

Office of the Inspector General

Commonwealth of Massachusetts

A Review of the Metropolitan District Commission's Swimming Pool Maintenance and Repair Contracts

Robert A. Cerasoli

Inspector General

December 2000



The Commonwealth of Massachusetts
Office of the Inspector General

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His Excellency the Governor

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The Honorable Chairman of the Senate Post Audit and Oversight Committee

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The Directors of the Legislative Post Audit and Oversight Bureaus

The Secretary of Administration and Finance

Members of the General Court

Omnibus ad quos praesentes literae pervenerint, salutem.

I am today releasing a report concerning the administration of two swimming pool maintenance and repair contracts by the Metropolitan District Commission (MDC). In 1997, the MDC conducted an internal review to identify sources of problems with the performance and oversight of these contracts. The MDC reported the results of its internal review to my Office in 1998 for further investigation. This report summarizes the findings that stemmed from my Office's investigation.

I commend the MDC for its proactive stance in undertaking an internal review and in reporting issues warranting further investigation to my Office. The MDC has informed me that it has implemented changes to its contract management practices to address the problems identified by its internal review. These changes, which have not been evaluated by my Office, are described in the MDC's response to a confidential review draft appended to this report.

Sincerely,

Robert A. Cerasoli,
Inspector General

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Introduction

The Metropolitan District Commission (MDC) is a state agency responsible for the oversight and maintenance of the Metropolitan Park System. The MDC operates and maintains 23 swimming, wading, and spray pools in 18 communities in the Greater Boston Metropolitan area. The 22 outdoor pools are open to the public from the end of the public school term in June until Labor Day. The one indoor pool operated by the MDC is a year-round facility.

The MDC Commissioner initiated an internal review in 1997 to identify the source of performance problems with its contracts for swimming pool maintenance and repairs. An MDC internal report dated July 22, 1997 identified a host of concerns with these contracts, including:

- cost overruns,
- excessive overtime payments,
- unacceptable contractor ratings for equal employment opportunity compliance,
- contractor failure to submit required documentation, and
- delays in opening outdoor swimming pools for the summer season.

The MDC's internal report noted that nearly all of the swimming pool maintenance and repair contracts had been awarded to a single contractor – Allied Weatherproofing Company Inc. (Allied) – for a period of ten years, raising concerns about the effectiveness of the MDC's competitive bidding practices.

Following its internal review, the MDC reported possible contractor payment irregularities to the Office of the Inspector General for further investigation. The Office reviewed records obtained from the MDC and from Allied, conducted interviews of MDC engineers and managers, and took a sworn deposition from Allied's President and owner. This report summarizes the results of the Office's review. It also outlines findings relating to the MDC's contract administration practices prior to 1999 that

rendered the swimming pool maintenance and repair contracts vulnerable to fraud, waste, and abuse.

In its response to a review draft of this report, the MDC Commissioner reported that the MDC has modified its swimming pool contract management practices to address the concerns identified in its internal review. The actions undertaken by the MDC to address these contract management issues are described in the MDC Commissioner's letter to the Office, appended to this report.

Background

The MDC's 1995-1997 and the 1997-1999 Swimming Pools Maintenance and Repair Contracts with Allied

The Office reviewed records relating to two contracts awarded by the MDC to Allied for maintenance and repairs to swimming pools and service buildings. The earlier of the two contracts, P95-1790-MIA, extended from April 1995 until April 1997 and contained a maximum price of \$679,625. The final cost of the contract was \$821,701. The subsequent contract, P97-1887-MIA, covered the two-year period from April 1997 to April 1999 and included a maximum price of \$949,384. The final cost of the contract was \$852,780. These two-year contracts will hereafter be referred to as the 1995-1997 contract and the 1997-1999 contract.

The work performed under both the 1995-1997 contract and the 1997-1999 contract consisted of repairs and improvements to service buildings, filtration, sterilization and piping systems, scheduled and emergency repairs to swimming pools, and tasks required to winterize the pools and to prepare them for the seasonal opening.

Both contracts called for Allied to be compensated for a major portion of the work performed on a cost reimbursement basis. Each contract contained an hourly rate for technical labor and another hourly rate for non-technical labor. These hourly rates, along with Allied's actual costs for parts and materials, were used to determine Allied's compensation for much of the repair and maintenance work performed.¹ This method of compensation placed a burden on the MDC to verify the actual number of hours of labor performed by Allied personnel and Allied's actual costs for parts and materials.

Both contracts required Allied to submit specific documents to the MDC as a condition of receiving payment for technical and non-technical labor. Allied was required to submit daily work logs to the MDC each week describing the work performed by the contractor's work force, including the location, type of work, hours of labor, and

¹ Compensation for certain specified items, such as excavation work and installation of new concrete walks and walls, was based on unit rate prices specified in the contract.

materials used. The contracts specified that Allied was not entitled to payment for work that was not documented in the daily work logs.

The MDC's Written Contract Administration and Payment Procedures

In 1990 the MDC issued to its employees a manual entitled "Standard Operating Procedures for Field Construction Projects" establishing uniform procedures for administering contracts and processing contractor payments. These written procedures should have been followed by MDC personnel responsible for administering the 1995-1997 and the 1997-1999 swimming pool repair and maintenance contracts.²

The MDC's operating procedures manual sets out separate contract administration duties for three designated positions: resident engineer, construction inspector, and project engineer. The segregation of duties called for in the MDC manual reduces the potential for error and employee misconduct in contract oversight and payment processing.

According to the MDC's operating procedures manual, the individual designated as the resident engineer is responsible for overall contract management and for maintaining specified records. The resident engineer's responsibilities include:

- maintaining a project diary to provide a daily record of significant events and to track the contractor's progress,
- maintaining a log of contractor submittals,
- preparing weekly reports of contractor activities,
- preparing monthly pay estimates, and
- submitting pay estimates and invoices to the project engineer for review, signature, and processing.

² The MDC has told this Office in December 1999, that it was preparing revised contract administration procedures. As of this date the procedures have not been implemented.

The MDC operating procedures manual outlines another set of tasks to be performed by the individual designated as the construction inspector. These tasks include:

- preparing daily contractor workforce and activity reports,
- inspecting all construction work, and
- maintaining a record of materials installed and work completed.

The construction inspector is required to prepare a standardized record referred to as a “Form 311” on a daily basis. The Form 311 records document the hours of technical labor and non-technical labor provided by the contractor and describe the work performed. The construction inspector submits the Form 311 records to the resident engineer, who relies on these forms to verify the actual number of labor hours and to prepare contractor pay estimates.

Under the contractor payment procedures outlined in the MDC’s operating procedures manual, the resident engineer, relying on Form 311 records and other MDC records of work performed and materials supplied, prepares and signs a pay estimate for submission to an individual designated by the MDC as the project engineer. After the project engineer has approved the pay estimate, the MDC generates and mails an invoice in the amount of the approved pay estimate to the contractor. The contractor must sign the invoice and submit it to the resident engineer in order to be paid for the work.

Following contract completion, the resident engineer is required to catalog and prepare all contract records for storage and forward them to the office of the MDC’s Deputy Director for Construction. According to the MDC operating procedures manual, contract records must be transferred to and maintained in centralized contract files when the contract is completed.

The Office’s review found that written procedures called for in MDC’s operating procedures manual were often disregarded in the administration of the 1995-1997 contract and the 1997-1999 contract.

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Findings

Finding 1. By bidding swimming pool repair and maintenance contracts in the spring, the MDC may have discouraged competition.

The MDC solicited competitive bids for the 1995-1997 and the 1997-1999 contracts as required by the state's public construction bidding law, M.G.L. c. 149. In each instance, the MDC received only one bid – Allied's. The Office found that prior to the 1995-1997 contract, the MDC had been advised that its practice of soliciting bids for the contract in the spring could reduce competition for swimming pool work. In a letter dated January 31, 1995, a contractor who expressed interest in but did not bid on an MDC swimming pool contract remarked that the MDC would likely generate more interest among contractors by timing the contract award to allow more work to be performed in the fall and winter. According to the letter:

[A]ny municipality or owner of dozens of pools knows that the most competitive bids can be obtained when work can be performed during the fall and winter. . . . Proper planning . . . would indicate an early fall bid as most beneficial.

The MDC did not heed the contractor's advice.³ The MDC advertised the 1995-1997 contract in March 1995 with a deadline of March 29, 1995 for the submission of bids. The 1995-1997 contract called for the contractor to start work on April 20, 1995 in preparation for the pool opening in June 1995. The MDC advertised the 1997-1999 contract in February 1997 with a bid submission deadline of March 12, 1997. The contract start date for the 1997-1999 contract was April 17, 1997.

By waiting until spring to seek bids for work needed to open the swimming pools, the MDC required the winning bidder to perform much of the work during the busy spring months. The MDC's timing of these contract awards may have contributed to the lack of competition for this work. In addition, this practice may have resulted in the need for more work to be performed on an overtime basis, as discussed in Finding 7.

³ The current pool service and repair contract had a bid opening date of March 10, 1999, and a start date of May 17, 1999. Once again, Allied submitted the only bid.

Finding 2. The MDC did not devote adequate resources to oversight of its contracts with Allied.

The MDC's operating procedures manual called for a construction inspector to inspect completed work and complete the Form 311 records documenting the contractor's daily workforce and activities and for a resident engineer to prepare and approve pay estimates. However, all of these responsibilities were assigned to the MDC resident engineer for the 1995-1997 and for a portion 1997-1999 contracts. The MDC told the Office that budget limitations forced the MDC to assign all of these oversight functions for these contracts to a single individual. In doing so, the MDC undermined the effectiveness of its internal controls and increased the potential for error and employee misconduct.

In addition to requiring the resident engineer to perform both contract oversight and payment approval functions, the MDC required this single individual to oversee and approve work at all 22 swimming pool locations.⁴ In an interview with the Office, the MDC's resident engineer for the 1995-1997 contract said that it was often impossible to verify Allied's actual workforce firsthand, and that at times he relied on Allied employees to report their hours and activities in order to complete the Form 311 records. Under these conditions, the MDC could not effectively monitor the contractor's work.

Finding 3. The resident engineer failed to maintain complete and accurate contract records.

In an interview, the individual who served as the resident engineer for the 1995-1997 contract and for the first three months of the 1997-1999 contract told the Office that he did not maintain a project diary, as required by the MDC operating procedures manual. The project diary provides a record of daily occurrences and can be used to verify the contractor's workforce and activities as recorded in the Form 311 records. The lack of a project diary would undermine the MDC's ability to verify the accuracy of its pay estimates and to protect its interests in the event of a contract dispute with Allied.

⁴ The resident engineer informed the Office that, in addition to his resident engineer swimming pool duties, he was also responsible at one point for supervising in-house work done by MDC personnel at other locations.

The same resident engineer also failed to maintain complete and accurate records of contractor workforce and activities on the Form 311 records under the 1995-1997 contract. The MDC was unable to provide the Office with any Form 311 records relating to the period from August 5, 1995 through September 24, 1995. The Office found that many of the Form 311 records for the period from July 21, 1996 to September 23, 1996 either contained no entries recording the contractor labor hours or were illegible. In addition, some of the Form 311 records listed labor hours but failed to specify whether work performed was technical or non-technical. Since the contracts contained different hourly rates for these two categories of labor, it was impossible to verify whether Allied was paid for this work under the appropriate rate schedule.

Finding 4. The MDC issued payments to Allied despite Allied's failure to comply with contract requirements.

The Office found that Allied exhibited a persistent pattern of noncompliance with contract requirements relating to documentation. An MDC interoffice memorandum dated August 16, 1999 from the Deputy Director for Construction to the Deputy Commissioner for Technical Services noted that Allied repeatedly failed to submit necessary paperwork, was difficult to reach, and was unresponsive to attempts to obtain information or services required by the contract.

4a. Allied failed to submit daily work logs as required under the 1995-97 contract.

The 1995-1997 and the 1997-1999 contracts required Allied to submit daily work logs to the resident engineer for all repair work, listing the location, work performed, labor hours, and materials used. The resident engineer's review and approval of these logs was a prerequisite to payment. The MDC was unable to provide the Office with copies of daily work logs for the 1995-1997 contract. The MDC employee who served as the resident engineer for that contract stated in an interview with the Office that Allied had not submitted the daily work logs required under that contract. Despite the missing documentation the MDC paid Allied for work under that contract.

4b. Allied failed to submit timely certified payroll reports as required by the contracts and by state law.

Massachusetts law requires contractors to pay a prevailing rate of wages to each employee performing work on a public construction contract.⁵ The law also requires contractors to submit weekly certified payroll reports to awarding authorities showing the occupation, the hours worked, and the wages paid to each employee under the contract. In addition to the explicit state law requirement, the 1995-1997 and the 1997-1999 contracts contain a provision requiring Allied to submit certified payroll reports on a weekly basis to the MDC. The Office found that Allied consistently failed to submit these reports in a timely manner.

For example, Allied certified payroll reports for work performed from March 1, 1996 through September 20, 1996 were not submitted to the MDC until February 1997. In addition, Allied did not submit certified payroll reports for work performed during the four-month period from May 1997 through August 1997 until September 1997. After that, Allied delayed its submission of certified payroll reports for work performed from September 1997 through December 1997 until January 1998. This pattern continued through the spring and summer of 1998, when Allied failed to submit certified payroll reports for work performed from May 1998 through August 1998 until September 1998.

In addition, Allied failed to submit statements of compliance as required by state law to the Department of Labor and Workforce Development, stating that its employees were paid according to the prevailing wage rates.

Finding 5. Allied's certified payroll reports do not substantiate the MDC's payments to Allied for hourly labor.

As part of the MDC's 1997 internal review of the swimming pool maintenance and repairs contracts, the MDC compared the number of labor hours recorded by the resident engineer on the Form 311 records for the period from May through October

⁵ Pursuant to M.G.L. c. 149, §§26-27, the Commissioner of Labor and Workforce Development determines the prevailing wage rates on all public works projects.

1997 with Allied's certified payroll reports for the same period. Under the terms of the 1995-1997 and the 1997-1999 contracts, Allied was required to perform all work using its own employees unless it obtained the MDC's prior written consent to subcontract work to another organization. For this reason, Allied's certified payroll reports should contain the same labor hours as the Form 311 records. However, in comparing the two forms, the MDC discovered that for many of the weeks reviewed, the Form 311 records reported a greater number of labor hours than the hours shown on Allied's certified payroll reports. This discrepancy raised concerns as to the accuracy of the Form 311 records and the possibility that the MDC paid Allied for more hours of work than Allied's employees actually performed.

The Office subsequently conducted its own analysis to compare the labor hours reported by the MDC resident engineer on the Form 311 records for the 1995-1997 and the 1997-1999 contracts with Allied's certified payroll reports.

The MDC could not locate all of the Form 311 records for the 1995-1997 contract. Because the Form 311 records for some weeks were missing, the Office could not compute the total number of hours reported on these forms for the 1995-1997 contract. The Office selected a one-month period from May 27 through June 30, 1995, for which there appeared to be a complete set of Form 311 records.

Although Allied's contract stated that the technical and non-technical labor would be performed by Allied's own employees, the MDC files contained certified payroll reports for this contract from another contractor, Harnais Construction, Inc. (Harnais). These records appear to indicate that Allied subcontracted with Harnais for some of the work. Harnais certified payroll reports indicated that Harnais' employees had performed a total of 351 labor hours of non-technical work during this one-month period.

In comparing the Form 311 records with the certified payroll reports submitted by both Allied and Harnais for this period, this Office found a large discrepancy, with the Form 311 records reporting a greater number of labor hours as shown on Table 1 below.

Table 1.
Discrepancies in Reported Labor Hours 1995-1997 Contract
May 27, 1995 - June 30, 1995

	Form 311 Records	Allied Payroll Records	Harnais Payroll Records	Difference
Technical Labor Hours	832.5	369.5	0	463
Non-Technical Labor Hours	851	96	351	404
Total Labor Hours	1683.5	465.5	351	867

The MDC was unable provide certified payroll reports from other contractors or other records that could reduce or explain these discrepancies in labor hours.

The Office then compared the hours reported on the Form 311 records and Allied's certified payroll reports under the 1997-1999 contract for the period from April 30, 1997 through June 30, 1998. This comparison also showed a discrepancy between the labor hours shown on the two records, but the differences were far less than those found under the 1995-1997 contract. The total labor hours reported for the period from April 30, 1997 through June 30, 1998 are shown on Table 2 below.

Table 2.
Discrepancies in Reported Labor Hours 1997-1999 Contract
April 30, 1997 - June 30, 1998

	Form 311 Records	Allied Payroll Records	Difference
Technical Labor Hours	2918.4	2705	213.4
Non-Technical Labor Hours	2142	1836.5	305.5
Total Labor Hours	5060.4	4541.5	518.9

The MDC began its internal review of these contracts in 1997. In July 1997, as a result of the concerns identified in that review, the MDC reassigned the resident engineer who had previously been responsible for preparing the Form 311 records for the 1995-1997 contract and for the first three months of the 1997-1999 contract. Following the assignment of a new resident engineer to the 1997-1999 contract, the discrepancy between the labor hours reported in the Form 311 records and in Allied's certified payroll reports was dramatically reduced, but not eliminated.

Finding 6. Allied failed to provide the Office of the Inspector General with payroll or other records to substantiate the MDC's payments for hourly labor.

The comparisons made by the MDC and by the Office of labor hours reported on the Form 311 records and on Allied's certified payroll reports raised concerns about whether the MDC had overpaid Allied under the contracts. To further investigate this question, the Office planned to review Allied's records to ascertain whether the labor hours reported on the Form 311 records could be substantiated.

M.G.L. c. 30, §39R requires contractors to keep and maintain sufficient accounting records under public construction contracts to account in reasonable detail for contract expenditures. The purpose of this law is to allow public agencies, the Inspector General, and other interested parties to audit public construction contracts to ensure that expenditures of public funds can be properly accounted for.

In January 1999, the Office issued an investigative summons to Allied for certain records relating to the 1995-1997 and the 1997-1999 contracts. Allied responded in February 1999 by providing documents that did not include payroll records, other records of Allied's payments to its employees, or records of payments to subcontractors for hourly labor shown on the Form 311 records.

The Office communicated with Allied's President and owner by telephone and by letter over the ensuing three months, requesting additional records specified in the investigative summons. Allied's President and owner indicated that he had additional records, but needed time to locate them. Allied provided additional documents to the Office in March 1999, but these documents did not include payroll or subcontractor payment records to support the labor hours reported on the Form 311 records.

Between March and September of 1999, Allied indicated that it would provide the Office with additional records as required by the investigative summons. In September 1999, the Office commenced a summons enforcement proceeding in Superior Court, seeking a court order compelling Allied to produce the records. After a hearing on October 5, 1999, the Superior Court issued an order requiring Allied to produce the records sought

by the Office. On October 20, 1999, Allied produced additional documents pursuant to the court order.

After reviewing the records produced on October 20, 1999, the Office determined that Allied had again failed to provide payroll or other records of payments to its employees or to subcontractors to substantiate the labor hours reported on the Form 311 records. In January 2000, the Office obtained an order from the Superior Court to take a deposition of Allied's President and owner, in order to ascertain whether the summonsed records existed. In a sworn deposition taken on January 28, 2000, Allied's President and owner testified under oath that he had provided all documents responsive to the Office's investigative summons. He further testified that some of Allied's records relating to MDC contracts had been stored in a barn with a leaking roof and had been accidentally destroyed.

The substantial discrepancies between the labor hours reported on the Form 311 records and the hours substantiated by Allied's certified payroll reports raise a serious concern as to whether Allied was paid for more hours of labor than it actually performed. Allied's failure to produce any records of payments to its own employees or to any subcontractor that would substantiate those hours of work magnifies this concern.

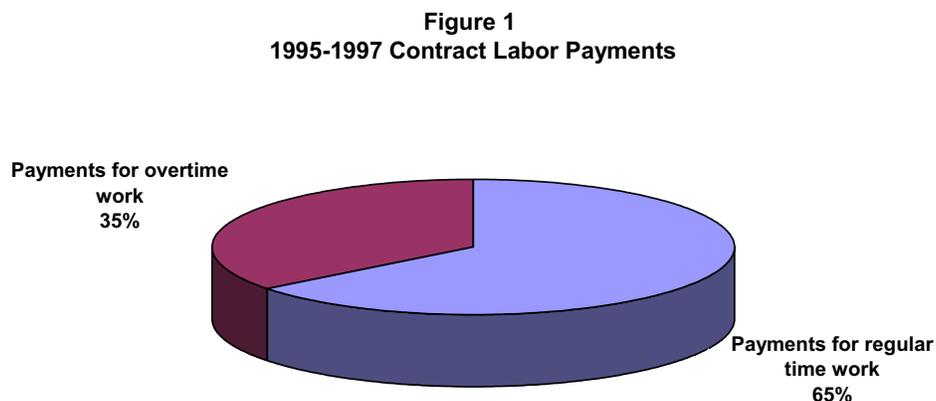
Finding 7. The MDC failed to control the cost of overtime work performed by Allied.

The MDC's 1995-1997 and 1997-1999 contracts with Allied specified that the MDC would compensate Allied at an overtime rate of one and one-half times the regular hourly rate for work performed by any employee in excess of eight hours in one day and for all work performed on a Saturday, Sunday, or legal holiday.

The contracts also indicated that the resident engineer would determine what work Allied would perform during overtime hours. The MDC's operating procedures manual required the resident engineer to obtain prior authorization from the Commission for scheduled overtime hours and authorization from the Deputy Director for Construction for unscheduled overtime hours necessitated by an emergency. The 1995-1997 and the 1997-1999 contracts prohibited Allied from performing work on Saturdays, Sundays,

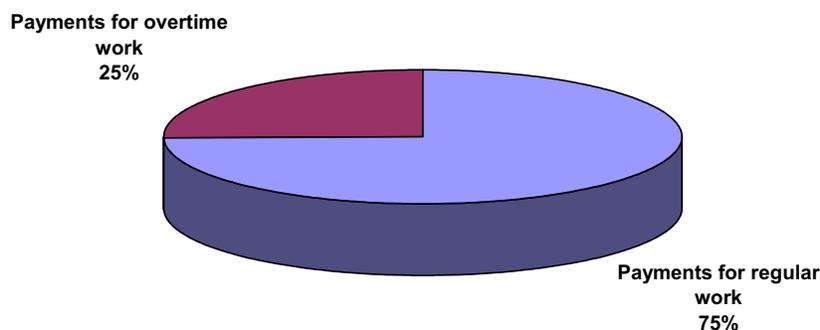
or holidays without the prior written approval of the resident engineer. The contracts also required Allied to obtain the resident engineer's authorization to continue work on an overtime basis on weekdays.

The Office's review disclosed that the resident engineer regularly submitted Form 311 records that included overtime hours. The records provided to this Office by the MDC do not contain written authorization from the Commission or from the Deputy Director for Construction for Allied to perform work on an overtime basis, nor do they contain documentation of the resident engineer's prior written approval for work performed on Saturdays, Sundays, and legal holidays. Moreover, the proportion of the work performed on an overtime basis appears to be excessive. The Office's analysis of data from MDC records showed that 26 percent of the total hours worked on the 1995-1997 contract were overtime hours. Allied was compensated for the overtime hours at a higher hourly rate, hence 35 percent of Allied's total compensation for hourly labor under the contract was for overtime work, as shown on Figure 1 below.



For the 1997-1999 contract the Office found that 19 percent of the total hours worked were overtime hours. Because Allied was compensated at a higher hourly rate for overtime, 25 percent of Allied's total compensation for hourly labor was for overtime work as shown on Figure 2. on the following page.

Figure 2
1997-1999 Contract Labor Payments



The 1995-1997 and the 1997-1999 contracts required Allied to provide an adequate workforce with the required expertise to perform the specified work, including performing repairs at various pools simultaneously when required.

Allied's certified payroll records reviewed by the Office show that Allied generally employed three or four employees to perform the work required by these contracts. These employees frequently worked on Saturdays, Sundays, and holidays, and often worked more than eight hours on a given day. The MDC records reviewed by the Office do not indicate that any of this overtime work was necessitated by emergency situations.

Had the MDC followed the contract provisions, exercised reasonable control over overtime work, and required Allied to provide an adequate workforce to complete routine work during regular working hours, its contracts with Allied would likely have carried a substantially lower cost to the state's taxpayers.

Finding 8. The MDC's poor record-keeping practices impeded the Office's review of the MDC contracts with Allied.

The Office's review was hampered by the poor quality of records prepared and maintained by the MDC. Many of the documents provided to the Office by the MDC were disorganized, incomplete, or illegible. In some instances, the Office made repeated requests for the same documents because the documents provided were

incorrectly copied or were not responsive to the Office's request. In one instance, the MDC took more than one year to locate and produce requested documents. As noted earlier, the MDC was unable to locate the Form 311 records relating to some of its payments to Allied.

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Conclusions and Recommendations

The Office's review disclosed that the MDC's practice of seeking bids during the spring months for maintenance and repair work required to open the swimming pools in June may have contributed to the absence of competition for the 1995-1997 and the 1997-1999 contracts for this work.

The Office's review also found that the MDC assigned a single individual to perform construction inspection and contract payment approval functions, in violation of its own operating procedures manual. The MDC required this single employee to inspect and oversee construction work at 22 different swimming pool locations as well as to perform other supervisory duties. The MDC's failure to devote adequate resources to effectively oversee these contracts increased the MDC's vulnerability to fraud, waste, and abuse.

Moreover, the MDC resident engineer responsible for administering the 1995-1997 contract and the first three months of the 1997-1999 contract failed to maintain a project diary, as required by the MDC's operating procedures manual. In addition, the MDC made payments to Allied despite Allied's failure to submit daily work logs or timely certified payrolls reports, as required by the contracts. By disregarding these documentation requirements, the MDC undermined its ability to verify the validity of Allied's claims for payment.

A comparison of the labor hours reported by the MDC resident engineer with the certified payroll reports filed by Allied many months later reveals unexplained discrepancies that raise doubts as to the actual number of labor hours performed. These discrepancies, together with Allied's failure to provide payroll or subcontractor payment records to substantiate the payments it received for hourly labor, suggest that the MDC may have overpaid Allied.

Compounding these contract oversight problems, the MDC also failed to adhere to its operating procedures manual and contract requirements governing approval for overtime work. A major portion of Allied's work was performed on an overtime basis, resulting in substantially higher costs to taxpayers.

Finally, the MDC's apparent inability to provide complete records in a timely fashion in response to the Office's requests is indicative of poor record-keeping practices.

To address the problems identified in this report, the Inspector General recommends the following measures:

- The MDC should solicit bids and award a contract for swimming pool repair and maintenance work in the fall to allow more work to be performed during the fall and winter months.
- The MDC should assign adequate personnel to effectively oversee and manage all contracts. In staffing these contracts, the MDC should bear in mind that contracts containing compensation terms based on hourly labor costs typically require more contract oversight than fixed-price contracts.
- The MDC should require MDC personnel to comply with the requirements contained in its own operating procedures manual regarding documentation of work performed.
- The MDC should enforce contractual and state law requirements for weekly submission of certified payroll reports.
- The MDC should adhere to its operating procedures manual and contract terms requiring prior written approval for overtime work.
- The MDC should examine its record-keeping practices to identify and remedy the causes of missing or misplaced records.
- The MDC should ensure that personnel with procurement, contract administration, and contract oversight responsibilities receive training through the Massachusetts Certified Public Purchasing Official program.

***Appendix A: The Metropolitan District Commission's
Response***



The Commonwealth of Massachusetts
Metropolitan District Commission

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OFFICE OF
INSPECTOR GENERAL

December 21, 2000

By Facsimile and First Class Mail

Robert A. Cerasoli
Inspector General
One Ashburton Place, Room 1311
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Dear Inspector General Cerasoli,

Thank you for the opportunity to respond to your draft report relating to the issuance and administration of the MDC Swimming Pool Maintenance Contracts ("Pool Contracts"). Although there is insufficient time to thoroughly analyze the material contained in the report prior to its release, it appears that the information contained therein is accurate. I take exception, however, not from what was contained in the report, but what was omitted. Conspicuously missing from the report is any mention that your review was initiated by a request from my office. In addition, the report gives the misleading impression that the MDC did nothing to resolve the concerns identified. Over three years ago, I directed the MDC Engineering and Construction Staff to completely overhaul the manner in which Pool Contracts were issued and administered. The following actions were taken:

- Reassignment of personnel previously administering the Pool Contracts.
- Hiring of additional engineers to support the pool maintenance program.
 - Additional field engineers enabled the MDC to establish a Pool Team to work solely on contracts to support swimming pool filtration system start-up, operational maintenance, and shut down.
 - Additional project engineers enabled the MDC to initiate multiple contracts to separate structural repairs from operational maintenance contracts.
 - The position of Deputy Director for Construction was re-established and filled to increase oversight of contract and MDC Standard Operating Procedure compliance.
- Dividing what was a single pool maintenance contract for all twenty-three MDC swimming pools into numerous different contracts.

Since 1997, sixteen (16) contracts relating to swimming pool maintenance have been issued to nine (9) different contractors, resulting in dramatically increased competition. Overtime on the contracts has been substantially reduced with work spread over the entire construction season. The swimming pools have opened on time the past two years and without any significant problems. Moreover, your own report indicates that the 1997-1999 contract work was completed for eleven percent (11%) less than the

estimated contract value. The MDC continues to review pool maintenance contracts to determine whether there are additional cost efficiencies available. In addition to the above, the Engineering and Construction Division continues to revise its Standard Operating Procedures to modernize construction, maintenance, and repair contract oversight practices.

The draft report presents the concept that advertising pool maintenance and repair contracts in the fall could increase efficiency and reduce overtime by allowing contractors to proceed with work in the fall and winter seasons when they are less busy. Since much of this work is weather dependent, the MDC disagrees with this concept. Even if a pool contract was initiated in the fall, work such as concrete repair, caulking, painting, and testing of filtration systems could not start until the spring. In addition, a significant amount of work performed in the spring is to correct damage caused by the effects of winter weather.

I understand the importance of your task to identify public contract administration deficiencies. That is why I brought the Pool Contract concerns to your attention. MDC staff has worked diligently over the past three years to improve contractor accountability and to reduce costs related to the Pool Contract process. Throughout this process, your staff was advised of these actions as well as the MDC's efforts to modernize its Engineering and Construction Division. Therefore, I would respectfully request that your report indicate that the MDC has already taken important steps to address the contract deficiencies identified in your report.

Sincerely,

David B. Balfour
Commissioner