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Underground Government:

Preliminary Report on Authorities and Other Public Corporations

State of New York
Commission on Government Integrity
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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.</td>
<td>INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>II.</td>
<td>STATE AUTHORITIES</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>A. What’s In A Name</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>B. Billions To Spend And Invest</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>C. Who’s Keeping Track?</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>D. Personal Services Contracts Guidelines</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Discretion To Spend</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>1. The Language Of The Guidelines</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>2. The Personal Services Contracts</td>
<td>15</td>
</tr>
<tr>
<td>III.</td>
<td>OTHER PUBLIC CORPORATIONS: STATE LEVEL</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>A. Corporations Affiliated With State Agencies</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>B. Corporations Set Up By State Authorities</td>
<td>22</td>
</tr>
<tr>
<td>IV.</td>
<td>LOCAL AUTHORITIES AND NOT-FOR PROFIT CORPORATIONS</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>A. Local Authorities</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>B. Corporations Set Up By Local Governments</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>C. Private Not-for-profit Corporations</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>D. The Tangled Web</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>1. Albany City And County</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td>2. Erie County And Buffalo City</td>
<td>34</td>
</tr>
<tr>
<td></td>
<td>The Buffalo Municipal Housing Authority</td>
<td>35</td>
</tr>
<tr>
<td></td>
<td>The Buffalo Development Companies</td>
<td>36</td>
</tr>
<tr>
<td></td>
<td>The Erie County IDA</td>
<td>36</td>
</tr>
<tr>
<td></td>
<td>3. Nassau/Suffolk Counties</td>
<td>37</td>
</tr>
<tr>
<td></td>
<td>Mitchell Field</td>
<td>37</td>
</tr>
<tr>
<td></td>
<td>Roosevelt Raceway</td>
<td>38</td>
</tr>
<tr>
<td>V.</td>
<td>SUMMARY AND CONCLUSIONS</td>
<td>41</td>
</tr>
</tbody>
</table>

APPENDIX

EXHIBITS
INTRODUCTION

In fiscal year 1990 New York's state authorities, not-for-profit corporations attached to state agencies, local authorities, and corporations run by local governments, will spend over $14 1/2 billion and award millions in tax-exempt financings and tax exemptions.\(^1\) The organizations which spend these vast sums operate, by and large, independently.\(^2\) Although these entities are all created by governments to serve a public purpose, they are not themselves traditional government bodies, and their transactions are generally not subject to normal government oversight and control. They were set up to help governments deal with complicated tasks without the constraints that can limit government's effectiveness; over time they have collectively become, in effect, a shadow government, quite powerful but little known and understood.

This report examines some of the issues raised by the ways in which authorities and government-sponsored not-for-profit corporations function at both state and local levels of New York government.\(^3\)

These organizations have multiplied in every political subdivision in the state. Each has developed in response to a particular need, and as the needs have grown they have grown in numbers, size, spending and influence. Upon examination, each one is a little different from the others, so that even experts have difficulty accurately defining them. Furthermore, tracking their sophisticated, complex financial transactions, including dealings with many different branches of government, with each other, and with many different recipients of funds, is a challenge even for skilled financial analysts with full access to documents. Frequently, despite the importance and complexity of their activities, the most rudimentary information that would permit analysis is extremely difficult to obtain. At present, so far as Commission staff has been able to determine, no one has even an approximate count of how many of these organizations exist and where they are,

\(^1\) Authorities are a particular type of public corporation called "public benefit corporation" and are created by special statutes. Government-sponsored not-for-profit corporations are just like any other not-for-profit corporation, except that they are set up by government officials and supported at least in part by public funds. Both authorities and not-for-profit corporations will be described in detail in the pages that follow.

\(^2\) As corporations, these entities are separate legal bodies with their own identities, not themselves units of government but controlled by the units of government which have created them, and assigned them to perform a specific function. In a sense, they are a part of government, yet apart from the governments which created them.

\(^3\) Untold millions of dollars in government funds will also be spent by privately run local not-for-profit corporations operating state-sponsored programs. These entities depend for their existence on the government funds that feed them, and government relies on them to deliver a broad range of services. They, too, present significant problems of oversight. They are not the main focus of this report, however, but are referred to below at 28-29, in part because in many cases the funds for these programs are delivered through the authorities and government-sponsored corporations which are addressed in this report.
much less an accounting of what they do. Increasingly, dealing with their intricacies to obtain the benefits they award has become, to quote one observer, "an intricate game." To the layperson, even their names blur: port authorities and port commissions, urban authorities and transportation authorities, urban renewal agencies and industrial development authorities and local development corporations, research corporations and development funds. The distinctions are not important, and to the public they are all part of a vast and confusing government.

These bodies are generally exempted by law from many of the controls designed to check favoritism, undue influence and abuse of official position, as well as corruption, fraud, waste and misuse of government funds. Thus, they are often exempt from civil service requirements, from many restrictions on how contracts may be awarded, and from audit and reporting requirements that are imposed by law and regulation on government agencies. The officers and employees of a number of these organizations are even exempt from conflict of interest prohibitions.4

The proliferation of these bodies, with fragmented, weak, or non-existent oversight, has important implications for the integrity of government, and for how the public views government. As more and more of the business of government is done by such organizations, a dichotomy has developed. Those on the outside, who seek jobs, loans, grants, and contracts from these bodies, see them as virtually indistinguishable from government—just one more state or local agency. This is especially true in the many situations where public officials sit on the governing boards of the quasi-governmental organizations, or even have day-to-day responsibility for their operations. But those who control, manage, and are employed by these organizations often view them as separate from traditional government, and emphasize those laws which exempt them from the constraints that apply to government. When confronted with a situation which appears to present either a conflict of interest or an opportunity for awarding benefits to friends and

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4 As of 1985, when the New York Governor’s Office published a Local Government Handbook, it was believed that there existed “about 46 truly statewide or regional authorities” and “about 325 local authorities”—a six-fold increase in thirty years. According to that handbook, in 1956 only about 90 authorities existed, including both state and local authorities. Local Government Handbook, Governor’s Office, 1985, at 135.

This count—on its face, approximate—includes only public benefit corporations which by law are required to be created by individual act of the State Legislature. There are indications that the numbers and activities of publicly sponsored not-for-profit corporations may also be expanding, but there is virtually no information compiled about them.


6 The Public Officer’s Law applies to authorities, one member of whose board is appointed by the Governor. The General Municipal Law applies to Urban Renewal Agencies and Industrial Development Agencies. The Housing Authority Law contains limited conflict of interest provisions. No conflict-of-interest rules apply to the officers and employees of Local Development Corporations or other not-for-profit corporations.
supporters, they can—and do—rightfully point out that these are not government bodies, and that different rules apply.\footnote{On occasion, some of these bodies will claim not to be subject to the oversight of the local Comptroller. (See Exhibit 6). Several entities responded to Commission requests for information by claiming not to be "government bodies." (In general, however, these organizations did provide at least partial information.)}

This is a situation with potential to breed favoritism, abuse of power, and even corruption. From time to time some incident of alleged favoritism or abuse has been revealed which has provoked criticism and calls for reform. For example:

Law firms and underwriters for one state authority's bond issues, and engineering firms for their construction projects, are chosen by non-competitive processes, and the contracts appear to be awarded to staunch political contributors to the Governor. Law firms, banks and brokerage firms involved in the investment of State Retirement Fund assets likewise contribute heavily to the Comptroller.\footnote{See below, at 9.}

A former state agency employee becomes a consultant, and then employee of, a related agency's "in-house not-for-profit corporation," while at the same time the private company he controls is awarded substantial state funds funnelled through the same not-for-profit corporation.\footnote{See below, at 20-21.}

A relative of the Governor is favored with a consultant contract awarded without any competition by another "in-house corporation" attached to another state agency.\footnote{See below, at 21-22.}

A mayor chairs the board of a local Industrial Development Agency ("IDA"); his law firm represents applicants for tax-exempt bonds to be issued through the agency; the mayor votes on the award, and shares in the law firm's fees.\footnote{See below, at 32-33.}
In a local housing authority, many of the senior managers and rank and file employees are members of the Mayor's political club.\textsuperscript{11}

In one municipality, the local Comptroller is unable to perform a complete audit of the books and records of local development corporations which help finance development projects; he is also unable to audit the local housing authority, despite allegations of misuse of funds. In both cases, because the funds controlled by those organizations come from several funding sources, no one oversight body does perform a comprehensive audit.\textsuperscript{12}

In another county, IDA financing is awarded after only perfunctory review of applications, voted upon by IDA board members who had undisclosed interests in the projects being financed. The commercial properties thus financed were built on county-owned land, leased at rental rates far below market.\textsuperscript{13}

In most or even all cases, no laws have been violated, although the conduct may appear improper. However troubling, none of these incidents has provided the stimulus for needed reform. Each event, like many of these bodies' activities, is viewed in isolation from the others, and the significance of the systemic problems is lost.

In the case of the statewide public authorities, some steps have been taken to develop oversight mechanisms and to impose clearer standards of conduct upon officers and employees.\textsuperscript{14} But no private or public body has taken a comprehensive look at local authorities, at the state or local quasi-governmental not-for-profit corporations, or at the ways in which the activities of all these organizations are intertwined. No one has examined the relationships between those who receive the jobs, the contracts, and the other benefits, and those who decide to award those benefits.

The Commission on Government Integrity commenced a preliminary investigation, compiling data about local authorities, and state and local government-sponsored not-for-profit

\textsuperscript{11} See below, at 35.

\textsuperscript{12} See below, at 34-36.

\textsuperscript{13} See below, at 37-38.

\textsuperscript{14} These measures are described below at 11-17.
corporations. Information was derived from varied sources. Some information was obtained by Commission staff directly from the organizations themselves, and other facts were learned during Commission investigations the primary focus of which was some other agency or conduct. Commission staff reviewed reports which the state authorities file with the State Comptroller in compliance with recently enacted statutes governing the award of personal services contracts, and interviewed a number of contracting personnel in statewide authorities. Other facts were learned from reports of government oversight bodies, including auditors, prosecutors and inspectors general.

Because of the absence of available data, large information gaps remain. But enough is known now to make it clear that fundamental reforms must be enacted.

The case for reform is derived from one basic concept: at the most fundamental level, these are all organizations controlled by government, dispensing the benefits of government, for purposes which on their face are the business of government. These entities are a critical part of government. This Commission recognizes that the freedom from constraints which these bodies enjoy often is the result of a deliberate choice to provide them with greater operating flexibility which was viewed as necessary for effective operation. It may not be necessary or even desirable that they be subject to all of the restraints that apply to "mainstream" government agencies. However, it is imperative that their officers and employees conduct themselves with a full awareness of their obligations to the public.

The following reforms are needed:

* The names and addresses of all such organizations, the names and other affiliations of their governing personnel, the sources and amounts of the organization’s income, the identities of those who receive benefits through the organization, and the dollar amounts of those benefits should be publicly available and easily accessible. There should, therefore, be an annual report containing this data, on file and publicly available in the jurisdiction where they are located.

* The award of benefits (grants, loans, contracts, legal fees and brokerage commissions) should in every case be made according to written criteria which relate to the purpose of the organization’s program, following formal procedures that apply to all, and with written documentation of the decision process.

16 The Commission’s investigation was conducted pursuant to its mandate under Executive Order 88.1 to examine “laws, regulations and procedures relating to the prevention of corruption, favoritism, undue influence and abuse of official position in government,” particularly those laws intended to prohibit conflicts of interest, and laws regarding the solicitation of government business.
All such entities should adopt effective internal control procedures. Each such entity controlling benefits of more than $1,000,000.00 per year should have an annual outside audit, made public.

Mechanisms should be put in place both to make sure that fund recipients fulfill the purposes of the organization's program, and to monitor the extent to which they are actually doing so; if they are not, the benefits should be revocable pursuant to a clear procedure.

Decision-makers in all such organizations should be subject to appropriate conflict-of-interest guidelines.

Employees of such organizations should be selected based on merit using procedures which make employment opportunities equally available to all who are qualified.

Effective oversight is also difficult because of the many connections among the various entities discussed in this report. State authorities, corporations and agencies have transactions with local authorities, local corporations, and local agencies, and all have dealings with Federal agencies. The transactions are complex, often involving layers of responsibility and networks of participation. Even where problematic transactions are apparent, responsibility for oversight and corrective action often does not lie clearly with one jurisdiction.

A great deal more work is needed to unravel these relationships, and to determine the nature of the oversight mechanisms and other controls that would be most appropriate. It is imperative to make this effort. Vast sums of public money are being funneled through these organizations, in an effort to address a myriad of social problems, from homelessness to drug abuse, to poverty and education. These bodies can no longer be viewed as exempt from the obligation to act in a manner commensurate with their public status.

This Commission is troubled by the phenomenon increasingly revealed by its work. The rigid constraints imposed on traditional governmental units do indeed hamper their effective functioning. The reasons for seeking new forms of governmental organization are compelling.

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17 Although each of these distinct entities has its own functions, leadership and dominant characteristics—which on the surface seem complex enough—they are intimately connected with each other and with the "mainstream" units of government in their day-to-day functioning. Board memberships of these bodies may overlap; public officials may sit on one or more of the boards or even act as executive director of one or another of the entities; each unit of government provides funds to many of these bodies through contract or appropriations; many of these bodies act as pass-through agencies for the flow of funds to others. Joint sponsorship of projects is common. The same contractors may do business with several of them, and also with the traditional government agencies—although they play by different rules. The web of relationships is thick and tangled.

18 See, for example, A Ship Without A Captain: Contracting in New York City, New York State Commission On Government Integrity, December, 1989.
But with the advent of authorities what has evolved in effect are two governmental systems, one far more accountable to the public than the other. This Commission questions the need for two distinct systems. Perhaps the goals of government could be equally well realized by modifying some of the provisions which hinder the effectiveness and flexibility of traditional governmental bodies, and imposing the same ethical standards and oversight on all governmental bodies, including authorities and not-for-profit corporations.

The answers to these questions are not simple. But they are urgently needed if government is to meet the complex challenges of the coming decades and to enjoy the respect of its citizens. We strongly urge the Governor to create another Moreland Act Commission to examine this area in depth and make recommendations for further specific reforms.

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19 One possible means to enhance accountability but retain flexibility for both traditional governmental units and quasi-governmental bodies might well be to develop sound internal control systems applicable to both. Commission staff reviewed the beginning phases of the implementation of the Internal Control Act of 1987. Personnel in the Division of the Budget, and in a number of agencies, were interviewed; the Division's implementation program was reviewed; and agencies' procedures were examined. Overall, and predictably, the degree of success experienced by the agencies was related to their history of systematic operations: agencies with more well established procedures for all their functions were able to embrace internal control procedures the most easily. In general, there was a tendency to underestimate the magnitude of investment of resources in training and guidance for agency personnel that is required to introduce effective internal control systems. It is the Commission's view that this investment is essential and will reap large rewards. The Internal Control Act of 1987 contains a sunset provision; unless renewed it will expire January 1, 1994. It should be renewed.
II. STATE AUTHORITIES

A. What’s In A Name?

The mystery that surrounds the government organizations which are the subject of this report begins with their very names. It is not possible to know, just by reference to an organization’s name, what kind of body it is, and what kind of relationship it has to government. The term "authority," while easily recognized, has no clear statutory meaning. The statutory term for "authority" in New York State is "public benefit corporation." But, although any New York State organization whose name includes the word "authority" is probably a public benefit corporation, many other organizations, named "agencies," "commissions" "funds" or "corporations," are also public benefit corporations. There is no obvious rhyme or reason for the various names. Indeed, the name is not significant in a legal sense; what matters is that these are organizations created by the legislature, endowed with some governmental powers, to serve some public purpose.

As public benefit corporations, the similarities among these bodies are far greater than any differences which might be suggested by their names. This report addresses all New York State’s public benefit corporations generally, and uses the terms "authority" and "public benefit corporation" interchangeably, to include all public benefit corporations, of whatever stripe.

B. Billions To Spend And Invest

The statewide authorities raise, receive, and spend vast sums of money in New York State. Data gleaned from the Executive Budget and the Comptroller’s Public Authorities’ Data Base reveal that the combined operating budgets of the state-wide authorities in 1988 (including

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20 The only sure way to identify a public benefit corporation is to find, in the statute creating it, the hallmark language: “this [authority/agency/commission/fund/corporation] shall be a body corporate and politic, constituting a public benefit corporation.” No definitive official list of statewide public authorities exists. The Executive Budget lists 29 as a group, discussing their bond issuing function; another 22 appear at scattered places in the Budget. The Governor’s Office maintains a mailing list of 53 authorities in which the Governor appoints at least one board member; this mailing list contains one body that is not a public benefit corporation. The Comptroller’s Office publishes a Public Authorities Data Base, but only 44 public benefit corporations are represented. For a list of statewide authorities compiled from all these sources, see Appendix at A-3 - A-4.

21 Public benefit corporations have special status under New York’s constitution and laws, which are described more fully in the Appendix.

22 Although every authority is created by a separate act of the State Legislature, as a general rule the board members of statewide authorities are selected by statewide officials, and those of local authorities are selected by local officials. These two groups will be discussed separately in this report, mainly because they are subject to very different levels of control and oversight. There are also hybrid and regional authorities, where the power to appoint the boards is shared among state and local officials.
operating expenses and capital disbursements totaled approximately $14.6 billion; their total outstanding debt amounted to somewhat more than $40 billion. Cash on deposit in various banks and marketable securities purchased through various brokers totalled $12.8 billion.

Authorities spend these billions on their own—sometimes sizable—staff, on the design, construction, maintenance and operation of the projects for which they are responsible, and on servicing and repaying their debt. In all their activities, they often generate lucrative benefits to third parties. Bankers, brokers, and lawyers involved in bond underwriting and the investment of authority funds receive fees. Ongoing operations, and especially construction projects, generate large contracts for goods and materials, and for design, engineering and construction services. Many authorities award loans and grants as part of government subsidy programs.

When contract award standards are flexible and scrutiny is limited, contracts may be used to favor friends and reward campaign contributors. From time to time the potential for abuse becomes reality. For example, the Executive Director of the Thruway Authority at one time enjoyed virtually uncontrolled discretion over the award of contracts by that body. Although procedures existed on paper requiring selection of contractors by a selection committee, in practice, the committee always deferred to the Executive Director. When he asked vendors to purchase computer software products from a company in which his family held a financial interest, many of them acquiesced. In another example, a very large proportion of engineering contracts awarded by the Thruway Authority went to contributors to the Governor's campaign committee and to the State Democratic Party Committee. Engineers interviewed by Commission staff stated that they made those contributions because (although those soliciting funds never suggested that the award of business contracts would be linked to their contributions) they "thought it unwise to take a chance and not contribute."

Similar risks exist when the availability of vast sums to invest is not matched with standards and procedures governing the selection of brokers, lawyers, banks and other professionals on the basis of merit and with equal opportunity for all who qualify. This Commission

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23 In comparison, the entire state budget that year was approximately $28 billion; of that, over $10 billion went to localities in non-school-related assistance, and $7.3 billion was awarded in education grant funds.

24 The different kinds of revenue sources for authorities are discussed in the Appendix. They include revenues from their projects; income on investments; government appropriations; and contracts.


documented the potential dangers of such a situation in another context, examining the campaign fundraising practices of the New York State Comptroller.27

C. Who's Keeping Track?

Early in their history, there was no attempt to regulate or even monitor authorities systematically; what little regulation existed was imposed on a case-by-case basis in the enabling legislation for the different authorities.28 In fact, authorities opposed any effort to apply general regulatory statutes to their activities.29 Initially, this freedom from constraints served clear purposes related to the reasons for their creation.30 Authorities were created as separate and distinct from state government in order to be able to issue bonds without a referendum or to avoid constitutional limits on bonding.31 Their revenues came from their own projects and this separation freed them from the supervision of the State Comptroller.32 They needed to manage large construction projects with (at least assumed) private-sector efficiency, and so were not required to adhere to strict line-item budgets, and were exempt from the restrictive competitive bidding requirements applicable to governmental units. They needed flexibility in hiring the most qualified professionals for very complex tasks, so were exempted from civil service procedures.33

27 See, The Midas Touch, at 54-73. The Comptroller of the State of New York has sole discretion to invest the $35.8 billion assets of the New York State Retirement Fund. During the period the Commission studied, campaign contributors were awarded an array of brokerage and other investment-related contracts.

28 The Public Authorities Law was enacted in 1939, at the urging of the Law Revision Commission, which observed that since the creation of the New York-New Jersey Port Authority in 1921 twenty-six authorities had been created "and it is foreseeable that others will be created in the future." Public Authorities Law §§ 1400-1849 (McKinney's 1981), at III. But, at the outset, its general provisions mandated limited oversight, leaving such requirements to the particular enabling statutes for particular authorities. For example, the Power Authority, established in 1931, was one of the first in which gubernatorial appointments to the governing board were subject to Senate confirmation.


31 N. Y. S. Const. Art. 8, § 4-10.

32 See note 35, below.

33 New York's Constitution, Art. V, § 6, provides that "appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination..." This constitutional requirement is implemented in statutes. In some cases, the statutes expressly apply to authorities (for example, housing authorities are expressly subject to their localities' civil service system); in other cases, authorities have been held to be exempt from specific provisions of statute. See, Burns v. (continued...)
During 1986 and 1987, the two major nuclear accidents that occurred at the Three Mile Island and Chernobyl Reactors, respectively, highlighted the need for significant regulatory reform in the nuclear industry.

The Nuclear Regulatory Commission, responsible for regulating nuclear power plants in the United States, was criticized for its role in the Three Mile Island accident. The commission's handling of the incident was seen as inadequate, leading to a loss of public confidence in nuclear safety.

In response, the Nuclear Regulatory Reform Act of 1984 was enacted, requiring significant changes to the commission's structure and operations. The act increased the commission's accountability and transparency, and strengthened its oversight of the nuclear industry.

Since then, the Nuclear Regulatory Commission has undergone significant changes, including the implementation of new safety regulations and the development of more advanced nuclear technologies. However, the legacy of the Three Mile Island and Chernobyl accidents continues to influence the commission's work, as it seeks to ensure the safety and reliability of nuclear power plants.
attempted to balance the authorities' historical and necessary independence with the demonstrated need for more accountability.\textsuperscript{37}

This balance is reflected in the statute which requires that authorities promulgate guidelines to govern their own awards of personal services contracts, yet allows the authorities independently to specify the procedures they will follow. (Similar "guidelines" approaches were taken in the statutes applying to authorities' investment practices and internal controls.) The statute merely describes the categories of contracts which should be covered by the guidelines, and directs that the guidelines provide for the award of these contracts on a competitive basis, unless competition is waived for approved reasons and by approved procedures. This Commission has reviewed the effectiveness of this approach to control over the authorities. As discussed below, significant deficiencies are obvious.

D. Personal Services Contracts Guidelines: Discretion To Spend

All statewide authorities are subject to Public Authorities Law §2879, effective January 1, 1984. It requires the authorities to adopt and publish "comprehensive" guidelines covering the whole spectrum of personal services contracts. The guidelines must deal with all aspects of such contracts, from the decision to enter into such a contract, to the methods for selection of a vendor on a competitive basis, to circumstances under which competition may be waived, to the monitoring of contract performance. The statute also calls for summary information about each contract to be filed with the Comptroller and made publicly available "upon reasonable request."\textsuperscript{38} The law does not, however, require pre-approval of contract decisions by the Comptroller, as is required of state agencies, nor does it provide for any enforcement mechanism other than possible audit by the Comptroller, to ensure compliance with the guidelines.

For a selected group of authorities,\textsuperscript{39} the Commission reviewed the actual personal service contract guidelines as well as the data filed by the authorities with the New York State Comptroller, and interviewed contracting personnel at the authorities.\textsuperscript{40} Commission staff focussed

\textsuperscript{37} In 1983 authorities with at least one member of the governing board appointed by the governor were made subject to the conflict of interest provisions of Public Officers Law Sec. 73; in 1984 authorities with a majority of members appointed by the governor were required to adopt guidelines governing the award of personal services contracts (and in 1989 this provision was expanded to apply to all procurement contracts); also in 1984, all authorities were required to adopt guidelines governing their investment practices; in 1987 those authorities already subject to the Public Officers Law were made subject to the Ethics in Government Act and Internal Controls Act of 1987.

\textsuperscript{38} The reports must include the name of the contractor, the amount of the contract, the amounts spent in each year, and a description of the method of award.

\textsuperscript{39} See Exhibit 1.

\textsuperscript{40} The Public Authority Data Base published by the Office of the State Comptroller contains a list of authorities whose board members are appointed by the governor. The list does not include every such authority, as some exist as subsidiaries (continued...)}
on the provision for award of contracts on a competitive basis, and found uneven results, both in the guidelines themselves and in the contract award practices.\footnote{41}{Competition is generally regarded by experts in government procurement as a crucial deterrent to corruption, as well as a deterrent to waste and abuse.}

1. The Language Of The Guidelines

The guidelines on their face do not always conform with the letter, and certainly not the spirit, of the governing statute. The statute lists the particular categories of services to be covered by the authorities' own personal service contract guidelines, including specifically all those services contracts which the authorities let most frequently,\footnote{42}{"Contracts for personal services shall mean ... a service including but not limited to the performance of legal, accounting, management consulting, investment banking, planning, training, statistical, research, public relations, architectural, engineering, surveying or other personal services of a consulting, professional or technical nature for a fee..." $\S$2879 (2)} but allows the guidelines to specify "circumstances in which the board may by resolution waive competition." Some authorities have used this waiver provision to exclude from competition entire categories of contracts—the very categories the statute says must be included. For example, while the statute specifies that guidelines providing for award on a competitive basis must encompass contracts for "legal services," many authorities routinely exclude legal services from their guidelines altogether, claiming that these services are not susceptible to competitive award procedures. In contrast, the Power Authority, and recently the State Comptroller's Office, routinely use Requests For Proposals for such contracts.\footnote{43}{These include Battery Park City Authority, Housing Finance Agency, Long Island Rail Road, Metropolitan Transportation Authority, Niagara Frontier Transportation Authority, and Urban Development Corporation.}

Even when the guidelines encompass a category of contract, they do not always call for competitive award procedures. The statute does not specify what form "the competitive selection" of contractors must take. The authorities are free to set up quite flexible procedures if they so desire; several do. The Battery Park City Authority requires a minimum of three bids from prequalified firms only "where practicable."\footnote{44}{Battery Park City Authority's "Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Personal Service Contracts", February 4, 1985.}

The Niagara Frontier Transportation Authority requires requests for proposals to be sent to a minimum of three prequalified firms, but only if "competitive ... selection is considered to be in the...\footnote{45}{"Resolution c: the New York Job Development Authority with Reference to Personal Services Contracts Guidelines and Investment Guidelines."}
best interest of the Authority." The Urban Development Corporation requires that requests for proposals be sent to a minimum of three firms and selection made from those responding, and a competitive decision made "to the maximum extent possible."  

The statute requires the authorities to specify the situations in which waiver of competition will be allowed. The authorities have used this provision to permit exceptions which, in effect, can swallow up the rules. For example, the guidelines adopted by authorities include the following language:

"Emergency or other extraordinary circumstances exist which make competition impracticable or inappropriate." (Battery Park City Authority)

"Such waiver [is] in the best interest of the authority." (Dormitory Authority)

"Time or other factors would make [competition] impracticable." (New York Job Development Authority)

"Provider of the services has unique or otherwise outstanding qualifications." (Long Island Rail Road Co.; Metropolitan Transit Authority)

"The need to obtain high quality services or services having unique or extraordinary features or time requirements substantially outweighs possible cost savings from selection on a competitive basis." (United Nations Development Corporation)

2. The Personal Services Contracts

The authorities' personal services contracts reports list the firms who were awarded the contract, the nature of the services, the amount of the contract, and the method used to award the contracts. There are many inconsistencies in reporting, both among and even within authorities. Each authority appears to establish its own set of definitions, so that the terms used to describe contracting methods are not comparable from one authority to the next.

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Despite this unevenness in reporting, the figures reported by the authorities, as well as audits performed by the Office of the State Comptroller, show that, for personal services contracts, competition is not the norm. While, for example, the New York State Power Authority awarded over 87% of its personal services contracts competitively in 1987, and 82% in 1988, the Metropolitan Transit Authority’s figures for the same periods were 39% and 45%, and those of the Battery Park City Authority were 69% and 23%.

These reports also reveal that different authorities approach the same type of service very differently. In the Personal Services Contracts Reports reviewed by Commission staff, MTA Headquarters reported one contract for court reporting services, awarded by competitive bid, for just over $53,000. The LIRR let 23 different contracts for court reporting services, totalling $17,500—each on a sole source basis. The NYC Transit Authority indicated that the classification of the contracts for court reporting services as "competitive" or "non-competitive" was "not applicable"; it awarded 163 such contracts totalling $413,000, and ranging from $2 to $65,000.

In fact, even the same authority sometimes chooses competitive methods to award a particular type of contract, and on other occasions reports that it awarded contracts for that same service on a sole source basis. The Transit Authority awards different executive recruiting contracts to different firms, by a process sometimes reported as sole source, sometimes "competitive negotiation" and sometimes "not applicable." Similarly, the Long Island Railroad awards personnel search contracts, and legal services contracts, to different firms, each on a sole source basis.

Interviews by Commission staff with contracting personnel in a number of authorities indicate that the choice of procedures is in part determined by the authority's attitude toward competitive processes. In some authorities, contracting personnel expressed a commitment to competitive procedures; there, virtually all personal services contracts are competitively let, and sole source contracts are minimal. In contrast, other authorities stated that the nature of personal service contracts precludes competitive selection, and the vast majority of their contracts—for what appear to be the same types of services—are let through a non-competitive process. When an authority wants competition, it will require competition; the converse is also true.

The audit authority of the State Comptroller, although substantial, is not exercised often enough and comprehensively enough to ensure that the statute's intent is being carried out. The Comptroller is directed by statute to audit every authority at least every five years, and more often if he deems it necessary. In practice, many authorities in the Comptroller's Public

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48 See Exhibit 1.

49 The New York State Power Authority reports a broad range of contracts as awarded pursuant to "bid." These include engineering contracts, medical exam contracts, appraisal services, design training services, and even corporate strategic planning services.

50 Public Authorities Law § 2804. The statute allows the Comptroller to accept an "external examination of its books and accounts...made at the request of such authority" in lieu of the Comptroller's audit.
Authorities Data Base have not been audited since before 1984, the first year reflected in the data base; for those which are audited by the Comptroller, the audits focus on a specific set of practices. Only eight authorities have been audited concerning the award and administration of personal services contracts; other areas are examined more or less frequently.\textsuperscript{31}

Those audits which focused on authorities' personal services contracts practices were sharply critical. The Comptroller found excessive use of sole source contracts, failure to adhere to the authorities' own guidelines, and over-weighting of the authorities' prior experience with particular vendors so that certain vendors were favored even in competitively awarded contracts.\textsuperscript{32}

In sum, although a number of measures have been adopted which have begun to make public authorities accountable to the public and to government for their decisions, too much is left to discretion by those provisions that have been enacted, and there remain major gaps in the oversight that should be provided.

\textsuperscript{31} Nineteen authorities' investment practices have been audited since 1984; twenty audits have been done of authorities financial management practices. Only one audit has addressed internal controls (the Urban Development Corporation); three have addressed personal practices, and seven have addressed operational practices.

\textsuperscript{32} The data base report does not, in most cases, reflect any follow up to ensure compliance with the recommendations of the audits. In the case of the Power Authority, the statistics reported by the authority, together with the information provided to Commission interviewers, indicate that efforts were made to implement the Comptroller's suggestions. The most recent reports submitted by the authorities also generally indicate an increase in competitive methods of award and decrease in sole source award of contracts. But this assessment is based on the authorities' own characterization of their procedures, rather than on any objective review of the contract award processes.
III. OTHER PUBLIC CORPORATIONS: STATE LEVEL

Under New York law, anyone over eighteen years of age can set up a not-for-profit corporation, so long as the requirements of the not-for-profit corporation law are met. A government can set up a not-for-profit corporation, and indeed two sections of the not-for-profit corporation law contemplate that they will do so. Even an authority or another corporation can set up a corporation, and some have done so.

The governments or authorities that establish such corporations can name their board members or can require that government officials be members of the boards—or even be the executives—ex officio. Once these corporations are established, they can do business, buy and sell property, provide services and charge fees for doing so, apply for federal, state and local grant moneys, enter into contracts with government units, and generally do anything their sponsors desire them to do—organizationally separate from their government sponsors. One particular kind of government-sponsored corporation, the local development corporation, even enjoys special privileges in connection with acquisition and sale of municipally owned real estate.

But no agency in New York keeps track of the activities of government sponsored corporations in any systematic fashion. Of all the "quasi-governmental" organizations that have sprung up in recent years, these are the least subject to oversight and control. The only oversight power derives from the contracts between the corporation and some agency of government, which can be audited like any other agency contract by the comptroller with jurisdiction over that agency. Such contracts often contain clauses imposing some reporting and audit requirements on the not-for-profit corporation as a condition of receiving grant funds. But these clauses are often not meaningfully enforced. Pre-approval, by either the State Comptroller or the Attorney General, of a not-for-profit corporation’s contracts with third parties, is never required, nor are such corporations subject to civil service, contracting, and conflict of interests laws.

53 Not-For-Profit Corporation Law § 401. § 404 requires approval of various departments and of the Supreme Court, but the authority of the Supreme Court is limited.

54 Not For Profit Corporation Law § 201 calls a “Type C” corporation one “formed for any lawful business purpose to achieve a lawful public or quasi-public objective. § 1411 lists a number of purposes for which “any one or more counties, cities, towns or villages of the state, or any combination thereof, or the New York State Job Development Authority...may cause [local development] corporations to be incorporated by public officers or private individuals...”

55 Some grant programs contemplate that grants will be awarded only to such corporations. See, for example, the New York State Legislative Manual for 1986-87, describing programs administered by the Division of Housing and Community Renewal (at 356-363).

56 The local legislative body or board of estimate in a municipality may declare land owned by the municipality available for purchase or lease by the LDC. The sale or lease may be made without appraisal, public notice or public bidding, except that a public hearing must be held (after ten days notice) before such a sale.
The way in which these organizations are organized and managed makes them susceptible to potential abuse, as reflected in the situations described below.

A. Corporations Affiliated With State Agencies

The Commission has identified approximately ten not-for-profit corporations established by officials of State agencies, and affiliated with those agencies in some ongoing way. Of these, it has reviewed two in some detail, and has reviewed a report of the State Inspector General concerning a third.

Each of these three corporations, (Health Research, Inc. ("HRI"), National Drug Research, Inc. ("NDRI"), and Welfare Research, Inc. ("WRI")), serves similar purposes with respect to its affiliate state agency. Essentially they serve as the agencies' vehicles to receive grants and bequests which, for legal reasons, may not be given to state agencies. The agencies select the affiliate corporations' directors, and often the Commissioner of the agency chairs the corporation. The corporations operate according to bylaws and pursuant to contracts with their respective agencies.

Because the corporations are separate from the agencies, they have a degree of operational flexibility not enjoyed by the agencies themselves. Research projects and agency programs that an agency wishes to sponsor can be started through the corporation without prior legislative approval, and without hiring through the State civil service. Similarly, programs which have received, in a Commissioner's view, too little funding from the Legislature may be supplemented with the corporations' unrestricted funds. For the year ending March 31, 1988, HRI had revenues totalling almost $37 million, and as of that date the corporation had nearly $22 million in assets.

57 These include Welfare Research, Inc. (Department of Mental Health); Youth Support, Inc. (Division for Youth); Health Research, Inc. (Department of Health); Narcotic and Drug Research, Inc. (Division of Substance Abuse Services); Research Foundation for Mental Hygiene, Inc. (Office of Mental Retardation and Developmental Disabilities); SUNY Research Foundation, Inc. (State University of New York); The Research Institute on Alcoholism (Division of Alcohol and Alcohol Abuse); Empire State Day Care Services, Inc. (Office of Employee Relations); the University of the State of New York Board of Regents Funds (Education Department); Environmental Conservation, Inc. (Department of Environmental Conservation).

58 HRI also handles the patenting and licensing of discoveries made by DOH researchers.

59 HRI has approximately 1,200 employees, many of whom are DOH employees on leave of absence while at HRI. Employees of HRI are represented by the CSEA, and participate in the State pension program, but are not otherwise considered public employees. (Commission staff interview of HRI official.)

60 HRI's revenues are divided into "Restricted Funds" (contracts, grants, and donations which may be used only for the specified purposes), and the "Intra-Corporate Fund" ("ICF"), consisting of interest earned on the restricted funds prior to expenditure, and fees charged to those contracts for administrative costs, and income from royalties on commercial sales of patented discoveries. As of March 31, 1988, the ICF cash balance was just over $2.5 million, available for whatever purposes the corporation chooses.
This availability of funds not subject to the usual agency controls raises troubling issues, reflected in the following examples.

Welfare Research, Inc. ("WRI") is a not-for-profit corporation affiliated with the Office of Mental Health, an office within the Department of Mental Hygiene.\textsuperscript{41} WRI, in 1984, hired the former First Deputy Commissioner of the Office of Mental Retardation and Developmental Disabilities ("OMRDD"), another office within the Department of Mental Hygiene, first as a consultant, then as an employee, to conduct a feasibility study examining possible expansion of community-based residential day treatment programs for mentally ill persons. One option was for such services to be delivered through not-for-profit corporations pursuant to contracts with the Office of Mental Health. While on the WRI payroll, this person helped incorporate, and became the director of, such a private corporation. The Office of Mental Health, pursuant to a contract, provided WRI with the funds to conduct the feasibility study, and directed that substantial portions of the contract sums be paid to the WRI employee's new corporation for startup and operating expenses. The corporation received over $200,000 on that basis. After a period of time, the employee left WRI, and his corporation applied for further funding directly from OMH. In connection with the usual review process for that OMH contract (which contemplated an award of $814,000 to the corporation for the first year of a two-year contract), the Comptroller questioned whether there were conflicts of interest, and asked the Attorney General to review the question. The Comptroller asked whether it had been appropriate for the employee to enter into the consulting relationship with WRI when he first left OMRDD, and then, whether the later contracts between WRI and his corporation were proper. In July, 1986, the Attorney General's Office issued a letter opinion finding no violations of the Public Officer's Law.

In that case, the question presented was whether, while he was in state service (that is, while on the OMRDD payroll and not while acting as a consultant or employee with WRI) the individual had had responsibilities related to the affairs of his new corporation. The time on the WRI payroll, when he had clearly had such duties, was not considered to be state service. In effect, he had been paid with state funds to establish a business which he then continued privately, conduct which would have been prohibited had the same rules applied to WRI as apply to the Office of Mental Health.

In another example, between mid-1985 and early 1987 Health Research, Inc. ("HRI"), a corporation affiliated with the Department of Health, spent nearly $65,000 pursuant to a preliminary contract with the University of California to establish a statewide computerized registry of cancer victims similar to one operating in California. The project was initiated by a suggestion from the Governor's wife to the Commissioner of Health. The funds were awarded to her brother, a computer expert living in Southern California, who, though mentioned only once in preliminary

\textsuperscript{41} The facts set forth in this section were derived from a memorandum to New York State Inspector General Joseph Spinelli from a member of his staff, dated October 14, 1986, on the subject "OMH Investigation."
contract documents, was known by all participants to be the subcontractor selected from the beginning on a non-competitive basis to set up the computer data base for the contract.  

National Drug Research, Inc. ("NDRI") received attention during 1988 when it was revealed that the wife of the Director of the Department of Substance Abuse Services was employed on the NDRI payroll as his chauffeur.  

No law or procedure prohibited the arrangement which placed the Director's wife on the payroll of the corporation, performing services not for the corporation, but for the agency which controlled it.

B. Corporations Set Up By State Authorities

In several cases, major state authorities have established corporate subsidiaries to handle particular aspects of their activities. Occasionally, the subsidiary corporations are themselves public benefit corporations, subject to the same contracting, reporting and conflicts-of-interest provisions as their authority parents.

But other subsidiary corporations are not public benefit corporations. The Urban Development Corporation has over 90 such subsidiaries, 53 created before 1982, 18 in 1982, and about five per year since 1982. Their names range from the familiar "42d Street Development Corporation" and "Metrotech Development Corporation" to the more obscure "Upper Lake Redevelopment Corporation," "Fresh Produce Corporation" and "Overcoat Development Corporation." The Harlem Urban Development Corporation has two corporate subsidiaries: the 125th Street Municipal Garage Facility, Inc., and the 260-262 West 125th Street Corporation. Several of the regional transportation authorities list various transit or parking companies as corporate subsidiaries, and the Nelson A. Rockefeller Empire State Plaza Performing Arts Center Corporation lists the Empire State Institute of Performing Arts.

It may be that such organizationally separate bodies are needed to help the authorities function effectively. But however little is known about the transactions of state authorities, far less is known about their corporate affiliates.

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42 This brief summary is based upon documents reviewed by Commission staff and upon deposition testimony of a number of witnesses at HRI, DOH, and the University of California.

43 These facts were brought to the Commission's attention during its investigation of contracting practices of the Division of Substance Abuse Services. See note 88, below.

44 Examples include the Housing Finance Agency, with subsidiary public benefit corporations the Housing Trust Fund Corporation and the Affordable Housing Corporation; the Urban Development Corporation, with subsidiary public benefit corporations including the New York Convention Center Development Corporation, the Harlem Urban Development Corporation and the Roosevelt Island Operating Corporation; and the Metropolitan Transportation Authority, with six subsidiary authorities in New York City.

45 They do not appear in the annual report of the UDC, and no details about them appear in the Comptroller's Data Base.

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The authorities' annual reports do not provide detail about their operations, and they are not subject
to the contracting guidelines in the recently enacted statutes governing authorities' contracts.
Comptroller oversight of authority contracts is much less certain and detailed than it is of agency
contracts, and it is unlikely that a situation like those described above,\(^{44}\) concerning corporations
affiliated with state agencies, would be detected.

\(^{44}\) See pages 20-22, above.
IV. LOCAL AUTHORITIES AND NOT-FOR-PROFIT CORPORATIONS

The problems presented by authorities and not-for-profit corporations at the state level are multiplied at the local level. Although their overall spending is less, they are much more numerous. They, too, have substantial impact on private citizens, and even less is known about them than about the state-level organizations.

A. Local Authorities

Local authorities are much like their statewide counterparts. They, too, are public benefit corporations which must be individually created by separate act of the State Legislature. They too have separate corporate identities, and a degree of independence derived in part from that autonomy and from their ability to issue bonds to finance their activities. They, too, developed initially to build, operate and maintain revenue-producing projects transcending the limitations of the local government units; they, too, have evolved into vehicles for funneling program grants and loans (particularly HUD and state housing and urban development grants) and for tapping the tax-exempt bond markets for funds to stimulate local development by financing commercial ventures. They, too, have mushroomed, both in terms of the range of their activities, their sheer numbers, and the amounts of money that flow through them and from them.

But the oversight which has begun to evolve over the state authorities is at an even earlier stage for the local authorities. The State Comptroller began to publish a list of housing authorities, urban renewal agencies and industrial development agencies only in 1986; only in 1987 did the Comptroller’s Office begin to attempt to collect and publish even rudimentary financial information about those which responded to a questionnaire. Data about New York City

67 There are hundreds of housing authorities, urban renewal agencies and industrial development agencies alone, not counting parking and sewer authorities and so forth. See, Appendix. There is simply no counting the number of local publicly controlled corporations, since no lists exist anywhere.

68 However, they are even more diverse among themselves than the statewide authorities. The several generic categories of local authority (housing authority, urban renewal agency, and industrial development agency) are structured in quite different ways and serve functions quite different from each other. There are also local authorities which do not fall within these generic categories, such as the New York City Health and Hospitals Corporation.

69 See, Comptroller’s Special Report On Municipal Affairs, for local fiscal year ended in 1986, Legislative Document (1987) no. 91, at 473-483. In the following year, the Comptroller also included a number of additional special districts such as sewer districts, as well as a variety of nursing homes and libraries; all of these were collectively called “special purpose units” in the Comptroller’s report. See, Comptroller’s Special Report on Municipal Affairs, for local fiscal year ended in 1987, Legislative Document (1988) no. 91, at 473-489.

70 The Comptroller’s Office distributed a form questionnaire to each of the bodies on a list it had assembled, for the first time, the previous year. The various entities responded to the request for information by providing a variety of documents; in some cases, responses to the questionnaires; in others, financial statements of one kind or another from which some of the requested data could be extracted. Some organizations did not respond at all. The bodies from whom the Comptroller’s Office is now collecting data include local authorities, but not local development corporations or other publicly created not-for-profit corporations.

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authorities is not included in the Comptroller's reports on municipal finances, but rather reported in
the New York City Comptroller's annual report.71

An Interim Report of the New York State Legislative Commission on State-Local
Relations published in September, 1989, compiled all the data that is presently available about
industrial development agencies. That thorough and thoughtful report described many activities of
IDAs based upon anecdotal information assembled by the Legislative Commission's staff, but spoke
of significant areas which remain unknown because of the lack of systematic oversight.72

Whether or not these authorities are subject to controls over their hiring and
contracting practices, to conflicts of interest prohibitions, or to audit and financial reporting
requirements, depends upon the particular enabling legislation, which in turn reflect the prevailing
political considerations at the time of their creation.73 As a general rule, only the various housing
authorities have been made subject to civil service laws of the localities to which they belong. The
local authorities are not subject to the recently enacted requirement to adopt contracting guidelines
which apply to the state authorities, although they are required to adopt investment guidelines.74
While prohibitions of conflicts of interest are contained in the individual statutes creating the
housing authorities, and urban renewal agencies and IDAs are subject to the conflict of interest
provisions of General Municipal Law §§ 800 et seq., there are presently no mechanisms to enforce
these prohibitions.

At the same time, the power to appoint the boards and the Executive Officers of
these local authorities rests with the local governing officials, either executive or legislative or both.
In the case of the housing authorities, only one of the members of the governing board may be an
official or employee of the municipality; in the case of the urban renewal agencies and IDAs, there
is no limitation on the number of members who may be local government officials or employees.

The activities of local authorities are significant, both in terms of dollars spent, and
in terms of impact upon the public.

71 The New York City Comptroller calls the IDA and other local authorities (except the Health and Hospitals
Corporation) "Enterprise Units" rather than "Special Purpose Units."

State Legislative Commission on State-Local Relations, September, 1989.

73 In 1989 new legislation required that IDAs submit independently audited financial statements to the State
Comptroller, to the Commissioner of Economic Development, and to the governing body of the municipality for whose benefit
they were created. That statute also requires the Commissioner of Economic Development to submit reports of trends

74 The State Comptroller has not yet published a compilation of the local authorities' investment guidelines or
investment data, comparable to that published for the statewide authorities in the Public Authorities Data Base.
Housing authorities, active since the 1920’s, have built and continue to manage some, though by no means all, of the publicly-assisted housing projects throughout the state. Although they have issued bonds and collect rents, they depend heavily for their revenues on state, federal and local appropriations. Collectively, the 105 housing authorities which provided separate data to the Comptroller in 1988 had outstanding bonds of nearly $768 million, and operating expenses of over $128 million. They listed revenues from federal aid as over $100 million, state aid of $4.8 million, and "other revenues" of almost $74.5 million. They maintain sizable staffs; they also spend large sums pursuant to contracts for goods and services related to building and maintaining their facilities.

Although the heyday of spending in urban renewal programs is past, Urban Renewal Agencies continue to be active where localities are actively seeking and spending grant money from the federal Housing and Urban Development Agency ("HUD"). They typically act as the locality’s focal point for coordinating applications for HUD funding through its Block Grant and Action Grant programs. For the nine Urban Renewal Agencies which provided separate financial information to the Comptroller for 1988, the total operating expenses amounted to $5.1 million.

Industrial Development Agencies ("IDAs") serve as government-controlled intermediaries through which commercial ventures obtain private financing (often at tax-exempt interest rates) as well as sales and real property tax exemptions. Prior to the 1986 federal Tax Reform Act, the tax-exempt status of IDA bond income made the financing they provided extremely attractive: in 1985 they issued $1.1 billion in bonds; in 1986 the figure was $614 million. Since that time, their tax-exempt financings have greatly diminished ($93 million in 1987; $146 million in 1988; $119 million in 1989), but many continue to be active in financing taxable bonds. In 1987, taxable bond activity of IDAs totalled $430 million; in 1988, $691 million; in 1989, $439 million. Even through taxable bond financing, the IDAs confer sales and property tax

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71 For example, New York City has several official organizations outside its own corporate structure involved in housing. In addition to a traditional housing authority there are the New York City Housing Development Corporation, an authority which provides low-interest loans for low-income housing construction and rehabilitation, and the New York City Rehabilitation Mortgage Insurance Corporation, not a public benefit corporation but a government-sponsored not-for-profit corporation, which provides insurance for institutional mortgages to encourage acquisition and rehabilitation of older residential properties in designated City neighborhoods.

76 Some active Urban Renewal Agencies which are functioning as public benefit corporations do not provide financial information to the Comptroller independently from the information provided by the municipality to which they are attached. For example, the data provided by Buffalo’s Urban Renewal Agency are blended into the data provided for the City as a whole.

77 Typically, a project qualifies for IDA sponsorship by applying, often through counsel, to the IDA, and upon review of some sort, the IDA certifies its eligibility for the funding. Then the bonds are issued by banks and underwriters, with the help of attorneys; the IDA staff looks on. The fees for the underwriters and attorneys are generated by the proceeds of the bond issue.

78 Interim Report, note 72 above, at 102.
exemptions—often awarded in a highly discretionary fashion—upon the commercial ventures receiving loans.  

Individual locally controlled authorities are generally created in response to a particular local need. Around the State, the most common local authorities are parking authorities and off-track betting corporations, and local or regional transportation authorities. New York City alone is home to several other such authorities: the New York City Educational Construction Fund, the NYC School Construction Authority, the NYC Health and Hospitals Corporation, the NYC Municipal Water Finance Authority, the NYC Water Board, and the NYC Off-Track Betting Corporation.  

B. Corporations Set Up By Local Governments

Just as state agencies and authorities have found it convenient to establish structurally separate corporations for specific purposes, local governments and authorities have done so as well. These local corporations appear most often to be incorporated as LDCs (local development corporations) under section 1411 of the Not-For-Profit Corporation Law, which gives them enhanced powers to buy and sell city-owned property. Because they are not "agencies" they are not subject to the Freedom of Information Law; because they are not "political subdivisions" they are not subject to competitive bidding requirements; because their officers and employees are not public officers and employees, they are not subject to the General Municipal Law conflicts of interest provisions or to the civil service requirements.

Local development corporations and their activities are even more intricate, confused and obscure than state-level not-for-profit corporations. There is simply no control over how they come into existence and no generally available information about what they do. Nonetheless, they...

79 The Interim Report also detailed the range of such tax incentives that continue to be offered in a highly discretionary manner by IDAs, and generally estimated their monetary value at hundreds of millions of dollars. Interim Report, at 50-58.

80 There are many other authorities which operate within New York City but are controlled by State officeholders. The Mayor has at least some voice in the appointment of board members of some of these: the City University Construction Fund, the United Nations Development Corporation, the Metropolitan Transportation Authority (which includes as subsidiaries the LIRR, the Metro-North Commuter Railroad, the Metropolitan Suburban Bus Authority, the New York City Transit Authority, the State Island Rapid Transit Operating Authority, and the Triborough Bridge and Tunnel Authority), the Roosevelt Island Operating Corporation, and the Municipal Assistance Corporation. But for others, even though their activities and effects are entirely within the City limits, control, in the form of appointment power over board members, is exercised by State officeholders (the Governor and sometimes the legislature). Included in this roster are the Battery Park City Authority, the Urban Development Corporation ("UDC"), including the Harlem UDC; the New York Convention Center Development Corporation and New York Convention Center Operating Corporation.

81 There appear to be hundreds of LDCs. The statute says that "any one or more counties, cities, towns or villages or the Job Development Authority may cause [a local development corporation] to be set up by public officers or private individuals." Not-For-Profit Corporation Law § 1411(e)(1). In practice, one major source of confusion is the fact that many LDC's are set up by government only as a formality in the most ministerial way; anyone complying with the statutory formula can set one up and apply for loans, loan guarantees, and grants through the various IDA and HUD and DHCR
enjoy a prominent place in government decisionmaking about the award of grants, loans, loan guarantees, tax abatements, and the like. But the precise functions and activities of LDCs vary from locality to locality, and from organization to organization.

One major activity of some LDCs is to apply for assistance (loans or loan guarantees) from the state Job Development Authority. The Job Development Act specifies that applications from individuals or companies must be submitted through a Local Development Corporation, which receives a fee deducted from the award. The Authority describes the LDC as the "applicant" for the grant or loan guarantee; the individual or company on whose behalf the application is made is the "occupant." However, once the award is received by the "occupant," the LDC is no longer in the picture. The Job Development Authority is not concerned with whether the LDC presenting the application was formed by a government, a private company, or a bank which may be lending money to the project. The statute requires an LDC as an intermediary, and any LDC will do. In this way, in 1987, the JDA awarded nearly $42 million in loans, and made loan guarantees worth $31.5 million. Although the statute calls for the JDA to receive any profits on the transactions of the LDC, no one from the JDA ever audits the LDC's to learn whether they have received profits.

In contrast, LDCs are often the true recipients of awards in the area of housing assistance. Federal HUD funds generally are routed to them either through municipal agencies or through the local Urban Renewal Agencies. The State Department of Housing and Community Renewal ("DHCR"), on the other hand, channels a broad range of grants directly to LDCs.87

81(...continued)

programs. Many program grants are awarded to organizations calling themselves "development corporations" which appear to have nothing to do with government.

82 The LDC may charge a fee for its services in facilitating the application, but once the arrangement is complete, it has no further role.

83 In New York City, a City-run LDC, the Financial Services Corporation, does act as the coordinator and conduit for the JDA grant applications of other, smaller LDCs in the New York area.

84 There are even regional and national companies which function as LDCs in New York State, and several of these apparently share the same address in New York City.

85 Not-For-Profit Corporation Law § 1411(e)(1) requires that the certificate of incorporation state that "all income and earnings of such corporation shall be used exclusively for its corporate purposes or accrue and be paid to the New York job development authority."

86 This information was obtained during a Commission staff interview with an official of the Job Development Authority.

87 Many of these LDCs appear to operate in the same localities as those brokering the award of JDA loans; if, in fact, the same organizations receive funds from both sources, the agencies do not cross-reference that information.

DHCR also awards large sums of money to other corporations, not sponsored by governments. See note 88, below.
But LDCs do not necessarily act as conduits for, or recipients of, grants. The New York City Public Development Corporation, although technically an LDC, has no dealings with either the Job Development Authority or the State or Federal Housing agencies. Instead, it has a master contract with the City to broker its real estate development deals, including taking title to and selling city-owned land, and arranging for tax and utility rate abatements to benefit developers of projects it sponsors.

In New York, the Financial Services Corporation ("FSC"), which serves as the coordinator for JDA grant applications in the area, has another, apparently unique function among LDCs. Pursuant to a contract with the New York City IDA, it administers the activities of the City’s IDA. Despite its substantial activities, the FSC does not issue an annual report.

C. Private Not-for-profit Corporations

Another great source of confusion is the fact that a whole panoply of not-for-profit corporations have been established which are not directly sponsored by government at all, but which are created by private individuals for the purpose of receiving grant money pursuant to different assistance and development programs. These are especially common in the areas of housing and urban and rural development. Called "neighborhood preservation corporations," "urban development corporations," "rural preservation corporations" and so forth, they are specifically designated by the statutes setting up various grant programs as the only kinds of organizations which may receive grants pursuant to those programs. In some cases it even appears that their sole purpose for existence is to receive and administer such grants. 68

Similar not-for-profit corporations are also increasingly common in the social services delivery area; there, they run treatment and prevention programs funded by, for example, the State Department of Health, Department of Mental Health, Division of Substance Abuse Services, and other similar agencies—or, as discussed above in the case of WRI, funded by the not-for-profit corporations run by those agencies.

These not-for-profit companies are wholly private enterprises, constrained only by the terms of their grant agreements with the granting agencies. No one has any coordinated idea of what they do, since there is not even any coherent listing of them. As best Commission staff could determine from available documents, the amount of money flowing from the State directly to such bodies was on the order of hundreds of millions of dollars, with many times that awarded from the State through local governmental bodies. In theory, these organizations’ actions are monitored by the granting agencies as part of normal contract management. In practice, these oversight measures are often not employed.

68 In 1987 DHCR awarded over $20 million to approximately 400 "neighborhood preservation companies", "rural preservation companies" and "local development companies"; in the same year it awarded an additional $22 million to a variety of recipients through its other funding programs. These funding programs are often designed to assist with administrative expenses of privately sponsored not-for-profit corporations. See note 55, above.
For example, this Commission studied the award of grants to local not-for-profit corporations99 by the Division of Substance Abuse Services. Weaknesses in the contract award process in that agency, as well as deficient contract monitoring, permitted the award of hundreds of thousands of dollars to individuals who appeared to be using the funds for their own gain, rather than for the provision of effective services.99 Another Commission, the State Commission on Quality of Care for the Mentally Disabled, has recently concluded a comprehensive review of another not-for-profit service provider funded by the Office of Mental Health. The report revealed that the provider's executives were both paying themselves extraordinarily high salaries and were profiting personally because they owned the premises that the corporation rented to provide its services. That report persuasively outlined the weaknesses inherent in relying solely on the good faith of such a corporation's board of directors to ensure that public funds awarded to the corporation will not be misused, and pointed out that, in the absence of effective contract management, current law provides no other control.99

Not-for-profit corporations such as these play an extremely important role in the State's network of programs. Because they are so linked, in so many cases, with the authorities and government-run not-for-profit corporations, it will not be possible to devise appropriate oversight measures for either group of organizations without a full understanding of the activities of all of them.

D. The Tangled Web

Negotiating the tangle of relationships and requirements of these different organizations and funding programs is truly "an insider's game." Often the insiders are government employees. In some cases, they have a personal stake, whether through partnerships, family relationships, or individually, in the awards which are given and the decisions that are made. Without any systematic gathering—much less public release—of information about these organizations, without any clearly applicable conflict-of-interest rules, without statutory standards governing how to decide who will or will not receive various benefits, officials are all but invited to use these bodies to reward friends and favorites, to benefit supporters and deny benefits to opponents. The Commission has explored some examples of apparent abuses that can occur.

99 One grant recipient was a for-profit corporation, but this was a departure from the agency's normal practice.


1. Albany City And County

Albany City and County reflect the proliferation and intertwining of authorities and public corporations that occur in localities. The City contains a Housing Authority, an Urban Renewal Agency, and an IDA, as well as several other authorities.92 There is another IDA for the County, and there are still others for six other municipalities. Three municipalities have Housing Authorities, and four have Urban Renewal Agencies.93 Both Albany City and Cohoes have Parking Authorities. And Albany is home to the statewide authorities, the Albany Port District Commission and the Albany Regional Transportation Authority.

Through its Albany investigation,94 the Commission learned of a number of local government-sponsored corporations. These, too, award substantial benefits to local business, as part of an effort to stimulate local economic development. Included among them are the Albany Local Development Corporation and Albany Community Development Corporation, LDCs sponsored by the City; IDA and DHCR reports list numerous other local development corporations which may or may not be sponsored by the City. In addition, in 1984 Mayor Whelan established the Tricentennial Commission, a not-for-profit corporation whose purpose was to sponsor events to commemorate the three hundredth anniversary of the founding of the city.

The intertwined dealings of these organizations, as well as the fact that appointments to control positions on their boards are controlled by local officials (primarily the Mayor), have contributed to a number of situations which pose problems. Although present law may not prohibit most of these arrangements, they appear to present conflicts of interest.

For example, the Tricentennial Commission, as a not-for-profit corporation, was exempt from competitive bidding requirements, open meetings laws, and conflicts of interest provisions. It received substantial City, County and State funding, and City workers, on City time, provided extensive services. The Mayor selected its officers; he also selected his own law firm to serve as counsel.95 One of the firm’s major clients was chosen as the corporation’s bank.

92 These include the Parking Authority, Light, Heat and Power Authority, and Port District Commission.

93 The Cities of Cohoes and Watervliet each have a Housing Authority, an IDA and an Urban Renewal Agency. The towns of Bethlehem and Colonie each have an IDA and an Urban Renewal Agency. The Village of Green Island has a Housing Authority and an IDA, and the town of Guilderland has an IDA.

94 The Commission investigated a number of instances of conflicts of interest involving the Mayor of Albany, and held a public hearing in Albany on June 26, 1989. While a number of the situations revealed during the Commission investigation would be addressed by adoption of the proposed Code of Ethics for Municipalities, those involving IDAs and LDCs would not.

95 One of the problems inherent in the case was that the Mayor continued in the active practice of law for a substantial part of his term as Mayor; he resigned from his law firm in January, 1988.
Another example involves the Albany Parking Authority, whose members are appointed by the Mayor with the consent of the Common Council, and whose chair, from 1983 until October, 1987, was the Mayor himself. It awarded a contract to manage its parking facilities to a private company pursuant to requests for proposals, a process which its officers maintained is not required by the law. Despite the fact that another bidder had submitted a lower bid, the authority awarded the contract to a firm that was a client of the Mayor's law firm, and, in the first year the contract was awarded, the Mayor participated in the vote.

Other examples involve the Albany IDA. The Mayor was a member, and later chair, of the IDA from January, 1982 until December, 1985; when he resigned, he appointed the City Comptroller to that position. During the Mayor's tenure as chair, members of his law firm represented at least four clients who sought substantial IDA financing for their commercial projects. Although he voted on these applications, he also shared, as a member of the law firm representing the applicants, in the fees they paid the firm.

The IDA also participated in arranging the funding for a major redevelopment effort in the Maiden Lane Triangle area of downtown Albany. That project also received funding from the Albany Local Development Corporation and the Albany Community Development Agency, as well as federal loans and grants. In his various roles as mayor, Chair of the LDC and Chair of the IDA, the Mayor authorized the transfer of City-owned property to the LDC, approved the requests-for-proposals that were sent to developers, approved the demolition of property that was delaying construction, approved and executed applications on behalf of the City for HUD funding, approved the issuance of $4 million in IDA bonds, and approved an interim construction loan of $300,000 from the LDC to the developer. His actions on the IDA bonds and the construction loan were taken at a time when his law firm was actively negotiating with the developer to lease space in one of the buildings in the project, and to invest $400,000 in the development project.

94 First Realty of Albany, a real estate rehabilitation project, received IDA financing of $2.4 million in 1982. 80 State Street Partners, another development sponsored by the same owners, received IDA bond financing of $7.4 million and a $5 million construction loan from the IDA. Albany Ventures, Inc. received IDA bond financing totalling $9 million. Finally, Crisafulli Warehouse received $500,000 in IDA Bond financing; the Mayor's firm represented both the company and one of the lending banks.

97 It was later brought to the Mayor's attention that his investment in the project would violate federal regulations, and he withdrew from the investment, though his law firm still proceeded to move into the new building.
2. Erie County And Buffalo City

Erie County, and the City of Buffalo, contain representative examples of every variety of local quasi-governmental organization. Erie County has an active IDA, which during the mid-1980's took a lead role in financing a major development project, the Pilot Field Stadium. Buffalo has a Housing Authority which maintains 5200 dwelling units, an Urban Renewal Agency structured as a public development corporation ("BURA"), and three government-sponsored Local Development Corporations. There are also three major development companies sponsored by Erie County.

In Buffalo, also, the authorities and development companies operate under the coordinated control of the Mayor. All three members of the Housing Authority Board are mayoral appointees, and the Mayor selects the Authority's Director. An agency of the City government, the Department of Community Development, has been designated as the operating arm of the Urban Renewal Agency. The Mayor chairs the BURA, and the Commissioner of Community Development also sits on its board. Mayoral appointees form a majority of the board. The Urban Renewal Agency is the City's official applicant for most federal and state grant funds; it, in turn, disperses them among the three LDCs, which then administer the award of funds to individual and corporate applicants.\(^9\) The Mayor also chairs each of the three Buffalo Development Companies, and appoints their boards. The Urban Renewal Agency, the LDCs, and the Department of Community Development all have offices in the same building, part of the complex which also houses the Mayor's office.

The Erie County IDA, although not controlled by the Mayor of Buffalo, has in recent years cooperated closely with the Buffalo IDA and LDCs in connection with the Pilot Field project as well as other projects. The Mayor sits on the board of the Erie County IDA. Between 1979 and 1983, the Erie County IDA received grants from the United States Department of Commerce totalling $8.5 million, to be used to capitalize revolving loan funds for industrial expansion and land reclamation.\(^9\)

In addition to being characterized by very close mayoral control, the Buffalo organizations are closely linked one with another. The LDCs share office space, staff, letterhead,

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\(^9\) The LDCs are ostensibly set up for different purposes: the Buffalo Neighborhood Revitalization Corporation, to stimulate housing rehabilitation within the City of Buffalo, by providing low-interest or interest-free loans and grants to homeowners and commercial property owners; Development Downtown, Inc., to administer Federal Urban Development Action Grant (UDAG) funds (grants and loans), and to oversee development and construction of various commercial and business enterprises in downtown Buffalo; and Buffalo Enterprise Development Company, to promote economic development and growth using federal grants to assist small businesses in securing the financing to expand their operations, and generally acting as an agent for the City to invest local, state and federal (mainly Small Business Administration) funds in economic development activities. See. Annual Reports of each of the Buffalo Development Companies.

\(^9\) This is an unusual function for an IDA, which normally provide assistance by facilitating private financing at tax-exempt rates.

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and a collective name, "The Buffalo Development Companies." There is a complex flow of funds back and forth among the various LDCs, the IDA, and the BURA.100

Over the past few years, several oversight bodies have reviewed the activities of the Housing Authority, the IDA, and, to a limited extent, the LDCs. Each of the oversight bodies has encountered difficulties, as it focused on one aspect or another of the problems of these entities, because the transactions of these organizations are linked in so many complex ways.

The Buffalo Municipal Housing Authority

The Buffalo Municipal Housing Authority is one of the oldest housing authorities in the state, if not the nation. Though functionally one organization, it receives appropriations from several sources; the majority of the buildings are funded federally, by HUD; the remaining buildings are supported with state funds, from the Division of Housing and Community Renewal. The State funds are insufficient to support the State buildings, and the City is obligated to supply the balance of needed funds, about $2 million annually. No one organization has responsibility for oversight of the entire authority. HUD may audit the expenditure of HUD funds; DHCR may audit the expenditure of DHCR funds. The Authority has argued, successfully, that the Buffalo Comptroller has no jurisdiction to audit the authority. Deferring to HUD oversight, the State Comptroller has declined to audit the authority.101

The Authority has been the subject of repeated allegations that its buildings are racially segregated, that the state-funded projects are targeted for blacks and are allowed to deteriorate while the federally funded projects are better maintained and targeted for whites and for the Mayor's political allies. DHCR has made repeated attempts to compel the Authority to rehabilitate the projects it funds, but its only sanction is to withhold the subsidy altogether, at great cost to the tenant population. Reluctant to take such a step, it has thus far met little success in bringing about rehabilitation. At the same time, there have been allegations that federal funds are misused and wasted, and that HUD has supplied inadequate oversight for even those portions it controls. There have been additional allegations that the Authority is used as a source of job patronage for the Mayor; although complaints were been made to the State Civil Service Commission, only a limited review has taken place. Senator Moynihan held hearings and issued a

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100 As one example, two of the LDCs, Development Downtown, Inc., and Buffalo Enterprise Development Corp., assigned to a bank the notes they held for loans made to local businesses, pledging the proceeds from the notes to secure repayment of revenue bonds issued by the Erie County IDA to fund the Stadium Project. Development Downtown, Inc. Financial Statements, December 31, 1986 and 1985, note 4; Buffalo Enterprise Development Corp. Financial Statements May 31, 1986 and 1985, Note 4.

101 See correspondence between Comptroller of Buffalo and New York State Comptroller's Office, Exhibit 6.
preliminary report in March, 1988, documenting some of the discrimination and patronage abuses, but there has been little followup.\footnote{See, An Overview of Federal Housing Programs: A Case Study of the Buffalo Municipal Housing Authority, March 20, 1988. Northeast-Midwest Senate Coalition, Senator Daniel P. Moynihan, Chair.}

The Buffalo Development Companies

Similarly, the Buffalo local development corporations have proved resistant to oversight. For years, they took the position that once the Urban Renewal Agency had disbursed HUD funds to the LDCs, the funds were no longer subject to HUD oversight. They developed practices of transferring funds from one LDC to another and then back with limited documentation, of placing funds received from HUD but not yet committed to a specific project in interest-free accounts with local banks, of forgiving loans made through the LDCs without explanation in the minutes, and of using the funds they received as repayments on loans made with HUD grant money to finance construction projects. They also took the position that the City Comptroller was not permitted to review their books; however, in auditing the books of the Urban Renewal Agency, the City Comptroller two years in a row criticized the Urban Renewal Agency's failure either to keep records, or to require the recipients of its grants to provide documentation to show that the Urban Renewal Funds had been appropriately spent. After the second round of criticism, the Urban Renewal Agency agreed to require proper documentation.\footnote{"Additional Information on Federal, State and County Grant Programs," June 30, 1986, Robert E. Whelan, Comptroller.}

The Erie County IDA

In 1989, the Office of the Inspector General of the United States Department of Commerce audited the Erie County IDA concerning the handling of $8.5 million grants it had awarded to the IDA. The Inspector General's later report criticized the IDA for a variety of conflicts of interest in awarding loans, for giving money to enterprises that were not in need, and for forgiving loans without appropriate basis. In addition, it appears that the IDA used some loan funds to establish a venture capital investment firm, and then made loans to some of the very companies it invited to fund the investment firm.\footnote{"Audit of Title IX Revolving Loan Fund, EDA Grant Number 01-39-01904, Erie County Industrial Development Agency, Buffalo, New York, Final Audit Report Number A-651-9-004," U.S. Department of Commerce, Office of Inspector General, Office of Audits, Atlanta Regional Office, February, 1989.}

The Buffalo organizations reflect the weaknesses that are created when large sums of money are awarded through different Federal and State grant programs to a variety of authorities and not-for-profit corporations. In such a complicated context, where so much information is not available publicly, and is only partially provided to oversight bodies, it is difficult to ensure accountability. Only the person with power to dispense the variety of benefits these organizations
control—the mayor—has the complete picture of all their activities. Oversight bodies see only fragments, and have only fragmented authority to compel corrective action where necessary.

3. Nassau/Suffolk Counties

Two widely publicized situations involving the Nassau County IDA and the Town of Hempstead IDA have similarly highlighted the need to develop better standards and controls governing their activities. In the first case, after an extensive investigation into the manner in which County owned land at Mitchell Field was leased to developers on below-market rates, the Nassau County District Attorney issued a report strongly criticizing the way in which many of the developers had received substantial financing through IDA bonds. In the second case, the dispute (documented in papers filed in connection with civil litigation over the disposition of the failing Roosevelt Raceway) concerns the private developers who purchased the raceway with funds from Town of Hempstead IDA bonds issued for the purpose of maintaining the property as a raceway. Now that the raceway has failed, the developers plan to sell the property for commercial development, at enormous profits.

Mitchell Field

In a detailed report, Nassau County District Attorney Denis Dillon described the role played by the Nassau and Hempstead IDA's in the fiasco at Mitchell Field. In that situation, a potentially very lucrative property owned by the County was leased to a variety of developers in 99-year leases calling for no rent until after rezoning, and then for rents well below market rates and without escalator clauses. The District Attorney, while finding no evidence of criminality, did find a number of conflicts of interest and other improprieties, and enumerated a variety of needed reforms of local decision-making processes. Many of these situations involved IDA financing of the developers' projects.

The report noted that millions of dollars in bonds for the Mitchell Field development were approved for tax-exempt treatment, thus reducing the amounts the municipalities might raise on a tax-exempt basis for other needed county and town improvements. The other tax benefits the IDA awarded also cost the public dearly. The tax-free sale of construction materials alone on one project cost $7 million in lost revenues. The existence of IDA bonds may deprive the municipality of the option to finance other improvements through borrowing. Although the IDA's are statutorily subject to audit by the State Comptroller, lack of manpower in that office has meant that that power is not exercised. In fact, the State Comptroller's Office declined to audit even when the District Attorney requested.


106 The report also pointed out that, although the funds are raised privately, the bonds are counted as part of the municipality's debt in calculating whether the municipality has reached its cap.
Upwards of $155 million was raised through IDA bonds awarded through the Nassau IDA and Hempstead IDA. Many of the applications were approved upon a pro forma oral presentation to the IDA boards, and in at least one case, a board member who participated in the approval had an undisclosed personal interest in the project.

The District Attorney's report detailed the intricate inter-connections of the IDA financing applicants, their attorneys, the IDA officials, and the elected and appointed official of the town and county, who are actually responsible for the IDA appointments as well as, in this case, for negotiating the leases. These inter-connections create many situations of actual conflict of interest and potential favoritism. One of the report's recommendations was that county officials not accept campaign contributions from those associated with the project.

Roosevelt Raceway

Failure of IDAs to monitor the use of their funds (another criticism made in the Mitchell Field report) is at the heart of the abuses alleged in the case of the Roosevelt Raceway.

In 1984, a consortium of developers calling themselves Roosevelt Raceway Associates purchased the track from Gulf and Western. After the Nassau County IDA had twice refused, the Hempstead IDA issued $54 million in IDA bonds. The authorizing resolution described the financing as "necessary to preserve and maintain current employment at the facility;" the lease provided that "at all times the facility must be used and operated as a first-class horse-racing facility."

Union members and the Standardbred Owners Association feared that the new owners intended only a real estate deal. They requested appointment of an oversight committee, or a stipulation in the funding arrangement similar to that in the lease, that the track be maintained as a racing facility. The IDA officials declined both requests, saying that such restrictions would hurt the sale of bonds.

Within a very short time, the track failed, and closed, with both union and racing association representatives contending that it had been deliberately neglected. The site, zoned for industrial use, is worth $200 million, although the owners have received significant property tax refunds based on operating the track at a loss. The owners now propose to repay in full the original $54 million in IDA financing, and to develop the area as a commercial center. The IDA maintains that protecting the bond-holders is its only responsibility, and that full repayment of the

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107 One project also received a loan from the New York State Retirement Fund assets in the amount of $125 million.
loan satisfactorily meets this goal.\textsuperscript{108} IDA officials expressly stated several times that they were not responsible for monitoring ongoing use of the track. Their responsibilities were confined to seeing that the investment of bond-holders was protected, and that all required payments were being made.

These two scenarios demonstrate the long-term effects that decisions of IDAs may have on local citizens. They represent costs in terms of lost taxes, and lost opportunities to finance other public projects. The absence of oversight and the lack of conflict of interest provisions make the funding process vulnerable to fraud and favoritism.

\textsuperscript{108} Legislation proposed but not enacted during the 1989 legislative session would have provided for the recapture of benefits from the recipient of IDA financing who prepays loans and sells the property for profit within ten years. A. 1398 (Assemblyman Lafayette)
V. SUMMARY AND CONCLUSIONS

The organizations discussed in this report control huge amounts of money in an intricate flow of funds, almost completely ungoverned by traditional oversight mechanisms. As—more and more—conventional government falters, such resources, immune from bureaucratic strictures, are seen as the hope in government's battle against public ills. Increasing responsibility for the affairs of government is allocated to these bodies. Yet, there is a recurrent failure to view the money flowing through authorities and not-for-profit corporations as the public's money just as if it were raised directly by taxes, and to view the public officials and employees who are making these decisions as bound to act for the public's welfare first and foremost. The oversight that might be provided by public scrutiny is unavailable because the public cannot even find out who these organizations are, what they do, what they decide, and who calls the shots. It is truly "an insider's game."

The deference that has been paid to the authority's independence has meant that even at the level of statewide authorities, oversight is approached with caution. But so far, there are serious problems with the "guidelines" approach. Left on their own, many authorities write guidelines that let them continue with business as usual.

This Commission does not advocate that the full panoply of detailed controls that presently apply to agencies be imposed on all these bodies. Indeed, as was observed above,\(^\text{109}\) the rigid constraints imposed on traditional governmental units do indeed hamper their effective functioning, and there are compelling reasons for seeking new forms of governmental organization. But the freedom from restraints has left many who are in reality public servants far too unaccountable to those they serve.

As noted earlier, this Commission questions the need for two distinct systems. Lawmakers should seriously consider whether the goals of government could be equally well realized by modifying some of the provisions which hinder the effectiveness and flexibility of traditional governmental bodies, and imposing the same ethical standards and oversight on all governmental bodies, whether traditional governmental organizations or authorities and not-for-profit corporations.

In any case certain basic principles must apply to all those doing the business of government, including those in authorities and other public corporations. These principles must include, at a minimum: public disclosure of their transactions; contracting based on procedures

\(^{109}\) See, pages 6-7, above.
designed to ensure competition; employment decisions based on merit and fitness; decisionmaking by leaders who are not subject to conflicts of interest; documentation of all decisions, sound internal controls, and periodic audit of their books and records, with the results made public. Only by such reforms can the public be assured that this vast government serves all the people.

Dated: New York, New York
April 1990

STATE OF NEW YORK
COMMISSION ON GOVERNMENT INTEGRITY

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Appendix
APPENDIX

I. AUTHORITIES/PUBLIC BENEFIT CORPORATIONS

The term "authority" refers to a particular type of organization known to the law as a "public benefit corporation." Public benefit corporations are corporate subsidiaries of government, not units of government. Under the New York State Constitution, they can only be created on a case-by-case basis by individual statutes enacted by the state legislature. Which particular governmental unit any one public benefit corporation may be subsidiary to is not always clear, but is most readily identified by referring to which Chief Executive or elected official has power, pursuant to the enabling legislation, to appoint the members of its governing board. For State authorities, such as the Thruway Authority, the Governor of the State and the State Legislature have this power; for local authorities, such as the New York City Health and Hospitals Corporation or the Buffalo Housing Authority, the power resides with the local mayor and city council.

An excellent description of the characteristics of public benefit corporations is contained in a soon-to-be published discussion of New York City authorities written by Annmarie Walsh, Luther Gulick Scholar in Residence with the Institute of Public Administration.

The public benefit corporations (hereafter, "authorities") are distinct corporate entities with powers to spend, to borrow and to collect rent or fees. They can enter into contracts, own property, and sue or be sued in their own name. They are internally governed by boards of directors, disparately appointed, some including incumbent government executives.

Authorities themselves are not governments (not separate municipal corporations, for example). They have no direct powers to tax, no reserve powers to regulate; they are not subject directly to general

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1 This Appendix will provide a more detailed discussion of the characteristics of authorities and publicly sponsored not-for-profit corporations than is feasible in the main text.

2 Even local authorities must be individually created by special act of the State legislature. In some cases there is a general enabling statute, and then the individual statutes track its terms virtually verbatim; in other cases the statutes are individually tailored.

3 This power may be direct or indirect, since some statutes provide that certain designated public officials shall be board members ex officio. In those cases, the Chief Executive who selects those public officials implicitly names those board members.

municipal law. They can exercise only those powers and conduct only those activities authorized in their charter statutes and related laws.

Neither are they line agencies of city or state government. The city and public authorities have contractual relationships, not hierarchical ones. The authorities have separate legal identity from municipal government, with distinct credit ratings and liabilities. Most are exempt from administrative law that applies to city departments, and not subject to the direct control of city overhead agencies. ...Their powers and structure can usually be changed only by statutory amendment (not by local law or executive order). ...And they are generally permitted "business-type budgets", that is budgets with less line-item detail, more flexibility for internal change than city agencies.

[The author goes on to describe how a number of authorities have themselves established corporate subsidiaries of their own.]

Authorities' revenues come from several sources. They issue bonds, on which they pay interest which is usually tax-exempt. They use the proceeds of those bonds to finance projects which in turn produce revenue, such as toll bridges, residential housing, factories and shopping malls; in most cases the revenues are used to retire the authorities' debt. In some cases authorities also receive appropriations from the state (in the case of local authorities, local) government; in other cases, they enter into contracts with government agencies to provide services for which they are paid (with tax dollars); at other times, they may serve as the vehicle to receive (and in turn disburse) grant moneys from agencies of federal, state, or even local government.

These different sources of revenue have evolved in the sixty-odd years that the authority form of government organization has existed in New York. At first, authorities were primarily used to finance, build and operate large-scale construction projects too complex to manage effectively within traditional government units, and too costly to finance with tax revenues, and politically difficult to finance by state borrowings which would be subject to referendum. At that time it was generally understood that the revenue from the projects of the authorities would service and retire the debt, and the authorities would remain financially self-sufficient. Later, authorities were used as vehicles for sweeping economic development programs (especially housing and urban renewal), whose costs outgrew the revenue they generated and which required subsidies in order to survive. Authorities then began to be used strictly as financing vehicles, routing funds to projects built and operated by other entities.

Not all authorities, however, issue bonds. Particularly in recent years, the authority form of organization has been used as a convenient way for government to accomplish complex tasks, without incurring substantial debt of their own, but financed by appropriations, contracts with
government units, and operating revenues. In other cases, authorities are used as a mechanism to process assistance programs.

Even the bond issuing activities of authorities have evolved over the years. Whereas initially authorities issued bonds with the expectation that the debt would be serviced and retired using the income generated by the projects that they sponsored, more recently it has been understood that the State will have a "moral obligation" to make good if those revenues are not sufficient, and, in fact, the State has undertaken to guarantee authorities' debt by direct appropriations and by entering into contracts with them to rent or buy the facilities they build at rates which will generate the necessary funds.

A listing of state-level public authorities follows.

Agriculture and New York State Horse Breeding Development Fund
Albany Port District Commission
Battery Park City Authority
Buffalo and Fort Erie Public Bridge Authority
Capital District Transportation Authority
Central New York Regional Transportation Authority
Community Facilities Project Guarantee Fund
Dormitory Authority of the State of New York
Energy Research and Development Authority
Facilities Development Corporation
Harlem Urban Development Corporation
Industrial Exhibit Authority
Long Island Power Authority
Long Island Railroad
Metro-North Commuter Railroad
Metropolitan Suburban Bus Authority
Municipal Assistance Corp of New York
Natural Heritage Trust
Nelson A. Rockefeller Empire State Plaza Performing Arts Center Corporation
New York City Transit Authority and Manhattan and Bronx Surface Transit Operating Authority
New York Convention Center Development Corporation
New York Convention Center Operating Corporation
New York Job Development Authority
New York State Affordable Housing Corporation
New York State Bridge Authority
New York State Energy Research and Development Authority
New York State Environmental Facilities Corporation
New York State Housing Finance Agency
New York State Housing Trust Fund Corporation
New York State Medical Care Facilities Finance Agency
New York State Olympic Regional Development Authority
New York State Project Finance Agency
New York State Science and Technology Foundation
New York State Thoroughbred Breeding and Development Fund Corp.
New York State Thoroughbred Racing Capital Investment Fund
New York State Thruway Authority
New York State Urban Development Corporation
Niagara Frontier Transportation Authority
Ogdensburg Bridge and Port Authority
Port Authority of New York and New Jersey
Port of Oswego Authority
Power Authority of the State of New York
Rochester-Genesee Regional Transportation Authority
Roosevelt Island Operating Corporation
State of New York Mortgage Agency
State University Construction Fund
Staten Island Rapid Transit Operating Authority
Thousand Islands Bridge Authority
Triborough Bridge and Tunnel Authority
United Nations Development Corporation

II. LOCAL AUTHORITIES

Local authorities—attached either to the county government or to cities, towns, and even villages within those counties—can, for the most part, be grouped into generic types. The most numerous are housing authorities, industrial development authorities, and urban renewal agencies (also known as community development agencies).5 A number of other local public benefit corporations are more unique to the particular locality: examples are the New York City Schools Construction Authority and the New York City Health and Hospitals Corporation. Each of these, both the generic types, and the individual local authorities, has a different purpose, and the powers and duties of each reflect these purposes as well as, often, requirements imposed by federal funding programs or tax laws.

Housing Authorities

These are the oldest of the local authorities, first established in the mid 1920's. Their revenues come from tax-exempt bonds, federal (HUD) and state (DHCR) subsidies; they also receive income from renting housing accommodations. They have power to acquire real property, to build and operate housing, and even to sell their projects. They are exempt from local taxes, but may enter into agreements with the localities within which they operate to make "Payments In Lieu Of Taxes" (PILOT payments). They are subject to the Civil Service Law, and employees of

5 Other groups include the various parking, sewer, and other local special service authorities.

Housing authorities exist—at least on paper—in 166 municipalities around the state, including cities, towns and even villages. There are Urban Renewal Agencies structured as public benefit corporations in about 120 municipalities. IDAs exist in at least 152 counties, cities, towns and villages.

Not all these authorities appear to be active. As is reflected in Exhibit 2, a large number of these bodies report no transactions, and many provide no information at all. Some report their data to the Comptroller on a combined basis with their municipalities.
the municipality in which they operate who become employees of the authority retain their Civil Service status. Only one member of the board may be a municipal official. Board members may not have an interest in any project. The authorities file annual reports with the Commissioner of DHCR.

A listing of housing authorities follows.

Albany Housing Authority
Alexandria Bay Housing Authority
Amsterdam Housing Authority
Auburn Housing Authority
Batavia Housing Authority
Bath Housing Authority
Binghamton Housing Authority
Boonville Housing Authority
Buffalo Housing Authority
Cambria Housing Authority
Camillus Housing Authority
Canajoharie Housing Authority
Canandaigua Housing Authority
Canastota Housing Authority
Canton Housing Authority
Catskill Housing Authority
Cheektowaga Housing Authority
Chittenango Housing Authority
Clayton Housing Authority
Cohoes Housing Authority
Corning Housing Authority
Coxsackie Housing Authority
Dekalb Housing Authority
Dolgeville Housing Authority
Dunkirk Housing Authority
East Hampton Housing Authority
East Rochester Housing Authority
East Syracuse Housing Authority
Edwards Housing Authority
Elizabethtown Housing Authority
Ellenville Housing Authority
Elmira Housing Authority
Erwin Housing Authority
Fallsburg Housing Authority
Fort Edward Housing Authority
Fowler Housing Authority
Frankfort Housing Authority
Freeport Housing Authority
Fulton Housing Authority
Geneva Housing Authority
Glen Cove Housing Authority
Glens Falls Center Authority
Gloversville Housing Authority
Goaben Village Housing Authority
Great Neck Housing Authority
Greece Housing Authority
Green Island Housing Authority
Greenburgh Housing Authority
Greenport Housing Authority
Groton Housing Authority
Harrietstown Housing Authority
Hempstead Housing Authority (Town / Village)
Herkimer Housing Authority
Hermon Housing Authority
Hoosick Housing Authority
Hornell Housing Authority
Hudson Housing Authority
Huntington Housing Authority
Ithaca Housing Authority
Island Park Housing Authority
Islip Housing Authority
Ithaca Housing Authority
Jamesport Housing Authority
Jay Housing Authority
Johnson City Housing Authority
Kenmore Housing Authority
Kingston Housing Authority
Kiryas Joel Housing Authority
Lackawanna Housing Authority
Lake Placid Housing Authority
Lancaster Housing Authority
Lansing Housing Authority
LeRoy Village Housing Authority
Liberty Housing Authority
Lisbon Housing Authority
Little Falls Housing Authority
Lockport Housing Authority
Lowville Housing Authority
Lynbrook Housing Authority
Malone Housing Authority
Mamaroneck Housing Authority
Massena Housing Authority
Mechanicville Housing Authority
Medina Housing Authority
Middletown Housing Authority
Mineola Housing Authority
Monticello Housing Authority
Montour Falls Housing Authority
Mount Kisco Housing Authority
Mount Vernon Housing Authority
New Rochelle Housing Authority
New Square Housing Authority
Newark Housing Authority
Newburgh Housing Authority
Niagara Housing Authority

A - 6
Niagara Falls Housing Authority
Norfolk Housing Authority
North Elba Town Housing Authority
North Hempstead Housing Authority
North Syracuse Housing Authority
North Tarrytown Housing Authority
North Tonawanda Housing Authority
Norwich Housing Authority
Nyack Housing Authority
Ogdensburg Housing Authority
Olean Housing Authority
Oneida Housing Authority
Oneonta Housing Authority
Orangetown Housing Authority
Oriskany Falls Housing Authority
Ossining Housing Authority
Oswego Housing Authority
Oyster Bay Housing Authority
Painted Post Housing Authority
Palmyra Housing Authority
Peekskill Housing Authority
Philadelphia Housing Authority
Philmont Housing Authority
Plattsburgh Housing Authority
Port Jervis Housing Authority
Potsdam Housing Authority
Queensbury Housing Authority
Ramapo Housing Authority
Rensselaer Housing Authority
Rensselaer Falls Housing Authority
Rochester Housing Authority
Rockville Centre Housing Authority
Rome Housing Authority
Rotterdam Housing Authority
Rye Housing Authority
Salamanca Housing Authority
Schenectady Housing Authority
Sherrill Housing Authority
St. Johnsville Housing Authority
Skaneateles Housing Authority
Sloansburg Housing Authority
Solvay Housing Authority
South Hampton Housing Authority
South Nyack Housing Authority
Spring Valley Housing Authority
Syracuse Housing Authority
Tarrytown Housing Authority
Ticonderoga Housing Authority
Tonawanda Housing Authority (City / Town)
Troy Housing Authority
Tuckahoe Housing Authority
Tupper Lake Housing Authority

A - 7
Urban Renewal Agencies/Community Development Agencies.

These are local public benefit corporations set up to qualify for assistance under the Federal Urban Renewal Law. The enabling legislation was enacted in 1962. These agencies tend to operate just like an executive agency within the municipality where they exist, with substantial overlap of municipal officers and Agency board personnel. These agencies develop approved urban renewal plans; projects sponsored by an agency within such an urban renewal plan thereby qualify for federal funding (HUD primarily) and matching state funding (DHCR primarily). Municipalities also provide assistance, often through awarding tax incentives to project sponsors or condemning the land which will be part of the project. Urban Renewal Agencies can receive title to municipal land; municipalities can condemn land and transfer it to the URA, or the URA can condemn land. The URA itself is exempt from state and local taxes, but unless otherwise stated in each one's enabling statute, is subject to state and local contracting laws. They also float bonds to finance their projects; the bonds are tax-exempt. The URA can transfer land without public notice, auction or competitive bid; instead, it is required to hold a public hearing on issues raised by the transfer.

Urban Renewal Agencies are required to file an annual report of financial status with the State Comptroller, who is empowered to audit the agency from time to time, and required to audit every five years. Each URA also files an annual report with the Commissioner of DHCR. They are subject to the General Municipal Law § 800(4) conflict of interest provisions.

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6 Sometimes an Urban Renewal Agency is called a Community Development Agency. It is still a public development corporation created pursuant to the same statute. Also, some localities chose to use the traditional government agencies to coordinate their various urban development programs. These disparities create confusion in any effort to trace their activities, since, for example, federal grant funds may in some cases be routed through an Urban Renewal Agency and in others through a municipal agency.

7 The Comptroller can accept an "external examination" in lieu of audit.
A listing of urban renewal agencies follows.

Albany Community Development Agency
Albion Urban Renewal Agency
Amsterdam Urban Renewal Agency
Auburn Urban Renewal Agency
Baldwinsville Urban Renewal Agency
Bethlehem Urban Renewal Agency
Binghamton Urban Renewal Agency
Buffalo Urban Renewal Agency
Canajoharie Urban Renewal Agency
Canandaigua Urban Renewal Agency
Clayville Urban Renewal Agency
Cohoes Urban Renewal Agency
Colonie Urban Renewal Agency
Corning Urban Renewal Agency
Dodgeville Urban Renewal Agency
Dunkirk Urban Renewal Agency
East Rochester Urban Renewal Agency
East Syracuse Urban Renewal Agency
Ellenville Urban Renewal Agency
Elmira Heights Renewal Agency
Elmira Urban Renewal Agency
Erwin Urban Renewal Agency
Fairport Urban Renewal Agency
Fallsburg Urban Renewal Agency
Fayetteville Urban Renewal Agency
Fort Edward Urban Renewal Agency
Fredonia Urban Renewal Agency
Freeport Community Development Agency
Fulton Community Development Agency
Genesee Urban Renewal Agency
Glen Cove Community Development Agency
Glens Falls Urban Renewal Agency
Gloversville Community Development Agency
Greenport Urban Renewal Agency
Hamburg Urban Renewal Agency
Hempstead Community Development Agency
Hilton Urban Renewal Agency
Hornell Urban Renewal Agency
Hudson Community Development Agency
Hudson Falls Urban Renewal Agency
Huntington Community Development Agency
Island Park Urban Renewal Agency
Ithaca Community Development Agency
Ithaca Urban Renewal Agency
Jamestown Urban Renewal Agency
Johnson City Urban Renewal Agency
Lancaster Urban Renewal Agency
Liberty Urban Renewal Agency
Little Falls Urban Renewal Agency

A - 9
Lockport Urban Renewal Agency
Long Beach Urban Renewal Agency
Lynbrook Urban Renewal Agency
Lyons Urban Renewal Agency
Mamaroneck Urban Renewal Agency
Massena Urban Renewal Agency
Mechanicville Urban Renewal Agency
Medina Urban Renewal Agency
Monticello Urban Renewal Agency
Mount Kisco Urban Renewal Agency
Mount Vernon Urban Renewal Agency
New Hartford Urban Renewal Agency
New Paltz Urban Renewal Agency
New Rochelle Urban Renewal Agency
Newark Urban Renewal Agency
Newburgh Urban Renewal Agency
North Syracuse Urban Renewal Agency
North Tarrytown Urban Renewal Agency
Norwich Urban Renewal Agency
Nyack Urban Renewal Agency
Ogdensburg Urban Renewal Agency
Olean Urban Renewal Agency
Oneonta Urban Renewal Agency
Ossining Urban Renewal Agency
Oswego Urban Renewal Agency
Palmyra Urban Renewal Agency
Patchogue Community Development Agency
Peekskill Community Development Agency
Penn Yan Urban Renewal Agency
Plattsburgh Urban Renewal Agency
Port Chester Community Development Agency
Port Jervis Community Development Agency
Potsdam Urban Renewal Agency
Rensselaer Urban Renewal Agency
Riverhead Community Development Agency
Riverside Urban Renewal Agency
Rochester Urban Renewal Agency
Rockville Centre Community Development Agency
Rome Urban Renewal Agency
Salamanca Urban Renewal Agency
Saranac Lake Urban Renewal Agency
Saratoga Springs Urban Renewal Agency
Schenectady Urban Renewal Agency
Sloatsburg Urban Renewal Agency
Smithtown Community Development Agency
Spring Valley Urban Renewal Agency
St. Johnsville Urban Renewal Agency
Syracuse Urban Renewal Agency
Tarrytown Urban Renewal Agency
Thomaston Urban Renewal Agency
Tonawanda Community Development Agency
Troy Urban Renewal Agency
Tuckahoe Urban Renewal Agency
Utica Urban Renewal Agency
Victor Urban Renewal Agency
Walden Urban Renewal Agency (Town / Village)
Wallkill Urban Renewal Agency
Warwick Urban Renewal Agency
Washingtonville Urban Renewal Agency
Watervliet Urban Renewal Agency
Waverly Urban Renewal Agency
Westchester Urban Renewal Agency
White Plains Urban Renewal Agency
Whitehall Urban Renewal Agency
Woodbridge Urban Renewal Agency
Yonkers Community Development Agency
Yorktown Urban Renewal Agency

Industrial Development Agencies.

These are local authorities originally established specifically to take advantage of Federal tax provisions allowing for states/municipalities to issue tax-exempt bonds to finance commercial/industrial development. The enabling legislation was passed in 1969, although many IDA's were created far more recently than that. The boards are appointed by the governing body of the municipality to which they are attached, and any number of the board may also be municipal officials. IDAs issue both tax-exempt and taxable bonds to finance commercial projects which they sponsor because they will enhance the development of the municipality; they take title to the property until the bonds are repaid, and the bonds are repaid out of the proceeds of the operation of the facilities. The projects to which an IDA holds title are exempt from sales and property taxes also, although the project may agree by contract to make PILOT payments\footnote{Payments In Lieu Of Taxes} to the municipality. (The 1986 tax law changes make this funding vehicle less attractive since most IDA sponsored projects would no longer qualify for federal tax-exempt bond funding. Some IDA's remain active, however, the recipients of their assistance deeming the other tax advantages sufficiently attractive to apply for funding via taxable bonds.) They are exempt from the public bidding requirements for construction of public facilities, but are subject to the conflict-of-interest provisions of the General Municipal Law.

The required reporting obligations of IDAs are sketchy, and apply mainly to the tax-exempt bonds they issue. Thus, IDAs are required to file with the Department of State a statement of their purposes, and a list of board members. The lists presently on file are sadly out of date; there appears to be no enforcement effort directed toward keeping the lists current. The Department of Economic Development must also be provided with copies of information reported to the Internal Revenue Service relating to the tax-exempt status of the authority. Beginning in 1986, bond issues to finance construction of "civic facilities" are subject to detailed reporting requirements.
(to Commerce, Budget, the Senate Finance and Assembly Ways and Means Committees). In September, 1989, for the first time, a compilation of data on New York’s IDAs was published.* No data have ever been compiled tallying the activities of individual IDAs in both the tax-exempt and taxable bond issues. Beginning in 1989, IDAs must file independently audited financial statements with the State Comptroller, the Department of Economic Development, and the governing body of the municipality they are created to serve.

A listing of industrial development agencies follows.

Albany Industrial Development Agency
Albany Community Development Agency
Albany Industrial Development Agency
Allegany Industrial Development Agency
Alton Industrial Development Agency
Amherst Industrial Development Agency
Amsterdam Industrial Development Agency
Auburn Industrial Development Agency
Babylon Industrial Development Agency
Bethlehem Industrial Development Agency
Black Brook Industrial Development Agency
Brookhaven Industrial Development Agency
Broome Industrial Development Agency
Carmel Industrial Development Agency
Cattaraugus Industrial Development Agency
Cayuga Industrial Development Agency
Champlain Industrial Development Agency
Chautauqua Industrial Development Agency
Chemung Industrial Development Agency
Chenango Industrial Development Agency
Clarence Industrial Development Agency
Clifton Park Industrial Development Agency
Clinton Industrial Development Agency
Cohoes Industrial Development Agency
Colonie Industrial Development Agency
Columbia Industrial Development Agency
Concord Industrial Development Agency
Corinth Industrial Development Agency
Deerpark Industrial Development Agency
Dryden Industrial Development Agency
Dunkirk Industrial Development Agency
East Greenbush Industrial Development Agency
East Hampton Industrial Development Agency
Erie Industrial Development Agency
Erwin Industrial Development Agency
Essex Industrial Development Agency
Fairport Industrial Development Agency

Franklin Industrial Development Agency
Fulton Industrial Development Agency
Genesee Industrial Development Agency
Geneva Industrial Development Agency
Glen Cove Industrial Development Agency
Glens Falls Industrial Development Agency
Green Island Industrial Development Agency
Groton Industrial Development Agency
Guilderland Industrial Development Agency
Hamburg Industrial Development Agency
Hamilton Industrial Development Agency
Harriettown Industrial Development Agency
Hempstead Industrial Development Agency
Herkimer Industrial Development Agency
Hornell Industrial Development Agency
Horseheads Industrial Development Agency (Town / Village)
Hudson Industrial Development Agency
Islip Industrial Development Agency
Jay Industrial Development Agency
Jefferson Industrial Development Agency
Keesville Industrial Development Agency
Lake Placid Industrial Development Agency
Lancaster Industrial Development Agency
Lewis Industrial Development Agency
Liberty Industrial Development Agency
Livingston Industrial Development Agency
Lockport Industrial Development Agency
Madison Industrial Development Agency
Malone Industrial Development Agency
Mechanicville & Stillwater Joint Industrial Development Agency
Middletown Industrial Development Agency
Monroe Industrial Development Agency
Montgomery Industrial Development Agency
Mount Pleasant Industrial Development Agency
Mount Vernon Industrial Development Agency
Nassau Industrial Development Agency
New Rochelle Industrial Development Agency
New Square Industrial Development Agency
Newburgh Industrial Development Agency
Niagara Industrial Development Agency (County / Town)
North Greenbush Industrial Development Agency
North Hempstead Industrial Development Agency
Oneida Industrial Development Agency
Onondaga Industrial Development Agency
Ontario Industrial Development Agency
Orleans Industrial Development Agency
 Oswego Industrial Development Agency
 Otsego Industrial Development Agency
 Oyster Bay Industrial Development Agency
 Patterson Industrial Development Agency
 Peekskill Industrial Development Agency
Port Chester Industrial Development Agency
Port Jervis Industrial Development Agency
Rensselaer Industrial Development Agency (County / City)
Rochester Industrial Development Agency
Rockland Industrial Development Agency
Rotterdam Industrial Development Agency
Salamanca Industrial Development Agency
Sand Lake Industrial Development Agency
Saratoga Industrial Development Agency
Schenectady Industrial Development Agency (County / City)
Schodack Industrial Development Agency
Schuyler Industrial Development Agency
Seneca Industrial Development Agency
Southeast Industrial Development Agency
Southampton Industrial Development Agency
St. Lawrence Industrial Development Agency
Steuben Industrial Development Agency
Suffolk Industrial Development Agency
Sullivan County Industrial Development Agency
Syracuse Industrial Development Agency
Tompkins Industrial Development Agency
Troy Industrial Development Agency
Ulster Industrial Development Agency
Utica Industrial Development Agency
Walden Industrial Development Agency
Wallkill Industrial Development Agency
Warren Industrial Development Agency
Waterford Industrial Development Agency
Watervliet Industrial Development Agency
Wayne Industrial Development Agency
West Turin Industrial Development Agency
Westchester Industrial Development Agency
Wilmington Industrial Development Agency
Wyoming Industrial Development Agency
Yates County Industrial Development Agency
Yonkers Industrial Development Agency
Yorktown Industrial Development Agency
Exhibits
<table>
<thead>
<tr>
<th>Category</th>
<th>1987</th>
<th>1988</th>
<th>1988</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alphabetical Listing</td>
<td>120</td>
<td>166</td>
<td>152</td>
</tr>
<tr>
<td>No Transactions To Report</td>
<td>50</td>
<td>39</td>
<td>34</td>
</tr>
<tr>
<td>Not Independent*</td>
<td>48</td>
<td>7</td>
<td>12</td>
</tr>
<tr>
<td>Provided Financial Information</td>
<td>11</td>
<td>85</td>
<td>70</td>
</tr>
<tr>
<td>Failed To Provide Financial</td>
<td>11</td>
<td>35</td>
<td>36</td>
</tr>
<tr>
<td>Financial Information</td>
<td>7</td>
<td>19</td>
<td>22</td>
</tr>
<tr>
<td>Operating Expenses***</td>
<td>$5,709,000</td>
<td>$105,398,000</td>
<td>$15,712,000</td>
</tr>
<tr>
<td>Outstanding Bonds and Notes***</td>
<td>$92,000</td>
<td>$586,972,000</td>
<td>$151,548,000**</td>
</tr>
</tbody>
</table>

* Reports transactions to Comptroller as integral part of municipality's figures.
** Figures indicate this is the approximate amount currently loaned out to client companies.
*** For those providing financial information.

INFORMATION FROM: NYS COMPTROLLER'S SPECIAL REPORT ON MUNICIPAL AFFAIRS, 1987 AND 1988
Section on Special Purpose Units

Exhibit 1
<table>
<thead>
<tr>
<th>PROGRAMS</th>
<th>FYE 3-31 1987</th>
<th>ACTIVITY 1962-1987</th>
<th>FYE 3-31-87</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct Loans</td>
<td>$40,000,000</td>
<td>$408,000,000</td>
<td></td>
</tr>
<tr>
<td>Loan Guarantees</td>
<td>31,500,000</td>
<td>34,800,000</td>
<td></td>
</tr>
<tr>
<td>Rural Development Loan Fund</td>
<td>1,900,000</td>
<td>1,100,000</td>
<td></td>
</tr>
<tr>
<td>Long Term Development Loan Fund</td>
<td>1,900,000</td>
<td>800,000</td>
<td></td>
</tr>
<tr>
<td>AL TECH TRUST FUND</td>
<td>10,000,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>X PORT</td>
<td>1,900,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**INFORMATION FROM:**
Annual Report of the New York State Job Development Authority FYE 3/31/87

Exhibit 2
<table>
<thead>
<tr>
<th>PROGRAM</th>
<th>NUMBER OF AWARDS</th>
<th>AMOUNT AWARDED</th>
<th>AVERAGE AWARD</th>
<th>TYPE OF RECIPIENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neighborhood Preservation Companies Program</td>
<td>202</td>
<td>$11,331,262</td>
<td>$56,095</td>
<td>Neighborhood Preservation Companies</td>
</tr>
<tr>
<td>Rural Preservation Companies Program</td>
<td>86</td>
<td>4,879,104</td>
<td>56,733</td>
<td>Rural Preservation Companies</td>
</tr>
<tr>
<td>Neighborhood Redevelopment Demonstration Program</td>
<td>111</td>
<td>5,089,275</td>
<td>45,849</td>
<td>Local Development Corporations</td>
</tr>
<tr>
<td>Housing Trust Fund Program</td>
<td>32*</td>
<td>13,202,000</td>
<td>412,562</td>
<td>Variety</td>
</tr>
<tr>
<td>Urban Initiatives Program (1985-1987)</td>
<td>50</td>
<td>2,587,500</td>
<td>51,750</td>
<td>Variety</td>
</tr>
<tr>
<td>Rural Area Revitalization Program</td>
<td>31</td>
<td>1,718,275</td>
<td>55,428</td>
<td>Variety</td>
</tr>
<tr>
<td>Special Needs Housing Demonstration Program</td>
<td>32</td>
<td>3,965,023</td>
<td>123,906</td>
<td>Variety</td>
</tr>
<tr>
<td></td>
<td>544***</td>
<td>$42,772,439</td>
<td>$78,625</td>
<td></td>
</tr>
</tbody>
</table>

* Excludes government entities (cities, etc.)
** Does not include rent subsidy, building operations and other non-third party programs
*** Some entities receive grants from more than one program

INFORMATION FROM: The Annual Report Of New York State Division Of Housing & Community Development FYE 3/31/87

Exhibit 3
**NEW YORK CITY ENTERPRISE FUND AGENCIES AND CORPORATIONS**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing Development Corp.</td>
<td>$ 9,372</td>
<td>$ 10,335</td>
<td>$2,248,078</td>
<td>$2,208,159</td>
</tr>
<tr>
<td>Industrial Development Agency</td>
<td>1,095</td>
<td>2,794</td>
<td>-0</td>
<td>-0</td>
</tr>
<tr>
<td>Public Development Corp.</td>
<td>14,442</td>
<td>17,357</td>
<td>10,789</td>
<td>-0</td>
</tr>
<tr>
<td>Financial Services Corp.</td>
<td>15,941</td>
<td>17,966</td>
<td>-0</td>
<td>-0</td>
</tr>
<tr>
<td>Business Relocation Ass. Corp.</td>
<td>471</td>
<td>571</td>
<td>-0</td>
<td>-0</td>
</tr>
<tr>
<td>Rehab Mortgage Ins. Corp.</td>
<td>259</td>
<td>412</td>
<td>-0</td>
<td>-0</td>
</tr>
<tr>
<td>Brooklyn Navy Yard Development Corp.</td>
<td>11,212</td>
<td>9,876</td>
<td>-0</td>
<td>-0</td>
</tr>
<tr>
<td>Health &amp; Hospitals Corp.</td>
<td>2,089,091</td>
<td>2,262,032</td>
<td>56,535</td>
<td>49,925</td>
</tr>
<tr>
<td>Off-Track Betting Corp.</td>
<td>160,407</td>
<td>163,184</td>
<td>1,838</td>
<td>1,491</td>
</tr>
</tbody>
</table>

Exhibit 4
<table>
<thead>
<tr>
<th>Housing &amp; Economic Development Corp.</th>
<th>52,792</th>
<th>59,311</th>
<th>2,254,999</th>
<th>2,204,540</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$2,355,082</td>
<td>$2,543,838</td>
<td>$4,572,239</td>
<td>$4,464,115</td>
</tr>
</tbody>
</table>

**INFORMATION FROM:** Comprehensive Annual Financial Report of the Comptroller of New York City for FYE 6/30/88
## PERSONAL SERVICE CONTRACTS*

### NYC Transit Authority

<table>
<thead>
<tr>
<th></th>
<th>1986</th>
<th>1987</th>
<th>1988</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Year Ending: 12/31</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td>$27,814,997</td>
<td>$23,563,723</td>
<td>$53,960,829</td>
</tr>
<tr>
<td><strong>Non-Competitive:</strong></td>
<td>7,927,458</td>
<td>7,900,856</td>
<td>30,681,857</td>
</tr>
<tr>
<td></td>
<td>(28.5%)</td>
<td>(33.5%)</td>
<td>(56.8%)</td>
</tr>
<tr>
<td><strong>Competitive:</strong></td>
<td>19,887,539</td>
<td>15,662,867</td>
<td>23,278,972</td>
</tr>
<tr>
<td></td>
<td>(71.5%)</td>
<td>(66.5%)</td>
<td>(43.2%)</td>
</tr>
</tbody>
</table>

### Metro North Commuter RR

<table>
<thead>
<tr>
<th></th>
<th>1986</th>
<th>1987</th>
<th>1988</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Year Ending: 12/31</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td>9,338,289</td>
<td>31,646,361</td>
<td>24,447,720</td>
</tr>
<tr>
<td><strong>Non-Competitive:</strong></td>
<td>3,046,779</td>
<td>1,466,533</td>
<td>1,102,358</td>
</tr>
<tr>
<td></td>
<td>(32.6%)</td>
<td>(4.6%)</td>
<td>(4.5%)</td>
</tr>
<tr>
<td><strong>Competitive:</strong></td>
<td>6,291,510</td>
<td>30,179,834</td>
<td>23,345,362</td>
</tr>
<tr>
<td></td>
<td>(67.4%)</td>
<td>(95.4%)</td>
<td>(95.5%)</td>
</tr>
</tbody>
</table>

### Long Island RR

<table>
<thead>
<tr>
<th></th>
<th>1986</th>
<th>1987</th>
<th>1988</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Year Ending: 12/31</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td>2,869,800</td>
<td>12,947,825</td>
<td>33,790,500</td>
</tr>
<tr>
<td><strong>Non-Competitive:</strong></td>
<td>963,100</td>
<td>1,342,325</td>
<td>5,358,800</td>
</tr>
<tr>
<td></td>
<td>(33.5%)</td>
<td>(10.4%)</td>
<td>(15.9%)</td>
</tr>
<tr>
<td><strong>Competitive:</strong></td>
<td>1,906,700</td>
<td>11,605,500</td>
<td>28,431,700</td>
</tr>
<tr>
<td></td>
<td>(66.5%)</td>
<td>(89.6%)</td>
<td>(84.1%)</td>
</tr>
</tbody>
</table>

### Metropolitan Suburban Bus Authority

<table>
<thead>
<tr>
<th></th>
<th>1986</th>
<th>1987</th>
<th>1988</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Year Ending: 12/31</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td>20,000</td>
<td>440,492</td>
<td>15,000</td>
</tr>
<tr>
<td><strong>Non-Competitive:</strong></td>
<td>20,000</td>
<td>15,000</td>
<td>15,000</td>
</tr>
<tr>
<td></td>
<td>(100%)</td>
<td>(3.4%)</td>
<td>(15%)</td>
</tr>
<tr>
<td><strong>Competitive:</strong></td>
<td>- 0 -</td>
<td>425,492</td>
<td>- 0 -</td>
</tr>
<tr>
<td></td>
<td>(0%)</td>
<td>(96.6%)</td>
<td>(0%)</td>
</tr>
</tbody>
</table>

### Triborough Bridge & Tunnel Authority

<table>
<thead>
<tr>
<th></th>
<th>1986</th>
<th>1987</th>
<th>1988</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Year Ending: 12/31</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td>2,190,472</td>
<td>4,131,766</td>
<td>5,318,096</td>
</tr>
<tr>
<td><strong>Non-Competitive:</strong></td>
<td>1,626,217</td>
<td>1,613,459</td>
<td>2,649,951</td>
</tr>
<tr>
<td></td>
<td>(74.3%)</td>
<td>(39%)</td>
<td>(49.8%)</td>
</tr>
<tr>
<td><strong>Competitive:</strong></td>
<td>564,255</td>
<td>2,518,307</td>
<td>2,670,145</td>
</tr>
<tr>
<td></td>
<td>(25.7%)</td>
<td>(61%)</td>
<td>(50.2%)</td>
</tr>
</tbody>
</table>

* All figures relate to amount of awards in the designated year.

Exhibit 5
<table>
<thead>
<tr>
<th>Authority</th>
<th>Year Ending</th>
<th>1986</th>
<th>1987</th>
<th>1988</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MTA Headquarters</strong></td>
<td></td>
<td>12/31</td>
<td>12/31</td>
<td>12/31</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>3,634,139</td>
<td>2,310,132</td>
<td>6,995,396</td>
</tr>
<tr>
<td>Non-Competitive</td>
<td></td>
<td>3,174,959</td>
<td>1,396,694</td>
<td>3,806,052</td>
</tr>
<tr>
<td>Competitive</td>
<td></td>
<td>459,180</td>
<td>913,438</td>
<td>3,189,344</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(87.4%)</td>
<td>(60.5%)</td>
<td>(54.4%)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(12.6%)</td>
<td>(39.5%)</td>
<td>(45.6%)</td>
</tr>
<tr>
<td><strong>NYS Power Authority</strong></td>
<td></td>
<td>12/31</td>
<td>12/31</td>
<td>12/31</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>10,936,075</td>
<td>26,686,656</td>
<td>21,785,473</td>
</tr>
<tr>
<td>Non-Competitive</td>
<td></td>
<td>5,253,910</td>
<td>3,296,692</td>
<td>3,841,462</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(48%)</td>
<td>(12.4%)</td>
<td>(17.6%)</td>
</tr>
<tr>
<td>Competitive</td>
<td></td>
<td>5,682,165</td>
<td>23,389,964</td>
<td>17,944,011</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(52%)</td>
<td>(87.6%)</td>
<td>(82.4%)</td>
</tr>
<tr>
<td><strong>NYS Dormitory Authority</strong></td>
<td></td>
<td>3/31</td>
<td>3/31</td>
<td>3/31</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>33,709,605</td>
<td>46,895,845</td>
<td>33,142,032</td>
</tr>
<tr>
<td>Non-Competitive</td>
<td></td>
<td>19,037,377</td>
<td>22,878,060</td>
<td>17,771,178</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(56.4%)</td>
<td>(48.8%)</td>
<td>(53.6%)</td>
</tr>
<tr>
<td>Competitive</td>
<td></td>
<td>14,672,228</td>
<td>24,017,785</td>
<td>15,370,854</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(43.5%)</td>
<td>(51.2%)</td>
<td>(46.3%)</td>
</tr>
<tr>
<td><strong>NYS Thruway Authority</strong></td>
<td></td>
<td>3/31</td>
<td>3/31</td>
<td>3/31</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>NOT AVAILABLE</td>
<td>16,990,475</td>
<td>11,308,022</td>
</tr>
<tr>
<td>Non-Competitive</td>
<td></td>
<td>NOT AVAILABLE</td>
<td>745,390</td>
<td>NO BREAKDOWN</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(4.4%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Competitive</td>
<td></td>
<td>NOT AVAILABLE</td>
<td>16,245,085</td>
<td>NO BREAKDOWN</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(95.6%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Battery Park City</strong></td>
<td></td>
<td>Authority</td>
<td>10/31</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>NOT AVAILABLE</td>
<td>2,890,817</td>
<td>2,088,527</td>
</tr>
<tr>
<td>Non-Competitive</td>
<td></td>
<td>NOT AVAILABLE</td>
<td>896,525</td>
<td>1,605,521</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(31%)</td>
<td>(76.8%)</td>
<td></td>
</tr>
<tr>
<td>Competitive</td>
<td></td>
<td>NOT AVAILABLE</td>
<td>1,994,292</td>
<td>483,006</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(69%)</td>
<td>(21.3%)</td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL:**
- **Year Total:** $90,513,377
- **Non-Competitive:** $41,049,980
- **Competitive:** $49,463,397

**Year Total:** $192,851,595
- **Non-Competitive:** $168,504,092
- **Competitive:** $126,952,558

**Year Total:** $192,851,595
- **Non-Competitive:** $168,504,092
- **Competitive:** $126,952,558

**Year Total:** $192,851,595
- **Non-Competitive:** $168,504,092
- **Competitive:** $126,952,558

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- **Non-Competitive:** $168,504,092
- **Competitive:** $126,952,558

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- **Competitive:** $126,952,558

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- **Competitive:** $126,952,558

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- **Competitive:** $126,952,558

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- **Non-Competitive:** $168,504,092
- **Competitive:** $126,952,558

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- **Non-Competitive:** $168,504,092
- **Competitive:** $126,952,558

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- **Non-Competitive:** $168,504,092
- **Competitive:** $126,952,558

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- **Non-Competitive:** $168,504,092
- **Competitive:** $126,952,558

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- **Non-Competitive:** $168,504,092
- **Competitive:** $126,952,558

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- **Non-Competitive:** $168,504,092
- **Competitive:** $126,952,558

**Year Total:** $192,851,595
- **Non-Competitive:** $168,504,092
- **Competitive:** $126,952,558

**Year Total:** $192,851,595
- **Non-Competitive:** $168,504,092
- **Competitive:** $126,952,558
No Breakdown For 11.3 Million

11.3 Million Eliminated from %

INFORMATION FROM: Personal Services Contracts Reports filed with New York State Comptroller
Hon. Edward V. Regan  
Comptroller of the State of New York  
Alfred E. Smith Office Building  
1 Swan and Washington  
Albany, NY 12236

Dear Comptroller Regan:

Through an agreement among the State of New York (The State), the City of Buffalo (the City) and the Buffalo Municipal Housing Authority (the Authority), the City has been financing the operating deficit of the Authority. This deficit in recent years is approximately $1.9 million and has exceeded $1 million each year for the past decade.

During the past year the Buffalo News reported among other problems, possible violations of the State's open meetings laws and purchasing and contracting laws. In response to this the Common Council directed the City Comptroller to undertake an audit of the Authority. The purpose of this audit is to first certify the actual operating deficit of the Authority and secondly to recommend economies where practicable to reduce that deficit, including adherence to the State laws concerning contracting and purchasing.

To that end the City Comptroller sought to have the City's outside auditors, the Arthur Young and Company to undertake that audit in compliance with the Common Council's directive. The auditors determined that costs are allocated by the Authority among State, Federal and City funding sources and that a full review of all sources would be required to comply with the Common Council directive. For example, since the Authority has no independent taxing powers, are any disallowed Federal costs being shifted to the State and City components. In order to minimize costs, the auditors would rely on any previous audits and workpapers where available.

Unfortunately, the Authority has repeatedly blocked efforts to undertake this audit. The Authority has disregarded the opinion of your office dated August 24, 1987 by Mr. Cornelius F. Healy which states in part "...it would appear that the City Comptroller has the necessary authority to perform such audit."

Additionally, the Authority has taken the position that even your office lacks the authority to undertake this audit. After reviewing this detail we find it difficult to conclude that a public agency established under the laws of New York State and funded by tax dollars is beyond the reach of the elected Chief Fiscal Officer of the State.
Therefore, we respectfully request that you review the enclosed materials and determine the following:

1) Does the office of the Comptroller of the State of New York have the authority to audit any and all financial records of the Buffalo Municipal Housing Authority.

2) If you determine that your office does possess the authority, will your office undertake this audit on behalf of the citizens and taxpayers of the City of Buffalo.

ROBERT E. WHelan
COMPTROLLER

GEORGE K. ARTHUR
COUNCIL PRESIDENT
Dear Mr. Whelan:

This is in response to your November 4 letter to Comptroller Regan which requests our office to undertake an audit of the Buffalo Municipal Housing Authority (the Authority).

We assume you have already obtained a copy of the audited Financial Statements and Report on Supplemental Financial Information for the two years ended March 31, 1986 and 1987 issued by the Authority on the State projects they manage. These audited financial statements reflect the cash subsidies due from the City.

It is our understanding the Authority has solicited requests for proposal to have audits performed for the two years ended June 30, 1986 and 1987 to meet their Federal audit requirements. Since the Authority receives in excess of $100,000 annually, the Authority is subject to the Federal Single Audit Act and Circular A-128 requirements under which an audit of the entire Authority is required. To meet these requirements, the auditors selected will have to either reaudit the State projects or incorporate by reference the separate audit referred to above and audit the audit period of the State projects between March 31, 1987 and June 30, 1987. Also under generally accepted governmental auditing standards, the auditors will have to examine any Circular A-87 approved cost allocation plan or any other system used by the Authority to allocate costs between Federal and State projects.

It is the policy of our office not to duplicate the work of independent auditors engaged by a local entity to meet Federal or any other specific audit requirements. Our office does reserve the right upon review of those audit reports to perform any additional work we determine necessary to either supplement the audit work already performed or to audit specific State compliance issues.
Therefore, since the independent audits of the Authority for 1986 and 1987 are not yet completed, our office is not prepared at this time to undertake any audit work of the Authority.

Very truly yours,

Cornelius F. Bealy
Deputy Comptroller

cc: George K. Arthur, Council President