Issue Date
September 3, 2010

Audit Report Number
2010 BO 1008

TO: Philip W. Holmes, Director of the Office of Housing, 1FHMLAT

FROM: John A. Dvorak, Regional Inspector General for Audit, (Boston) Region, 1AGA

SUBJECT: The Avesta Housing Management Corporation Did Not Properly Follow HUD Rules and Regulations

HIGHLIGHTS

What We Audited and Why

We audited the Avesta Housing Management Corporation (Avesta), located in Portland, ME, in response to a request from the U.S. Department of Housing and Urban Development's (HUD) Manchester, NH, Office of Housing field office. The request came after the completion of an Office of Inspector General (OIG) audit[1] of the Orchard Court project. Avesta was the previous manager of Orchard Court and is the current manager of 30 other HUD projects.

Our overall audit objective was to review Avesta's management of the other HUD projects and determine whether HUD funds were used in accordance with the regulatory agreement and HUD requirements. Specifically, we wanted to determine whether (1) Avesta complied with HUD procurement policies and procedures, (2) services provided by Avesta under identity-of-interest contracts were reasonable and adequately supported, and (3) Avesta's method of cost allocation was adequate and supported.

[1] Audit report dated November 6, 2008, Report No.2009-BO-1002.

What We Found

The audit showed that Avesta did not always comply with HUD regulations. Our audit identified several specific deficiencies that need to be addressed. The audit also showed Avesta maintained its properties in good condition, REAC scores have been high, and it's management reviews conducted by Maine State Housing and Rural Development have been excellent. Also, the vacancy rates at its properties have been around 1% with collection rates at 99%.

However, Avesta did not comply with HUD procurement procedures because it could not furnish documentation to substantiate that it solicited bids and/or obtained cost estimates when procuring ongoing services and construction contracts. In addition, it had not established written procurement policies. Procurements totaling more than $2.6 million covering a 3-year period were unsupported.

Additionally, Avesta could not demonstrate that the identity-of-interest services it provided to the HUD projects it managed were not in excess of costs that would be incurred in arms-length transactions. Therefore, there was no assurance that the HUD projects incurred an appropriate or reasonable cost for these services. The cost of the services for maintenance, janitorial, and resident service fees totaling more than $1.6 million over a 3-year period was considered unsupported.

Lastly, Avesta failed to comply with HUD requirements to ensure that the allocation of the time spent by its property managers working with HUD projects was adequately supported. As a result, there was no assurance that the property manager salaries were allocated equably among the 30 HUD and 30 non-HUD projects managed by it. Avesta also did not properly ensure the reasonableness of costs for accounting/bookkeeping services. Costs of more than $796,000 covering a 3-year period were unsupported.

What We Recommend

We recommend that the Director of Multifamily Housing in the HUD Manchester, NH, field office require Avesta to comply with all terms and conditions of its management certifications and HUD requirements for soliciting written or verbal cost estimates and maintaining documentation supporting the basis for contract awards. In addition, Avesta should provide an independent cost analysis for each procurement citied in this report to ensure that more than $2.6 million was reasonable and supportable. For any amounts not reasonable or supportable, it should reimburse the HUD projects from non-Federal funds.

We also recommend that the Director require Avesta to ensure compliance with the requirements for the (1) cost for services provided under arms-length transactions not exceeding the amount ordinarily paid for such services, (2) disbursements to HUD projects being reasonable and adequately supported, and (3) supervisory salary costs attributable to administrative duties being properly absorbed by management fees. The Director should also require Avesta to provide acceptable documentation in support of the more than $1.6 million charged for maintenance, janitorial, and resident service coordinator fees and determine whether the costs were reasonable. For fees not considered reasonable, HUD should ask Avesta to reimburse the HUD projects from non-Federal funds.

Lastly, we recommend that the Director require Avesta to provide documentation in support of the distribution of $470,358 in property manager salaries to the HUD projects. For any costs not supported, reimburse the HUD projects from non federal funds. In addition, we recommend that the Director require Avesta to provide documentation to determine if $325,832 in accounting/bookkeeping service costs were at or below market rate. For any service costs that exceeded the market rate, Avesta should reimburse the HUD projects from non-Federal funds.

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 auditee the draft report on July 7, 2010 and requested a response by July 21, 2010. The exit conference was delayed at the request of the auditee and was eventually held on July 26, 2010. We received the auditee's response on July 30, 2010**.** The auditee did not agree with the conclusions and recommendations in the findings.

The complete text of the auditee's response, along with our evaluation of that response, can be found in appendix B of this report. The auditee also provided some attachments with its response and those are not included in the report, but are available upon request. Although these attachments are not exhibited in the report, most of these items were either reviewed during OIG's field work or were addressed in our evaluation of the auditee's written response.

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BACKGROUND AND OBJECTIVE

The Avesta Housing Management Corporation[2] (Avesta) was founded in 1974. Over three decades, Avesta Housing has grown into the largest nonprofit housing agency in Maine. Avesta Housing maintains administrative headquarters at 307 Cumberland Avenue, Portland, ME, with a full-time and part-time staff of 65 employees. Avesta Housing is led by a board of directors, consisting of 14 members whose membership is drawn from a variety of banking, business, public, community, social service, and housing organizations. Avesta has developed more than 1,700 units of affordable housing for itself and other entities. Avesta has an assisted living program that operates within the Maine Department of Health and Human Services long term care programs.

Avesta's portfolio of 30 U.S. Department of Housing and Urban Development (HUD)-affiliated and 30 Non-HUD-affiliated projects includes a variety of conventional as well as State and federally assisted family and elderly housing. Avesta manages about 1,668 units of housing including its own properties and properties owned by others. Seven of the HUD-affiliated projects are under HUD 202/Project Rental Assistance Contracts (PRAC). The remaining 23 HUD-affiliated projects receive Section 8 housing assistance payments and Avesta manages these projects for the project owners. Avesta provides maintenance, janitorial or resident service coordinator services under identity-of-interest contracts for 29 of the 30 HUD projects it manages.

The primary objective of the audit was to review the management of HUD projects by Avesta and determine whether HUD funds were used in accordance with the regulatory agreement and HUD requirements. Specifically, we wanted to determine whether (1) Avesta complied with HUD procurement policies and procedures, (2) services provided by Avesta under identity-of-interest contracts were reasonable and adequately supported, and (3) Avesta's method of cost allocation was adequate and supported.

[2] Also formerly known as York Cumberland Housing Management Corporation

RESULTS OF AUDIT

Finding 1: Avesta Failed To Follow HUD Procurement Procedures

Avesta's procurement practices did not always comply with HUD regulations. Specifically, Avesta could not provide documentation to substantiate that it solicited bids and/or obtained cost estimates when procuring ongoing services and construction contracts. In addition, it had not established written procurement policies. As a result, there was a lack of assurance that the procurement process was fair and equitable and that more than $2.6 million spent represented the most favorable prices that could have been obtained. These deficiencies occurred because Avesta did not follow HUD procurement regulations and its chief executive officer (president) did not adequately monitor the performance of its former director of maintenance, who was responsible for procurement activity.

$2,462,770 Paid for Services Was Unsupported

Avesta did not follow HUD procurement policy that requires it to (1) solicit written cost estimates from at least three contractors or suppliers for any contract for ongoing supplies or services which are expected to exceed $10,000 per year and (2) retain documentation of all bids as part of the projects records.

More than $300,000 charged from January 1, 2007, to December 31, 2009, to the HUD projects for ongoing services was unsupported. (See exhibit 1) Avesta procured services from two separate snow removal/grounds care companies and a landscaping company that provided services exceeding $10,000 each year over a three year period for seven HUD projects. However, before awarding the contracts to these companies, Avesta failed to demonstrate that it obtained competitive bids or written cost estimates.

In addition, there was no evidence that Avesta solicited verbal cost estimates for $2,074,597 charged to the HUD projects for ongoing services provided by 30 companies. (See Appendix D). HUD handbooks require verbal or written bids for supplies or services not to exceed $5,000 but are silent on requirements for purchases between $5,000 and $10,000. Consequently, HUD Manchester, New Hampshire field office dictates that for any contract for ongoing supplies or services estimated to cost less than $10,000 per year, Avesta should solicit verbal cost estimates and make a record of any verbal estimates obtained. Therefore, we determined that the charges below $10,000 in any given year for the 30 companies totaling $2,074,597 were unsupported.

EXHIBIT 1

Project	Service	2007 Costs	2008 Costs	2009 Costs	Total Costs
Baron Place	Snow removal & grounds care	$18,131.63	$21,763.29	$19,754.96	$59,649.88
Foxwell I	Snow removal & grounds care	27,883.50	31,849.50	31,093.00	90,826.00
Golden Park	Snow removal & grounds care	19,653.63	21,473.96	19,725.98	60,853.57
Orchard Terrace	Snow removal & grounds care	17,091.00	20,537.00	19,925.10	57,553.10
New Marblehead No	Landscaping	10,618.08	12,134.61	12,683.00	35,435.69
New Marblehead Manor	Landscaping	13,200.58	13,699.61	12,243.00	39,143.19
Unity Gardens	Landscaping	13,819.38	15,399.96	15,491.81	44,711.15
Total		**$120,397.80**	**$136,857.93**	**$130,916.85**	**$388,172.58**

Economically and Socially Disadvantaged Firms Did Not Have an Opportunity to Participate in the Procurement Process

Supplies and services must be competitively bid not only to achieve the lowest reasonable construction cost, but also to provide increased fair access to the economic opportunities created through a project. The certification agreement between the project owners and management agent stipulates that the agent agrees to provide minorities, women, and socially and economically disadvantaged firms equal opportunity to participate in the project's procurement and contracting activities. Of the 30 HUD properties, 19 are regulated by certification agreements.

Six Construction Procurements Reviewed Had Deficiencies

We reviewed ten of Avesta's construction procurements costing $309,355. For six of the ten, we identified at least one violation of HUD procurement regulations as follows:

Company	Project	Work	Costs	Deficiencies
Royal Glass	Pinewood Apts	Window repl.	$ 59,960	3
Patriots Mech.	Blackstone 1 & 2	Wt. heater repl.	14,925	2
Harold Brooks	Foxwell I	Roofing	35,800	1
Harold Brooks	Maple Grove	Roofing	9,850	3
Harold Brooks	Baron Place	Siding	31,600	2
Harold Brooks	Foxwell II	Siding	33,700	2
			$185,835	

Deficiency Explanation:

1. Contract awarded to highest bidder without justification. Avesta awarded a contract for roofing work at the Foxwell I project to a contractor that was not the lowest bidder. Avesta's president stated that its former director of maintenance did not feel comfortable after checking references and observing prior work of the contractor that submitted the lowest bid. However, Avesta did not furnish auditable documentation to substantiate its claims.

2. Contracts awarded with inadequate competition for three procurements. The evidence showed that only two written cost estimates were obtained for the replacement of water heaters at the Blackstone project. In addition, only two written cost estimates were obtained for siding/reshingling work at the Baron Place project and the Foxwell II project. In accordance with HUD regulations, a management agent (Avesta) is required to maintain written cost estimates for contracts in excess of $10,000 or evidence that verbal estimates were received from at least three contractors.

3. Contract awarded without competition. There was no evidence that Avesta solicited bids before awarding a contract for the installation of Harvey windows at its Pinewood Apartments project. Avesta stated that due to certain circumstances, bidding was not required for this procurement. Again, Avesta did not furnish auditable documentation to substantiate its claims. We were provided only one estimate for roofing work at Maple Grove. Avesta could not locate all of the paperwork related to this procurement.

Avesta Did Not Maintain Written Procurement Policies and Procedures

Avesta did not maintain written procurement policies and procedures. It stated that it followed HUD's procurement regulations and planned to prepare its own written procurement policies in the near future. An Avesta official furnished us a one-page draft of a procurement policy that Avesta began preparing during our audit.

Avesta maintained only minimal procurement documentation for the procurement actions reviewed. Avesta's president stated that, for the most part, his company followed the procurement requirements outlined in the HUD handbook. The president further stated that any inconsistencies in applying proper procurement procedures could be attributed to the company's high turnover in chief financial officers and the former director of maintenance's failure to maintain complete and organized procurement records. We contend that as the head of a company, a president is responsible for the performance of his staff. The president's job description states that he is required to oversee all management functions, including managing his senior staff.

Conclusion

Without the documentation to substantiate that an analysis of similar goods/services offered in the area was performed, HUD could not be certain whether the project received the goods/services at the lowest possible price. In addition, HUD had no assurances that the procurement process was fair and equitable. These deficiencies occurred because Avesta did not follow HUD procurement regulations and its president did not adequately monitor the performance of its former director of maintenance's activities.

Recommendations

We recommend that the Director of Multifamily Housing in the HUD Manchester, NH, field office

1A. Require Avesta to ensure that $2,648,605 was reasonable and supported. For any amounts not reasonable and supported, HUD should require Avesta to reimburse the HUD projects from non-Federal funds.

1B. Require Avesta to comply with all terms and conditions of its management certifications and HUD rules and regulations that require soliciting written or verbal cost estimates and maintaining documentation supporting the basis for contract awards.

1C. Require Avesta to establish a written procurement policy that follows Federal procurement regulations and provide training to its staff regarding the new policy.

RESULTS OF AUDIT

Finding 2: Avesta Did Not Adequately Support the Costs for Identity-of-Interest Services

Avesta could not demonstrate that its costs for maintenance, janitorial and resident service coordinator services were not in excess of costs that would be incurred in arms-length transactions, or that its costs for these services were charged correctly to the HUD projects. As a result, there was no assurance that the costs charged to HUD projects for services totaling more than $1.6 million were the most reasonable and economic prices and whether the HUD projects incurred an equitable share of the costs. We attribute these deficiencies to Avesta's understanding that the fees were reasonable if based on hourly fees alone charged in the local marketplace and the fees' being consistent with the budgets approved by HUD. The hourly rate was used to calculate a flat rate which was not compared to amounts charged in the local marketplace.

Hourly Rates of Services Charged to HUD Projects Were Not Adequately Supported

Avesta executed three written identity-of-interest agreements for related maintenance, janitorial and resident service coordinator services with many owners of the HUD-affiliated projects that it manages. The maximum annual fee compensation under these agreements was a flat rate paid from the projects' operating accounts in monthly installments equal to one twelfth of the annual fee. This fee was based on what Avesta believed was reasonable and necessary to cover the needs of the project. The hourly rates used to calculate the annual contract fees were not adequately supported. The total charges to HUD projects for maintenance, janitorial and resident service fees were more than $1.6 million in fiscal years 2007, 2008, and 2009.

Fiscal year	Maintenance	Janitorial	Resident services	Totals
2007	$279,199	$114,110	$115,049	$508,358
2008	$305,725	122,584	124,481	552,790
2009	308,836	120,898	124,836	554,570
Overall totals	**$893,760**	**$357,592**	**$364,366**	**$1,615,718**

The regulatory agreement between the property owner and HUD requires that owners not pay out funds except for reasonable operating expenses. The regulatory agreement further limits allowable costs for goods and services provided under arms-length transactions.

Avesta compared its hourly rates to what other management companies in the State charged for their services. To justify its rates for maintenance technicians in fiscal year 2009, Avesta compared the maintenance fee assessed to its properties with those of four other local management companies. Avesta's method of requesting hourly rates from the other management companies was not conducive to obtaining the most useful and reliable information. In addition, Avesta failed to obtain job descriptions to compare its scope of work with that of the four management companies to determine whether similar services were provided.

Avesta compared the resident service coordinator fee assessed to its properties with only one other management company, and no comparisons were performed for janitorial services. Although Avesta charged a separate fee for janitorial services in addition to the maintenance fee it charged, many of the services outlined in Avesta's janitorial service agreement were identical to the services reflected in its maintenance agreement. Further, Avesta's maintenance technicians performed all janitorial duties.

The Basis for Time Charged to HUD Projects Was Unsupported

The hours used by Avesta in calculating the total costs under its agreements were not adequately supported. Avesta did not track and charge the actual number of hours staff worked at the projects, but relied on its knowledge or past experience when assigning hours to the agreements. An organization cannot arbitrarily assign hours to a project; instead, the hours must be based on activity reports which represent a reasonable estimate of actual work performed during the period.

Comparable Fees Obtained by OIG Were Below the Agent's Fees

We contacted four management companies in the State of Maine to obtain hourly rates for services provided by maintenance technicians, janitors, and resident service coordinators. In addition, we requested detailed job descriptions for the three job positions and requested explanations regarding how the management companies billed services to projects. All four of the management companies charged hourly rates below the rates charged by Avesta. The management companies maintained adequate control over where their staff spent their time.

The projects were billed based on documented hours recorded for work performed to complete work orders and work assignments.

Avesta Overcharged Maintenance Supervisor Salaries to HUD Projects

A member of Avesta's staff stated that the maintenance supervisor salaries were charged to HUD projects under the maintenance service agreements. However, HUD dictates that the salaries of the agent's personnel performing supervisory tasks must be paid from management fees. The job description for an Avesta maintenance supervisor indicated that a supervisor was responsible for supervising maintenance technicians as well as performing duties similar to those of maintenance technicians. Therefore, if hours for specific work are not charged directly, only a prorated share of the salaries should have been charged to the project accounts, while tasks involving supervisory administrative responsibilities should have been absorbed by the management fees.

Avesta justified its fees as reasonable because the fees were consistent with the budgets approved by HUD. However, budgets were estimates determined before the services were performed and did not qualify as a substitute for actual costs.

Conclusion

The cost comparisons obtained were not adequate to show that the services provided by Avesta staff were reasonable and not in excess of costs that would be incurred in arms-length transactions. Avesta did not maintain sufficient documentation to show that services provided were reasonable and economical prices for the projects and that HUD projects did not incur a disproportionate cost for these services. Also, Avesta did not perform an evaluation of whether their fees were based on like services. The fees charged must be reasonable regardless of whether they are consistent with the budgets approved by HUD because budgets cannot be used as an approval of costs. Without documentation showing that the costs were reasonable, the cost of services totaling more than $1.6 million was unsupported.

Recommendations

We recommend that the Director of Multifamily Housing in the HUD Manchester, NH, field office

2A. Require Avesta to comply with the terms and conditions of its regulatory agreements and HUD rules and regulations that require: that the cost for services provided under arms-length transactions do not exceed the amount ordinarily paid for the services; disbursements to HUD affiliated projects are reasonable and adequately supported; and supervisor salaries for administrative duties are properly absorbed by management fees. The Director should also direct Avesta to maintain documentation verifying these conditions.

2B. Require Avesta to provide acceptable documentation in support of the $1,615,718 charged for maintenance, janitorial and resident service coordinator fees so that HUD can determine whether the costs were reasonable. For fees not considered reasonable, HUD should require Avesta to reimburse the HUD projects from non-Federal funds.

2C. Direct the owners to obtain another source to provide these services if Avesta is not responsive and effective in resolving this finding.

RESULTS OF AUDIT

Finding 3: Avesta Did Not Comply With HUD Requirements for Allocating and Ensuring the Reasonableness of Project Costs

Avesta failed to comply with applicable HUD requirements to ensure the appropriate allocation of the time spent by its property managers working with HUD projects and did not ensure the reasonableness of costs for accounting/bookkeeping services. Avesta's property managers did not maintain adequate records or reports showing hours worked by activity or project. Avesta also did not follow HUD requirements for ensuring that costs of accounting/bookkeeping services did not exceed the cost of procuring comparable services from independent vendors. This deficiency occurred because Avesta did not understand what was specifically required to meet HUD rules and regulations. As a result, there was no assurance that salaries of property managers were allocated equably between the 30 HUD and 30 non-HUD projects managed by Avesta and the cost of accounting/bookkeeping services were provided at a reasonable cost. Therefore, the costs of $796,190 for salaries and services covering the period January 1, 2007, to December 31, 2009, were unsupported.

Property Manager Salaries of $470,358 Were Unsupported

Documentation provided by Avesta to show where its property managers worked or spent their time was not adequate to meet HUD requirements. HUD requires that salaries and fringe benefits of personnel performing front-line duties be prorated among the properties served in proportion to actual time spent. In addition, Avesta's allocation plan dictates that property manager salaries are to be charged to projects based on time spent at the respective property. Avesta did not prorate based on actual time spent and, therefore, the property manager salaries of $470,358 charged to the HUD projects from January 1, 2007, to December 31, 2009, were unsupported

As support for the property managers salaries, Avesta produced monthly reports showing accomplishments at one project for front-line duties in fiscal year 2008 and a supervisor's e-mail listing nine HUD properties and the hours spent per week at those properties as reported by property managers. Avesta contended that the combination of these two records constituted compliance with HUD regulations on cost allocation. The implication that the property managers charged the same number of hours every week on a particular project was not reasonable or practicable considering the nature of a property manager's job duties. The hours devoted to tasks, such as completing the move-in process, completing move-out inspections, marketing availability of apartments, and handling tenant complaints, would not be generally consistent and would vary from week to week. In addition, neither Avesta's monthly reports nor the supervisor's report identified the specific property manager(s) performing the work. A more effective method to ensure that HUD projects do not incur a disproportionate share of the costs would be to require property managers to record hours for work performed on weekly reports prepared for each project. Avesta agreed in principle that its cost allocation system for property managers could be improved.

Accounting and Bookkeeping Services of $325,832 Were Unsupported

Avesta failed to maintain documentation required by HUD to ensure that accounting/bookkeeping services were at or below market rate. The accounting/bookkeeping services costs included accounting staff wages, benefits, worker's compensation insurance, and payroll taxes; a portion of the accounting manager's wages and payroll taxes, excluding benefits; and the cost of accounting software and property compliance software. HUD regulations dictate that costs to the project for centralized accounting and computer services provided by the management agent (Avesta) may not exceed the cost of procuring comparable services from an independent vendor. Each year, the management agent must determine whether these costs are at or below market rate and maintain such evidence on site. Avesta did not comply with HUD regulations for this requirement. Without the required documentation, the accounting/bookkeeping services of $325,832 charged to the HUD projects from January 1 2007, to December 31, 2009, were unsupported.

There was difficulty in tracing the fiscal years 2007 and 2008 costs for accounting/bookkeeping services because the costs were combined with other expenses in an account titled "Other Administrative Expenses." During the audit, Avesta's chief financial officer reconciled some of the "Other Administrative Expenses" account and identified the accounting/bookkeeping services for seven HUD projects in fiscal year 2008. Excluding charges of the seven projects reconciled by the chief financial officer, the remaining $325,832 represented questioned costs for the 2007 and 2008 costs charged to the "Other Administrative Expenses" account.

Conclusion

Avesta failed to follow HUD rules and regulations regarding management costs it charged to HUD projects. During our audit period, costs for property managers and accounting/bookkeeping services charged to the projects' operating accounts totaled $796,190. Because Avesta failed to follow HUD procedures, we could not determine whether these charges to HUD projects were correct and reasonable. Therefore, the costs of $796,190 for these services were considered unsupported.

Recommendations

We recommend that the Director of Multifamily Housing in the HUD Manchester, NH, field office

3A. Require Avesta to provide documentation in support of the distribution of $470,358 in property manager salaries to the HUD projects. For any costs not supported, Avesta should reimburse the HUD projects from non-Federal funds.

3B. Require Avesta to include a review of the reasonableness of $325,832 in unsupported accounting/bookkeeping service costs in relation to the market rate in the independent cost analysis in finding 1A and reimburse the HUD projects from non-Federal funds for the costs of services that exceed market rate.

3C. Require Avesta to identify the costs for accounting/bookkeeping services in 2007 and the remaining costs for those services in 2008 that are attributable to the administration of HUD projects.

3D. Ensure that Avesta submits and follows an allocation method based on actual time spent at each project that meets HUD's approval.

SCOPE AND METHODOLOGY

We performed an audit of the Avesta Housing Management Corporation. Our fieldwork was completed at Avesta's office located at 307 Cumberland Avenue, Portland, ME, from December 15, 2009, to April 29, 2010. Our audit generally covered the period January 2007 to December 2009 and was extended when necessary to meet our objective.

To accomplish our audit objective, we

- Reviewed applicable Office of Management and Budget (OMB) circulars, HUD handbooks/guidebooks, regulatory agreements, project owner's/management (Avesta) certifications, and previous participation certifications.
- Reviewed Avesta's policies and procedures and held discussions with Avesta officials to gain an understanding of Avesta's corporate structure, cost allocation, accounting controls, procurement practices, and monitoring policies.
- Reviewed independent public auditors' reports and media articles related to Avesta and its staff.
- Evaluated the internal controls and conducted sufficient tests to determine whether controls were functioning as intended and reviewed computer controls to determine whether Avesta had proper controls over its outsourced information technology (IT) services.
- Reviewed Avesta's organizational chart and job descriptions to determine the responsibilities of staff and whether job descriptions were consistent with the work under Federal programs. Also, we reviewed for any indications of overlap in job duties/responsibilities.
- Evaluated the Agent's procurement practices by selecting for review 100% of the businesses providing ongoing services to HUD projects, after excluding utility companies, retail stores, and insurance companies. Also, reviewed the agent's only three procurements related to IT services. During the audit phase, we evaluated construction procurements by selecting a nonrepresentative sample of seven construction checks from a universe of 30 construction checks larger than $3,000. The seven checks selected totaled $229,755. For those procurements, we reviewed invoices, written agreements, requests for proposals, and bids received.
- Interviewed Avesta's staff and reviewed all contracts and other documentation maintained by Avesta for maintenance, janitorial, and resident service coordinator fees to determine whether the fees were reasonable, eligible, and adequately supported.
- Interviewed Avesta's staff and reviewed all documentation maintained by Avesta for its cost allocation methodology for property manager salaries, accounting/bookkeeping services, and office/supplies expenses.
- Ensured that management fees were reasonable, calculated properly, and within HUD-approved limits. We also reviewed check registers to determine whether projects were charged for expenses that should have been absorbed by the management fees.

- Reviewed cash receipts registers and check registers for any large or unusual transactions. For any expenses that warranted follow-up, we requested invoices or other supporting documentation.
- Reviewed financial statements to determine whether there were loans or transfers to individuals, related projects, or other businesses for projects in a non-surplus-cash position and reviewed for reductions in long-term loans and notes payable without HUD approval.
- Using the check registers covering the audit period, we scheduled itemized costs by date and check number for maintenance technicians, janitors, resident service coordinators, property managers, and accounting/bookkeeping services for all 30 HUD-affiliated projects. We totaled costs by fiscal year for each of the above categories of expenses.
- Selected for review a fair representation of management companies from a universe of 90 HUD-affiliated management companies to ensure comparability of maintenance, janitorial and resident service fees. This universe was based on a comprehensive HUD portfolio of HUD-insured and HUD-subsidized projects located in the State of Maine. We identified a sample of four management companies for review based on a nonrepresentative sampling method due to the large universe. Three of the four management companies selected represented the companies managing the largest number of HUD-affiliated projects. To ensure that the sample included at least one management company located in close proximity to Avesta, we selected a company located in Portland ME. We selected that management company because the company manages the largest number of HUD-affiliated projects of any management company located in "Portland proper."

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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

INTERNAL CONTROLS

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

- Program operations,
- Relevance and reliability of information,
- Compliance with applicable laws and regulations, and
- Safeguarding of assets and resources.

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. They 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 objective:

- Controls over procurement and contracting
- Controls to ensure that fees and costs incurred under identity-of-interest contracts are reasonable and adequately supported
- Controls for implementing an effective system for allocation of salaries

We assessed the relevant controls identified above.

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.

Significant Weaknesses

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

- Avesta did not adequately monitor its procurement and contracting process (finding 1).

- Avesta did not adequately support the costs or fees for identity-of-interest services (finding 2).
- Avesta failed to implement an effective system for allocation of salaries (finding 3).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

The audit identified questioned costs of $5,060,513

Recommendation number	Unsupported 1/
1A	$2,648,605
2B	$1,615,718
3A	$470,358
3B	$325,832
Total	$5,060,513

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**

HESSEL, ALUISE AND NEUN, P.C.
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July 30, 2010

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RE: Written Comments of Avesta Housing Management Corporation
Regarding OIG Draft Audit Report Number 2010-BO-1007

Dear Mr. Dvorak:

Comment 1

This firm represents Avesta Housing Management Corporation ("AHMC"), and by this letter we convey the written formal comments of AHMC regarding the draft Office of Inspector General (OIG) audit dated July 7, 2010, Audit Report Number 2010-BO-1007. As a general matter, AHMC disagrees with and questions the majority of the conclusions reached in the draft audit as well as many of the OIG's recommendations. AHMC likewise requires and hereby requests clarification of certain aspects of the draft audit in order to respond to various OIG assertions that appear to lack a legal and/or factual basis.

Comment 2

We noted a surprisingly large number of simple, clear and factual errors (68 in total) in the draft audit report, including misnaming the auditee, misreporting the year the auditee was incorporated, misnaming the three operating entities related to the auditee and mistakes about the number of properties that AHMC currently manages. We have summarized these mistakes in the attached appendix, but the more significant errors are noted below.

Comment 3

We were also surprised that the draft version that was emailed to AHMC on July 7, 2010 for review and response was not marked "Draft/For Discussion and Comment Only/Subject to Review and Revision" as would be typical, and it was already signed, dated and included an audit number. This is highly unusual and suggests at least someone at the OIG does not consider this to be a "draft" but a final audit, and that various conclusions have already been reached regardless of the auditee's input.

Comment 4

Furthermore, when AHMC staff discussed the OIG's preliminary audit findings with two of the OIG auditors on April 29, 2010, they were informed that the auditor in charge of Finding 1 had not completed his work much less made a final recommendation before the preliminary finding was drafted and a repayment recommendation was established. The

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lead auditor admitted that he had not even consulted the work papers of the investigating auditor before drafting the preliminary finding.

Comment 5

There also appear to be significant departures from Generally Accepted Government Audit Standards in the OIG's audit and situations where the auditors misrepresented the number of items that they tested with respect to a specific issue in order to overstate the apparent errors that the OIG purported to find, as described in more detail below.

General Observations

Comment 6

An OIG audit is supposed to be fair, balanced and objective. Despite assurances by the OIG throughout the process (entrance conference, survey and audit) that the audit would be so, that HUD regulations would take precedence over guidance materials, and that credit would be given for proactive measures taken by AHMC, the draft audit report proves otherwise.

Absolutely no credit is given to AHMC for consistently establishing and maintaining top-notch management operations as evidenced by numerous benchmarks of success, and this is a deficiency of the draft report. Founded in 1974, AHMC is part of the largest non-profit housing organization in the State of Maine, and manages over 1,600 units. For the vast majority of this time AHMC had an outstanding working relationship with HUD.

Comment 7

AHMC has consistently maintained the properties' physical condition in an expert manner and REAC scores have regularly been high, averaging 93. AHMC's management reviews conducted by Maine Housing and Rural Development typically receive outstanding ratings. The vacancy rates at these properties have been extraordinarily low at 1% or lower, with collection rates at 99%, which are all exemplary.

Comment 8

AHMC's fees and charges are very reasonable. For example, AHMC charges $5,723 and $4,875 per unit per year on average for total operational costs to Section 202 PRAC and Direct Loan projects, respectively. [Tab A] We note that this information was previously shared and discussed with the OIG on January 28, 2010. AHMC provided a summary a few days later, and presented the data again as part of its May 6, 2010 comments regarding the preliminary audit findings. The cost analysis represents the results of a comparison by AHMC of costs of twelve similar developments managed by other management companies based in Maine and New Hampshire. The data show that these companies charged an average of $7,009 and $6,722 per unit per year to Section 202 PRAC and Direct Loan projects, respectively. [Tab A] This is $1,256 and $1,847 more on average than AHMC charges.

Comment 9

The OIG has repeatedly objected to the "reasonableness" of AHMC's janitorial, resident services coordination, and maintenance costs, but these objections appear to be based on issues of documentation rather than on the reasonableness of the actual charges. AHMC has charged the HUD properties very modest fees and this by itself should put this issue to rest. AHMC has charged each HUD-regulated unit a mere $217 per year for janitorial services, $256 per year for Resident Services Coordination and $540 per year for

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maintenance. [Tab B] We note that this information was previously provided to the OIG auditors on December 8, 2009, on February 23, 2010 and March 2, 2010. This enabled the auditors to perform these calculations themselves, but they apparently elected not to, although these financial measures are a critically important set of data points that we think the OIG would have wanted to analyze as part of its audit. Instead the OIG report emphasizes form over substance.

Comment 10

For reasons that it does not explain and cannot support, the OIG engaged in convoluted interpretations of HUD guidance materials in an apparent effort designed to support the OIG's agenda rather than to identify true departures from legitimate HUD requirements. It appears almost the entire report is based not on regulations but on the 1994 HUD Management Agent Handbook (HB 4381.5 REV-2) that is widely agreed to be outdated and includes inconsistencies. In fact, the OIG appears to have gone out of its way to misrepresent various facts and HUD policies, or misconstrue statements made by AHMC personnel in order to paint the management company in the worst possible light.

Comment 11

Additionally, we learned during the July 26, 2010 exit conference that the OIG is still in the process of revising the draft audit report and responding to the field office's comments on the draft report; however, our client will not have an opportunity to comment on the revision, which further complicates the auditee's ability to react to what is essentially a moving target, and may violate HUD's own internal procedures. These facts reinforce the overall sense that the audit process is unfairly targeting a competent and successful management company.

Comment 12

The OIG also made sweeping generalizations about the applicability of HUD requirements and yet ignored the fact that only a portion of the AHMC portfolio is subject to these requirements. AHMC has not been provided with the detail regarding the allegedly unsupported costs that are listed in the appendices to the draft audit report; therefore it is impossible to determine if the amounts were, in fact, related to projects governed by the HUD regulations.

Comment 13

Finally, we have reason to question the independence of the audit and whether the OIG improperly relied on and deferred to the HUD Manchester field office in performing what was supposed to be a separate third-party analysis of AHMC's compliance with HUD directives. On April 29, 2009, I discussed the intended purpose of the field office's referral of AHMC to the OIG for audit with Manchester Multifamily Program Center Director Philip Holmes. Mr. Holmes stated that he lacked the staff to evaluate AHMC's compliance with various HUD directives and therefore had sought a referral to the OIG with the expectation that the OIG would conduct an independent analysis of AHMC's practices. The same commitment to independent review and analysis was echoed during a conversation I had with Kevin Smullen, former Assistant Regional Inspector General for Audit on July 10, 2009. Additionally, we are told that in conversations during May 2009, Mr. Holmes indicated to both AHMC Board member Helen McGuinness and AHMC President Dana Totman that he was seeking "an independent review that would take the personalities out of the conflict". Despite these assurances, the lead OIG auditor admitted during the exit conference that OIG worked with and consulted exclusively and

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extensively with HUD Manchester and relied almost exclusively on staff in that office to clarify and interpret the different HUD regulatory requirements. Thus the OIG's audit of AHMC was not truly independent.

What follows is a section-by-section analysis of the OIG's draft audit report in which we point out numerous inaccuracies and ambiguities that must be corrected in order for the audit report to comport with generally accepted accounting principles and to represent fairly the documentation and data that AHMC provided to the auditors.

"What We Audited and Why"

Comment 14

The OIG does not define what it considers to be a "HUD project" for purposes of the audit. AHMC manages seven projects with HUD debt or which receive grants from HUD (Section 202 Direct Loans/Capital Advances with Project-Based Rental Assistance Contracts), no projects with FHA-insured debt, and 22 other projects for which HUD provides Section 8 rental assistance to the tenants. A significant portion of the Section 8 HAP projects are "old regulation" (pre 1980) projects that are regulated by the provisions of 24 CFR Section 883, governing state housing agency financed developments, and are subject to different regulatory requirements because HUD has no debt or investment in the properties. (See HB 4381.5, paragraph 1.2(b), "Depending on the circumstances, HUD, ... Rural Housing or a state/local agency will be responsible for oversight of management agent activities.") Of the seven properties with HUD debt, six are owned by separate non-profit corporations that are affiliated with Avesta, and one is owned by an unaffiliated owner. Of the 22 projects with HAP contracts, two are owned by unaffiliated owners and the rest by AHMC affiliates. [Tab C]

"What We Found"

We disagree with the assertion in paragraph one that AHMC did not always comply with HUD regulations. We submit that the majority of the "regulations" cited by the OIG are in fact guidance materials that are subject to reasonable interpretation, which AHMC appropriately exercised.

Comment 15

The OIG mischaracterized AHMC's ability to furnish documentation pertaining to procurement practices by failing to acknowledge that in *most* instances AHMC did in fact provide the requested documentation, and in fact turned over 166 pages of bid and related documentation pertaining to procurement activities. From our review of the draft audit report, it appears that the crux of the OIG's argument is that a number of bidders did not sign their bids. However, the OIG has not indicated what HUD regulations require that bids must be signed, although the OIG made some rather non-specific references to inapplicable OMB Cost Circulars during the exit interview. We note that as the OIG acknowledges in Appendix C, an unsigned bid if accepted and relied upon creates a valid and binding agreement between the parties. AHMC has been advised by its local counsel that such is the case under Maine law.

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Comment 16

Paragraph two, which discusses substantiation and documentation issues, should acknowledge the unfortunate and untimely death of AHMC's Facilities Manager, Robert Fleury, who was in charge of some of the examined procurement activities. The death of this individual stymied attempts to provide documentation that Mr. Fleury controlled during the audit period, particularly with respect to those bids below $10,000 that were based on oral discussions.

Comment 17

Furthermore, it is untrue that AHMC lacked written procurement policies. In addition to its own policy guides, AHMC directs its staff to refer to relevant rules and regulations of regulatory agencies. These would include the HUD Occupancy Handbook (HB 4350.3) and the Management Agent Handbook (HB 4381.5) among other materials as supplementary guidance to its management and operations policies. We submit that it would be unwieldy and unnecessary to replicate each and every policy contained in the voluminous HUD Handbooks in AHMC's own policy guides, and nowhere is such a requirement specified by HUD.

Comment 17

However, the OIG in its desire to see more specificity in AHMC's policies overstated this perceived problem as if AHMC lacked any such policies at all, which is untrue. Additionally, we note that AHMC did modify its procurement policy in an effort to respond to the OIG, which the OIG failed to acknowledge in the draft audit report. In fact the modification is used against AHMC and is misconstrued as if AHMC's then existing policies were defective, which is not the case.

Comment 18

Paragraph three improperly claims that AHMC was unable to justify the cost effectiveness of its identity of interest services provided to its managed properties, and it fabricates a perceived harm to the managed properties while completely discounting the value provided. Nowhere does the OIG acknowledge that AHMC charges its HUD-managed properties less than other similarly situated management companies in the area, that the properties are in excellent physical condition, and that they have virtually no vacancies, which contradicts the OIG's conclusion that the services AHMC provides are not cost effective.

Comment 18

Finally, the OIG's claim that AHMC failed to properly allocate time spent by management staff on its managed properties ignores the fact that AHMC's method of allocating staff costs is an appropriate interpretation of the HUD guidance materials.

"What We Recommend"

Comment 19

Because AHMC disagrees that it violated HUD procurement directives and questions the OIG's methodology used to derive its finding that more than $2.6 million dollars of procurements are allegedly unreasonable and unsupportable, it asserts that independent cost analyses of such procurements are unnecessary. If an independent cost analysis is found to be necessary, it should only have to be done for the subset of procurement activities that depart from written HUD policies, of which there are only one or two, and even in those circumstances there are logical explanations for the occurrences that deserve fair consideration. The OIG additionally failed to acknowledge the value the

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properties received from the various procurement activities. To demand repayment in full would result in unjust enrichment. The OIG also tended to inflate the finding by improperly concluding that more managed properties were covered by the HUD procurement guidelines than actually are.

Comment 20

AHMC disagrees with the OIG's recommendations with respect to the provision of identity of interest maintenance, janitorial and resident coordinator services because it questions the conclusion that such services were unreasonable and inadequately supported. As a practical matter, the questioned costs amount to an average of $84 per unit per month. [Tab B] Furthermore, the OIG erroneously overstated the potential repayment by incorrectly asserting that no value at all was provided to the properties in the course of service delivery, which is patently false.

Comment 20

We disagree with the recommendation that AHMC provide further documentation in support of project manager salaries because the OIG's premise is based on a misreading of the applicable HUD guidance materials.

"Auditee's Response"

Comment 21

As part of the aforementioned deficiencies and our concerns with respect to the OIG's designation of the draft audit report as a true discussion draft, there is a paragraph missing from this section, which should read as follows:

"We provided our discussion draft audit report to Avesta on July 7, 2010. We held an exit conference on July 26, 2010. Avesta provided written comments on ________, 2010. It generally agreed/disagreed with our report findings."

"Background and Objective"

Comment 22

This section of the draft audit report should exclusively pertain to Avesta Housing Management Corporation as that is the entity that was audited. It is unclear why the OIG engaged in a discussion of the various affiliates of AHMC that have no bearing on the management company. Consequently, there are a number of errors in this section. (See the appendix for more details.)

Comment 23

With respect to the OIG's assertion that resident service coordinators are automatically eligible project expenses, the HUD Manchester office apparently disagrees having recently rejected a budget because the project manager questioned the need for such services. Now AHMC is faced with the dilemma of having to comply with a contradictory directive.

Comment 24

The OIG incorrectly stated that all of AHMC's contracts for maintenance, janitorial and resident service coordinators are with identity of interest suppliers, but more accurately some of the HUD-assisted properties managed by AHMC are not owned by identity of interest entities.

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Results of Audit

This finding should more appropriately be titled:

Finding 1: Avesta Typically Followed HUD Procurement Procedures

Comment 12

Comment 17

Comment 25

Comment 26

We reject the allegations contained in the first paragraph because it is simply untrue that AHMC was unable to document or substantiate the solicitation of bids and/or cost estimates for ongoing services and construction contracts. Additionally, the OIG erroneously ascribed HUD contracting requirements to a number of projects that are unregulated by HUD. It is untrue that AHMC lacked written procurement policies, and regardless the OIG has not demonstrated that written policies are required. The conclusions reached as a result of the OIG's erroneous suppositions are unsupportable and must be deleted from the final report. The allegations that AHMC did not follow HUD procurement requirements or that its president failed to adequately monitor the performance of its former facilities manager are incorrect. According to paragraphs 1.5 and 1.7 of HB 4381.5, HUD is required to approach its dealings with management agents with respect for the situation of the management agent.

Comment 27

Furthermore, the OIG mischaracterized the factual details bearing on the procurement transactions and also failed to acknowledge state agency rather than HUD regulation of certain projects. Of the 15 procurement transactions reviewed by the OIG, three were storm-related emergency repairs; thus customary bidding requirements were relaxed per the HUD guidelines. Seven procurements had three bids and were fully compliant with HUD guidelines. One procurement was between $5,000 and $10,000 where there are no applicable HUD guidelines. Another procurement was paid for by Gorham Savings Bank loan proceeds and HUD guidelines do not apply. Two procurements had two (not the suggested three) bids however these were projects financed by Maine Housing and the procurement activities were approved by Maine Housing. The fifteenth procurement was for Baran Place (a PRAC project) and three bids were received, however one of the bids was for only a portion of the work. AHMC forwarded all three bids to HUD Manchester staff for review by Nicholas Rago and Janice Higgins. Ms. Higgins sent AHMC a letter approving this procurement following HUD's review.

It would be more accurate for the OIG to state the following in this section of the audit report:

"AHMC's procurement practices generally complied with HUD requirements. AHMC usually provided documentation to substantiate that it solicited bids and/or obtained cost estimates when procuring ongoing services and construction contracts. Additionally, in a number of circumstances the properties were regulated by state agencies rather than by HUD requirements. Of the 15 procurement transactions that we reviewed, seven fully complied with HUD guidelines and three were storm-related emergency repairs, which necessitated departures from customary bid requirements. Three of the properties we reviewed are regulated by state agency requirements, and

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appeared to comply with those directives. An additional procurement cost between $5,000 and $9,999 therefore there were no applicable HUD guidelines. Finally, HUD staff reviewed and approved the last procurement that we evaluated. Accordingly, all 15 of the procurements that we reviewed comply with applicable policy guidelines."

Comment 12

Comment 28

Because the OIG has not provided sufficient detail regarding the allegedly unsupported costs listed in Appendices D and E, it is impossible for AHMC to determine if the amounts were actually related to properties governed by HUD regulations. Accordingly, the following subsection most likely overstates the amount paid for services that are unsupported and also fails to take into account the fair market value of the goods and services that the HUD-regulated properties benefited from. Accordingly, the dollar figure for the allegedly unsupported services must be revised downwards.

"$________ Paid for Services Was Unsupported"

Comment 12

We take issue with this entire section and dispute its accuracy and the underlying basis for the OIG's conclusions. First, by overstating the number of projects that are covered by the HUD procurement guidelines and by applying such guidelines to uncovered projects, the OIG was able to inflate the alleged damage suffered by the HUD-regulated projects and to justify its erroneous conclusion that AHMC's practices were supposedly non-compliant. The OIG's assertions regarding document retention similarly fail because they are either based on an erroneous application of the HUD guidelines to non-covered projects, or because the auditors failed to acknowledge the documentation that was provided to them.

Comment 12

By examining only check registers and the funds that flowed out of the projects, the OIG only looked at half of the fund movements and omitted a critical component in its analysis, namely it failed to determine whether the payments were actually made from non-project funds (e.g., conventionally financed rehabilitation efforts). At the exit conference the OIG admitted that it likely missed any non-project funds that were provided outside of the audit period, which causes us to question whether it requested the correct data from AHMC as well as its reconciliation methodology. In fact, the conventionally financed rehabilitation of Pinewood occurred during the audit period, and yet the OIG missed this data. These flaws contributed to the overstatement of unsupported costs.

Comment 29

Furthermore, the OIG invented a whole new threshold for bidding requirements, one that actually conflicts with stated HUD policy. Specifically, it is untrue that project costs for a given procurement are to be aggregated across covered projects, owned by different ownership entities and conducted over several years in determining bidding thresholds, and the OIG has not provided any authority in support of its claims. In order to arrive at this conclusion, the OIG had to cite certain provisions from the Management Agent Handbook selectively, and it purposely omitted the critically important distinction that all contract bidding is measured on a <u>per project basis</u> rather than aggregated across projects as the OIG suggests. (See HB 4381.5 paragraph 6.50).

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Likewise the OIG cites no authority for its theory that AHMC "should" have considered total costs, nor has it explained how or why it interprets discretionary standards to be mandates in assigning culpability. In fact, during a June 17, 2010 budget training session officials from the HUD Manchester field office said that aggregation of costs across different properties was not required. (See attached summary of the meeting by Maine Real Estate Manager's Association members and as confirmed by HUD at Tab D.)

Comment 29

We are forced to conclude that the OIG misread the Management Agent Handbook provisions that provide for procurement activities on a per project basis. Thus it is untrue and an extreme exaggeration to assert that more than $2.6 million dollars incurred for on-going project services were improperly bid and are therefore unsupported. We also note that aggregation of costs across projects, different owners and over several years was not raised in the preliminary Finding 1 write-up that was shared with AHMC in April 2010. This brand new and unsupported aggregation theory can only lead one to conclude that the OIG is artificially attempting to inflate its findings in order to make AHMC's practices look as problematic as possible.

Comment 27

In addition, HUD's procurement guidelines are internally inconsistent and ambiguous. Specifically, Section 6.50 of the Management Agent Handbook, the scant guidance on the topic, provides that procurements of goods or services totaling $10,000 or more per year require three written bids, and such contracts below $5,000 "should" be memorialized via oral bids, but there is no express discussion of product or service contracts between $5,000 and $9,999.

Comment 28

Moreover, the OIG has accorded absolutely no consideration to the value the properties received for the contracted services. It is a well settled equity principle (referred to by the courts as "quantum meruit") that one who benefits from the labor and materials of others should not be unjustly enriched by denying an obligation to pay for the fair value of such services or materials when the services or materials have already been performed or delivered and accepted. Accordingly, the government is equitably prevented from disallowing all costs for the products and services consumed by the projects; otherwise the projects would be unjustly enriched.

Comment 27

Comment 16

Comment 29

The OIG claims no efforts were made to solicit verbal cost estimates for items costing less than $10,000 per year, but the HUD handbook does not require such estimates for purchases between $9,999 and $5,000 and instead suggests that procurements of less than $5,000 should be orally bid. The auditors also ignored the fact that AHMC's facilities manager who oversaw some of the examined procurement activities experienced a heart attack and died unexpectedly, so AHMC was understandably hampered in its ability to locate documentation substantiating these procurements. Additionally, it appears that the OIG is improperly aggregating costs across properties once again in arriving at its claim that $180,265 was unsupported.

Comment 30

Even if the OIG had the authority to require aggregation of costs across covered projects, the OIG's analysis is faulty because the calculations of procurement costs in Exhibit E are not annualized. As shown on the attached chart [Tab E], when such figures are

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annualized only three individual procurements exceeds $5,000, the HUD standard for suggesting verbal bids.

Comment 31

The OIG also failed to acknowledge that AHMC had sought and obtained approval to make withdrawals from the properties' replacement reserve funds in order to pay for such goods and services contracts [Tab F], so presumably the field offices would have raised concerns with AHMC's contracting activities at the time such withdrawals were authorized had there been any concerns.

We submit that this section of the draft audit report should more appropriately be drafted as follows:

"AHMC generally followed HUD procurement policy that requires it to (1) solicit written cost estimates from at least three contractors or suppliers for any contract for ongoing supplies or services that is expected to exceed $10,000 per year and (2) retain documentation of all bids as part of the HUD project's records.

"_________ charged from January 1, 2007, to December 31, 2009, to covered HUD projects for ongoing services was unsupported. (See Appendix D and E, [which should reflect annualized numbers and include details about which projects and service contracts were reviewed]). AHMC procured services from 30 companies for the benefit of ___ HUD-regulated properties. Generally, each procurement on a per project basis did not exceed $10,000. In a few instances ongoing service or product procurements exceeded $10,000 for a given project and did not appear to have been properly bid. AHMC should ensure that appropriate written and verbal cost estimates are obtained as outlined in the applicable HUD guidance materials. Therefore we determined that $____________ was unsupported."

<u>It Has Not Been Shown That "Economically and Socially Disadvantaged Firms Did Not Have an Opportunity to Participate in the Procurement Process"</u>

Comment 32

We disagree with the OIG's broad assertion that economically and socially disadvantaged firms were prevented from having an opportunity to participate in the procurement process, not only because this requirement applies to a subset of the HUD-assisted projects managed by AHMC but also because the OIG did not provide any support for its claim. Without proper attribution and identification of the properties that the OIG necessarily determined may have violated the HUD criteria, AHMC is unable to confirm that the properties were indeed subject to the HUD requirements. This deficiency prevents AHMC from being able to respond in a meaningful way to the allegation.

Comment 32

We note that of the properties identified by the OIG as allegedly having construction related procurement deficiencies in the subsection below, only one property (New Marblehead North) is required to execute a HUD-form management certification, which is the only document that arguably includes the condition regarding economically and

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socially disadvantaged firms. Accordingly, this subsection of Finding 1 should be eliminated from the audit report.

Because the OIG misrepresented the number of construction procurements it reviewed and the associated number of deficiencies and their scope, the title of the next subsection should read as follows:

<u>**None of the Construction Procurements Reviewed Had Deficiencies**</u>

The original title of this subsection is a clear overstatement. In total, 15 procurement transactions (not 7, as the OIG falsely claims) were reviewed, and 8 were determined by the OIG to have no issues. [Tab G] By failing to acknowledge these facts, the OIG purposely distorted AHMC's record with respect to construction procurement. Therefore, the total construction costs reviewed should also acknowledge and include the 8 procurement transactions that were acceptable. For the reasons discussed below, of the 7 transactions questioned, none were actually deficient.

Comment 12

As part of its response to the preliminary audit findings, AHMC pointed out that only New Marblehead North is required to execute the management agent certification, and that its Section 8 assisted properties are financed by Maine State Housing Authority ("MSHA") and are therefore overseen by the state agency. [Tab C] Nevertheless, the OIG ignored these important facts in preparing its draft audit and improperly concluded that the HUD procurement guidelines applied to all of AHMC's properties and provided no explanation of why it has chosen to attempt to impose HUD requirements on properties unilaterally that are not so regulated. This non-jurisdictional assertion of power is a clear abuse of HUD's authority.

"<u>Deficiency Explanations</u>"

With respect to the deficiency explanations, once again the OIG appears to have engaged in selective reporting of the facts to have and completely ignored whether the HUD requirements even apply to certain properties. The OIG also claimed that verbal cost estimates were not obtained in a number of instances, which is an exaggeration.

The following explanations of individual procurement transactions were previously provided to the OIG on May 6, 2010:

Comment 12

Comment 16

1. <u>Foxwell I Roofing</u>. This project is regulated and financed by MSHA and is therefore not required to execute a management certification. MSHA guidelines govern the procurement activities for Foxwell I, and attached please find the state agency's approval of the roofing work. [Tab H]. The OIG criticized AHMC for being unable to submit auditable documentation regarding the former facility manager's rationale for selection of the vendor despite his untimely death.

Comment 12

2. <u>Blackstone I and II water heater replacement</u>. These properties are regulated and financed by MSHA and are therefore not required to execute management certifications.

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MSHA guidelines govern the procurement activities for Blackstone I and II, and attached please find the state agency's approval of the water heater replacement work. [Tab I]

Comment 15

3. Unsigned bid proposals. The OIG appears to be mixing up proposals with agreements to perform services. The proposals are nothing more than offers and while they should be dated, there is no requirement that they be signed. AHMC should not be held responsible for what the OIG perceives to be sloppiness on the part of the bidders as these are conditions beyond its control. We understand that the OIG never brought this alleged deficiency to AHMC's attention until the auditee received the draft audit report. During the exit conference OIG staff made some vague references to different OMB Cost Circulars that may include this specification, but it was not at all clear what the auditors were referring to, or that the OMB Circulars even applied to AHMC. Furthermore, as the OIG acknowledged in Appendix C to the draft audit, a bid becomes a binding agreement upon acceptance by the offeree. We are advised by local counsel that this is the case under Maine law.

Comment 12
Comment 16
Comment 27
Comment 33

4. Pinewood Apartments (window replacement) and Maple Grove (roofing). Both of these properties receive Section 8 assistance pursuant to old regulation (pre 1980) state agency HAP contracts and they are overseen by MSHA. Unfortunately, due to the death of its former facilities manager, AHMC could not locate all of the paperwork that pertained to the Maple Grove roofing work, which fell in the $5,000 to $9,999 range where no written bids are required. In all fairness, the audit should acknowledge this as an extraordinary event. With respect to the Pinewood window replacement project, the source of funds for that transaction were provided by the property's commercial lender Gorham Savings Bank and are not HUD dollars as evidenced by the attached sources and uses of funds statement. [Tab J]

The next subsection of the report mischaracterizes the sufficiency of AHMC's procurement policies and procedures, thus the heading should be revised as follows:

AHMC Maintained Adequate Written Procurement Polices and Procedures

Comment 17

OIG claims that AHMC lacked written procurement policies and planned to prepare written guidance in the near future, but these are additional distortions of the facts and HUD requirements. AHMC maintains that its policies and procedures and bid tracking sheet complied with the relevant HUD requirements, and it indicated to the OIG that if the OIG determined that additional clarification of procedures were necessary, AHMC would make the necessary changes. The AHMC Property Management Team and Maintenance Team policy and procedures manuals include a discussion of purchase order issues. Furthermore, the policy manuals additionally refer AHMC staff to relevant agencies' rules and regulations, which would include the HUD Management Agent and Occupancy Handbooks.

We note that the OIG has not clarified which HUD handbook or regulation specifically requires that management agents have their own written procurement policies and procedures. Likewise, we are unaware of any such requirement. If anything, the AHMC

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policies may have lacked the specificity that the OIG would have liked to see, but it is untrue that there were no written policies at all. Furthermore, the OIG improperly construed AHMC's attempts to modify its policies to address the OIG's concerns as an admission that its existing policies were deficient in some fashion. This is disconcerting given that the OIG consistently maintained that proactive measures taken by the auditee to enhance operations would be looked upon favorably, and that the auditee would receive credit for them.

Comment 16
Comment 25
Comment 34

It is likewise unfair of the OIG to criticize the former facilities manager's alleged record keeping deficiencies and yet fail to acknowledge his untimely death. The OIG also attributed statements to AHMC's President that he did not make, took such statements out of context, and appears genuinely confused about how AHMC is structured and therefore made incorrect assumptions about the president's supervisory role. The accusatory tone that AHMC's president is allegedly neglecting his oversight responsibilities is likewise not appreciated and is untrue.

Accordingly, this subsection of the audit report should be revised to read as follows:

"AHMC generally maintained adequate procurement polices and procedures, and trained and directed its staff to consult the appropriate HUD guidelines and materials with respect to such activities. We acknowledge the proactive efforts that AHMC's made to further clarify its practices by drafting additional procurement specific language for inclusion in its policy and procedures manuals.

"AHMC acknowledged that its recent growth and the death of its former facilities manager in some cases complicated its efforts to locate the requested supporting documentation in a timely manner. We are unaware that any such problems continue to this date, however."

<u>"Conclusion"</u>

For the aforementioned reasons, the OIG has reached a number of unsupportable conclusions with respect to AHMC's procurement practices, which should be revised. The OIG improperly dismissed documentation AHMC submitted as being inadequate. It is inaccurate for the OIG to assert that HUD lacked any assurance whatsoever that AHMC's procurement practices were fair and equitable. AHMC has been submitting audits to HUD since 1974 and has been consistently monitored by Department of Agriculture, Maine Housing, and HUD for this entire period with no significant issues ever identified. Furthermore, the OIG ignored the fact that various HUD requirements do not even apply to a number of AHMC-managed properties, and distorted HUD policy to conclude that certain voluntary directives were required. It is simply untrue that AHMC's president did not provide adequate supervision of procurement staff. The OIG also improperly failed to acknowledge the value of the products and services that the projects benefitted from as well as the overall excellent quality of AHMC's management operations.

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"Recommendations"

Comment 12

Comment 19

1A. We disagree that an independent cost analysis is needed for each procurement. Only those projects that are subject to the HUD requirements should have to show compliance with the HUD directives, and then only those transactions that may have departed from the HUD directives with respect to HUD's actual bidding requirements. Furthermore, for any such project where AHMC demonstrates that the project obtained non-federal funds, an independent cost analysis should not be required, and the OIG should downward adjust its calculation of allegedly unsupported costs accordingly.

1B. Consistent with its ongoing policies and procedures, AHMC agrees to comply with all terms and conditions of the applicable HUD management certifications and HUD rules regarding verbal and written cost estimates, including document retention policies as it has been doing all along.

1C. AHMC has already implemented an adequate procurement policy and the recommendation should acknowledge this as well as the proactive measures that AHMC took to enhance its already existing policies. We understand that AHMC has completed an internal training program to review and remind all staff of the company's procurement practices, and that such training is provided to newly hired employees as well.

Comment 17

For the reasons discussed below, we disagree with the OIG's characterization of AHMC's support for identity of interest services that were provided to its HUD-regulated properties; therefore, the heading of Finding 2 should be revised as follows:

<u>Finding 2</u>: Avesta Generally Adequately Supported the Costs for Identity-of-Interest Services

Comment 8
Comment 9
Comment 35

Comment 36

It is untrue that AHMC failed to demonstrate the reasonableness of identity of interest fees charged for maintenance, janitorial or resident service coordinator services. Not only did AHMC show how it determined that its fees were lower than third-party fees would have been, but it provided supporting documentation regarding those fees that are charged by similarly situated management companies [Tab K], and it verified its staffing allocations following a thorough review of project activity reports in conjunction with the employees' time cards [Tab L]. These practices are consistent with the HUD guidelines, which provide that time cards are just one means of accounting for staff allocations. (HB 4381.5, paragraph 6.38(b)(4)).

Additionally, with more than 35 years of property management experience, AHMC has a depth of knowledge that it draws on with respect to the cost of providing management services, local market conditions (including the labor markets and applicable rates) and the time necessary to complete management tasks. Furthermore, a number of AHMC staff used to work for other area management companies, so AHMC has obtained additional knowledge of other companies' management operations in this manner.

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Comment 8
Comment 9
Comment 37

Nevertheless, the OIG summarily rejected AHMC's analyses and documentation because it departed from the specific forms that the OIG wanted to see. Accordingly, we disagree that there was "no assurance" that the costs charged to the HUD-assisted projects were reasonable and equitably shared among the projects. Furthermore, the OIG improperly misconstrued statements AHMC made about HUD's acceptance of budgeted costs in the drafting of its summary of this finding.

Comment 19

Once again, the OIG failed to consider the value the properties received for the services provided. For the same reasons discussed above with respect to Finding 1, the government is prohibited from disallowing all costs because it may disagree with how the auditee characterized and arrived at such costs, otherwise the projects would be unjustly enriched.

Comment 12
Comment 38

Moreover, the OIG cites nothing other than general guidance as a basis for questioning the costs in Finding 2. The OIG has not and cannot point to any specific provision that AHMC has violated. The draft audit also appears to overstate the number of projects that are subject to HUD Regulatory Agreements and their associated requirements.

Thus Finding 2 should more appropriately be drafted as follows:

"AHMC generally demonstrated that its costs for maintenance, janitorial, and resident service coordinator services were not in excess of costs that would have been incurred in arms-length transactions, and such costs were generally charged to the appropriate HUD-regulated property. AHMC enhanced its practices by implementing bi-weekly time sheets that require staff to track and allocate their time across the different properties that they serve. The local field office approved and determined the reasonableness of the annual budgets and annual financial statements which include the specific staffing allocations and fees. AHMC could seek other independent corroboration of the fees charged for such maintenance, janitorial, and resident service coordinator services, to the extent practicable, by obtaining annual bids for such services going forward."

AHMC disagrees with the OIG's allegation that the hourly rates that it charged its HUD-managed properties were inadequately supported; thus the title of the following subsection needs to be changed as follows:

Hourly Rates of Services Charged to HUD Projects Were Generally Adequately Supported

Comment 12

As a preliminary matter we note that it is impossible to determine which projects the OIG analyzed in arriving at what appear to be inflated calculations of allegedly inadequately supported costs for the three services provided. It appears that the OIG aggregated such costs across all of AHMC's managed properties; however, as noted, only seven properties are governed by regulatory agreements and the Financial Operations and Accounting Procedures for Insured Multifamily Projects Handbook (4370.2), and twelve properties whose Section 202 loans were prepaid are subject to use agreements. Therefore, we

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require written clarification of which properties' costs were tallied in arriving at the more than $1.6 million dollar figure.

Comment 8
Comment 37

Even if it turns out that the OIG analyzed the appropriate set of properties, it ignored the provisions of HUD Handbook 4370.2 (paragraph 2-6(E)) that clearly provides that there is no single form of appropriate documentation, but that "other supporting documentation" is acceptable. Thus, approved invoices and bills are not the only means of substantiating such charges.

Comment 8
Comment 39

We disagree with the OIG's assertion that the hourly fees charged were merely based on the Agent's "belief" of what was reasonable and necessary. In fact, AHMC polled five other management agents of similar size and capacity that provide similar services [Tab K], and it performed its own research into the costs associated with a sampling of data made available to it by different owners and auditors. [Tab A] AHMC also attempted to obtain relevant cost information from the Manchester field office, but that office only shared the average total cost of all operations for all HUD PRAC/202 developments in northern New England, and these figures are too aggregated to be useful. [Tab M]

Comment 40

The OIG focused a great deal of attention on the hourly rates charged for such services, but absent consideration of the actual hours worked, hourly rates do not provide a full picture of the actual costs incurred. Similarly, hourly rates are irrelevant with respect to evaluation of lump sum contracts.

Comment 41

We note that the OIG appears to make much of the fact that only one other source was surveyed with respect to resident service coordinator fees. However, as AHMC previously explained to the OIG, there are very few suppliers that provide these services from which valid comparisons may be drawn. If the OIG and/or HUD have suggestions regarding additional sources for this information, AHMC would be open to considering them.

Therefore, we suggest that the OIG revise this subsection of the audit report as follows:

"AHMC executed identity-of-interest agreements for related maintenance, janitorial and resident service coordinator services with a number of owners of the HUD-affiliated projects that it manages. The maximum annual fee compensation under these agreements was a flat rate paid from the projects' operating accounts in monthly installments equal to one twelfth of the annual fee. This fee was based on what AHMC determined was reasonable and necessary to cover the needs of the projects based upon annual surveys of other management companies and independent research and analysis that AHMC conducted into costs charged at similarly situated properties. The fees were reviewed, determined reasonable, and approved by HUD. Although we would have preferred to have seen such services formally bid out, AHMC generally adequately supported the hourly rates charged and the number of hours used to calculate the annual contract fees.

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"The regulatory agreement between the property owner and HUD requires that funds only be expended on reasonable operating expenses, although we acknowledge that only seven of AHMC's properties are subject to regulatory agreements. The regulatory agreement further limits allowable costs for goods and services provided under arms-length transactions. HUD Handbook 4370.2 states that all disbursements must be supported by approved invoices and bills or other supporting documentation. AHMC satisfied this requirement by entering into a contract for each service provided with each of the relevant project owners.

"AHMC compared its hourly rates to what other management companies in the State charged for their services. To justify its rates for maintenance technicians in fiscal year 2009, AHMC compared the maintenance fee assessed to its properties with those of four other local management companies. While we would have preferred to see AHMC bid out such services to three different potential service providers, AHMC's method generally satisfied the HUD requirements. We were told by AHMC that it did not need to obtain job descriptions in order to compare its scope of work with that of the four management companies because of its extensive knowledge of the kinds of services that were provided and their associated scope, but we recommend that in the future AHMC should review job descriptions in order to more conclusively determine that the services are comparable."

We disagree with the OIG's characterization of AHMC's use of lump sum contracts, and accordingly the title of the next subsection needs to be revised as follows or deleted in its entirety:

The Basis for Time Charged to HUD Projects Was Supported

Comment 40

The OIG provides no justification for its blanket invalidation of the use of fixed fee contracts, which may result in significant cost savings. With its average annual per unit costs of $217 for janitorial services, $256 for Resident Services Coordination and $540 for maintenance services, AHMC apparently delivers true value to its HUD-managed properties. [Tab B] So long as the fees charged are reasonable, are derived via appropriate means and reflect market costs, the OIG has no grounds to object. We particularly dispute the OIG's characterization of fixed fee contracts as "arbitrary." HUD does not specifically require the use of only time-based contracts, and the OIG has provided no legal justification for its assertion that they are prohibited.

Comment 42

Furthermore, we note that during a recent (June 17, 2010) budget training session officials from the HUD Manchester field office said that lump sum service contracts are allowable as long as there is a written statement of work, competitive bids, and some method of ensuring that the work is performed per the contract. [Tab D]

Accordingly, we believe that this subsection should be deleted in its entirety because the OIG has no legal grounds to challenge AHMC's use of fixed-fee contracts.

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The OIG Cannot Substantiate Its Claims Regarding Comparable Fees

Comment 43

For the reasons discussed below, we strongly disagree with the methodology that the OIG utilized to evaluate allegedly comparative fees of representative management companies and take issue with the conclusions that were reached. During the exit conference, the OIG admitted that it failed to test the information obtained from the other companies. AHMC's independent auditor has advised that the OIG's failure to test such information is a critical flaw because the OIG did not follow Generally Accepted Government Auditing Standards in evaluating this information. Accordingly, the OIG appears to lack the grounds to substantiate its claim that other management agents provide similar services for lower fees.

AHMC has a number of questions about the OIG's survey of the four Maine management companies and requires written clarification of a number of the OIG's claims. Most importantly, the OIG did not indicate how many hours each service was performed nor what the total costs to the properties were. The OIG did not discuss whether the scope of work for the services provided was the same across the companies or how that necessarily compared to the services provided by AHMC. Similarly, we have no way of knowing if the staffs of the surveyed companies have the same level of experience as AHMC's employees, or by how much their hourly rates allegedly diverged. We hereby request that the OIG provide detailed written materials evidencing its contacts with the four Maine management companies so that we may evaluate and comment on the scope and applicability of the information collected.

From the conclusory statements in the audit report, it is impossible to determine if those companies or their costs are indeed comparable to AHMC's. We request that the OIG clarify how it tested the information it received from the four management companies in order to make the statements that " [t]he management companies maintained adequate control over where their staffs spent their time" and "[t]he projects were billed based on documented hours recorded for work performed to complete work orders and work assignments". We understand that under Generally Accepted Government Auditing Standards, the OIG would have to perform tests in order to make these statements. Without adequate assurances that the appropriate tests were performed, the OIG's conclusions must fail.

Comment 8

As AHMC has already shared with the OIG, a comparison of all operating costs across various similarly situated management companies that reveals that AHMC's costs are consistently the lowest. [Tab A] The implication that AHMC maintained inadequate control over how its staff spent its time is inaccurate. This subsection of Finding 2 must be eliminated because it is unsupportable.

The next subsection appears to be based on the OIG's misreading and/or misinterpretation of HUD guidance materials as well as an erroneous understanding of how AHMC actually handles the costs of its supervisory employees. Thus, this subsection should read as follows:

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AHMC Appropriately Did Not Charge Maintenance Supervisor Salaries to HUD Projects

Comment 12

As a preliminary matter, we are unable to determine from the OIG draft audit whether the OIG analyzed the correct subset of properties and associated costs in arriving at its assertion regarding maintenance personnel. As previously noted, not all AHMC-managed properties are subject to HUD regulation and oversight, and yet the OIG draft report appears to suggest that all of AHMC's managed properties were lumped together as part of this analysis.

Comment 44

The OIG did not identify which AHMC staff member allegedly stated that maintenance supervisor salaries were charged to HUD regulated properties under the maintenance service agreements thus we are unable to determine if a misstatement was made, or if a correct statement was misheard. This statement is contradicted by the maintenance service agreements themselves, which provide that only maintenance services are charged to the HUD-regulated properties. We note that a sample of these agreements were provided to the OIG for review on December 15, 2009 and January 5, 2010 as requested by the OIG, and again as part of AHMC's May 6, 2010 response to the preliminary audit findings. If there was any confusion with respect to the terms of the agreements and the allegedly contradictory statements of the unidentified staffer, the OIG would have had ample time to bring this to AHMC's attention for resolution before the draft audit report was finalized.

Additionally, the OIG's suppositions regarding maintenance personnel appear based on a misreading of provisions contained in the Management Agent Handbook. Specifically, Paragraphs 6.38(a)(1), 6.39(b)(5) and 6.39(c) provide that project maintenance is properly considered to be a front-line expense and such costs are borne by the project, whereas project "monitoring" as part of a visit to the property and oversight are management agent costs. We note that all of AHMC's maintenance personnel work out of and are assigned to specific managed properties, and none are actually central office employees, so it is inaccurate of the OIG to characterize such employees as if they were central office staff whose primary responsibilities were supervisory or "monitoring" in nature.

Furthermore, AHMC performed an analysis of the proportion of time that its supervisory maintenance personnel spend on purely supervisory functions, and determined that this ranged from approximately 7% to 15.5% on average, with the balance of their time spent performing front-line maintenance activities. [Tab N] Most importantly, and un-reflected in the OIG audit, is the fact that AHMC <u>does not charge</u> the cost of such supervision to the properties that it manages, so we are unclear what point the OIG is trying to make. We understand that AHMC previously provided copies of its maintenance services contracts to the OIG that show that only maintenance services are charged to the managed properties, so it is surprising that the OIG would reach a different conclusion on the basis of a comment made by an unidentified staff member.

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Comment 37
Comment 40

Moreover, the OIG's assertion that AHMC supposedly held up the HUD-approved budgets as the sole measure of the sufficiency of its cost allocations is false. AHMC relied on a number of factors, including its own analysis of the proportion of time that its maintenance supervisors spent providing front-line services. It seems appropriate that AHMC should be able to presume that the field office would engage in due diligence with respect to the projects' annual budgets, including the standard HUD practice of questioning those sums that departed more than 5% from the projected costs, that the budgets would have been rejected if the field office had concerns, and any variances would be addressed during the process of reviewing the annual audited financial statements. The OIG should therefore acknowledge that HUD's year after year approval of and acceptance of these activities supports the agent's assertion that HUD did not disagree with how AHMC had allocated these costs.

Thus, this subsection should be eliminated entirely because AHMC does not charge supervisory fees to its managed properties, as set forth in its service agreements that were previously provided to the OIG.

"Conclusion"

The OIG's conclusion is based on the erroneous assertion that AHMC's comparisons of costs with respect to identity of interest services are inadequate when in reality the OIG summarily rejected all such documentation and analysis provided by AHMC. Additionally, it appears as if the OIG itself is unsure about its conclusions in this area because it characterized AHMC's fees as if they "appeared" unreasonable. Furthermore, as previously explained and as a matter of equity, the OIG may not discount all of the services provided by AHMC personnel as if they imparted no value at all to the properties. Thus it is inaccurate for the OIG to claim that the entire value of the fees charged for such services, totaling $1.6 million dollars, are unreasonable and unsupported.

"Recommendations"

Comment 38

2A. AHMC does not necessarily dispute the recommendation, but we understand that AHMC is already in compliance with HUD cost allocation requirements at those properties that are covered by HUD regulatory agreements and related rules. The OIG has yet to articulate which regulations govern cost allocation issues. Accordingly, we object to the OIG's assertion, which does not appear to be adequately justified, that the fees charged appear to exceed customary arms-length transaction or that supervisory services were necessarily charged to the projects, particularly because the documentation previously provided to AHMC refutes its claims.

2B. As previously discussed, we believe that AHMC has already provided sufficient acceptable documentation in support of the fees it charged for maintenance, janitorial and resident service coordinator services, so there should be no reason for HUD to perform an independent evaluation. In 2010 AHMC bid out such services and in the process confirmed that its costs were lower than comparable market rates [Tab O]. As a result,

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the Manchester field office permitted AHMC to raise its rates for these services. Regardless, AHMC should only have to repay those fees where the services provided did not benefit the projects, which we understand is not the case.

2C. We think communications with project owners are unnecessary and uncalled for as AHMC is already compliant with HUD requirements at those projects that are so regulated.

With respect to Finding 3 and as more particularly addressed below, we disagree with the OIG's characterization of AHMC's practices with respect to ensuring reasonableness of project costs, and the finding heading should be revised as follows:

<u>Finding 3</u>: Avesta Generally Complied With HUD Requirements for Allocating and Ensuring the Reasonableness of Project Costs

Comment 45

The OIG exceeded its authority when it states that it reviewed 30 non-HUD projects as part of its analysis. Accordingly we question the scope of the salaries and services that were called into question and suspect they are overstated. Additionally, we note that the OIG's preliminary audit finding theorized that OMB Circular A-122 applied to AHMC and justified denial of the questioned costs on this basis. Based on AHMC's research, and as acknowledged by other HUD officials, Circular A-122 is inapplicable to AHMC, and the OIG has provided no new justification for its conclusions. Instead, once again the OIG summarily dismissed AHMC's supporting documentation with very little discussion of its rationale.

Comment 46

Comment 47

Contrary to the OIG's assertions, AHMC provided appropriate attribution of the various costs charged to its HUD-managed properties and did so in a form that is supportable by paragraph 6.38 of the Management Agent Handbook [Tab L]. We disagree with the OIG's claim that AHMC's records and reports were inadequate or failed to track the labor required to provide the questioned services. It is a complete overstatement for the OIG to claim that there is "no assurance" that project manager salaries were allocated equitably, and that all such costs are unsupported. As a matter of equity, the OIG is prohibited from denying that the projects failed to benefit from the services that were indeed provided.

Thus, Finding 3 should be reworded as follows:

"AHMC generally complied with applicable HUD guidelines to ensure the appropriate allocation of the time spent by its property managers providing services to HUD-regulated properties, and it generally ensured the reasonableness of costs for accounting/bookkeeping services. AHMC's property managers generally maintained adequate records and reports showing hours worked in such a fashion that calculations of hours worked on behalf of a specific property could be reasonably derived, in conformance with HUD guidelines.

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"AHMC could have improved its practices to ensure that the costs of accounting/bookkeeping services did not exceed the cost of procuring comparable services from independent vendors by formally bidding such services out on an annual basis. AHMC has committed to undertaking such bid practices in the future."

Because it is a mischaracterization for the OIG to conclude that AHMC's cost allocation methods violated HUD guidance materials, the subsection heading should be revised to read:

Property Manager Salaries Were Generally Supported

Comment 36
Comment 48

The OIG improperly assumed that the cost allocation method employed by AHMC, which is based on time sheets and monthly activity reports, is deficient because it is not a purely timesheet based model. To the best of our knowledge, HUD does not dictate that only timesheets must be used as part of a management agent's staff allocation practices, and the OIG has provided no justification for its determination. In fact, in discussing allocation of agent staff that perform front-line duties, paragraph 6.38(b)(4) of the Management Agent Handbook provides that weekly timesheets are an acceptable method of documenting hours worked, but by no means does it indicate that this is the only acceptable or required method.

Comment 49

It is an exaggeration for the OIG to assert that HUD requires salaries and fringe benefits of personnel performing front-line duties to be based on actual time spent when a per-unit basis of cost allocation is acceptable. In fact, as part of its comparison of per unit staff allocations versus hours spent at each property, AHMC determined that it was actually undercharging the properties for front-line staff. [Tab P] We note that the OIG suggested that AHMC conduct a *per unit* analysis to ensure the properties were not overcharged, and the underlying data was provided to the OIG auditors who apparently elected not to evaluate it. Additionally, AHMC obtained approval from HUD to allocate bookkeeping and accounting costs on a per unit basis, as evidenced by the attached email from Multifamily Housing Division Supervisor Mark Seltzer of the Manchester field office. [Tab P] This email was previously provided to the OIG auditors.

Comment 50

Additionally, the OIG misrepresented statements made by AHMC with respect to its willingness to modify its timesheets. We understand that AHMC said that it would change its timesheets to meet the OIG's specifications if this was determined to be appropriate. AHMC argued strongly that its analysis of activity logs and time sheets satisfied the Handbook guidance, but the OIG apparently refused to consider AHMC's position. It is untrue that AHMC stated to the OIG that it agreed with the OIG that its cost allocation system could be improved.

Concurrently, AHMC reached out to the Manchester field office for guidance on this topic, but was rebuffed and told that no guidance would be forthcoming. [Tab M] HUD Manchester's response is in direct contravention of the mandate that HUD program staff provide assistance to management agent staff in working to meet their HUD responsibilities. (See HB 4381.5, paragraph 1.7(a)).

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This subsection of the finding should more appropriately be revised as follows:

"Documentation provided by AHMC to show where its property managers worked or spent their time was generally adequate to meet HUD guidelines. HUD requires that salaries and fringe benefits of personnel performing front-line duties be prorated among the properties served in proportion to actual use. AHMC utilized a method of cost allocation that generally accounted for the time spent by its property managers at the managed properties.

"As support for the property managers' salaries, AHMC produced monthly reports showing accomplishments at one project for front-line duties in fiscal year 2008 and a supervisor's email listing nine HUD-assisted properties and the hours spent per week at those properties as reported by the property managers. As part of its allocation and analysis of front-line staff time spent at the various properties, AHMC staff adjusted the time allocations across the properties pursuant to information provided by supervisory personnel familiar with the duties performed at the different properties. In response to our comments about how the timesheets could be enhanced by adding space for the front-line staff to delineate hours spent at each of the properties served, AHMC made modifications to its timesheets. In our view the revised timesheets can be closely tracked back to the work detail provided via the monthly reports."

Similarly, we disagree with the OIG's characterization of AHMC's support for its accounting and bookkeeping service fees, and this subsection heading should be revised as follows:

AHMC Generally Supported its Accounting and Bookkeeping Services

Comment 12

Once again, this was another cost area where the OIG ignored whether the regulatory documents actually pertained to properties managed by AHMC, and instead imposed the HUD requirement regardless. This had the unfortunate effect of impermissibly overinflating the OIG's estimate of allegedly misdirected funds.

Comment 51

Furthermore, the OIG incorrectly assumed that the staffing necessary to oversee and operate accounting and bookkeeping services are non-project expenses. Figure 6-2 of the Management Agent Handbook unequivocally provides that "all costs related to maintaining a centralized or project-based accounting functions of the project" are a project expense. This includes the staff necessary to conduct the work. This is confirmed by paragraph 6.38(a)(3) that states that supervisory staff who provide oversight over centralized accounting and computer services for the project are chargeable to project accounts, and is further confirmed in paragraph 6.39(c)(1). Thus it is untrue that AHMC failed to comply with HUD requirements and that such costs are unsupported. We note there are no applicable regulations regarding this issue as the OIG insists.

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Comment 52

AHMC commits to providing the OIG the requested clarifications regarding the 2007 and 2008 accounting and bookkeeping service fees and breaking such costs out from the "Other Administrative Expenses" account. We note that it is our understanding that the Manchester field office originally directed AHMC staff to include bookkeeping and accounting fees in the "other" account.

Accordingly, this subsection of Finding 3 should be revised as follows:

"AHMC generally maintained documentation required by HUD to ensure the reasonableness of costs for accounting/bookkeeping services it provided to the HUD projects. The accounting/bookkeeping services costs included accounting staff wages, benefits, worker's compensation insurance, and payroll taxes; a portion of the accounting manager's wages and payroll taxes, excluding benefits; and the cost of accounting software and property compliance software. With HUD approval, these costs were allocated on a per-unit basis to the projects managed, with the exception of property compliance software, which is charged directly to the project. For those projects with regulatory agreements, the regulatory agreement between the property owner and HUD provides that the owners shall not pay out any funds except for reasonable operating expenses. HUD guidelines also provide that costs to the project for centralized accounting and computer services provided by the management agent may not exceed the cost of procuring comparable services from an independent vendor. Each year the management agent must determine whether these costs are at or below market rate and maintain such evidence on site.

"In early 2010, AHMC submitted a request for guidance to the Manchester field office seeking additional guidance with respect to such bidding requirements, but was turned away. AHMC maintains that it has experienced difficulty in obtaining appropriate bids in order to address the HUD guidelines."

"AHMC experienced difficulty in tracing the fiscal years 2007 and 2008 costs for accounting/bookkeeping services because the costs were combined with other expenses in an account titled 'Other Administrative Expenses.' During the audit, at the request of OIG, AHMC's chief financial officer reconciled some of the 'Other Administrative Expenses' account and identified the accounting and bookkeeping services for seven HUD projects in fiscal year 2008. Upon learning in the draft report that the OIG would like additional reconciliations, AHMC has committed to completing the reconciliations of the 'Other Administrative Expenses' for the fiscal years that are still at issue."

<u>"Conclusion"</u>

The IG adopted a broad brush approach in invalidating all of AHMC's bookkeeping and accounting costs, provided little justification for its actions, and improperly ignored the value provided to the properties.

<u>"Recommendations"</u>

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Comment 49

3A. AHMC disagrees with the implication inherent in the recommendation that per unit accounting of property manager salaries is inappropriate, and that all such costs are deemed to be unsupported on this basis alone. Per the attached cost analysis of 2009 project manager salaries, AHMC determined that it was actually under charging its HUD-managed properties. [Tab P] AHMC disagrees that all such costs should necessarily be returned to the properties because the OIG failed to acknowledge the fair market value of the services provided and the demand for reimbursement would unjustly enrich the properties.

3B. AHMC is committed to determining appropriate and comparable fair market rates against which to compare its costs, and it has requested additional guidance from HUD about how to accomplish this. We understand that during a recent telephone conversation with AHMC's CFO and Vice President of Management and Assisted Living, Michael Myatt, HUD project manager Janice Higgins declined to provide such guidance. In fact, during the exit conference it was apparent that the Manchester field office does not believe that its role is to provide guidance to management agents. This places the auditee in an untenable position where it cannot hope to ascertain the HUD requirements and yet will likely be held to some unarticulated standard. Furthermore, AHMC disagrees that all such costs that are deemed to be unsupported should be returned to the properties because the OIG failed to acknowledge the fair market value of the services provided, and the demand for reimbursement would unjustly enrich the properties.

Comment 52

3C. AHMC commits to provide the requested breakout of costs for accounting and bookkeeping services in 2007 and the remaining costs for those services in 2008 that were attributable to the administration of HUD projects as soon as practicable. We note that had the OIG asked for such information during the audit, AHMC would have provided it at that time.

3D. Avesta agrees that the local field office has not provided sufficient guidance with respect to its expectations or the HUD requirements in all of the areas challenged by the OIG. For example, on February 9, 2010, the Chairperson of Avesta Housing wrote to Multifamily Program Center Director Philip Holmes and requested additional guidance with respect to cost accounting issues [Tab M]. In its response of February 24, 2010, HUD Manchester rebuffed the request for additional training and clarification of HUD policy and effectively dismissed AHMC, citing a general expectation that HUD approved management agents should have the requisite experience to successfully manage HUD properties. [Tab M] We note however that the Management Agent Handbook affirmatively requires the field offices to work with management agents in the provision of quality affordable housing. In fact, the very first responsibility articulated in the Handbook is for "HUD Area Office staff [to] provide[] assistance to help agents meet their responsibilities..." Handbook 4381.5, paragraph 1.7(a).

SCOPE AND METHODOLOGY

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Ref to OIG Evaluation **Auditee Comments**

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The OIG has failed to indicate how it defines "Avesta", what constitutes a "segment" of such "Avesta" entity, nor what it considers to comprise "Avesta Housing." The only Avesta entity subject to the audit is Avesta Housing Management Corporation.

Comment 53

We note that the OIG failed to acknowledge that as a matter of law HUD Handbooks do not enjoy the same force or effect as regulations because they are not subject to rulemaking standards that require public notice and opportunity to comment. The auditee was assured at the entrance conference that the OIG would be governed principally by the Code of Federal Regulations and that Handbooks were guidance.

Comment 54

In the first bullet point there is an imprecise reference to "applicable" OMB circulars, but there is no mention of the fact that OMB Circular A-122 does not apply to AHMC despite that this was a central focus of the OIG's for much of the time when it was performing the audit.

In the fifth bullet point there is a reference to job descriptions that are "consistent with those of Federal programs." It is unclear what Federal job descriptions the OIG is referring to.

The sixth bullet point improperly claims that the OIG evaluated seven construction-related procurements; however, the OIG actually evaluated a total of 15 such procurements. [Tab G]

The seventh bullet point claims that the OIG evaluated all of AHMC's contracts and documents, but AHMC does not believe that this occurred based on the documentation requested by the OIG.

The eighth bullet point claims that the OIG reviewed all "attainable" documentation maintained by AHMC. However this term is misleading because AHMC gave the OIG everything that it asked for despite that at times the auditors had difficulty articulating precisely what they wanted, which may not have included all documentation that was necessarily "attainable."

The ninth bullet point does not specify what the HUD approved "limits" are with respect to management fees.

The twelfth bullet point improperly claims that AHMC manages 30 total HUD-affiliated properties, but the correct number is 29 such properties. Furthermore, the OIG failed to draw distinctions between the different programmatic requirements affecting the HUD-regulated properties.

The thirteenth bullet point fails to substantiate the OIG's claim that its selection of "representative" management companies for cost comparison purposes was "fair", and given that an admittedly "non-representative" sampling of the universe of 90 HUD-affiliated management companies was used by the OIG to arrive at only four such companies, we have reason to question whether the analysis was indeed "fair".

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In the fourteenth bullet point the OIG notes that one of the management companies it selected for cost comparison purposes is the second largest manager of HUD-affiliated properties in the Portland proper and is therefore comparable to AHMC; however, AHMC does not manage any HUD properties in Portland proper, so the OIG's selection methodology appears to be flawed.

We question the claim that the entire audit was conducted in accordance with Generally Accepted Government Auditing Standards because the OIG failed to clarify how it actually tested the information received from the four management companies in order to make the statements that " [t]he management companies maintained adequate control over where their staffs spent their time" and "[t]he projects were billed based on documented hours recorded for work performed to complete work orders and work assignments". AHMC's independent auditor has advised that under such auditing standards, the OIG would have had to perform tests in order to properly substantiate and make these statements.

INTERNAL CONTROLS

Comment 55

For the reasons discussed throughout this response, AHMC disagrees with the OIG's belief that it found three significant weaknesses with respect to the adequacy of AHMC's internal controls.

APPENDIX A – SCHEDULE OF QUESTIONED COSTS

We disagree with the OIG's schedule of questioned costs because all of the recommendations overstate the amount of the allegedly unsupported costs, as further discussed in the body of AHMC's response.

APPENDIX C – CRITERIA

Finding 1

The OIG failed to impose HUD regulatory requirements on only those properties that are actually subject to the applicable HUD regulations. Accordingly, the OIG erroneously asserted that HB 4381.5 applied to properties that were not actually subject to the Handbook. We note that it is an open question, and the management agent certification appears to support our view, that properties that receive Section 8 assistance but are financed by State Housing Finance Agencies or Rural Development are overseen by such agencies rather than HUD.

The OIG also selectively misquoted HB 4381.5 in its draft report. Missing from the first sentence of paragraph one is a critically important reference to the scope of the cost analysis, which is limited to each individual project. Paragraph 6.50(a) of the Handbook actually reads as follows, with the missing wording underlined:

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> "...the agent is expected to solicit written cost estimates from at least three contractors or suppliers for any contract for ongoing supplies or services which is expected to exceed $10,000 per year or the threshold established by the HUD Area Office with jurisdiction over *the project*."

(emphasis added.) We note that there are numerous other references to "the project" in the other bullet items in this same section of the Handbook.

At the top of page 25 there is a missing reference to the correct chapter of the Management Agent Handbook, and we disagree that the Handbook necessarily "dictates" the use of competitive bidding in all instances. As paragraph 6.50 provides, three competitive bids are only required for procurement of good and/or services that cost more than $10,000 per year.

Finding 2

As the OIG admits and points out in this section, the relevant regulated party with respect to any regulatory agreement is the project owner and not the management agent, and the OIG did not audit any owners of AHMC-managed properties that are HUD regulated.

In the last paragraph as part of its discussion of paragraph 6.39(c), the OIG neglected to mention that supervisory employee's salaries may be charged to projects if they are performing front-line duties.

APPENDICES D AND E

The OIG engaged in an improper and unauthorized aggregation of costs across projects and also project owners, in violation of HUD requirements (HB 4381.5, paragraph 6.50(a)), and provided no legal basis for this aggregation. Even if costs could be aggregated across properties, the OIG erred in failing to annualize these figures in Appendix E. Had the amounts been annualized, none would have exceeded $10,000 per year per project and per procurement activity. [Tab E]

Conclusion

AHMC disagrees with the OIG's report findings and questions the majority of its conclusions. There appear to be significant departures from Generally Accepted Government Auditing Standards and the OIG auditors admitted that they failed to work independently of the HUD Manchester field office. The OIG report does not appear to be fair, balanced or objective, particularly as it distorts HUD policy positions and fails to acknowledge the exemplary management record of AHMC.

Contrary to the OIG's allegations and consistent with the documentation provided to the auditors by the auditee, AHMC typically followed HUD procurement procedures, as a general matter it adequately supported the costs of its identity of interest services, and it also generally complied with HUD requirements for allocating and ensuring the

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reasonableness of project costs. Because of the many flaws in the OIG's audit methodology and the lack of support for its conclusions, we recommend that the OIG withdraw the draft audit report and refrain from issuing a final report.

Thank you for the opportunity to comment on the OIG's draft audit report. Should you have any questions about this letter or the accompanying documentation, please do not hesitate to contact me at 202-466-5300.

Sincerely,

Lisa A. Tunick

Attachments

cc: Richard A. Walega, Regional Administrator, HUD – Boston Regional Office
Joseph Crisafulli, Director, HUD – Boston Multifamily HUB
Philip W. Holmes, Director, HUD – Manchester Multifamily Program Center
J. Bryan Howell, Counsel to the I.G., HUD O.I.G. – Washington, D.C.
Kristen J. Ekmalian, Assistant Regional I.G. for Audit, HUD O.I.G. – Connecticut
Morgan McCarthy, Senior Auditor, HUD O.I.G. – Boston
Dana Totman, President, Avesta Housing
Gail P. Kingsley, Avesta Housing Board Chair
Bruce E. Fritzson, CPA, Otis Atwell
Maurice A. Selinger, III, Esq., Curtis Thaxter

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AUDITEE COMMENTS AND OIG'S EVALUATION

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Appendix

Comment 1

Errors and Misstatements in OIG Draft Report No. 2010-BO-1007

1. Page 1, Line 1 – Avesta Housing Management Company is actually Avesta Housing Management Corporation ("AHMC").

2. Page 1, Line 5 – Avesta Housing Management Corporation is the current manager of 29 (not 30) other HUD related projects.

3. Page 2, Line 17 – On the date the report was presented, July 7, 2010, Avesta Housing Management Corporation managed 29 HUD-related and 31 non HUD related projects

4. Page 2, Line 23 – We point out that 13 of the HUD related projects do not have applicable management certifications.

5. Page 2, Line 32 – "HUD affiliated projects" is a new term and difficult to distinguish from HUD projects.

6. Page 5, Line 1 – There is so such entity with the name Avesta Housing Organization. Previously we were told that the auditee was Avesta Housing Management Corporation.

7. Page 5, Line 1, footnote 2 – Avesta Housing Management Corporation was formerly known as York Cumberland Housing Management Corporation – not York Cumberland Housing.

8. Page 5, Line 1 – Avesta Housing Management Corporation was founded in 1974, not 1972.

9. Page 5, Line 8 – "Avesta Housing" is not under an umbrella.

10. Page 5 – Line 8 – There are no corporations with the names Avesta Housing Management Company, Avesta Development, nor the Inn at Village Square.

11. Page 5 – Line 10 – Maine State Housing Authority does not pay AHMC a management fee for managing its development programs.

12. Page 5, Line 12 – The assisted living program operates within the Maine Department of Health and Human Services long term care programs, not under the U.S. Department of Agriculture.

13. Page 5, Line 15 – Avesta Housing Management Corporation manages about 1,668 units not 1,300 units of housing.

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14. Page 5, Line 16 – Six, not seven of the managed projects are under the HUD PRAC program.

15. Page 5, Line 18 – We are uncertain what is known, meant or implied by the phrase "the quality of the PRAC program has improved."

16. Page 5, Line 21 – AHMC does not administer projects for Maine State Housing Authority. AHMC manages projects for the owners of the projects.

17. Page 5, Line 23 – Not all contracts with the owners are identity-of-interest contracts.

18. Page 6, Line 2 – AHMC could and did provide documentation to substantiate that it solicited bids.

19. Page 6, Line 8. – AHMC did not employ a director of maintenance, however it did employ a facilities manager who did not report to the CEO and who had responsibility for some procurements related to property repairs.

20. Page 7, Line 3 – The HUD Management Agent Handbook indicates verbal cost estimates should be sought for contracts less than $5,000 per year, not $10,000.

21. Page 7, Line 12 – 19 properties, not 18, are regulated by management certification agreements.

22. Page 7, Line 13 – The OIG reviewed 15 construction procurements, not 7.

23. Page 8, Line 16 – A proper signature is not required for bids.

24. Page 8, Line 33 – The AHMC President did not make that statement.

25. Page 9, Line 1 – The AHMC President did not make that statement and there is no former employee with the job title "Director of Maintenance".

26. Page 9, Line 14 – The President did not ever directly supervise the Facilities Manager and there was no Director of Maintenance.

27. Page 9, Line 20 – During the exit conference the OIG auditors agreed that HUD projects should not be reimbursed if the purchases occurred with non HUD funds.

28. Page 10, Line 8 – We simply point out that the HUD Management Agent Handbook requires HUD officials to review budget items for reasonableness. For AHMC to conclude that fees that are the same as those approved (and determined reasonable) by HUD and that are consistent with local marketplace to be reasonable, does not sound deficient.

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29. Page 11, Line 7 – AHMC has had staff that have worked for all four of the surveyed management companies so rechecking job descriptions was unnecessary.

30. Page 11, Line 29 – The OIG is stating that "the management companies maintained adequate control", however, no testing was done and no documents were reviewed. The OIG is making this statement in violation of Generally Accepted Government Auditing Standards.

31. Page 12, Line 2 – 'May not have met requirements' is an entirely speculative phrase and highlights the OIG's uncertainty on the issue.

32. Page 12, Line 20 – Concern is raised that HUD projects did not incur a disproportionate share for these services, yet when the OIG surveyed other management companies, the auditors specifically failed to survey what the other companies charged for these services – instead, focusing on an hourly rate rather than the cost of these services.

33. Page 12, Line 16 – The OIG indicates the cost comparisons were not adequate, yet fails to demonstrate any written criteria for measuring adequacy.

34. Page 12, Line 19 – "Avesta did not maintain sufficient documentation to show that services provided were the most reasonable" is a statement in which the OIG expands the HUD handbook requirement from "reasonable" to "most reasonable" with no authority and with inexplicable motive.

35. Page 12, Line 22 – "Avesta fees appeared unreasonable... without evaluation... of whether they were based on like services". The OIG simply fails to explain why they appear unreasonable. The fees were based on like services because AHMC and each of the surveyed companies have exchanged staff.

36. Page 13, Line 4 – There simply are no "regulations" that have these requirements so the OIG should not suggest there are any.

37. Page 13, Line 12 – According to Handbook 4350.1, paragraph 7-29(G)(2), HUD must annually review project income and expenses and "assess whether the actual expense base is reasonable... and whether the project is taking reasonable efforts to control costs and is complying with the terms of the certification in Appendix 3." HUD has determined that all of the expenses contained in the cited $1,615,718 are reasonable and has taken reasonable effort to control costs so providing documentation would be redundant.

38. Page 14, Line 14 – Despite OIG claims to the contrary, documentation was provided by AHMC and the OIG has been unable to define what is meant by "adequate".

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39. Page 15 – Line 2 – AHMC did not agree in principle that its system could be improved. AHMC did agree that it would make every attempt to comply with any new written defined requirements of HUD.

40. Page 15, Line 14 – There are no HUD "regulations" that dictate this.

41. Page 15, Line 16 – There are no HUD "regulations" for this requirement.

42. Page 15, Line 29 – The OIG auditor requested the Chief Financial Officer to reconcile the accounts for the seven projects and she did. The auditor simply did not request any additional reconciliation and these funds do not represent questioned costs.

43. Page 16, Line 1 – There are no HUD "regulations" regarding these costs.

44. Page 16, Line 5 – The OIG indicates that they could not determine whether these charges were reasonable, however, the OIG could easily have included these cost categories in its survey of four management companies to compare reasonableness or the OIG could have reviewed HUD's review of the relevant budgets and financial statements that had been submitted to HUD and determined to be reasonable by HUD.

45. Page 16, Line 18 – AHMC has already identified these costs in 2007 and 2008 in its submitted audited financial statements.

46. Page 17, Line 1 – According to formal correspondence from the OIG office, the name of the auditee is not "Avesta" and "Avesta" is not a segment of "Avesta Housing", a non-existent organization.

47. Page 17, Line 6 – The OIG reviewed considerable "inapplicable" OMB circulars, HUD Handbooks, regulatory agreements, management certifications and previous participation certificates as well as "applicable" materials.

48. Page 17, Line 20 – There are no Federal programs job descriptions to measure consistency with.

49. Page 17, Line 25 – The OIG selected for review 15 construction related procurements, not 7.

50. Page 17, Line 33 – The OIG reviewed all "attained" documentation that was attained during their visit. Additional documentation is and was attainable upon request.

51. Page 18, Line 15 – Four management companies are arguably not a "fair" representation from a universe of 90 and the OIG even indicates it is a non-representative sampling.

52. Page 18, Line 25 – The OIG claimed it selected one management company because, "next to Avesta, the company manages the largest number of HUD-affiliated projects…

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located in Portland proper". AHMC manages zero HUD-affiliated projects in Portland proper.

53. Page 18, Line 27 – The audit does not appear to have been conducted in accordance with Generally Accepted Government Auditing Standards because audit conclusions on the bottom of page 11 were reached with no testing or document review as required by the audit standards.

54. Page 19, Line 22 – AHMC did contract for annual audited financial statements that adequately monitored its procurement and contracting process and these audits were reviewed by HUD and other funding sources. Additionally, Maine Housing and Department of Agriculture monitored these processes annually.

55. Page 20, Line 1 – AHMC did support these costs, however, OIG has applied undefined and unwritten "adequacy" criteria.

56. Page 20, Line 3 – AHMC's system of allocating salaries has been deemed effective by HUD from 1974 to 2007 when a new HUD asset manager was assigned.

57. Page 22, Line 11 – We understand that normal audit procedures obtain legal interpretations or clarifications before making findings, not after.

58. Page 25, Line 3 – The OIG abbreviated the statement in the handbook and thereby altered and, misquoted the actual statement.

59. Page 25, Line 5 – The OIG again has reworded the actual language contained in the handbook.

60. Page 25, Line 10 – The OIG fails to identify which projects have management certifications in place and tested procurements against this requirement even when the projects did not have the requisite certifications in place.

61. Page 26, Line 1 – The OIG references "Handbook 4370.2 Chapter ?", so AHMC does not know which specific guidance material the OIG refers to.

62. Page 26, Line 7 – Most of the properties (25) do not have the regulatory agreements.

63. Page 26, Line 9 – Most of the properties (25) do not have regulatory agreements.

64. Page 26, Line 15 – The handbook references supervisory project personnel, not agent's supervisory personnel.

65. Page 26, Line 25 – The referenced regulatory agreements do not exist for many AHMC managed properties.

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66. Page 27, Line 1 – These procurements did not exceed $10,000. Combining procurement from among properties over several years leads to totals that may exceed $10,000 but which violate no regulations or other HUD requirements.

67. Page 28, Line 1 – Procurements below $5,000 are mentioned in policy guidance, however, no guidance or regulation references pertain to procurements between $5,000 and $10,000.

OIG Evaluation of Auditee Comments

Comment 1 OIG made the necessary changes or revisions to the draft report and clarifications were provided where necessary.

Comment 2 The draft was provided to ensure that the facts were presented correctly. OIG's draft was based on information identified during the audit; however, necessary minor changes were made when warranted based on the additional information in the attached appendix from Avesta. In addition, many of the 68 items identified were repeatedly counted and were considered to be minor in nature, and certain information cited as not being factual was provided to OIG verbatim by Avesta's chief financial officer and vice president of management during the audit.

Comment 3 The auditee's comment that we are suggesting that the report was not a draft is misleading and is not an actuate portrayal of the facts and the events surrounding its transmittal. The e-mail transmitting the draft report clearly stated that it was a draft report provided for the exit conference, the report was clearly labeled as a draft report, and the accompanying letter stated that it was a discussion draft provided for comment and that it was subject to revision. On July 8, 2010, we instructed Avesta to disregard the copy previously provided because it did not contain the restrictive language for a discussion draft. The restrictive language for a discussion draft inadvertently had not been added before it was transmitted, and the omission was noted by us the following day. It was replaced with the version that clearly noted that it is a discussion draft and was made available for review and comment. No other changes were made except the adding of the restrictive language.

Comment 4 During the audit process, the status of the findings was discussed with the auditee as the findings were being developed. The findings were presented to Avesta based on the information it had provided, but its failure to provide all the procurement records requested by OIG impeded the OIG's efforts to complete the work and confirm the full extent of the unsupported costs. However, the audit work on procurement was completed to prepare a draft finding outline but the amount of unsupported costs was not finalized. Also, Avesta was advised of the possibility that it would have to repay the costs if costs could not be supported.

Comment 5 There was no departure from generally accepted government auditing standards at any point during this audit. Regardless of the minor transposition errors found, which were adjusted as explained below, the presentation of the extent to which Avesta had failed to support certain expenditures because it did not follow HUD procurement regulations was accurate. The audit selection of procurements was conducted in two stages and focused on procurements paid from project funds. Following the standards, an initial sample was tested for compliance and unsupported costs were identified. Then a more extensive testing of additional procurements was performed to confirm the extent of the total unsupported costs. In these samples, were two procurements that were each completed in two stages, and Avesta recognized these as separate procurements, but OIG recognized each procurement with two stages as one procurement in its analysis. The procurement transactions included in the report pertain to those selected by OIG in the audit phase of our review. However, OIG also reviewed three procurements in the survey stage and revised the report to include the sample initially tested. Therefore, a total of 10 procurement contracts were reviewed by OIG, excluding the procurements paid with non-HUD funding and the two procurements performed in separate stages. Also see comment 29.

Comment 6 We believe the report is balanced, fair, and objective to the extent to which Avesta was forthcoming with its responses and the information that it provided during and after the audit. There is uncertainty as to what proactive measures Avesta implemented, particularly because it disagreed with the majority of the conclusions throughout the audit and the findings and recommendations in the draft report and because of instances in which Avesta wavered or remained undecided on issues.

Comment 7 OIG revised the report to recognize and include some of Avesta's accomplishments in the final report as indicated in the auditee comments.

Comment 8 The finding questions whether the fees were reasonable, and Avesta has not provided information to show they were reasonable. Even in the example provided in the auditee comments showing a comparison of total costs, adequate support is not provided to ensure reasonability. It does not provide comparative information at a detailed level to show the hours of work or the type of work performed by other similar projects that would support that Avesta's fees were reasonable. The amount of the fees charged to the project should be in proportion to the work performed, but Avesta has been unable to adequately justify the hours or work performed at HUD projects. Also, the cost comparison of 12 individual projects considers all operating costs, whereas our review focused on specific costs or fees. In addition, Avesta failed to provide the names of the projects in its analysis, and the analysis did not take into consideration variables such as location, age of property, new construction or rehabilitation, and number of units and should not be used as a benchmark for establishing the cost of delivering these services.

Comment 9 The reasonableness finding was not based on the lack of documentation as stated in the auditee's comments. We questioned the reasonableness of these services because (as noted in the draft report) both the hourly rates and number of hours used by Avesta to calculate the annual contract costs were not supported. It did not provide the basis for the hourly rates and whether they were reasonable based on service provided through the open market or provide evidence of the hours that would normally be needed to perform these services. As a result, the reasonableness of the contract costs is uncertain. Avesta's statement that the report emphasizes form over substance is misleading.

Comment 10 The audit showed that Avesta did not follow HUD requirements in administering HUD-funded projects. The comment that the basis for the report is totally reliant on HUD's Management Agent Handbook 4381.5 is inaccurate. The basis for the finding was explained and supported, was based on the criteria documented in appendixes C and E, and shows that OIG relied on applicable HUD requirements and the Management Agent Handbook 4381.5, which demonstrates practices that follow HUD requirements. These are the same requirements followed by other management agents throughout HUD's servicing area. In addition, the term "agenda" is also an inaccurate portrayal of what is involved under the standards in auditing. There are objectives of the audit, and those were fully explained in the background. Also, the information contained in the report is documented and based on the information provided and presented to us by Avesta staff and is not a misrepresentation of any fact or misconstrued statements. The audit report only states the conditions that were found.

Comment 11 We did not revise the report. We informed Avesta at the start of the exit conference that OIG's response to the HUD field office comments were contained in the written PowerPoint presentation provided to them. The changes were the supplemental information explained and discussed at the exit conference. Therefore, Avesta was afforded an opportunity to comment during the exit conference on the supplemental information. In addition, none of the information that was added affected the accuracy of or changed the information in the body of the report that Avesta commented on. These changes are the additional schedules of information provided by Avesta and shown in appendixes of the audit report.

Comment 12 We have added the details regarding the projects associated with the criteria and the unsupported costs to this report. All 30 HUD-affiliated projects in Avesta's portfolio are subject to HUD regulations and requirements in one form or another. The number of projects covered by HUD regulations and requirements are in appendix E. Specific information on the unsupported maintenance, janitorial and resident service coordinator fees came from Avesta and is included in appendix F. A breakdown of property manager salaries came from Avesta and is in appendix G, and accounting/bookkeeping services also came from Avesta and are in appendix H. This additional information does not affect any conclusions that were reached in the audit.

Comment 13 There was no questionable independence during the audit in appearance or in fact, and to indicate that the OIG relied exclusively and extensively on HUD is inaccurate; and the expression of such displays an inappropriate understanding of the auditing standards that were followed. The standards require that communicating the audit results to the auditee and to responsible HUD program staff be a continuous process throughout the audit. Communicating the results permits timely revision of the findings and draft audit report based on comments and documentation provided by the auditee, and as appropriate, HUD is also made aware of the results and may comment on regulatory aspect of the conditions identified, but in this case, none were offered. However, it should be noted that

Avesta failed to provide adequate documentation during the audit showing a lack of compliance and this was discussed with Avesta. Our analysis and the results presented were an independent analysis of Avesta practices, and the report identified those practices that were inconsistent with HUD requirements. The results and conditions communicated throughout the audit were presented to both Avesta and HUD; and there was never any consulting exclusively and extensively with HUD or reliance on HUD to clarify and interpret different HUD regulatory requirements during the audit. When presented with the draft audit report, HUD only requested that supplemental information be added, as stated in comments 11 and 12, and had no comments on OIG's interpretation of HUD requirements as presented in the draft report. While OIG works with HUD, OIG does not work for HUD. The Inspector General works independently of the HUD Secretary and reports to Congress.

Comment 14 The background section clearly defines HUD projects for the purposes of the audit. HUD regulations and requirements in one form or another apply to all 30 HUD-affiliated projects in Avesta's portfolio. Also see comment 12.

Comment 15 Paragraph one accurately reflected the information in the report specifically that Avesta did not always comply with HUD requirements. During the audit, Avesta was given the opportunity to address the lack of compliance but did not provide documentation to support procurements of ongoing services, and documentation in support of the construction procurements was incomplete. There were no mischaracterizations in the draft report of any documentation presented by Avesta pertaining to its procurement practices. Also, there is no information in appendix C to indicate that OIG acknowledged that unsigned bids, if accepted, create a valid and binding agreement between parties. In addition, we have no recollection of any nonspecific references to inapplicable OMB cost circulars at the exit interview. Although HUD regulations may not specifically state that bids must be signed, it is considered prudent practice that important documents contain a proper signature to ensure the validity of such documents. An unsigned document can be easily manipulated by other parties or created to give the appearance of compliance. We removed the citation in the report regarding Avesta's failure to maintain signed documents, but we recommend that in the future, Avesta ensures bids are signed to substantiate the validity of the bids.

Comment 16 The passing of the former director of maintenance was very unfortunate. However, any organization must ensure that its staff maintains organized, complete, and traceable records to allow the organization to continue to function properly and operate in an orderly manner when events such as deaths, injuries, retirements, and terminations occur. This issue also indicates that Avesta needs to implement additional internal controls regarding procurement activities.

Comment 17 Avesta did not provide OIG with its own written procurement policies during the audit. This fact was conveyed to OIG by Avesta's vice president of management. Later, the vice president provided OIG a one-page draft of procurement regulations, which could not adequately address the compliance aspects of HUD requirements. Also, although Avesta may have directed its staff to follow HUD's Management Agent Handbook and other supplementary guidance, it did not have the associated internal controls to ensure that staff followed the handbook or guidance as evidenced by the lack of documentation to show compliance with HUD requirements. Further, written policies and procedures beyond the regulations and handbooks would allow Avesta to specify how they want employees to comply with the rules, who is responsible for specific requirements, and the documentation it finds acceptable.

Comment 18 We cannot address whether Avesta charged its properties less than other companies since we did not audit other companies to make such a comparison. Contrary to Avesta's statement, OIG is not specifically questioning the value of services received. In addition, Avesta did not comply with its allocation plan or federal regulations which states that property manager salaries are to be charged to projects for time spent at the property.

Comment 19 Recommendation 1A in finding 1 will allow HUD to determine whether the amounts paid for services were reasonable. If the independent analysis indicates Avesta charged more services than what was reasonable, only the excess amounts will be required to be repaid.

Comment 20 See comments 9 and 18.

Comment 21 The information is included in this final report and was not included in the draft because Avesta had not yet provided its comments.

Comment 22 As indicated through the body of the report, as well as in the background section, Avesta Housing Management Corporation was the main focus. The background section provides necessary details pertaining to the organization's overall structure and is normally provided for the background section of the report. OIG generally includes this type of information for any large company or corporation subject to an OIG audit. Also, see comment 2.

Comment 23 There is no assertion regarding the resident service coordinator in this section. Also, the draft report did not address the eligibility of the resident service coordinator services or whether they were automatically eligible project expenses.

Comment 24 All are considered identity-of-interest contracts because Avesta is providing these services to the projects that it manages.

Comment 25 The report is accurate and reflects the conditions found. Also, we contend that a chief executive officer of any organization is entrusted with the direction and administration of that organization's policies and procedures. Therefore, as the head of the company, the chief executive officer is required to oversee all management functions and is ultimately responsible for the performance of the organization's staff.

Comment 26 Contrary to Avesta's implication, OIG is unaware of any display of disrespect on the part of HUD.

Comment 27 There are no mischaracterizations in the report, only the presentation of the conditions found. Also, HUD procurement regulations apply to all 30 HUD projects managed by Avesta (see appendix E). With the exception of the three storm-related procurements that would be excluded from our selection because the procurements were not funded with HUD money, all sample procurements were paid from project funds. Also, there were two procurements that were each completed in two stages, and Avesta recognized these as separate procurements, but OIG recognized each procurement with two stages as one procurement in its analysis. The procurement transactions included in the report pertain to those selected by OIG in the audit phase of our review. However, OIG also reviewed three procurements in the survey stage and added the results of those reviews to the report. Therefore, a total of 10 procurement contracts were reviewed by OIG, excluding the three storm-related procurements and the two procurements performed in separate stages. Although the HUD field office may have approved of the purchases, HUD was not aware of the specific procurement methods followed by Avesta or its noncompliance with HUD requirements. Although the HUD criteria does not address requirements for procurements between $5,000 and $10,000, the Manchester, NH, HUD field office dictates that the procurement standards requiring oral bids for contracts under $5,000 would also apply for contracts between $5,000 and $10,000. We clarified the report on the criteria.

Comment 28 OIG did not take into consideration the value of the services provided as we did not make such a determination. This is why we recommended that Avesta evaluate the costs of such services, which will provide evidence of whether or not these services are unsupported.

Comment 29 We have revised the report to show that the $10,000 threshold for procurements is on a per project basis. All payments for the year made by a project to a specific vendor are recognized as one procurement.

Comment 30 Changes were made, accordingly.

Comment 31 Although HUD approved the withdrawal of replacement reserve funds, there is no evidence that HUD was aware of Avesta's contracting activities and would only be aware if Avesta had provided HUD the specific details of its contracting activities.

Comment 32 Since Avesta failed to solicit bids for the services; there was a lack of opportunity for economically and socially disadvantaged firms to participate in the bidding process. By simply bidding out jobs as required, economically and socially disadvantaged groups have greater access to opportunities. We want to emphasize that it did not appear to be Avesta's intention to exclude or prevent, in any way, the economically and socially disadvantaged from bidding. This deficiency occurred because of the lack of compliance. With regard to the economically and socially disadvantaged firms, we are not making reference to the construction contracts but are referring to the contracts for services that were not solicited for bid. A total of 19 of the 30 HUD projects are required by the management certification to consider the economically and socially disadvantaged firms under the procurement process.

Comment 33 Our review showed that project funds were used to make these repairs. With regard to Avesta's claims that the source of funds used to make repairs were from a bank and not HUD is unsupported. Avesta did not furnish auditable documentation to substantiate its claims. Avesta manages 23 projects that receive federal rental assistance payments, and therefore these projects follow HUD procurement guidelines.

Comment 34 We did not acknowledge the facility manager's untimely death because we did not believe it was relevant. Had he not had an untimely death, the records still would not have been properly documented. In an April 15, 2010, discussion between OIG and Avesta's chief executive officer, the chief executive officer stated emphatically that the former director of maintenance who handled procurement was deficient in maintaining procurement records, adding that the records were often incomplete and disorganized. During an April 29, 2010, discussion with OIG, the chief executive officer made a similar remark, stating that the former director of maintenance failed to maintain complete and organized procurement records.

Comment 35 As explained in the draft report, Avesta's method for analyzing rates from the other management companies was not conducive to obtaining the most useful and reliable information. Avesta provided OIG the maintenance hourly rates used by four separate management agents in fiscal year 2009, but only two of these rates were comparable to the maintenance rates charged by Avesta. In addition, Avesta's written requests for comparable rates from other management companies gave the appearance that Avesta was canvassing or soliciting for rates. For example, a typical request for information, presented as an open-ended question, reads as follows: "I like to test the waters each year in an attempt to make sure our charges are reasonable. We currently bill out $34.50/hour for maintenance time. What do you each bill out for maintenance technicians at your properties?" Later, Avesta agreed that this was not the best approach. In addition, Avesta failed to request job descriptions to compare its scope of work with that of the four management companies to determine whether similar services were provided.

Comment 36 OIG did not state anywhere in the report that time sheets are the only basis for keeping track of where property managers are spending their time. We recognize that time sheets are acceptable but are not the only method that can be followed.

Comment 37 Avesta stated that its fees were reasonable based on a consistency with budgets approved by HUD. However, a budget is simply a forecast, and year end reports must reflect an after-the-fact determination of the actual activity of each employee. HUD approves the figures in the budget, but does not approve actual expenses. OIG also determined that Avesta could not support its budget figures. We were informed by Avesta's chief financial officer and vice president of management that Avesta's budgets were based on per-unit costs in accordance with the local HUD field office's request. OIG requested that Avesta's chief financial officer provide documentation to substantiate that fiscal year 2008 accounting/bookkeeping salaries for the seven 202/PRAC projects were allocated on a per-unit cost basis. However, Avesta's chief financial officer was unable to substantiate that the budgeted salaries were allocated on a per-unit basis.

Comment 38 The criteria applicable to the findings are included in Appendix C.

Comment 39 In a January 28, 2010, written response to the HUD Manchester field office, Avesta's vice president of management stated that hourly fees charged were based on Avesta's belief that the fees were reasonable and necessary.

Comment 40 OIG did consider the actual hours worked. We recognize that Avesta's contracts are based on two components, namely hourly rates and the number of hours. As we stated in the report, the hourly rates and the number of hours used to calculate the contract fees in these contracts were not adequately supported. The hours used by Avesta to support its contracts were based on past experience or judgment. The past experience and judgment used did not include activity reports for all employees. The federal regulations are specific on what is needed to support an allocation method. Therefore, we characterize the number of hours Avesta used to support its contracts as arbitrary. Avesta should have had a system in place to track the actual hours property managers spent at the projects. An allocation method must represent a reasonable estimate of the actual work performed by the employee during the period.

Comment 41 Avesta's assertion that there were very few suppliers for resident service coordinator fees from which valid comparisons may be drawn is disputable because in the following year, Avesta increased its selection of suppliers of resident service coordinator fees threefold.

Comment 42 HUD stated that lump sum contracts are allowable as long as management agents use competitive bidding, but Avesta's contracts for maintenance technicians, janitors, and resident service coordinators did not meet this requirement because contracts were not competitively bid.

Comment 43 We disagree with Avesta and its independent auditor. Based on our objective, it was unnecessary for OIG to perform as detailed a review as described by Avesta. Our objective, as explained in the background and to Avesta on April 29, 2010, required us to perform a limited review similar in some ways to what Avesta had failed to carry out. OIG never intended to perform as detailed an analysis as described by the independent accountant. In addition to obtaining hourly rates, OIG evaluated job descriptions and documented examples of how other management companies bill services to its projects. We evaluated and compared hourly rates and job descriptions between Avesta and the four management companies contacted by OIG.

Comment 44 The statement made that salaries of maintenance supervisors are paid under maintenance technician's contracts was made by Avesta's vice president of management during a discussion with OIG on January 6, 2010. Based on his written job description, the maintenance supervisor splits his time between supervisory responsibilities and duties similar to those described in the maintenance technician contracts. Under these conditions, it becomes apparent that a prorated share of the supervisor's salary should be charged to the project accounts, while the remaining salaries should be absorbed by management fees. Therefore, the statement made by the Avesta's vice president is not accurate.

Comment 45 OIG had the authority to review all of Avesta's projects because the manner in which Avesta accounted for and allocated its costs made it a necessary audit step. OIG stated that because Avesta failed to comply with HUD requirements for allocating and ensuring the reasonableness of project costs, there was no assurance that salaries for property managers were allocated equably between the 30 HUD and 30 non-HUD projects managed by Avesta and the accounting/bookkeeping services were provided at a reasonable cost.

Comment 46 The term "OMB Circular A-122" is not used frequently because the circular has been replaced by 2 CFR 230, which applies to all nonprofits conducting business with the government through grants, agreements, or contracts. OIG's criteria/justifications for its conclusions are also found in paragraphs 6.37(c) and 6.38(a) of HUD Handbook 4381.5 (see appendix C). OIG had previously discussed the basis of its conclusion with Avesta management.

Comment 47 Avesta failed to comply with applicable HUD requirements to ensure the appropriate allocation of the time spent by its property managers working with HUD projects and did not ensure the reasonableness of costs for accounting/bookkeeping services. Avesta's property managers did not maintain adequate records or reports showing hours worked by activity or project. Avesta also did not follow HUD requirements for ensuring that the costs of accounting/bookkeeping services did not exceed the costs of procuring comparable services from independent vendors.

Comment 48 Based on our review, the premise that the monthly reports and the e-mail substantiate that Avesta is adequately tracking and charging actual hours worked at projects is incorrect. Neither the monthly reports nor the supervisor's e-mail identified the names of the property managers performing the work or the projects where the work was performed. In addition, we could find no correlation between the hours shown on the time sheet and any payroll period(s). No auditable or supporting documentation was provided by Avesta to substantiate that Avesta adjusted time allocations across properties and modified timesheets. During the audit, OIG discussed Avesta's failure to adequately support allocation of property manager salaries, and OIG provided Avesta more than sufficient time to provide support.

Comment 49 There are no exaggerations in the report. HUD states that salary and fringe benefit costs may be prorated among projects but only for the amount of time actually spent performing front-line duties for that project and not by the number of units in the project. Also, OIG was never provided specific documentation establishing that properties were being undercharged for property manager services. Also, as noted in recommendation 3A of the report, OIG requested that Avesta provide documentation in support of the distribution of property manager salaries to the HUD projects. We did not elect to conduct our own analysis of property manager costs but planned on making this a recommendation in the report. Based on the statement, it is clear that Avesta has misinterpreted finding 3. Avesta's implication that OIG is specifically questioning Avesta's practice of allocating accounting and bookkeeping costs on a per-unit basis is incorrect. We recognize this is not a front line duty and HUD approved this practice.

Comment 50 During a discussion with Avesta staff on April 29, 2010, Avesta's vice president of management stated that Avesta's cost allocation system for property managers could be improved. The vice president further stated that Avesta recently began asking its property managers, maintenance technicians, janitors, and resident service coordinators to document the hours they work by project on the timesheets.

Comment 51 Finding 3 states the following: "HUD regulations also dictate that costs to the project for centralized accounting and computer services provided by the management agent (Avesta) may not exceed the cost of procuring comparable services from an independent vendor. Each year, the management agent must determine whether these costs are at or below market rate and maintain such evidence on site." Avesta did not comply with HUD regulations for this requirement. We were informed by Avesta's chief financial officer on April 29, 2010, that Avesta failed to conform to this requirement.

Comment 52 The audit found that Avesta had been instructed by the HUD Manchester field office to break out specific costs, including accounting and bookkeeping charges, consolidated in the "other administrative costs" account, but Avesta failed to fully comply with these instructions.

Comment 53 A properly promulgated handbook (or other guidance) is enforceable to the same extent as rules promulgated under the Administrative Procedures Act (APA) with notice and public comment, provided that it properly interprets a statute or regulations, or it is imposed upon a third party by contract or agreement.

Comment 54 OIG made minor changes to the report based on Avesta's comments to further clarify the scope and methodology section of the draft report. However, OIG will not address each item in this section because, aside from the minor corrections, these items were already covered in previous comments.

Comment 55 Comments related to internal controls and appendixes of the report reflect the same arguments presented in the previous comments on the highlights and findings. Therefore, further comment is not necessary since it's already covered in comments 1 through 54.

Appendix C

CRITERIA

<u>Finding 1</u>

HUD Handbook 4381.5, paragraph 6.50(a), provides that the agent is expected to solicit written cost estimates from at least three contractors or suppliers for any contract for ongoing supplies or services which are expected to exceed $10,000 per year or the threshold established by the HUD Area Office with jurisdiction over the project. Paragraph 6.50(b) provides that for any contract for ongoing supplies or services estimated to cost less than $5,000 per year, the agent should solicit verbal or written cost estimates to ensure that the project obtains services, supplies, and purchases at the lowest possible cost. The agent should make a record of any verbal estimates obtained. In addition, paragraph 6.50(c) prescribes that documentation of all bids should be retained as part of the project's records for 3 years following the completion of the work.

Paragraph 11(g) of the management agreement/certification between the owner and management agent provides that the agent agrees to provide minorities, women, and socially and economically disadvantaged firms equal opportunity to participate in the project's procurement and contracting activities.

Paragraphs 4(a), (c), (e), and (f) of the management agreement/certification between the project owner and management agent provide that the agent agrees to

- Ensure that all expenses of the project are reasonable in amount and necessary to the operations of the project.

- Obtain contracts, materials, supplies, and services on terms most advantageous to the project.

- Solicit verbal or written cost estimates and document the reasons for accepting other than the lowest bid.

- Provide that copies of such documentation will be maintained and made available during normal business hours.

Finding 2

Paragraph 6b of the regulatory agreement between the property owner and HUD provides that the owners shall not pay out any funds except for reasonable operating expenses.

Section 9(b) of the regulatory agreement limits allowable costs for goods and services provided under arms-length transactions. This requirement states that payment for services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

HUD Handbook 4381.5, paragraph 6.39(c), dictates that the salaries of the agent's supervisory personnel must be paid from management fees.

Paragraph 6.37(c) of HUD Handbook 4381.5 provides that salaries and fringe benefits of personnel performing front-line duties are prorated among the properties served in proportion to actual use.

Title 2 of the Code of Federal Regulations, Cost Principles for Non-Profit Organizations, Appendix B of Part 230, Sections [(m)(1)(2)(a)(b)(c)] state, in part, the following: Salaries and wages will be based on documented payrolls and the distribution of salaries and wages must be supported by employee activity reports, which reflect the distribution of activity of each employee. The reports must be maintained for all staff members and must account for the total activity for which employees are compensated. The reports must be signed by the individual employee, or by a responsible supervisory official having firsthand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.

Finding 3

Paragraph 6.38(a) of HUD Handbook 4381.5 dictates that costs to the project for centralized accounting and computer services provided by agents not exceed the cost of procuring comparable services from an independent vendor. Each year, agents must determine that these costs are at or below market rate and maintain such evidence on site.

Paragraph 6.37(c) of HUD Handbook 4381.5 provides that salaries and fringe benefits of personnel performing front-line duties are prorated among the properties served in proportion to actual use.

Paragraph 3 of the regulatory agreement between the property owner and HUD provides that the owners shall not pay out any funds except for reasonable operating expenses.

Title 2 of the Code of Federal Regulations, Cost Principles for Non-Profit Organizations, Appendix B of Part 230, Sections [(m)(1)(2)(a)(b)(c)] state, in part, the following: Salaries and wages will be based on documented payrolls and the distribution of salaries and wages must be supported by employee activity reports, which reflect the distribution of activity of each employee. The reports must be maintained for all staff members and must account for the total activity for which employees are compensated. The reports must be signed by the individual employee, or by a responsible supervisory official having firsthand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.

Appendix D

PROCUREMENTS BELOW $10,000

Type of service	Costs for 3-year period	Number of projects serviced
Cleaning and janitorial	$ 8,265	13
Maintenance	14,792	1
Fire protection	10,256	6
First septic treatment company	8,920	7
Second septic treatment company	9,505	1
Grounds work	8,400	1
First elevator service company	7,060	1
Second elevator service company	8,357	2
Trash removal	10,996	2
Smoke alarm and safety equipment	6,946	20
First landscaping company	11,806	1
Alarms and sprinklers	15,367	24
Security	12,029	6
Third elevator service company	7,245	1
Second landscaping company	25,105	1
Water treatment	15,217	3
Subtotal	**$180,266**	

Appendix D

PROCUREMENTS BELOW $10,000

Type of service	Costs for 3-year period	Number of projects serviced
Elderly care	$ 30,221	1
Extermination	31,822	23
Carpet & flooring replacement	195,438	24
First snow removal/grounds care company	140,590	10
Painting	71,694	25
Appliances	45,625	17
Independent public accounting services	383,095	27
Plumbing	35,039	18
First landscaping company	59,647	3
Second snow removal/grounds care company	296,043	15
Care of building environmental system	484,909	25
Second landscaping company	4,230	1
First trash removal company	82,016	21
Second trash removal company	33,962	12
Subtotal	**180,266**	
Total	**$2,074,597**	

Appendix E

HUD PROJECT TYPES MANAGED BY AVESTA HOUSING

Project	HUD 4381.5	9839 Certification	Federal Rent Subsidy	2 CFR Part 230	HUD Regulatory Agreement
Little Falls Landing	Yes	Yes	PRAC	Yes	Capital Advance
Unity Gardens	Yes	Yes	PRAC	Yes	Capital Advance
Baron Place	Yes	Yes	PRAC	Yes	Capital Advance
Foxwell II	Yes	Yes	202/8	Yes	Direct Loan
Jordan Bay Place	Yes	Yes	PRAC	Yes	Capital Advance
Elwell Farms	Yes	Yes	PRAC	Yes	Capital Advance
Five Graham Street	Yes	Yes	PRAC	Yes	Capital Advance
Blackstone I & II	Yes	No	8/NC/SR	Yes	No
Foxwell I	Yes	No	8/NC/SR	Yes	No
Mary Ann Manor	Yes	No	8/NC/SR	Yes	No
New Marblehead Manor	Yes	No	8/NC/SR	Yes	No
New Marblehead North	Yes	Yes	Section 8	Yes	No
Golden Park Village	Yes	No	23/8 + 8 NC/SR	Yes	No
Applewood Apartments	Yes	Yes	Section 8	Yes	No
Avignon Apartments	Yes	No	8 NC/SR	Yes	No
Brookhollow Apartments	Yes	Yes	Section 8	Yes	No
Hill Street Terrace	Yes	No	23/8	Yes	No
Kallock Terrace	Yes	Yes	Section 8	Yes	No
Livermore Terrace	Yes	No	23/8	Yes	No
Maple Grove Terrace	Yes	No	8/NC/SR	Yes	No
Orchard Terrace	Yes	Yes	Section 8	Yes	No
Pinebluff Apartments	Yes	Yes	Section 8	Yes	No
Pinewood Apartments	Yes	No	8/NC/SR	Yes	No
Prescott Heights	Yes	Yes	Section 8	Yes	No
Pumkinville Apartments	Yes	Yes	Section 8	Yes	No
Ridgewood Apartments	Yes	Yes	Section 8	Yes	No
Stonecrest Apartments	Yes	Yes	Section 8	Yes	No
Sunnyside Apartments	Yes	Yes	Section 8	Yes	No
Wayside Apartments	Yes	No	8/NC/SR	Yes	No
Woodsedge Apartments	Yes	Yes	Section 8	Yes	No

Appendix F

MAINTENANCE, JANITORIAL, AND RSC FEES JANUARY 1, 2007 TO DECEMBER 31, 2009

Project	Maintenance	Janitorial	RSC[3]	Totals
Little Falls Landing	$31,330.00	$31,330.00	$25,414.94	$88,074.94
Unity Gardens	37,231.95	19,188.05	19,188.05	75,608.05
Baron Place	51,307.31	20,562.39	37,591.66	109,461.36
Foxwell II	10,253.97	5,078.63	10,200.36	25,532.96
Jordan Bay Place	38,839.11	9,039.31	16,719.05	64,597.47
Elwell Farms	17,489.38	16,917.38	12,228.73	46,635.49
Five Graham Street	67,279.29	19,179.05	19,517.39	105,975.73
Blackstone I & II	39,623.96	11,405.96	9,619.96	60,649.88
Foxwell I	79,525.36	29,822.00	37,115.00	146,462.36
Mary Ann Manor	2,121.94	680.98	0.00	2,802.92
New Marblehead Manor	19,881.36	9,940.64	0.00	29,822.00
New Marblehead North	24,764.96	9,905.96	39,623.96	74,294.88
Golden Park Village	50,422.64	15,351.94	7,694.63	73,469.21
Applewood Apartments	19,812.04	4,953.04	5,837.05	30,602.13
Avignon Apartments	11,730.80	2,725.72	0.00	14,456.52
Brookhollow Apartments	20,401.37	9,905.96	10,347.95	40,655.28
Hill Street Terrace	26,220.67	10,789.97	9,333.96	46,344.60
Kallock Terrace	39,623.96	10,191.96	10,061.95	59,877.87
Livermore Terrace	0.00	0.00	0.00	0.00
Maple Grove Terrace	19,881.36	4,970.36	9,634.64	34,486.36
Orchard Terrace	39,623.96	19,812.04	10,347.95	69,783.95
Pinebluff Apartments	39,623.96	19,760.05	10,347.95	69,731.96
Pinewood Apartments	4,137.77	689.63	95.68	4,923.08
Prescott Heights	29,640.00	19,760.05	9,879.95	59,280.00
Pumkinville Apartments	19,812.04	9,905.96	10,347.95	40,065.95
Ridgewood Apartments	34,671.04	19,812.04	10,347.95	64,831.03
Stonecrest Apartments	19,811.05	4,953.04	10,347.95	35,112.04
Sunnyside Apartments	59,436.00	9,905.96	10,347.95	79,689.91
Wayside Apartments	14,497.73	1,434.17	1,539.50	17,471.40
Woodsedge Apartments	24,764.96	9,619.96	10,633.95	45,018.87
Total	**$893,759.94**	**$357,592.20**	**$364,366.06**	**$1,615,718.20**

[3] Resident Service Coordinator

Appendix G

PROPERTY MANAGER SALARIES JANUARY 1, 2007 TO DECEMBER 31, 2009

Project	Fiscal Year 2007	Fiscal Year 2008	Fiscal Year 2009	Total
Little Falls Landing	$12,480.00	$9,234.00	$8,039.70	$29,753.70
Unity Gardens	11,440.00	12,740.00	8,843.67	33,023.67
Baron Place	17,645.04	15,336.10	14,018.55	46,999.69
Foxwell II	6,815.37	6,794.68	3,438.47	17,048.52
Jordan Bay Place	5,668.02	4,506.68	7,107.25	17,281.95
Elwell Farms	9,360.00	11,620.92	10,886.87	31,867.79
Five Graham Street	6,101.37	6,222.68	12,307.68	24,631.73
Blackstone I & II	0.00	0.00	0.00	0.00
Foxwell I	0.00	0.00	0.00	0.00
Mary Ann Manor	0.00	0.00	0.00	0.00
New Marblehead Manor	0.00	0.00	8,039.04	8,039.04
New Marblehead North	0.00	0.00	8,039.04	8,039.04
Golden Park Village	0.00	0.00	0.00	0.00
Applewood Apartments	6,101.37	6,794.68	7,614.84	20,510.89
Avignon Apartments	0.00	0.00	0.00	0.00
Brookhollow Apartments	6,101.37	5,650.68	7,668.36	19,420.41
Hill Street Terrace	0.00	0.00	0.00	0.00
Kallock Terrace	6,101.37	6,794.68	7,672.44	20,568.49
Livermore Terrace	0.00	0.00	7,119.36	7,119.36
Maple Grove Terrace	0.00	0.00	0.00	0.00
Orchard Terrace	6,101.37	6,794.68	10,741.20	23,637.25
Pinebluff Apartments	6,101.37	6,794.68	11,422.32	24,318.37
Pinewood Apartments	0.00	0.00	731.37	731.37
Prescott Heights	7,626.63	8,493.32	9,518.76	25,638.71
Pumpkinville Apartments	6,101.37	6,794.68	6,818.28	19,714.33
Ridgewood Apartments	6,101.37	6,794.68	8,522.76	21,418.81
Stonecrest Apartments	6,101.37	6,794.68	5,113.56	18,009.61
Sunnyside Apartments	9,152.00	10,192.00	12,059.88	31,403.88
Wayside Apartments	0.00	0.00	0.00	0.00
Woodsedge Apartments	6,101.37	6,794.68	8,285.13	21,181.18
Totals	**$141,200.76**	**$145,148.50**	**$184,008.53**	**$470,357.89**

Appendix H

ACCOUNTING BOOKKEEPING SERVICES AND OTHER ADMINISTRATIVE EXPENSES JANUARY 1, 2007 TO DECEMBER 31, 2009

Project	Fiscal Year 2007	Fiscal Year 2008	Fiscal Year 2009	Total
Little Falls Landing	$7,200.00	$0.00	$4,335.10	$11,535.10
Unity Gardens	1,716.68	0.00	4,768.61	6,485.29
Baron Place	0.00	0.00	8,390.31	8,390.31
Foxwell II	4,638.37	0.00	2,115.16	6,753.53
Jordan Bay Place	3,807.00	0.00	3,215.41	7,022.41
Elwell Farms	6,000.03	0.00	5,630.81	11,630.84
Five Graham Street	5,806.13	0.00	6,461.93	12,268.06
Blackstone I & II	0.00	0.00	377.96	377.96
Foxwell I	0.00	0.00	576.25	576.25
Mary Ann Manor	0.00	0.00	120.00	120.00
New Marblehead Manor	3,050.63	3,397.32	400.00	6,847.95
New Marblehead North	3,050.63	3,397.32	4,362.96	10,810.91
Golden Park Village	0.00	0.00	756.96	756.96
Applewood Apartments	7,077.62	7,212.93	3,523.80	17,814.35
Avignon Apartments	0.00	9.17	0.00	9.17
Brookhollow Apartments	8,149.13	9,067.96	4,362.96	21,580.05
Hill Street Terrace	0.00	0.00	472.00	472.00
Kallock Terrace	9,878.88	10,992.32	4,362.96	25,234.16
Livermore Terrace	0.00	0.00	1,300.77	1,300.77
Maple Grove Terrace	0.00	0.00	358.04	358.04
Orchard Terrace	11367.62	12,649.04	6,041.28	30,057.94
Pinebluff Apartments	10,203.38	11,353.68	5,202.12	26,759.18
Pinewood Apartments	0.00	0.00	383.00	383.00
Prescott Heights	8,891.63	9,893.96	4,362.96	23,148.55
Pumkinville Apartments	7,193.12	8,003.68	3,523.80	18,720.60
Ridgewood Apartments	8,370.12	9,313.68	4,362.96	22,046.76
Stonecrest Apartments	4,985.75	5,547.64	2,683.53	13,216.92
Sunnyside Apartments	8,680.87	9,659.32	4,362.96	22,703.15
Wayside Apartments	148.33	0.00	38.50	186.83
Woodsedge Apartments	7,076.63	7,874.68	3,313.92	18,265.23
Totals	**$127,292.55**	**$108,372.70**	**$90,167.02**	**$325,832.27**