, the agency was also contracted for enforcement of Section 3 requirements.

for proper removal and disposal of asbestos waste for its Capital Fund and Recovery Act Capital Fund projects, and (3) complied with labor standards enforcement requirements.

RESULTS OF AUDIT

Finding 1: The Authority Could Not Support Proper Disposal of Asbestos Waste

The Authority did not ensure that its abatement contractors complied with contract requirements for the proper disposal of asbestos waste removed from its Federal housing projects. It could not account for at least 30 cubic yards of asbestos waste removed from a construction site and could not readily account for asbestos waste removed from other construction sites. This condition occurred because the Authority relied on its environmental monitoring contractor to ensure that its abatement contractors complied with contract requirements for removal and disposal of asbestos waste with no apparent follow-up or oversight. As a result, the Authority could not support disposal costs associated with more than \$2 million in abatement costs paid on these contracts.

Contractors Did Not Comply With Contract Requirements

The Authority did not ensure that its abatement contractors complied with contract requirements for the proper disposal of hazardous waste removed from its Federal housing projects. We reviewed nine⁷ abatement contracts with the Authority and found that seven of the contractors could not support proper disposal of asbestos waste removed from the projects in accordance with contract requirements. In one instance, the waste shipment record, dated January 30, 2010, had been changed from 40 cubic yards to 10 cubic yards of waste with no explanation of why the change was made or where the additional 30 cubic yards were disposed of. Neither the Authority nor its environmental monitoring contractor performed follow-up to determine what happened until we brought it to the Authority's attention. According to the Authority's environmental monitoring contractor, approximately 40 cubic yards of asbestos waste were generated during this abatement project. The waste shipment record was not provided to the Authority until after the project was completed and final payment was made so it was not able to retain payment until the issue was resolved. We obtained a copy of the waste shipment record from the landfill, that showed 10 cubic yards of waster was removed from the project, but it did not show how much was received by the landfill and disposed.

After our request, the Authority's environmental monitoring contractor followed up but was not able to determine why the amount was changed and what happened to the additional 30 cubic yards of waste. Although the Office of Inspector General (OIG) pointed out this discrepancy to the Authority in

⁷ One of the contractors had two different abatement companies perform the abatement.

September 2010 during a previous audit, the Authority did not report the missing 30 cubic yards to the required State and/or Federal agencies until April 29, 2011.

In another instance, the waste shipment record was changed from 19 cubic yards to 2 cubic yards. According to an executive project manager at the Authority, there were 19 bags of waste. There was no reconciliation to the scope of work or the actual amount of waste removed, so the Authority could not be sure that all of the waste was properly disposed of.

In the remaining five instances, although some waste shipment records were complete, the amount of waste on other waste shipment records was either not listed or not reconciled to the amount of asbestos removed from the project to ensure that all of the waste was properly accounted for and disposed of. Additionally, some of the waste shipment records were not properly executed by all required parties. As a result, the Authority could not support the disposal costs associated with more than \$2 million in abatement costs. During our audit, one of the environmental monitoring contractors began including a statement in its final summary report stating that the amount of waste disposed of according to the waste shipment records was consistent with the amount of waste removed from the project.

Inadequate Monitoring of Environmental Monitoring Contractors

We reviewed two firms that the Authority had under contract to perform environmental monitoring services. These firms monitored abatement work performed by the Authority's abatement contractors working on Authority projects. The Authority relied on the environmental monitoring contractors to ensure that its abatement contractors complied with local, State, and Federal environmental requirements and that the asbestos waste was properly accounted for. However, the Authority did not adequately monitor or oversee its environmental monitoring contractors. The environmental monitoring contractors ensured that asbestos waste was properly removed from the projects. However, after that, there was no accountability of the waste other than the waste shipment record. The waste shipment record tracked the waste from pickup to final disposal at the landfill. Therefore, the waste shipment records needed to be properly completed, executed, and available to the Authority before final payment to the contractor to ensure the proper disposal of the waste.

The Authority did not always receive the waste shipment record in a timely manner; however, it did not report this problem as required. When the Authority does not obtain a copy of the waste shipment record signed by the owner or operator of the designated disposal site within 35 days of the date the waste was accepted by the initial transporter, it is required to either contact the transporter or the owner of the designated disposal site or both to determine the status of the

waste shipment. If the Authority does not receive the waste shipment record within 45 days, it is required to report this matter in writing to the appropriate local, State, or Federal agency responsible. During our audit, the Authority began to maintain a schedule to track the receipt of the waste shipment records. The Authority planned to hold its environmental monitoring contractor responsible for ensuring that it received the waste shipment record from the abatement contractors in a timely manner. If it was not received in a timely manner, the Authority planned to withhold payments to its environmental monitoring contractors and its abatement contractor for the abatement portion of the contract until the waste shipment record was received.

The Authority was also not able to readily support that all of the abatement workers were properly licensed and trained and had the proper medical clearance. The Authority's environmental monitoring contractors were required to obtain this documentation at the beginning of the project and provide it to the Authority once the project was completed. However, when we requested this information, the Authority did not have the required information for 4 of the 10 abatement contractors. The Authority did not adequately monitor its environmental monitoring contractors to ensure that they complied with contract requirements and provided all of the required documents to the Authority in a timely manner.

Conclusion

The Authority did not ensure that its abatement contractors complied with all local, State, and Federal environmental requirements before paying for abatement costs with HUD capital funds. As a result, disposal costs associated with more than \$2 million in capital funds may have been paid for abatement projects that were not properly completed. Additionally, the Authority could be at risk for fines by the local, State, or Federal agency responsible if it cannot show proper disposal of hazardous waste. During the audit, the Authority developed policies and procedures for hazardous waste removal and has taken steps to implement this new policy, including the manifest tracking form developed in response to our audit.

Recommendations

We recommend that the Program Center Coordinator of HUD's Hartford Office of Public Housing ensure

- 1A. The Authority's written policies and procedures comply with requirements and include sufficient management controls for ensuring that hazardous

waste is properly disposed of and accounted for .

We also recommend that the Program Center Coordinator of HUD's Hartford Office of Public Housing require the Authority to

- 1B. Adequately monitor its environmental consultants to ensure that they meet contract requirements, including reporting to the required State and Federal agencies any hazardous waste for which disposal documentation cannot be produced.
- 1C. Support that hazardous waste removed from Federal projects was properly accounted for and disposed of in accordance with contract requirements or repay from non-Federal funds the disposal costs it cannot support from the \$1,574,998⁸ in abatement costs for the non-Recovery Act Capital Fund projects reviewed.

We recommend that the Program Center Coordinator of HUD's Hartford Office of Public Housing require the Authority to

- 1D. Support that hazardous waste removed from Federal projects was properly accounted for and disposed of in accordance with contract requirements or repay from non-Federal funds the disposal costs it cannot support from the \$452,658⁹ in abatement costs for the Recovery Act Capital Fund projects reviewed.

⁸ This amount includes \$16,950 in abatement costs from contract number DC-09-C-0003, \$107,933 in abatement costs from contract number DC-09-C-0019, and \$1,450,115 in abatement costs from contract number 100408.

⁹ Includes vacancy reduction contracts for two contractors that used three different abatement contractors under contract number DC-09-C-0016, totaling \$274,358, and \$178,300 from contract number DC-09-C-0023.

RESULTS OF AUDIT

Finding 2: The Authority Did Not Always Comply With Labor Standards Enforcement Requirements

The Authority did not always comply with labor standards enforcement requirements. Specifically, it did not

- Complete the required enforcement reports for at least seven contractors, the underpayments of which were more than \$1,000 and totaled more than \$244,000 and in which at least six violations appeared to have been willful noncompliance;
- Ensure that all required information reported to HUD in its semiannual enforcement reports were complete and accurate;
- Always document that it performed a review of certified payrolls and followed up on payroll falsification indicators;
- Require contractors to sign a statement of future compliance when underpayment violations were identified;
- Establish an account to hold restitution collected for workers owed restitution but who were not found or in instances of appeal by the contractor; and
- Ensure that its enforcement file system was complete.

This condition occurred in part because the Authority did not have written policies and procedures for labor standards compliance. Additionally, the Authority's contract with a city agency responsible for identifying noncompliance of labor standards violations was too general and did not detail the Authority's and agency's responsibilities. Lastly, the Authority did not adequately track noncompliance violations for its contractors. As a result, HUD did not have assurance that the Authority met its labor standards enforcement requirements. Additionally, there is a risk that the Authority may continue to use contractors that willfully violate labor standards requirements and continue to hire undocumented workers to work on federally funded projects, including Recovery Act-funded projects.

Required Enforcement Reports Not Completed

The Authority did not complete the required enforcement reports for at least seven contractors/subcontractors, the underpayments of which were more than \$1,000 and totaled more than \$244,000. The Authority stated that it was not aware of the requirement to submit these reports to HUD when it did not recommend debarment and had obtained restitution from the contractors. In at least six of the seven violations, the underpayments appeared to have been willful (see appendix C for violations for the six contractors). The Authority stated that it did not determine that

the violations were willful; however, it did not document the basis for that determination. The agency, which was responsible for identifying and investigating labor standards violations, believed the violations for these contractors were willful.

In these six violations, the agency found that contractors misclassified employees, did not include employees on the payrolls and later underpaid them, did not pay employees for work performed, and did not pay overtime to employees when required. In four of the six violations, the contractors underpaid undocumented workers.

Semiannual Enforcement Reports Not Complete and Accurate

The Authority did not ensure that all required information reported to HUD in its semiannual enforcement reports was complete and accurate. The Authority did not always include contractors that had complaints and did not include all restitution collected. Further, liquidated damages were not always determined and collected, and overtime restitution collected was not broken out from straight time restitution collected. This condition occurred because the Authority did not have an adequate method of tracking contractors with complaints and the final resolution, including restitution paid by the contractor. The individual at the Authority who completed these reports sent e-mails requesting this information from Authority staff and reviewed monthly agency reports submitted to the Authority to complete these reports. The Authority put together a log of contractors with noncompliance violations based on our request for this information. The log showed contractors with violations and whether the violations were resolved; however, it did not identify the amount of restitution paid, did not show how the violations were resolved, and was not always complete. This type of log would be beneficial to the individual responsible for completing these reports.

Certified Payroll Reviews Not Always Documented and Follow-up Not Always Performed

When the agency identified violations through inspections, interviews with employees, or complaints, it generally performed a thorough review of documentation provided by contractors and did an adequate job of determining restitution, based on the certified payrolls and other information obtained, and ensuring that employees were paid. However, it was not always clear whether other certified payrolls were reviewed or that the agency followed up on payroll falsification indicators. We identified payroll falsification indicators on several

contractor payrolls, such as several employees' not working 40-hour work weeks, and working less than 8 hour days, and the ratio of laborers to mechanics was disproportionate. The agency stated that it did not follow up on payrolls in which the hours are less than 40 hours per week or less than 8 hours per day, as the workers could have been working on other jobs and many of the businesses were small and new businesses. Many of the contractors used a form that showed total gross wages and gross wages for the Authority project; however, there were contractors that had several payrolls in which the amounts were the same for both total gross wages and gross wages for the Authority project, and no follow-up was performed.

Our review of two contractors' records showed that certified payrolls did not always agree with contractor records. Further, the contractors could not provide timesheets to verify the information for the period requested. Additionally, one of these contractors continued to show all laborers on the certified payrolls, even after paying restitution to several employees for misclassification. No additional follow-up was performed. Two other contractors also showed cash payments with no deductions and could not provide time sheets to verify information shown on the payrolls. One of these contractors issued Internal Revenue Service forms 1099 to the workers shown on the payrolls. No additional follow-up was performed for these payrolls.

Statement of Future Compliance Not Obtained

Although the Authority required that the contractor sign a statement of compliance with Federal requirements, including Federal labor standards, before commencing work, it did not require contractors to sign a statement of future compliance when underpayments were identified and violations appeared willful. HUD streamlining guidance states that HUD has made it a priority to target labor standards enforcement activities on willful violators (i.e., employers that falsify certified payrolls) and to recommend debarment against repeat violators. In these cases, a first offense will require from the employer a written statement assuring future compliance in addition to full wage restitution for all underpaid employees. If the employer is found in violation of labor standards again, a recommendation of debarment should be made based in part upon the breach of assurance of future compliance secured after the prior violation.

Escrow Account Not Established for Restitution

The Authority did not maintain an account to hold restitution owed to workers not found or who did not come forward for restitution payments or in cases in which a contractor appealed restitution calculations. We found at least one case in which two workers did not come forward for restitution payments and the Authority's

contractor held onto the money orders attached to the file. These money orders were obtained from the contractor in early 2010 and stated that they would be void after 90 days. The Authority is required to submit to HUD any restitution funds not claimed after 3 years. It is not prudent to hold bank checks or money orders for 3 years without depositing them into a bank account, as they could be lost during this time or expire.

Enforcement File System Not Complete

The Authority did not ensure that its enforcement file system was complete. It was not always clear from the documentation in the agency's files that items were resolved or what the final resolution was. For example, although e-mail correspondence indicated that one violation should have been referred to the U.S. Department of Labor (DOL) for investigation, neither the Authority nor the agency could tell us whether it was referred to DOL. Additionally, follow-up inspections were not printed and included in the files, and e-mail correspondence among the agency, contractors, and the Authority was not always included in the files. Follow-up inspections are especially important in cases in which contractors are found using undocumented workers, as only authorized workers should be working on federally funded projects. Additionally, it was not always clear whether the Authority took the action recommended by the agency, such as holding payments. When we asked the Authority for its enforcement files, we were told that there wasn't a specific enforcement file but that various individuals would have e-mails and other correspondence related to enforcement actions taken by the Authority. As a result of our review, the agency began including e-mail correspondence in its files and started including a memorandum in the file regarding the final resolution. The Authority should ensure that it notifies the agency of actions taken against contractors in response to its recommendations so that the enforcement file is complete or maintain its own enforcement files for actions it takes against contractors in response to violations identified by the agency.

No Written Policies or Procedures

These deficiencies occurred in part because the Authority did not have written policies and procedures for compliance with labor standards enforcement. Additionally, the Authority's contract with the agency responsible for identifying noncompliance of labor standards was too general and did not detail agency and Authority responsibilities in the area of labor standards enforcement. During the audit, the Authority developed written policies and procedures for labor standards enforcement. According to the agency and the Authority, they were working on a

revised contract. The Authority should ensure that this revised contract is clear regarding the Authority's and agency's responsibilities for labor standards enforcement.

Conclusion

The Authority had taken steps to ensure that it meets labor standards enforcement requirements, including developing written policies and procedures for labor standards enforcement and ensuring the use of documented workers by its contractors. The Authority needs to implement additional steps in its written policies and procedures to document cases of willful intent by contractors when underpayments are identified, especially when contractors submit false payrolls, and ensure that contractors sign a statement of future compliance so that the Authority can make the appropriate recommendation to HUD for debarment of repeat willful violators. The Authority also created a log to identify contractors with violations and the resolutions; however, it needs to take additional steps to ensure that this information is complete and accurate. It needs to ensure that it documents its reviews of certified payrolls and follows up when necessary for any payroll falsification indicators identified and ensure that it has a complete enforcement file system so that it can show that it took appropriate enforcement action when required.

Recommendations

We recommend that the Program Center Coordinator of HUD's Hartford Office of Public Housing ensure that

- 2A. The Authority's written policies and procedures comply with requirements and include reporting responsibilities and sufficient management controls and incorporate Davis-Bacon Act streamlining guidance.
- 2B. The Authority's staff is trained in labor standards compliance.

We also recommend that the Program Center Coordinator of HUD's Hartford Office of Public Housing require the Authority to

- 2C. Revise its non-Recovery Act-funded contract with the agency to ensure that it is more specific as to Authority and contractor responsibilities for labor standards administration and enforcement.
- 2D. Report non-Recovery Act violations in which either willful intent is apparent or restitution for a single employer was \$1,000 or more or both,

including those reviewed, and make any needed corrections to its semiannual enforcement reports.

We also recommend that the Program Center Coordinator of HUD's Hartford Office of Public Housing require the Authority to

- 2E. Report Recovery Act violations in which either willful intent is apparent or restitution for a single employer was \$1,000 or more or both, and make any needed corrections to its semiannual enforcement reports.

SCOPE AND METHODOLOGY

We conducted our audit between December 2010 and April 2011. We completed our fieldwork at the Authority located at 360 Orange Street, New Haven, CT, and at various Authority contractors' offices in Connecticut. Our audit covered the period October 1, 2008, through September 30, 2010, and was extended when necessary to meet our audit objectives.

To accomplish our audit objectives, we

- Reviewed applicable Recovery Act and Capital Fund regulations, notices, and guidance.
- Reviewed management controls over eligibility, labor standards enforcement, and contract compliance related to proper disposal and accountability of hazardous waste.
- Interviewed pertinent HUD, Authority, agency, and contractor staff.
- Reviewed all seven Capital Fund activities, totaling more than \$3.2 million that were started during our audit period to determine whether the activities were eligible in accordance with Capital Fund requirements.
- Reviewed 19 violations of underpayments and undocumented workers for 17 contractors cited by the agency to determine whether the Authority complied with labor standards enforcement and other Federal requirements.¹⁰
- Reviewed 6 of the 17 contractors' records to verify information provided on certified payrolls.
- Determined whether 10 abatement contractors complied with contract requirements for proper removal and disposal of hazardous materials for all nine projects started during our audit period.
- Determined what action the Authority took if contractors did not comply with contract requirements to submit waste shipment records within the required timeframe.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹⁰ We reviewed all violations of underpayments and undocumented workers cited in the agency's monthly reports from August 2008 to September 2010. We expanded our audit period to include three additional violations due to the amount of restitution collected for one contractor shown on the semiannual enforcement report and to review two additional violations cited for two contractors already in our sample.

INTERNAL CONTROLS

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

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

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

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

- Controls over selecting and approving eligible Capital Fund activities
- Controls over contract compliance related to proper disposal and accountability of hazardous waste
- Controls over labor standards enforcement

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiencies

Based on our review, we believe that the following items are significant deficiencies:

- The Authority did not ensure that abatement contractors complied with contract requirements for proper removal and disposal of hazardous material.
- The Authority did not always comply with labor standards enforcement requirements.

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Unsupported 1/
1C.	\$1,574,998
1D.	\$452,658

1/ 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 the 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.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 1

May 18, 2011

Mr. John Dvorak
Regional Inspector General for Audit
U.S. Department of Housing and Urban Development
Office of the Inspector General
10 Causeway Street, Room 370
Boston, MA 0222-1092

Re: HUD OIG Audit Finding 2011-BO-100X

Dear Mr. Dvorak:


This letter and the materials attached hereto are provided in response to the HUD OIG proposed audit findings (the "Finding") against the Housing Authority of the City of New Haven ("HANH " or the "Authority") for Capital Funds Audit: Eligibility, Labor and Environmental Compliance.

Auditor's Finding 1: The Authority Could Not Support Proper Disposal of Asbestos Waste

Finding One states that the Authority did not ensure that its abatement contractors complied with contract requirements for the proper disposal of asbestos waste removed from its federal housing projects in accordance with its contracts and that nine of the Authority abatement contracts were reviewed and found that seven of the contractors could not support proper disposal of asbestos waste removed from the projects in accordance with contract requirements. In addition, the Finding states that the Authority relied on its environmental monitoring contractor to ensure compliance with environmental requirements, with no apparent follow-up or oversight of its contractor. As a result, the Authority could not support disposal costs associated with over \$2 Million in abatement costs paid on the contracts.

It is the Authority's position that the finding is incorrect. The Authority provided support documentation to the Office of the Inspector General (OIG) auditors on all the contracts and met or exceeded the regulations and industry standards to be followed for hazardous material removal. In conformance with State, Local and Federal regulations, a licensed environmental consultant was contracted to perform all tasks as a project monitor as required per contract. Each of the abatement contractors that performed the work had executed manifests, the chain of custody of the impacted material being removed and delivered to the identified landfill. These manifests were included in a report which was prepared for each contract by the licensed environmental consultant. These were provided to the OIG auditors for their review. As such we counter the specifics of the finding below.

Housing Authority of the City of New Haven's Elm City Communities
360 Orange Street, P.O. Box 1912, New Haven, CT 06511
(203) 498-8800 • TTD (203) 497-8343 • www.newhavenhousing.org
u-drive folder_legal_p&d folder_cap.funding draft fin response_5_12


Housing Authority of New Haven
Karen DuBois-Walton, Ph.D.
Executive Director

1

Ref to OIG Evaluation

Auditee Comments

Comment 2

No Monitoring Performed on Environmental Monitoring Contracts

The Authority's Response:

The Authority disagrees that it did not ensure that its abatement contractors complied with contract requirements for the proper disposal of hazardous waste removed from its federal housing projects. The contract requirements are comprised of multiple responsibilities for the proper disposal of hazardous waste removed and all aspects of monitoring were conducted and completed. Each project is overseen by a HANH-staff person who serves as project manager. Some projects are additionally overseen by a contracted construction managers. Each abatement contract is then additionally overseen by an Abatement Contractor who serves as project monitor. A project monitor is the subject matter expert who functions as the on-site representative and interprets project specifications or abatement management plans, conducts visual inspections and final clearance monitoring, inspects the construction and maintenance of the containment barriers, reviews proper demarcation of work areas, and enforces common compliance during the removal process, abatement cleanup and waste disposal. The Authority provided copies of all Environmental Monitor contracts for review by the OIG.

The Authority has had three firms under contract since June 2009 to perform a variety of environmental needs that the Agency may have and one of the tasks identified is environmental monitoring services. The contracts that the OIG auditors reviewed were monitored by two of the three environmental engineering firms under contract.

Comment 3

The Authority disputes the finding that the Authority did not perform any monitoring or oversight of its environmental monitoring contractors. The Authority staff routinely communicated with the environmental monitoring contractors from the initial project development with tasking them for hazardous material testing, reviewing results, identifying the scope of work to be performed and the scope of work that the environmental consultants project designer prepared, the bidding and selection of the abatement contractor, the coordination of the abatement contractor on site, receipt of documentation such as the State Notification for the Work, and regular scheduled job meetings with the environmental consultants on the progress of the work. The Authority did respond to the recommendation that additional oversight of the environmental monitoring contractor would be of value and the Authority prepared a Manifest Tracking Form to ensure that the documents are received in a timely fashion. However, all the Waste Shipment Records are in the Authority's possession along with additional documentation which exceeds the regulations for disposal.

Comment 4

The waste shipment records (manifests) were provided to the OIG auditors. This is the only document required for the accountability of the waste. The OIG auditors requested additional documentation for a reconciliation of the removed impacted material which exceeds the regulations. The Authority complied with this request and it was prepared and provided for their review (see Attachment #1).

Ref to OIG Evaluation

Auditee Comments

Comment 5

The Authority provided complete backup documents for all the contracts that the OIG auditors requested. In these reports there were supporting documents as follows:

- Scope of Work
- Daily Monitoring Data
- Final Visuals/Air Clearance Reports
- State Notification Forms
- Contractor's Asbestos License
- Asbestos Waste Shipment Records
- Work Area Access Logs
- Worker Training Certificates, License, Medical Clearance Letters, Respirator Fit-Test-Logs
- OSHA Air Monitoring Data
- Eagle Environmental Certificates
- Closeout Request Notices to Contractor

The Daily Monitoring Data is comprised of a Daily Monitoring Log which provides Contract Information, time of day, description of the work in progress, time the work finished for the day and signed by the licensed project monitor, Interior Abatement Daily Work Area Checklist, Interior Abatement Waste Load Log, and as applicable a Drawing with work area defined. The Daily Monitoring Log reflects the ongoing activity of the remediation and it has the activity described in the log when the impacted material has been bagged and removed to the hazardous material container. This documentation supports that the material was being handled properly, was removed properly and disposed of properly.

Comment 6

The Authority disputes that it was also not able to readily support that all of the abatement workers were properly licensed, trained and had the proper medical clearance.

The Authority has submitted to the OIG auditors the training, licenses and medical clearance documentation for four (4) of the five (5) abatement contractors on the identified projects. HANH concedes it does not possess the requested documentation for one (1) abatement contractor. HANH disputes the OIG reference to the "Authority did not have the required information for four of the 10 abatement contractors", the Authority at no time had 10 abatement contractors. The five abatement contractors which were reviewed by OIG auditors were Abcon Environmental Inc, Murdock Asbestos and Deleading, Oscars Abatement, Environmental Engineering Services Inc. and Niram.

Comment 7

Contractors Did Not Comply with Contract Requirements

The Authority's Response:

The Authority disputes that it did not comply with abatement contract requirements. The Authority disputes the statement that "the amount of waste was either not listed on the waste shipment records or reconciled to the amount of asbestos removed from the project to ensure that all of the waste was properly accounted for and disposed of". The majority of the waste shipment records

Ref to OIG Evaluation

Auditee Comments

Comment 8

(manifests) were legible and completely executed. In a few instances, some manifests were illegible. The Authority subsequently obtained documentation from each landfill corresponding to the illegible manifest. The Authority contacted the landfills and received a Certificate of Disposal or Ticket of Receipt for every manifest related to the seven contracts under the finding (see Attachment #1). The Certificate of Disposal certifies that the referenced material was disposed of in accordance with all local, state and federal regulations at the Landfill (exact name of the landfill inserted) and the Generator, Profile Number, tons of waste generated and the manifest numbers are attached.

Each contract is summarized below:

Non-Recovery Act projects:

Contract DC-09-C-0019/contract amount \$107,933.31

McQueeney – Crystal Property Managers (prime contractor) - Abcon

Comment per OIG auditor e-mail provided 4/25/11 to HANH: amount not always listed on the waste shipment records. No reconciliation of what was removed to what was disposed of.

HANH disputes this and has provided documentation that shows that the dollar amount that is unsupported is \$0.

Attached is a table prepared by Eagle Environmental, Inc. which reconciles the amount of impacted material removed and the Certificate of Disposal prepared by Minerva Enterprises, LLC corroborates receipt of impacted materials for disposal by Manifest #B2148, B2102, B2101, B2147, B2145, B2143, B2110, B2111, B2122, B2114, B2144.

The enclosed table identifies the type of material removed, quantity of each material, and the number of bags of asbestos waste and corresponding waste shipment records generated when bags are removed from the building. Bags were stored in a vacant, locked unit and removed every few days. The waste shipment records include the waste generated during the removal of 9,900 square feet of floor tile and associated mastic, 20 light fixtures, 20 sinks and 80 linear feet of cove base as well as polyethylene sheeting used to construct each containment and all protective equipment and cleaning supplies utilized as part of the asbestos abatement work within 21 containments. The average number of bags removed from each unit was approximately 37 bags which is consistent with the quantity of materials removed from each containment. There are no unsupported costs.

Contract 100408/contract amount \$1,450,115

McConaughy Terrace – Niram

Comment per OIG auditor e-mail provided 4/25/11 to HANH: amount not always listed on waste shipment records. Also, they were not always signed by the drivers.

Comment 9

Ref to OIG Evaluation

Auditee Comments

Comment 10

HANH disputes this and has provided documentation that shows that the dollar amount that is unsupported is \$0.

The 18 manifests that comprise the impacted material that was disposed of were provided to the OIG auditors. There were four that were questioned for completeness. Attached are the 18 manifests which were retrieved from archive by the landfill with two e-mails from the contractor, one dated May 5, 2011 which references the landfill getting the manifests from the archives and the other dated 4/28/11. The contractor confirms only 40CY containers were utilized and that the 4 manifest that appear to be incomplete are very light and difficult to read. Attached is an analysis of the weight of the asbestos-containing roofing & stucco materials removed which was prepared by Enviromed Services, Inc. The Weight Estimate totals 192 tons and the total weight accepted at the landfill was 208.33 tons.

Attached are two Certificates of Disposal prepared by Waste Management for the two disposal sites which show that all 18 manifests are accounted for. One Certificate of Disposal has 91.52 tons of material accepted at Grows North Landfill and the other has 116.8 tons of material accepted at Tullytown Resource Recovery Facility (TRRF) for a total of 208.32 tons.

Contract DC-09-C-0003/contract amount \$16,950

Ruoppolo Manor – Hewitt Construction (prime contractor) - EES

Comment per OIG auditor e-mail provided 4/25/11 to HANH: originally 40 cy changed to 10 CY no record for the additional 30 CY

HANH disputes that the entire dollar value is unsupported. It was clearly accepted that 10 CY of material was disposed of. HANH has reported the lack of documentation for the additional 30 CY. Dollar amount to be modified to \$12,712 at this time as portion that is unsupported.

At this time, all parties agree that the records confirm disposal of a minimum of 10 CY at a regulated landfill. Therefore the amount of the abatement contract that is unresponsive should be 75% of the total contract amount which is \$12,712. Certificate of Disposal prepared by Minerva Enterprises, LLC corroborates receipt of material represented by Manifest #31643.

Comment 11

Pursuant to 40 CFR Part 61 Subpart M, Section 61.150(e)(4) of the NESHAP regulation a letter has been sent to NESHAP notifying of the discrepancy of the waste removal. (see Attachment #2). This finding should be revised to note that cost for the removal of the 10 cubic yards was supported.

Therefore, out of \$1,574,998 in non-Recovery Act abatement contracts, at most \$12,712 may be unsupported.

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5

Ref to OIG Evaluation

Auditee Comments

Comment 12

Recovery Act Projects:

HANH is able to support \$452,658 in hazardous waste removed from federal projects was properly accounted for and disposed of in accordance with contract requirements for the Recovery Act projects reviewed that have been identified in the Finding Outline issued per footnote #9 as unsupported. These multiple contracts totaling \$452,658 have followed the industry standards and regulations required for removal and disposal of hazardous material. There are daily monitoring logs which confirm that the material removed has been bagged, clearly tagged and placed in the appropriate marked container/s on site which then has been transported to a regulated landfill. Every manifest has been reconciled to an executed Certificate of Disposal from the respective landfill.

**Contract DC-09-C-0016/contract amount \$147,106
Vacancy reduction – ACT Contract 1 and 2 (prime contractor) - Murdock Asbestos and Deleading**

Comments per OIG auditor e-mail provided 4/25/11 to HANH: amounts were in the waste shipment record and they were properly executed, but there was no reconciliation of the amount of waste removed to the amount disposed of.

HANH disputes this and has provided documentation that shows that the dollar amount that is unsupported is \$0.

In response to the OIG auditor's comment that there was no reconciliation of the amount of waste removed to the amount disposed of, per the Regulations governing asbestos abatement, removal and disposal, such is not required nor is it an industry standard. However, HANH provided an analysis of the weight removed prepared by Enviromed Services, Inc. Attached is an analysis of the weight removed prepared by Enviromed Services, Inc. The weight estimate totals 48,986 lbs. (24.49 tons). The tickets of the receipt from Modern Landfill and BFI Imperial Landfill which were transported by Transwaste, Inc. total 32.9 tons are also attached. These disposals had loads from multiple waste disposal sites but the weight accepted includes the amount of weight estimate.

Comment 13

Industry standard is the visual monitoring of the material being removed is properly bagged, tagged and placed in the identified hazmat container on site; then the waste is transported with the chain of custody being tracked on the manifest and a transporter may combine disposal loads. The manifests as the OIG auditors noted are properly executed and the backup ties in that the deliveries were made.

**Contract DC-09-C-0016/contract amount \$11,700
Vacancy reduction – ACT Contract 2 and 3 (prime contractor)- Abcon Environmental**

Comment per OIG auditor e-mail provided 4/25/11 to HANH: amount of waste not always included and the amount of waste removed not reconciled to the amount of waste disposed of.

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6

Ref to OIG Evaluation

Auditee Comments

Comment 14

HANH disputes this and has provided documentation that shows that the dollar amount that is unsupported is \$0.

In response to the OIG auditor's comment that the amount of waste was not always included and the amount of waste removed not reconciled to the amount of waste disposed of, attached is the Certificate of Disposal from Minerva Enterprises, LLC. Each manifest had specified disposal amounts noted in terms of bags and not in terms of cubic yards or tonnage. This is an acceptable identification of waste for disposal and it was accepted and disposed of properly in accordance with all local, state and federal regulations as certified by the landfill.

Contract DC-09-C--0023/contract amount \$178,300

Ribicoff – Oscar's abatement

Comment per OIG auditor e-mail provided 4/25/11 to HANH: no amount listed on waste shipment record

HANH disputes this and has provided documentation that shows that the dollar amount that is unsupported is \$0.

In response to the OIG auditor's comment that the waste shipment record did not list an amount, HANH provided an analysis of the weight removed prepared by EnviroMed Services, Inc. The Weight Estimate totals 9387 pounds. The Hakes Landfill Ticket has a Net Weight of 9480 lbs and in the line Comment: 157317 is the Manifest #. Therefore the waste was disposed of in accordance with the contract documents and is supported.

Comment 15

Therefore, out of the \$452,658 in Recovery Act abatement contract, \$0 are unsupported.

Auditor's Recommendation

"We recommend that the Director of HUD's Boston Office of Public Housing require the Authority to

1) develop policies and procedures for ensuring hazardous waste is properly disposed of and accounted for, 2) ensure that Authority staff is trained in environmental monitoring requirements, 3) monitors its environmental monitoring contractors to ensure that they are adequately meeting the requirements of their contracts, and 4) supports that asbestos waste removed from federal projects was properly accounted for and disposed of, or repay from non-federal funds the disposal costs it cannot support from the \$2,027,656 in abatement costs for the projects we reviewed."

Comment 16

The Authority's Response

- 1) The Authority has developed a Hazardous Materials Policy (Attachment #3) that is distributed to The Authority staff, prime contractors and sub contractors (if applicable) awarded abatement contracts and the licensed environmental consultants tasked with the project.

Ref to OIG Evaluation

Auditee Comments

Comment 17

2) The Authority shall have certain Authority staff attend appropriate asbestos abatement regulations training courses to be more informed, however, Federal, State and Local regulations require specialized licensure, education, technical expertise and experience to be an environmental project monitor. The project monitoring is not a task that can be performed by The Authority staff. The Authority will continue to contract for this service.

Comment 18

3) The Authority has prepared a Hazardous Materials Policy (Attachment #3) which includes the Manifest Tracking Form that assists The Authority staff in the oversight and communications to track the status of the disposal of the impacted material. It clarifies that the environmental contractor will be held responsible for tracking the receipt of the manifest/s within the timeframe and if it has not been provided in the 35 day and 45 day timeframe to conform to 40 CFR Part 61 Subpart M, Section 61.150(e)(4) of the NESHAP regulation regarding required notification to the responsible agency. The environmental monitoring contractor cannot be held responsible for the manifest being provided but only the oversight and reporting requirements. If these responsibilities are not met, The Authority will withhold payment in their lack of performance of their contractual obligations. This is noted in the Hazardous Materials Policy (Attachment #3)

Comment 19

4) The agency has provided documentation that supports the abatement costs on all Recovery Act funded projects and has supported the costs of all by \$12,712 of the non-Recovery Act funded abatement projects. It is The Authority's position that the statement that the Authority cannot support \$2 Million in abatement costs paid on these contracts is incorrect. The Authority provided support documentation to the Office of the Inspector General auditors on all the contracts and met or exceeded the regulations and industry standards to be followed for hazardous material removal. In conformance with State, Local and Federal regulations, a licensed environmental consultant was contracted to perform all tasks as a project monitor as required per contract. Each of the abatement contractors that performed the work had executed manifests, the chain of custody of the impacted material being removed and delivered to the identified landfill. These manifests were included in a report which was prepared for each contract by the licensed environmental consultant. These were provided to the OIG auditors for their review. The Authority has provided as supportive documentation that the disposal of the asbestos waste was done in accordance with the contract requirements, refer to Attachment #1, a Certificate of Disposal or Tickets of Receipt from the respective landfill for each of the contract.

Ref to OIG Evaluation

Auditee Comments

Comment 20

Auditor's Finding 2: The Authority did not always comply with labor standards enforcement requirements.

Auditor Finding: The Authority did not complete the required enforcement reports for at least seven contractors, whose underpayments were over \$1,000 and totaled more than \$244,000, and in which at least six violations appear to be willful non compliance.

The Authority's Response:

It is the Authority's position that it has historically and currently submitted complete and accurate semi-annual enforcement reports that included the reporting of contractors that had underpaid an employee(s) in the amount over \$1,000.00. The Authority believed that filing the semi-annual enforcement reports met the regulatory requirements. The Authority has since revised the stated practice to report findings in accordance with the 29 CFR 5.7 (a) (2).

Auditor's Finding: The Authority did not ensure all required information reported to HUD in its semi-annual enforcement reports were complete and accurate.

The Authority's Response:

The Authority disagrees that it did not ensure all required information reported to HUD in its semi-annual enforcement reports were complete and accurate. The Authority contracted the compliance tasks to an outside contractor and monitored their performance under that contract. Violations were reported to the Authority by the contractor. The Authority included information on its semi-annual report. The Authority reported all the required information in its possession at the time of the completion of the Semi-Annual Labor Standards Enforcement Report and provided the OIG Auditors with copies of the Reports. The Semi-Annual Labor Standard Enforcement Reports were completed with data obtained from the Authority's contractor (i.e. City of New Haven Commission on Equal Opportunities). The Authority acknowledges that it is possible that additional restitution and/or complaints may have been collected and/or submitted to the Authority contractor after the submission of the reports. As a result, the Authority changed its procedure to have its staff collect and track all restitution and/complaint documentation to reduce and/or eliminate any delay or inaccuracy in enforcement reporting. However, the Authority disputes this finding because it has consistently reported enforcement activity to HUD via the Semi-Annual Labor Standard Enforcement Reports. Listed below are the Semi- Annual Labor Standard Enforcement Reports submitted to the Auditors :

- Semi- Annual Labor Standard Enforcement Report period 2: April 1, 2008 to September 30, 2008. The numbers of Prime Contractors were 40 totaling contract amount \$15,059,573.00. The numbers of complaints were 5; number of employees whom wage restitution was collected and/or disbursed was 40; and restitution collected and/or disbursed was \$131,564.95.

Comment 21

Ref to OIG Evaluation

Auditee Comments

Comment 22

- Semi- Annual Labor Standard Enforcement Report Period 1: October 1, 2008 to March 31, 2009. The number of Prime Contractors were 14 totaling contract amount \$640,890.00; The number of complaints were 4; number of employees whom wage restitution was collected and/or disbursed was 10; and restitution collected and/or disbursed was \$39,750.00.
- Semi- Annual Labor Standard Enforcement Report Period 2: April 1, 2009 to September 30, 2009. The numbers of Prime Contractors were 17 totaling contract amount \$14, 646,481.00; The numbers of complaints were 4; number of employees whom wage restitution was collected and/or disbursed was 3; and restitution collected and/or disbursed was \$7, 363.54.
- Semi- Annual Labor Standard Enforcement Report Period 1: October 1, 2009 to March 31, 2010. The numbers of Prime Contractors were 19 totaling contract amount \$ 4,550,929.00; The numbers of complaints were 2; number of employees whom wage restitution was collected and/or disbursed was 1; and restitution collected and/or disbursed was \$2,296.50.

Auditor's Finding: The Authority did not always document that it performed a review of certified payroll and followed-up on payroll falsification indicators

The Authority's Response:

HANH **disputes this finding.** It is not required that 100% of payrolls be reviewed, in fact that is discouraged by HUD guidance. The OIG was provided and reviewed significant number of payrolls that clearly indicated that they had been reviewed. Additionally, they reviewed extensive desk audits that were completed on selected payrolls.

Comment 23

In reviewing payroll the Authority has closely monitored payroll falsification indicators in conformity with the spot-check outlined in the HUD streamlining guidance. The Authority maintains that it is not required or practical to conduct 100% payroll reviews. "In fact, HUD found much more serious violations involving more underpaid workers and significantly more wage restitution could be missed because the Authority's contract staff was over tasked with HUD –mandated payrolls minutiae...It is also the case that the violations disclosed behind falsified payroll are much more egregious (both in terms of affected workers and the amount of underpayment) than violations that appear on the face of the payroll."(See page 11 Streamlined of the HUD Practical Guide for the States, Indian Tribes and Local Agencies, September 2009). The OIG report failed to mention that they reviewed numerous detailed investigations which included on –site interviews with workers, questionnaires answered by contractor employees, written statements or complaints that were investigated and lead to various resolutions including but not limited to restitutions.

Auditor's Finding: The Authority did not require contractors to sign a statement of future compliance when underpayment violations were identified.

Ref to OIG Evaluation

Auditee Comments

Comment 24

The Authority's Response:

The Authority disputes this finding. Statements of compliance are obtained from every contractor in the process described below. (Sample Statement of Compliance is attached).The Authority's IFQ, IFB and RFP have historically included contract terms that ensure compliance with Federal, State and Local Laws, Statute, Ordinance and Regulation with regard to contractor's compliance with wage rates and authorized worker provisions. Additionally, contractors and subcontractors involved in construction contracts in excess of \$2,000 are required to attend a Pre-Construction Meeting. The contractor is informed that they must pay wages in accordance with Federal Labor Standards issued pursuant to the Davis-Bacon Act by the Department of Labor (DOL) including the overtime requirements of the Contract Work Hours and Safety Standards Act which are applicable to construction contracts in excess of \$100,000. Each contractor is mandated to execute an acknowledgement of receipt of the following:

- Federal Davis Bacon Labor Standards,
- Department of Homeland Security (U.S. Citizenship and Immigration Services) Form I-9 , Employment Eligibility Verification required for each new employee,
- Utilization Requirements for Section 3 and WBE
- A Sample Federal Wage Payroll Form
- *Statement of Compliance attesting to pay all persons employed full weekly wages earned with rebate and in accordance with Federal Regulations and will abide by the terms of the Copeland Act. (Attachment # 4)
- Statement of Compliance regarding hiring of legal workers (Attachment #5)

As stated above the Statement of Compliance is distributed at the Pre-Construction Meeting and contractors are required to submit an executed Statement of Compliance attesting that they will pay all persons employed full wages earn, comply with Federal Regulations (29 CFR subtitle A) and the Copeland Act. As an additional measure, the Authority will enhance the stated compliance procedure to include the Statement of Future Compliance for contractors that are deemed willful violators, however, this will be additive to the Statement of Compliance already obtained by HANH.

Auditor's Finding: Establish an account to hold restitution collected for workers owed restitution but who were not found or in instances of appeal by the contractor.

The Authority's Response:

The Authority disputes this finding. There is no requirement that the Authority establish an escrow account as the means of holding restitution payments. The requirement is to obtain restitution. The Authority has aggressively obtained restitution where there is the evidence of the underpayment. The Authority ensures that restitution is made promptly and in full and that the failure to pay correct wage rate has been reported on the semi-annual enforcement reports. In cases where restitution is not promptly made the Authority has held payment of invoices, retainage and/or notified the surety of the performance bond. In cases where restitution is due to workers who cannot be located (and paid) the Authority retains the contractors' payment (certified check) in house and holds the payment for three (3) years; thereafter, the payments were forwarded directly to the Department of Labor.

Comment 24

Ref to OIG Evaluation

Auditee Comments

Comment 26

The Authority has revised its practice of forwarding payment to the Department of Labor and will forward the stated payment to HUD.

Auditor's Finding: Ensure that its enforcement file system was complete.

The Authority's Response: HANH disputes this finding. HANH has enforcement files on every contract. As per the HUD Streamlining Guide the "Local Contracting Agencies (LCAs) can best determine how to maintain their files provided that certain minimum requirements are met." The Authority is in full compliance with DOL regulations that require certified payrolls and basic records relating to the payrolls are preserved not less than three years after completion of the project and the resolution of any enforcement actions which may carry over after completion. There is no specified requirement that mandates that enforcement files include every email pertaining to the enforcement action be printed and included into the compliance folder. The Auditor was supplied with documentation including emails demonstrating compliance and enforcement of the Labor Compliance.

Auditor Finding: No written Policies or Procedures

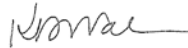
The Authority's Response:

The Authority disputes this finding. There is no requirement for Policies and Procedures. The Authority contends that its contract language and practices are and have been in compliance with the Federal, State and Local Laws and Regulations. However, it should be noted that on February 15, 2011 the Authority's Board of Commissioners authorized the attached Contract Compliance Policy (see Attachment #6) and immediately thereafter the Policy was made available to all the Authority's staff. The Authority has recently scheduled additional Procurement Training, Labor Compliance Training, Hazardous Material Training and Section 3 Training.

Comment 27

If you have any questions, comments or concerns about this matter, please do not hesitate to contact me.

Very truly yours,



Karen DuBois-Walton

OIG Evaluation of Auditee Comments

Comment 1 The Authority did not have all of the waste shipment records and did not follow up with the environmental monitoring contractor or the abatement contractors to obtain them in a timely manner, as required. According to a discussion with the director for capital projects & modernization, the Authority's environmental monitoring contractors ensure accountability from the unit to the container; after that, there is no other process for ensuring accountability of materials disposed of besides the waste shipment record. The Authority did not provide us final summary reports from its licensed environmental monitoring contractors for four of the nine abatement contracts, either during the audit or as part of its response. After we requested the environmental monitoring contractor's reports and supporting documentation from the Authority during our audit, the Authority's executive project manager had to contact the environmental monitoring contractor to obtain this information for projects completed in 2010.

Further, the Authority did not obtain complete waste shipment records in a timely manner for all projects. This issue was brought to the Authority's attention during the first audit of the Authority in September 2010; however, when we requested all of the waste shipment records during this audit, the Authority was not able to readily provide them. We requested all of the waste shipment records and other supporting documentation on February 14, 2011; however, as of April 6, 2011, we hadn't received all of the supporting documentation. Further, based on the documents that were provided during our audit, the Authority was not able to account for all of the asbestos waste to ensure that it was disposed of properly. Waste shipment records did not always list the amount of waste disposed of or were not properly executed by all parties involved in the chain of custody. The Authority did provide additional documentation in response to our findings; however, based on what was provided, we were not able to determine whether all hazardous waste were properly disposed of, therefore, no changes were made to the unsupported amount in the finding. HUD will need to determine whether the Authority can adequately support proper disposal of the asbestos waste.

Comment 2 Our finding that the abatement contractors did not comply with contract requirements for the proper disposal of hazardous waste relates to the abatement contractors that performed the abatement work, not the environmental monitoring contractors. The reason we state that they did not comply with contract requirements is that they were not able to support and account for the proper disposal of waste removed from the projects. The waste shipment records were not always complete and were not provided to the Authority in a timely manner.

Comment 3 The Authority did not monitor its environmental monitoring contractors to ensure that they complied with contract requirements and provided all of the required documents to the Authority in a timely manner. The Authority did not have all of the waste shipment records and did not follow up with the environmental

monitoring contractor or the abatement contractors to obtain them in a timely manner, as required (See comment 1). In response to preliminary audit results, the Authority began using a manifest tracking form to ensure it receives the waste shipment records in a timely manner. We acknowledge the Authority efforts to correct this deficiency.

Comment 4 The reconciliations were requested during the audit so we could verify that the waste was accounted for, but it was not provided until after we presented our findings to the Authority. A reconciliation may not be an industry standard; however, unless the Authority performs a reconciliation, it will not be able to support that all asbestos materials removed from the project were accounted for in accordance with requirements. Further, since the environmental monitoring contractors perform the monitoring of the abatement contractors and the waste shipment records are sometimes provided directly to the Authority, the Authority needs to be aware of the amount of waste generated during the project to ensure that all of the waste shipment records are obtained in a timely manner to account for the waste. Otherwise, the Authority may only receive one waste shipment record when two or three are required to account for all of the waste. Currently, there is a disconnect between the amount of waste removed from a project and the amount of waste disposed of. There needs to be a procedure in place to adequately account for the waste.

Comment 5 See comment 1.

Comment 6 The Authority used eight different abatement contractors for the nine projects reviewed. Two contractors were used on 2 different projects for a total of 10 abatement contractors. Two contractors were counted twice, but the employees were not always the same on each project. On one project, we weren't able to determine which employees worked on the project because we weren't provided with any documentation. Therefore, the Authority did not provide complete records to support that all of the abatement workers were properly licensed and trained and had the proper medical clearance.

Comment 7 See comment 1.

Comment 8 In response to our finding, the Authority provided additional documentation to support proper disposal of hazardous materials, however we were not able to adequately evaluate whether the Authority was able to support proper disposal of hazardous materials as the information provided was not complete, not independent, and missing pertinent information. For example, the Authority did not provide any additional support for one contract we questioned. In another example, the Authority provided certificate of disposals from one landfill, however, the certifications do not indicate the amount of waste received and refer to the "attached, certified, original copies", which were not included in the package. In another example, the information from the disposal sites did not indicate the waste shipment record numbers or project associated with the amount

of waste shown as received. Additionally, the Authority provided estimates of waste removed from the projects by the environmental monitoring contractors after the findings were provided, which are not independent estimates. HUD will need to determine whether the Authority can adequately support proper disposal of the asbestos waste.

Comment 9 Documentation provided was not complete. The certificate of disposal does not indicate the amount of waste received and indicates that there were attached, original copies of waste records; however, these were not included in the supporting documentation provided. The copies of the waste shipment records that the Authority provided us during the audit were illegible. Further, the waste estimate provided by the Authority did not include the amount of waste removed (unit of measure) as required. Additionally, the waste estimate was completed by the environmental monitoring contractor, which is not an independent estimate. Therefore, HUD will need to determine whether the Authority can adequately support proper disposal of the asbestos waste.

Comment 10 Of the 18 waste shipment records associated with this project, 5 did not list the amount of waste disposed of. Also, seven waste shipment records were not executed by the driver (three of these also did not have amounts listed and were counted above). Thus, nine of the waste shipment records were not complete and properly executed. Therefore, the Authority was not able to properly account for the asbestos waste removed from this project and ensure that it was properly disposed of. The Authority provided additional supporting documentation it obtained from the disposal sites and its environmental monitoring contractor after we provided our findings to the Authority. The disposal site showed that 208.32 tons was disposed of related to these waste shipment records, and the environmental monitoring contractor estimated 192 tons were removed. The estimate of waste removed, as determined by the environmental monitoring contractor for the Authority, was done after the findings were provided and is not an independent estimate. HUD will need to determine whether the Authority can adequately support proper disposal of the asbestos waste.

Comment 11 We did not prorate the abatement costs but questioned the entire cost of the abatement contract as unsupported, and the Authority needs to support the disposal costs associated with the contract or repay the amount of disposal costs that is unsupported. Disposal costs were not broken out from the total abatement costs. We acknowledge that a waste shipment record showed 10 CY was removed from the project (changed from 40CY). However, the record does not show the amount received by the landfill or provide an explanation why the amount was revised from 40 CY to 10 CY. Also, in this case, the Authority stated that the abatement contract was \$16,950; however, we obtained a copy of the signed proposal for the abatement work, which was for \$41,200. Additionally, documentation at the agency (award recommendation notice and compliance statements) showed that the contract amount was \$31,500. Therefore, we are not

sure what the actual contract amount is. We used the lowest contract amount in the report.

Comment 12 See comment 8.

Comment 13 See comment 4. Also, the additional supporting documentation provided showed 24.49 tons was estimated by the environmental monitoring contractor and 32.9 tons was shown as received by the disposal site. The estimate of waste removed was completed by the environmental monitoring contractor after the findings were provided and is not an independent estimate. Additionally, the response indicates that “these disposals had loads from multiple waste disposal sites but the weight accepted includes the amounts of weight estimates”. We disagree with this assertion since there is no way to distinguish the waste generated attributed to the additional loads from waste attributed to this project (i.e. difference between 32.9 vs. 24.49 tons). Also, one of the three disposal facility records provided did not indicate the waste shipment record numbers or project. Another disposal facility record showed a waste shipment record number that was not a waste shipment record provided during the audit for this project. HUD will need to determine whether the Authority can adequately support proper disposal of the asbestos waste.

Comment 14 The waste shipment records requires the generator to show the type of container such as bags or drums and the quantity of materials, which should be shown as a unit of measure, such as cubic yards or tons, as required by Federal regulations¹¹. One of the three waste shipment records showed the number of bags and did not list the amount (quantity) of waste disposed of. The Authority did not provide documentation from the disposal site showing the amount of waste received or an estimate of waste removed. Therefore, HUD will need to determine whether the Authority can adequately support proper disposal of the asbestos waste.

Comment 15 Again, this information was not provided during the audit. It was not made available until after the audit work was complete because the Authority did not have the information available at its office. The waste shipment record that was available at the Authority and provided to us did not list an amount of waste disposed of. The additional supporting documentation provided by the Authority in response to our report from the disposal site showed 9,480 pounds was received and the environmental monitoring contractor estimated 9,387 pounds. However, the estimate of waste removed was completed by the environmental monitoring contractor after the findings were provided and is not independent. Therefore, HUD will need to determine whether the Authority can adequately support proper disposal of the asbestos waste.

¹¹ Appendix to Title 40: Protection of Environment, Part 262—Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700–22 and 8700–22A and Their Instructions)

- Comment 16** We revised the finding to show that the Authority developed a hazardous waste policy during the audit. The written policy appears to address deficiencies identified during the audit; however, HUD will need to confirm that the new policy complies with all requirements.
- Comment 17** We agree that the Authority still needs to contract out its environmental project monitoring; however, Authority staff members also need to be familiar with environmental requirements so that they can properly monitor and oversee the Authority’s environmental monitoring contractors and ensure that they meet all of their contract requirements.
- Comment 18** See comment 16.
- Comment 19** See comments 1 and 8.
- Comment 20** The Authority stated it has revised its practice to comply with the requirement to submit the required employer-specific enforcement reports to HUD.
- Comment 21** The Authority’s response stated that it disputed the finding because it had consistently provided enforcement activity to HUD via the semiannual labor standard enforcement reports. However, the finding does not state that the Authority did not complete the semiannual enforcement reports but, rather, that the reports were not always complete and accurate. As stated in the finding, we found instances in which complaints against contractors were not included, restitution collected was not always reported, and overtime restitution collected was not broken out. We reviewed whether the Authority included the missing information in the next semiannual enforcement report and found that it had not. The Authority did not provide support showing that this finding was incorrect; therefore, no changes were made.
- Comment 22** We did not state that 100 percent of payroll reviews were required. We agree that 100 percent of payroll reviews are not required and that spot checks of payroll are adequate. As stated in the finding, we could not always determine whether certified payrolls were reviewed or false payroll indicators followed up on. In several cases, the agency also found that contractors were using undocumented workers. This violation by itself warrants more scrutiny of the payrolls submitted.
- Comment 23** The Authority stated that we failed to mention that it reviewed many detailed investigations. We disagree as the first sentence of the finding specifically states, “When the agency identified violations through inspections, interviews with employees, or complaints, it generally performed a thorough review of documentation provided by contractors and did an adequate job of determining restitution, based on the certified payrolls and other information obtained, and ensuring that employees were paid.”

- Comment 24** The Authority agreed that it did not require contractors to sign a statement of future compliance. We added to the finding that the Authority requires that the contractor sign a statement of compliance with Federal requirements, including Federal labor standards, before commencing work. However, this is not the same as the statement of future compliance when a contractor is found to have willfully underpaid its employees.
- Comment 25** The Authority did not agree with us that an escrow account was required. However, according to HUD guidance, “Making Davis Bacon Work: A Contractor’s Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects,” “Sometimes, corrective actions or disputes continue after completion and provisions must be made to ensure that funds are available to pay any wage restitution that is ultimately found due. In these cases, we allow projects to proceed to final closing and payments provided the prime contractor deposits an amount equal to the potential liability for wage restitution and liquidated damages, if necessary, in a special account. The deposit or escrow account is controlled by the contract administrator.” In this case, the contract administrator would be the Authority.
- Comment 26** When we asked the Authority for its enforcement files for the contractors in our sample, we were told that the Authority did not have a specific enforcement file for each contractor but that several Authority staff may have e-mails or other documentation. We were told that information may not all be in one place. The agency had enforcement files; however, as stated, they were not complete, and we could not always determine what the final resolution was based on documentation in the file. The Authority’s chief legal officer stated that the Authority also completes an evaluation form at the end of a job for the contractor and if it has had problems with the contractor, this will be considered on any future contracts that it bids on. However, when we asked for the contractor evaluations, the Authority could not readily provide them, and when we did obtain them, we found that the evaluations were incomplete and in several cases, were dated after our request for this information.
- Comment 27** Although the Authority stated that it disputes the finding, it developed written policies and procedures after we pointed out the lack of written policies and procedures related to labor standards enforcement at a February 10, 2011, meeting and in prior discussions with Authority staff. The Authority is required to comply with labor standards and other Federal requirements; therefore, written policies and procedures are a necessary internal management control, and without them, there is a greater risk of noncompliance with requirements. The Authority needs to revise its policies and procedures to submit employer specific enforcement reports to HUD for cases of willful intent or where restitution is \$1,000 or more for one employer, even when restitution is collected. It also needs to implement additional steps in its written policies and procedures to document cases of willful intent by contractors when underpayments are identified, especially when contractors submit false payrolls, and ensure that contractors sign a statement of

future compliance so that the Authority can make the appropriate recommendation to HUD for debarment of repeat willful violators. HUD needs to confirm that the Authority's written policies and procedures comply with requirements.

Appendix C

VIOLATIONS THAT APPEARED TO HAVE BEEN WILLFUL NONCOMPLIANCE

Contractor	Restitution collected	Violations cited by agency
1	\$51,090	Undocumented workers, nonpayment of wages, failure to pay prevailing wage rates. According to the prime contractor for this job, he found out that the foreman for contractor 1 was a subcontractor that had an agreement not to pay prevailing wage rates.
2	\$39,352	Undocumented workers, complaints made by six workers of underpayment of wages including overtime, and misclassification of work performed.
3	\$3,750	Nonpayment of wages to two undocumented workers. The subcontractor was not disclosed by the contractor and did not submit certified payrolls.
4	\$6,669	Complaints from two workers for underpayment of wages, misclassification, and overtime not paid.
5	\$2,296	Certified payrolls were not submitted for an undisclosed subcontractor until identified by agency, and a worker was underpaid.
6	\$7,284	Undocumented workers, underpayment of wages, conflicting and inaccurate payrolls, including one worker interviewed by the agency at site not shown on the certified payroll. Payroll checks to the worker were returned due to insufficient funds.