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Inspector General

OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

REPORT OF INVESTIGATION CASE NUMBER: 2014-0009 WB



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ENGINEERING SHORT LIST COMMITTEE EXECUTIVE SUMMARY

WHAT WE DID

On June 25, 2014, the Office of Inspector General (OIG) Investigations Division received an anonymous complaint related to allegations involving Palm Beach County (County) Engineering and Public Works Department (Engineering), as well as Deputy County Engineer Tanya McConnell.

The complaint alleged that (1) Ms. McConnell, as the Chair of the Engineering Short List Committee¹ (Committee), improperly voted for firms with whom she maintains close personal relationships with the principal consultants and/or owners for/of these specific firms; (2) Ms. McConnell, as the Chair of the Committee, improperly influences the votes of subordinate Committee members; and, (3) that County Policy and Procedure Memorandum (PPM) CW-O-048 and the Committee's practices are not in compliance with § 287.055, Florida Statutes, otherwise known as the Consultants' Competitive Negotiation Act (CCNA).

Pursuant to § 112.3188, F.S. (The Whistle-blower Act), based on the nature of the information disclosed to the OIG, one or more individuals were granted

Whistle-blower protection and the OIG subsequently initiated a Whistle-blower investigation.

WHAT WE FOUND

To better understand this report, some discussion of Inspector General (IG) investigations standards and the gray area between legality and what is right is warranted. IG investigations are usually initiated as a result of allegations that someone acted in violation of an established standard (law, ordinance, policy). The IG investigator gathers and evaluates facts/evidence and then examines applicable standards to determine whether or not the alleged actions violated those standards. Both a preponderance (or majority) of evidence and a violation of a specific law, ordinance, or policy is required to support/substantiate the allegation of wrong doing.

In this particular investigation, two of the three allegations were deemed to be inconclusive due to a lack of established standards. However, just because certain actions may not be illegal does not make those actions right. When situations like this come to light, corrective measures must be taken. Such actions may include the establishment of new policies or procedures and appropriate personnel actions.

As to **Allegation (1)**, Ms. McConnell openly acknowledged that she voted for firms with whom she maintains close personal relationships with the principal consultants and/or owners who are vying for County projects. Ms. McConnell denied any favoritism towards her "friends." However, the allegation was deemed **inconclusive** because, aside from a potential violation of the County's Ethics Ordinances, there currently are no other Local, County, and/or State policies,

¹ The Committee is responsible for the initial phase of awarding Engineering Consulting Contracts.

ordinances, and/or statutes that mandate County employees to recuse themselves from voting for firms with whom they maintain close personal relationships with the owners, resulting in a potential award of a contract. It is important to note that while the County does not require its own employees to recuse themselves in these situations, firms vying for County Engineering projects are required to submit a "Conflict of Interest" form with their proposal regarding their business interests.

As to **Allegation (2)**, none of the Committee members interviewed stated that Ms. McConnell directly influenced their choices² either before, during, or after Committee meetings. However, **50%** of all the Committee members interviewed felt that Ms. McConnell indirectly influenced or attempted to influence either their **future** choices or other Committee members' **future** choices. This belief was based on statements to subordinate staff members and/or actions by Ms. McConnell after their choices. Ms. McConnell denied directly or indirectly influencing Committee members' choices. The allegation was deemed **inconclusive** because, aside from a potential violation of the County's Ethics Ordinances, there currently are no other Local, County, and/or State policies, ordinances, and/or statutes that govern her behavior. The OIG found that Ms. McConnell's statements and actions towards Committee members following Committee choices, at a minimum, created a perception of influence and/or the appearance of impropriety.

Allegations (1) and (2) have also been referred to the County's Commission on

Ethics for a review and determination of any violation of its Ordinances.

As to **Allegation (3)**, we found that the County's policy and its process as implemented, may comply with the technical requirements of § 287.055, F.S. While the allegation was **not supported**, the current process of eliminating proposers (preliminary short list) using a voting methodology that is based on the number of proposals received, without ever scoring and/or ranking them, is contrary to the basic principles of effective public procurement outlined not only in the County's own Purchasing Code, but in § 287.001, F.S. as well. This process is not transparent so as to inspire confidence in its openness and fairness and additionally increases the opportunity for favoritism and abuse.

Qualified proposers eliminated without making the preliminary short list are provided no indication of the category or categories in which they were determined to be inferior to their competitors and are provided no written score as a basis for improvement. Conversely, proposers who do make the preliminary short list are scored and ranked by the Committee and that information is available for their review.

While two of the three allegations were deemed to be **inconclusive** and one allegation was **not supported**, we uncovered significant issues for which corrective actions must be taken. This is of particular importance since millions of dollars have been awarded in these projects.

² The word "choice" is used interchangeably to represent either a Committee members' vote (preliminary short list) or scoring and ranking (short list).

WHAT WE RECOMMEND

We recommend the following corrective actions:

1. The County take appropriate personnel action.
2. The County implement a policy requiring County employees, with procurement responsibilities, to recuse themselves in matters that involve those with whom they have personal or private relationships that could reasonably be a perceived or actual conflict.
3. The County address the current makeup of the Committee, so that neither the Chair nor any other member is in a position to improperly influence the outcome of the Committee decision.
4. That Engineering eliminate the preliminary short list step and score and rank all proposers.

The County concurred with all of the OIG's Recommended Corrective Actions and is taking immediate actions to change their Policies and Procedures.

BACKGROUND

On December 5, 2013, the Office of Inspector General (OIG) Contract Oversight Unit issued Notification #2013-N-0012 related to the Palm Beach County (County) Engineering and Public Works Department's (Engineering) application of § 287.055, Florida Statutes, otherwise known as the Consultants' Competitive Negotiation Act (CCNA), for procuring certain engineering consultant contracts. Following the release of this report which included recommendations for corrective action (available on the OIG website), on June 25, 2014, the OIG Investigations Division received an anonymous complaint related to Deputy County Engineer Tanya McConnell.

The complaint alleged that Ms. McConnell, as the Chair of the Committee, votes for firms with whom she maintains close personal relationships with the principal consultants and/or owners for/of these specific firms. Moreover, Ms. McConnell's relationships with these individuals potentially influence the votes of her subordinate staff members also serving on the Committee. Additionally, despite the prior OIG report (Notification #2013-N-0012) indicating that the previous process employed by Engineering did not appear to comply with CCNA, no action had been taken to remedy their processes, which left Ms. McConnell in a position to make arbitrary selections of her favored firms.

Pursuant to § 112.3188, F.S. (The Whistle-blower Act), based on the nature of the information disclosed to the OIG in this complaint, one or more individuals were granted Whistle-blower protection and the OIG subsequently initiated a Whistle-blower investigation.

ALLEGATIONS AND FINDINGS

Allegation (1):

Palm Beach County Engineering and Public Works Deputy County Engineer Tanya McConnell, as the Chair of the Engineering Short List Committee, improperly voted for firms with whom she maintains close personal relationships with the principal consultants and/or owners for/of these specific firms, which would constitute a violation of Local, County, and/or State policies, ordinances, and/or statutes.

Allegation (2):

Palm Beach County Engineering and Public Works Deputy County Engineer Tanya McConnell, as the Chair of the Engineering Short List Committee, improperly influences the votes of subordinate Committee members, which would constitute a violation of Local, County, and/or State policies, ordinances, and/or statutes.

Finding:

Allegation (1) was deemed ***inconclusive*** because, aside from a potential violation of the County's Ethics Ordinances, there currently are no other Local, County, and/or State

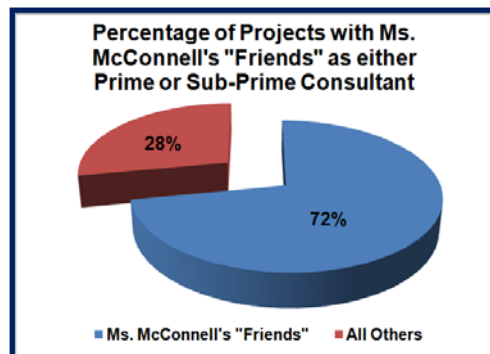
policies, ordinances, and/or statutes that mandate County employees to recuse themselves from voting for firms with whom they maintain close personal relationships with the owners, resulting in a potential award of a contract. It is important to note that while the County does not require its own employees to recuse themselves in these situations, firms vying for County Engineering projects are required to submit a "Conflict of Interest" form with their proposal regarding their business interests. However, this matter has been referred to the County's Commission on Ethics for a review and determination of any violation of its Ordinances.

Allegation (2) was deemed *inconclusive* because, aside from a potential violation of the County's Ethics Ordinances, there currently are no other Local, County, and/or State policies, ordinances, and/or statutes that govern her behavior. The OIG found that Ms. McConnell's statements and actions towards Committee members following Committee choices, at a minimum, created a perception of influence and/or the appearance of impropriety. However, this matter has also been referred to the County's Commission on Ethics for a review and determination of any violation of its Ordinances.

The OIG's investigation did not disclose information that Ms. McConnell directly influenced subordinate staff members who were also serving on the Committee. However, the OIG found that Ms. McConnell's statements to subordinate staff members and/or actions following Committee votes, at a minimum, created a perception of influence and/or appearance of impropriety. While there appears to be a general consensus amongst those interviewed that each of the companies identified in this report are highly qualified in both their area of expertise and work product, more than half of the Committee members questioned Ms. McConnell's involvement in the process. They also questioned how her continued supervision of them impacts the process itself, because of her close personal relationships with these individuals whom she commonly refers to as her "friends." Committee members provided multiple examples of statements to subordinate staff members and/or actions following their votes, which have created a perception that Ms. McConnell may not be able to remain objective. As one Committee member stated, "the integrity of the whole selection process is at risk."

The complainant alleged that Ms. McConnell's personal relationships with Ronald Last (Last Devenport, Inc.), Brian Rheault (Bridge Design Associates, Inc.), and David Wantman (Wantman Group, Inc.), resulted in favorable selections by both Ms. McConnell and her subordinates on the Committee. Based on this information, the OIG conducted a review of all the Committee actions between July 1, 2011 and August 31, 2014.

- Between July 1, 2011 and August 31, 2014, **25** projects went before the Committee.
- Of the **25** projects that went before the Committee, Ms. McConnell was present and voted on each project.
- Of the **25** projects that she voted on, **18** projects included at least one of the firms identified by Ms. McConnell as her “friends” where they were either the prime or sub-prime consultant.
- Furthermore, in those **18** projects, Ms. McConnell voted to move her “friends” from the initial list of proposers to the Preliminary Short List (Long List) and/or Short List³ **17** times or **94%** of the time.
- For these **18** projects, a total of **\$8,972,743.41** has been authorized by the County for payment (to date). **\$2,734,857.13** of that total has been paid.



Pursuant to § 112.3188, F.S. (The Whistle-blower Act), based on the nature of the information disclosed to the OIG, certain Committee members were granted Whistle-blower protection in order to maintain their confidentiality. Ten Committee members were interviewed and provided the following pertinent comments regarding Ms. McConnell's actions:

- **60%** of all the Committee members interviewed stated that it was common knowledge throughout Engineering of Ms. McConnell's close personal relationships with Ronald Last (Last Devenport, Inc.), Brian Rheault (Bridge Design Associates, Inc.), and David Wantman (Wantman Group, Inc.). Some of the comments made by those Committee members are as follows:
 - Committee members were aware of a close personal relationship between Ms. McConnell and Mr. Last, Mr. Rheault, and Mr. Wantman going back 15 to 20 years.⁴
 - Committee members stated that Ms. McConnell regularly lunches with Mr. Last (1 to 2 times per week) and occasionally lunches with Mr. Rheault.⁴
 - Ms. McConnell has vacationed with Mr. Rheault.⁴
 - Committee members stated that Ms. McConnell plays golf with Mr. Last.⁴

³ Based on information provided by the County, the Committee skipped the Preliminary Short List procedure on seven occasions due to the small number of proposers.

⁴ Ms. McConnell confirmed this information during her interviews with the OIG.

- Committee members were not aware of the level of socialization with Mr. Wantman.
- Ms. McConnell sat on the selection committee for the position of Assistant County Engineer, for which Mr. Last was a finalist.⁵
- None of the Committee members interviewed stated that Ms. McConnell directly influenced their choices either before, during, or after Committee meetings. However, **50%** of all the Committee members interviewed felt that Ms. McConnell indirectly influenced or attempted to influence either their **future** choices or other Committee members' **future** choices. This belief was based on statements to subordinate staff members and/or actions by Ms. McConnell after their selected choices. **40%** of all the Committee members interviewed stated that Ms. McConnell reminds employees of their "at-will"⁶ employment status and stated their fear of retaliation by Ms. McConnell for making any negative statements about her or her "friends." They stated this not only related to Committee decisions, but also related to fear of retaliation for what they might say during the OIG's investigation. Some of the comments made by those Committee members are as follows:
 - The integrity of the whole selection process is at risk because of Ms. McConnell's behavior and even prospective consultants know this and will use it to their advantage by putting her friends on as sub-consultants. Although this Committee member stated they were not directly influenced, Ms. McConnell voices her displeasure in veiled ways (anger, disgust). The same Committee member stated they have received first-hand complaints from other Committee members that Ms. McConnell plays favorites with her friends and those Committee members feel intimidated. The same Committee member has personally heard Ms. McConnell address other Committee members about their voting and lack of voting for her friends.
 - Ms. McConnell is well-known as a vindictive person and the general atmosphere around Engineering is that "it's not worth it" when it comes to going against her on anything. The Committee member stated that Ms. McConnell reminds employees of their "at-will" employment status and that for a period of time Ms. McConnell's secretary had a sign over her desk that read, "I serve at the will of Tanya McConnell."
 - Between 5 to 10 occasions, following a Committee meeting, Ms. McConnell has made negative statements regarding a Committee member's choice such as, "you always go against my friends, you have something against me." The same Committee member believed these comments were negative towards their

⁵ The County's Human Resources Department, as well as Mr. Last, confirmed that Mr. Last was a candidate for the Assistant County Engineer position in 2006. Mr. Last stated that he was offered the position, but subsequently declined. Because County record retention requirements no longer applied to these documents, additional documentation was no longer available for the OIG's review.

⁶ Florida is an "Employment at Will" state. An employee can be hired and fired at any time for any reason, with certain exceptions.

choice and led the Committee member to believe that they “needed to be following her path.”

- He/she was aware of two separate incidents following a Committee meeting where Ms. McConnell exchanged words with Committee members about their choices.
- Committee members will not speak negatively about Ms. McConnell’s “friends” during Committee meetings, and on occasion Ms. McConnell jokes to Committee members about “not liking her friends.”
- Following a Committee meeting, a Committee member was asked by Ms. McConnell why they did not vote for her “friends.” The Committee member stated that “even if there are no direct commands given the perception is enough to make the process not work the way it should.”
- After one particular Committee vote (preliminary short list), Ms. McConnell immediately rose from her chair, searched through the tally sheets that were being tabulated, pulled a Committee member’s tally sheet, and stated “that’s the one [tally sheet] I wanted to see.” A Committee member who observed this stated that Ms. McConnell is not subtle and that the point of this behavior was to [influence] a future vote.
- He/she stated that Committee members are reluctant to speak negatively about Ms. McConnell’s friends during a Committee meeting, even if the discussion relates to factual information (such as problems involving a current project) involving one of her friends companies that would reflect poorly.
- He/she was aware that Ms. McConnell complained to another Committee member that other Committee members won’t “vote for her friends.” The same Committee member has noticed a reluctance of other Committee members to bring up negative comments of Ms. McConnell’s friends “cause they don’t want to deal with what her reaction may be.”
- Ms. McConnell tries to intimidate people, tries to scare people, rules by intimidation, power hungry, on a power trip, throws fits, and holds grudges. The Committee member further stated that there is ongoing fear in the office [for losing their jobs] and Committee members are more fearful now because of the OIG’s investigation.
- A Committee member requested notification prior to the OIG’s release of this Investigative Report to “prepare for blowback.”

Statement of Ronald Last, Principal Engineer, Last Devenport, Inc.

Mr. Last stated that he has personally known Ms. McConnell between 20 – 22 years, having initially met through his former employer, while she was a Reviewer in the

Roadway Production Division. They became personal friends through their respective children who are very close in age. Mr. Last stated that he only socialized with Ms. McConnell through engineering association functions, "But other than that, not really outside of that." However, Mr. Last acknowledged that he has lunch with Ms. McConnell "Probably once a week."⁷ Mr. Last also stated that once or twice a year, he has participated in golf tournaments with Ms. McConnell, and on occasion golfed with Ms. McConnell and her husband. When asked how this would appear to other proposers who didn't have personal relationships with Ms. McConnell and didn't get her votes, Mr. Last stated that he could not speak for other consultants and stated that Ms. McConnell takes her job very seriously and will "tell you like it is." Mr. Last further opined that Ms. McConnell votes for who she feels is the best consultant to get the job done.

Statement of Brian Rheault, President, Bridge Design Associates, Inc.

Mr. Rheault stated that he has personally known Ms. McConnell for approximately 25 years, having initially met when she was a staff engineer who reviewed some of his plans for the County. Mr. Rheault described his relationship with Ms. McConnell as that of a "fairly close friend" and that they lunch together regularly, occasionally go to dinner together, and in the past (several years ago) have vacationed together with their respective spouses. When asked how this would appear to other proposers who didn't have personal relationships with Ms. McConnell and didn't get her votes, Mr. Rheault stated that they can have their own opinion, but he has only known her to be a professional and to his knowledge, he has never received any preferential treatment.

Statement of David Wantman, President, Wantman Group, Inc.

Mr. Wantman stated that he has personally known Ms. McConnell approximately 15 years, having initially met when she was working for the County and he was doing Roadway design work for the County. Mr. Wantman described his relationship with Ms. McConnell as that of a professional relationship. Mr. Wantman stated that he has maybe lunched with Ms. McConnell once a year, but has not socialized with her outside of a group vacation approximately 10 years ago with their respective families and Mr. Rheault. Mr. Wantman stated that he understands the perception issue and how it has evolved in the County as well as the State. Mr. Wantman further stated that he believes that his employees should be friends with their clients, but does not condone gratuities that unfairly bias selection or direction. Mr. Wantman compared the County's current preliminary short list process, wherein Committee members simply vote to eliminate some of the initial list of proposers, to a "check mark of favoritism." Mr. Wantman further expressed his opinion that the "check mark" means "my competitor or maybe us got to the right people on the right day and said the right things."

Statement of George Webb, County Engineer

Mr. Webb stated that Ms. McConnell began her employment with the County as a Project Engineer in the Roadway Division and eventually became the Deputy County Engineer (2003). In that time, many of the businessmen identified in this report were also starting their careers and developed personal friendships and relationships with

⁷ Ms. McConnell confirmed that these lunches have been going on for approximately 20 years.

Ms. McConnell. Mr. Webb concurred with witness statements given regarding the quality of work of Last Devenport, Inc., Bridge Design Associates, Inc., and Wantman Group, Inc. and believed that regardless of her personal relationships with the owners of these firms, Ms. McConnell could maintain her objectivity. Mr. Webb described Ms. McConnell as “opinionated...and in some instances doesn’t have the filter or the brakes,” but applies that personality consistently across the board. Mr. Webb stated there was a difference between Ms. McConnell asking questions about a Committee member’s choice to gain insight and Ms. McConnell asking questions to intimidate. Mr. Webb stated that if Ms. McConnell’s approach was to intimidate Committee members, then that would be “totally unacceptable.” Mr. Webb stated that he does not attend Committee meetings and this was the first time this type of information regarding Ms. McConnell’s behavior had ever been made known to him.

Statement of Tanya McConnell, Deputy County Engineer

Ms. McConnell confirmed that she has personal relationships with Mr. Last, Mr. Rheault, and Mr. Wantman which have continued for 20 - 25 years. Ms. McConnell added that most of her friends are in the engineering profession as they all grew up in the industry. The following chart illustrates a summary of some of the statements provided by Ms. McConnell regarding her relationships with Mr. Last, Mr. Rheault, and Mr. Wantman:

<p style="text-align: center;">Ron Last Last Devenport, Inc.</p>	<ul style="list-style-type: none"> • She has had regular lunches on the same day for 20 years, twice a week; plays on the same team with Mr. Last in engineering association golf tournaments twice a year, which sometimes includes her husband.
<p style="text-align: center;">Brian Rheault Bridge Design Associates, Inc.</p>	<ul style="list-style-type: none"> • She has had regular weekly lunches on the same day for 20 years. • Her entire family, “aunts, cousins, mother, uncles, everybody” used to go to Mr. Rheault's home on Christmas Eve for years up until about 8 years ago. Mr. Rheault and his wife have been to my home on Christmas morning to open gifts. • She and her family went to Fort Myers or somewhere on the West coast of Florida every Memorial Day weekend with Mr. Rheault, his family, and other families. Mr. Rheault paid for the lodging expenses. The last time was shortly after she was promoted in 2003. • She “hang[s] out” with Mr. Rheault’s wife and their respective spouses are all friends.

David Wantman

Wantman Group, Inc.

- She has had lunch with Mr. Wantman approximately 2 to 3 times per year.
- Her family is also friends with Mr. Wantman's family. She has also known Mr. Wantman's father longer than she has known Mr. Wantman.

Ms. McConnell stated that because her friends are engineers, she has always taken pride in separating those relationships. Ms. McConnell stated that contrary to the allegation, many of her friends would say that she would "nail their ass" worse than a prospective vendor that was unknown to her. Ms. McConnell further stated that her expectations of individuals who may be her friends are higher than others, but at the end of the day, she would not let a "lunch or whatever impact what I've work so hard for my whole life." Ms. McConnell explained that her goal is to select the best firm... "and sometimes it's a friend of mine..., but basically the question is do I feel conflicted? No, I don't. I'm very up front. I don't feel conflicted." Ms. McConnell stated that she tends to be "very vocal" and there are Committee members not willing to speak openly about how they feel about a particular proposer who may sometimes be sitting in the same room. Ms. McConnell denied influencing, directly or indirectly, any Committee member to choose her friends. Ms. McConnell stated that with the current process there is no discussion about proposers amongst Committee members, "everybody does their [own] vote...and I am entitled to vote however I see fit...and if it's for my friends, hallelujah." Ms. McConnell stated that prior to and during Committee meetings, she has never had any discussions with Committee members regarding their choices throughout the process. Ms. McConnell stated that if her friends were the only ones getting the jobs, then the allegation would prove itself. Unless she was "telling them how to vote," everybody has an equal opportunity.

Ms. McConnell stated that if it's a perception issue, she would step aside and no longer be a member of the Committee. Ms. McConnell repeated that she has never influenced nor attempted to influence her staff regarding their choices as Committee members. Ms. McConnell recalled one incident with a Committee member (unknown) after a meeting where she may have had a discussion with that individual where she felt that a proposer, either Last Devenport, Inc. or Wantman Group, Inc., was not being treated fairly. After this discussion occurred, another Committee member stated that she (Ms. McConnell) "got really pissed." Ms. McConnell confirmed that she was "really pissed" but was unable to recall any details other than believing that the Committee member was treating "friends of mine" differently. Ms. McConnell stated that if this incident led someone to believe she was attempting to influence their choices, it was never her intent and she was sorry. Ms. McConnell stated that other than this incident she has never asked Committee members about their choices after a meeting.

Ms. McConnell pointed out that she had been forthcoming throughout this process and if the fact that she has close personal relationships with the principal consultants and/or owners for/of these specific firms vying for County contracts or that one of the owners

has paid for trips in the past, which included some of her own family members, “bring[s] [her] down for that” then “[she has] no defense.”

Allegation (3):

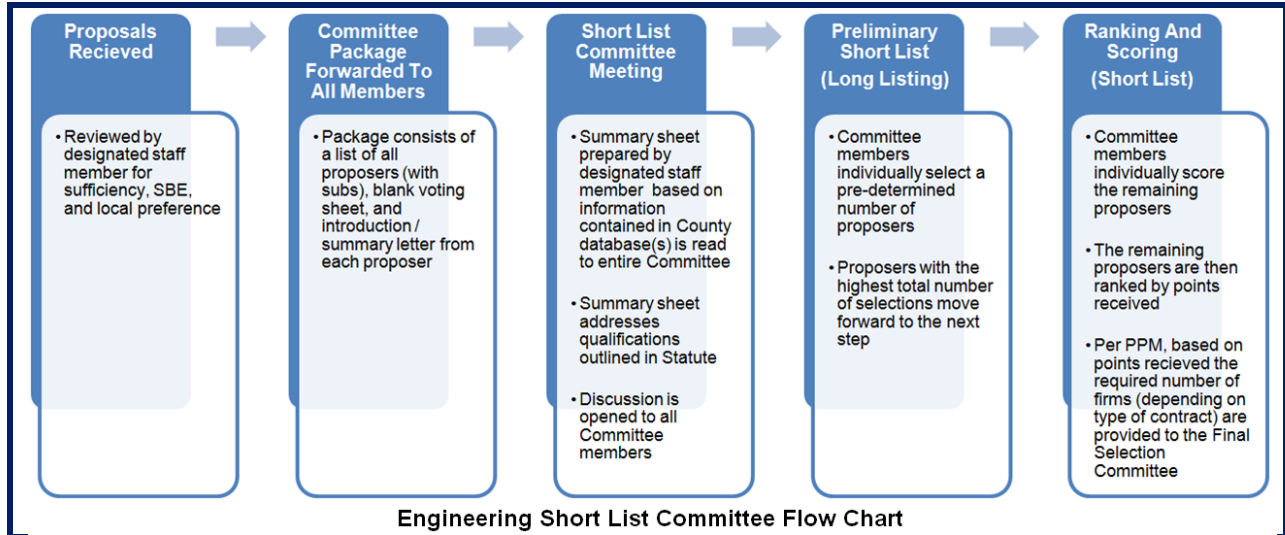
Palm Beach County’s Policy and Procedure Memorandum CW-O-048, Selection of Professional Engineers, Architects, Landscape Architects, Land Surveyors and Mappers, and practices, applicable to the County’s Engineering and Public Works Department are not in compliance with the Consultants’ Competitive Negotiation Act (CCNA). If supported, the allegation would constitute a violation of § 287.055, F.S.

Finding:

The information obtained ***does not support*** the allegation. The PPM and its process as implemented, may comply with the technical requirements of § 287.055, F.S. However, the current process of eliminating proposers (preliminary short list) using a voting methodology that is based on the number of proposals received, without ever scoring and/or ranking them, is contrary to the basic principles of effective public procurement outlined in § 287.001, F.S., to wit – *“The Legislature recognizes that fair and open competition is a basic tenet of public procurement; that such competition reduces the appearance and opportunity for favoritism and **inspires public confidence** that contracts are awarded equitably and economically”* [emphasis added]. Similar language is reiterated in the County’s own Charter (Palm Beach County Purchasing Code, Section 2-51(c)(2) and (3)).

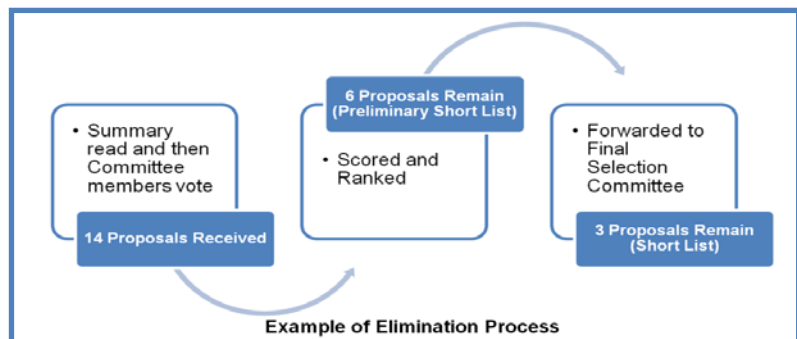
Qualified proposers eliminated without making the preliminary short list are provided no indication of the category or categories in which they were alleged to be inferior to their competitors and are provided no written score as a basis for improvement. Conversely, proposers who do make the preliminary short list are scored and ranked by the Committee and that information is available for their review.

The OIG reviewed County PPM CW-O-048, the official process to be utilized by the Committee, which establishes procedures “for the acquisition of professional services from...engineers...in excess of the threshold amounts established under [CCNA]...” The OIG also reviewed the process as actually implemented, in the illustration shown below:



Currently, based on the number of proposals received, the Committee uses a voting methodology⁸ to select a predetermined number of proposers to move forward in the selection process to the preliminary short list.⁹ Committee members vote based on a brief summary provided by an Engineering staff member and a Committee package¹⁰ (provided prior to the meeting), which includes the proposers' introduction letter detailing their

experience. Committee members' stated that their votes are based on their own personal knowledge and experience of the proposers. Once the votes are tallied, the remaining proposals are individually scored (based on set criteria) and ranked by each Committee member. The scores are subsequently totaled and then based on a predetermined number of proposals needed, the short list is therein created with the highest ranking proposals forwarded to the Final Selection Committee¹¹ for award.



Committee members' stated that their votes are based on their own personal knowledge and experience of the proposers. Once the votes are tallied, the remaining proposals are individually scored (based on set criteria) and ranked by each Committee member. The scores are subsequently totaled and then based on a predetermined number of proposals needed, the short list is therein created with the highest ranking proposals forwarded to the Final Selection Committee¹¹ for award.

Statement of George Webb, County Engineer

Mr. Webb explained that following the OIG's release of Notification #2013-N-0012 (December 5, 2013) which outlined better practices for the County's CCNA process, he understood the OIG's position and in consultation with the County and Engineering staff revised their process. Mr. Webb stated that Engineering chose not to utilize a numeric scoring of all proposals as suggested in the OIG's report. Engineering instead chose to implement a new process in which the Committee is provided with a brief summary of

⁸ It should be noted that this intermediate step is only used if a higher volume of proposals are received.

⁹ Also known as long listing.

¹⁰ The Committee package also includes a list of all proposers, including sub-consultant(s), and a blank voting sheet.

¹¹ It should be noted that the Final Selection Committee is neither comprised of the same number of, nor the exact same members as the Engineering Short List Committee.

each of the critical areas outlined in CCNA for each proposal, leading into the voting process (preliminary short list). Mr. Webb opined that this new process meets CCNA standards.

Statement of Tanya McConnell, Deputy County Engineer

Ms. McConnell explained that prior to the OIG's release of Notification #2013-N-0012 (December 5, 2013), the Committee, which she chairs, conducted a general discussion of the proposers known to Committee members, but had little or no discussion of unknown proposers. In consultation with the County and Engineering staff, the Committee's process was enhanced to include a brief summary, prepared by a designated Engineering staff member of each of the critical areas outlined in CCNA for each proposal, leading into the voting process (preliminary short list). Ms. McConnell opined that their previous process met the CCNA standard; however, she stated that this enhancement was done to "appease the OIG." When asked to explain why the Committee adds the intermediate step of preliminary short listing instead of scoring and ranking all proposals, Ms. McConnell stated that depending on the number of proposals received, it could be "very very time consuming." She did state that if a small number¹² of proposals were received, the Committee scored and ranked all proposals. Ms. McConnell explained that their end goal has always been to get the most qualified firm(s); however, at some point in the process the Committee also has to be efficient. After additional discussion, Ms. McConnell stated that she understood from an outside perspective, that if "we do it for the five, why aren't we doing it for the forty."¹³

Statement of David Wantman, President, Wantman Group, Inc.

Mr. Wantman provided the OIG with his opinion of the preliminary short list process and stated "...the reality is, that check mark [for a vote] means nothing." Mr. Wantman further stated his opinion that the "check mark" means "my competitor or maybe us got to the right people on the right day and said the right things." Mr. Wantman explained that on one of the projects that his company did not make the preliminary short list, he made a public records request and found that there were no notes from any Committee member; therefore, the Committee "they [had] no justification behind it." According to Mr. Wantman, he is "tired" of the voting process and that the check mark vote simply means a "check mark of favoritism."

RECOMMENDED CORRECTIVE ACTIONS

Based on the findings in the allegation, the OIG recommends that the County take the following corrective actions as to Allegations (1) and (2):

1. Take corrective personnel action it deems appropriate.
2. The County implement a policy requiring County employees, with procurement responsibilities, to recuse themselves in matters that involve those with whom

¹² The PPM provides for a specific calculation to determine whether or not the preliminary short list procedure is used.

¹³ It should be noted that "forty" was a general number discussed during Ms. McConnell's interview; however, of the 25 projects the OIG reviewed, there was an average of 12 proposals per project with the fewest number being 4 and the greatest number being 25.

they have personal or private relationships that could reasonably be a perceived or actual conflict.

3. Currently, the Chair, whether a member of the Committee or not, is in a position to potentially influence the outcome of the Committee decision because the Chair supervises all but one of the Committee members. Review the makeup of the Short List Committee and implement a process whereby no member of the Committee has supervisory authority over another.

Based on the findings in the allegation, the OIG recommends that the County take the following corrective actions as to Allegation (3):

1. In order to inspire public confidence in the process, eliminate the preliminary short list step and score and rank all proposers.

ARTICLE XII, SECTION 2-427

Pursuant to § 112.3189, Florida Statutes, on March 11, 2015, the WB(s) were provided the opportunity to review the OIG's findings and provide a written response within twenty (20) calendar days. The WB(s) provided response(s) to the report; however, those response(s) did not require any significant changes to the report. While the report already highlighted a fear of retaliation that was expressed by WB(s), the OIG received response(s) that again included statements of their continued fear of retaliation in one form or another by Ms. McConnell.

Pursuant to Article XII, Section 2-427 of the Palm Beach County Code, on April 1, 2015 and April 6, 2015, the County and Ms. McConnell, respectively, were provided the opportunity to submit a written explanation or rebuttal to the OIG's findings within ten (10) calendar days. On April 13, 2015 and April 14, 2015, the County and Ms. McConnell provided written responses (all three responses are attached).

The County concurred with the OIG's Recommended Corrective Actions and advised the following:

- The County agreed with taking corrective personnel action it deemed appropriate.
- The County agreed with the necessity for employees to recuse themselves from "any decision making role" in a procurement process when they have a real or perceived personal or private relationship with a vendor. The OIG's Draft Corrective Actions included professional relationships; however, the OIG concurs with the County's assessment related to personal or private relationships. Therefore, the Recommended Corrective Action was updated.
- The County agreed with the OIG's Recommendation to review the makeup of the Short List Committee and recognized that the County needs to try to substantially achieve this in a manner to ensure "that no single person has controlling influence on possible outcomes."

- The County agreed with the OIG's Recommendation to eliminate the preliminary short list step and score and rank all proposers and advised that the procedure will be modified so that all proposers are scored and ranked. (As of April 15, 2015, the County began taking immediate actions to change their Policies and Procedures.)

In addition to the County's response, County Engineer George Webb provided comments to the OIG's Report regarding the Final Selection Committee's choices related to the 25 contracts reviewed by the OIG.

OIG Response: While Mr. Webb is accurate concerning the Final Selection Committee's choices, the scope of the OIG Investigation involved Ms. McConnell, as the Chair of the Committee, and her votes that moved her "friends" from the list of proposers to the Short List. The OIG Investigation found in **18** of the **25** projects reviewed, where Ms. McConnell had the opportunity to choose her "friends," she did so **17** times (**94%** of the time).

Deputy County Engineer Tanya McConnell submitted her own response to the OIG's Report. While her responses did not provide any significant information that would change the OIG's Findings, the following is noted:

- As acknowledged in the OIG's Report, everyone interviewed stated that the three firms identified in this Report were highly qualified. This Investigation did not seek to discredit those firms as the scope of the OIG Investigation involved Ms. McConnell, as the Chair of the Committee, and her votes that moved her "friends" from the list of proposers to the Short List. The OIG Investigation found in **18** of the **25** projects reviewed, where Ms. McConnell had the opportunity to choose her "friends," she did so **17** times (**94%** of the time).
- Ms. McConnell is accurate in pointing out that no other law, ordinance, or policy exists (aside from a potential violation of the County's Ethics Ordinances) related to the two allegations involving her actions that were deemed inconclusive. However, just because certain actions may not be illegal does not make those actions right. In order to inspire public trust, not only must we follow the law, we must avoid all appearances of impropriety.
- Ms. McConnell, in her response, goes to some length to attempt to identify the individual(s) who made statements to the OIG and seeks to discredit their sworn statements, to include their own perception of incidents involving Ms. McConnell. In doing so, one must be reminded that it is not **who** made a statement, rather it is the validity of sworn statements made by multiple individuals that their perception of her actions were similar.

Based on the responses received, no additional action is warranted by the OIG. The OIG will continue to follow-up with the County and their implementation of the Recommended Corrective Actions.

This Investigation has been conducted in accordance with the ASSOCIATION OF INSPECTORS GENERAL Principles & Quality Standards for Investigations.



INTEROFFICE COMMUNICATION
PALM BEACH COUNTY

TO: Jeff Himmel, Director of Operations
Office of Inspector General

FROM: Robert Weisman
County Administrator

[Handwritten signature]
by T. Webb

George T. Webb
County Engineer

DATE: APRIL 10, 2015

RE: **OIG Case Number: 2014-0009 WB**

County Administration

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Board of County
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Mary Lou Berger, Vice Mayor

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Paulette Burdick

Steven L. Abrams

Melissa McKinlay

Priscilla A. Taylor

County Administrator

Robert Weisman

This is in response to the Draft Investigative Report.

As to the Recommended Corrective Actions:

- 1) **Take corrective personnel action it deems appropriate.**

Response: AGREED.

- 2) **The County implement a policy requiring County employees with procurement responsibilities to recuse themselves in matters that involve those with whom they have private or professional relationships that could reasonably be a perceived or actual conflict.**

Response: IT IS AGREED THAT EMPLOYEES WHO HAVE A REAL OR PERCEIVED PERSONAL/PRIVATE RELATIONSHIP WITH A PROCUREMENT COMPETITOR MUST RECUSE THEMSELVES OR BE EXCLUDED FROM ANY DECISIONMAKING ROLE IN THE RELEVANT PROCUREMENT PROCESS.

IT IS NOT AGREED THAT PROFESSIONAL REALTIONSHPIS, AS SUCH IS REASONABLY AND TYPICALLY DEFINED, SHOULD BE THE BASIS FOR RECUSAL OR EXCLUSION FROM A DECISIONMAKING ROLE IN PROCUREMENT PROCESS. A PROFESSIONAL RELATIONSHIP IS TYPICALLY ESTABLISHED THRU FAMILIARITY WITH EMPLOYEES OF FIRMS THAT HAVE PERFORMED WORK FOR THE COUNTY, OR SUBMITTED PRODUCT TO THE COUNTY ON BEHALF OF THIRD PARTIES.

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Jeff Himmel
Page Two
April 10, 2015

THESE RELATIONSHIPS MAY RESULT IN POSITIVE OR NEGATIVE PERCEPTIONS OF WORK CAPABILITY. THIS TYPE OF KNOWLEDGE, WHEN CONSIDERED AS PART OF COMPETITOR QUALIFICATIONS, IS RELEVANT TO GETTING THE BEST RESULT FOR THE PUBLIC. FOR A QUALIFICATIONS BASED SELECTION PROCESS, SOME PORTION OF THE SELECTION DECISIONMAKERS SHOULD BE PROFESSIONALS IN THE FIELD INCLUDED FOR THEIR EXPERTISE.

- 3) **Currently the Chair, whether a member of the Committee or not, is in a position to potentially influence the outcome of the Committee decision because the Chair supervises all but one of the Committee members. Review the makeup of the Short List Committee and implement a process whereby no member of the Committee has supervisory authority over another.**

Response: BASED ON THE RESULTS OF YOUR INVESTIGATION, THIS IS A LOGICAL RECOMMENDATION. IN PRACTICE, IT IS CHALLENGING BECAUSE THE SHORT LIST PROCESS, WHEN IT IS NECESSARY, IS PERFORMED WITHIN THE RELEVANT DEPARTMENT AND IT MAY NOT BE POSSIBLE TO AVOID SUPERVISORY OVERLAP. WE AGREE THAT WE NEED TO TRY TO SUBSTANTIALLY ACHIEVE THIS EITHER DIRECTLY OR THRU PROCESS CHANGE AND ASSURE THAT NO SINGLE PERSON HAS CONTROLLING INFLUENCE ON POSSIBLE OUTCOMES.

- 4) **In order to inspire public confidence in the process, eliminate the preliminary short list step and score and rank all proposers.**

Response: AGREED. THE PRELIMINARY SHORT LIST STEP WILL BE MODIFIED SO THAT ALL PROPOSERS ARE SCORED AND RANKED.

Please do not hesitate to contact us if any additional information is required.



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and Public Works**

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Priscilla A. Taylor

County Administrator

Robert Weisman

INTER-OFFICE MEMORANDUM

Date: April 14, 2015

To: Jeff Himmel, Director of Operations
Office of Inspector General

From: George T. Webb, P.E., *G. T. Webb*
County Engineer

Re: OIG Case Number: 2014-0009 WB

This is in response to the Draft Investigative Report.

County Administrator Weisman and I responded to the Recommended Corrective Actions in a separate correspondence. I wanted to provide some additional comments as to the overall report as well other facts associated with the selection process.

COMMENTS

It is my understanding that you concluded, that in regards to the first two allegations, with the potential exception of the County's Ethics Ordinance, Ms. McConnell had not violated any Local, County and/or State policies, ordinances, and/or statutes. You have referred both of those allegations to the Commission on Ethics, and I commit to working with them as they determine how to proceed in dealing with the allegations.

I would also note that the report had no mention of any specific benefit (financial or otherwise) that accrued to Ms. McConnell because of her actions relating to the individuals and/or their firms.

County staff did our own evaluation of the detailed voting practices of the Short List Committee during this three year period. We found that, in regards to the three firms, Ms. McConnell and the Committee disagreed over one-third of the time.

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Finally, none of this report pertained to the Final Selection Committee, which ultimately recommends consultants to the Board of County Commissioners. During this same three year period, the final selection process considered 16 different engineering and surveying projects where one or more of the three firms were attempting to be selected. Based on the recommendations of the Final Selection Committee, prime contracts totaling over \$10M were awarded by the BCC to 18 different firms (annual contracts were awarded to different firms in the same category). The three firms that were mentioned in the report were all selected as a prime consultant on one or more of the projects and, between them, they are projected to receive only 7% of the dollars to be spent on the projects.

Please do not hesitate to contact me if any additional information is required.

April 14, 2015

Jeff Himmel
Director of Investigations
Office of Inspector General
Palm Beach County
P.O. Box 16568
West Palm Beach, FL 33416-6568

RE: OIG Case # 2014-0009WB

Dear Mr. Himmel,

Thank you for the opportunity to comment on your report. My comments correspond to the different segments of the report

What We Do

The anonymous complaint addressed in the opening paragraph is not attached to the Report of Investigation. I am interested in seeing this complaint as last the charges laid out are very specific. I was made aware of a complaint around this time last year and these charges seem to go beyond the actual charges made.

What We Found

As stated, the responsibility of the IG's Office is to investigate violations of established laws, ordinances, and policies. Finding that two of the allegations did not violate any such established standards should not result in an inconclusive finding. Your investigation found no violations.

Allegation (1)

It is my job to vote for the firms most capable of designing County projects. As acknowledged by you later in your report, the three firms named happen to be some of the best that the County has to offer in their respective areas of expertise. The fact that I happen to maintain personal relationships with the owners of these firms is irrelevant. The basis for my vote is, and has always been, the work product provided, regardless of any personal relationship I may have. It should be noted that I have other friends in the business who don't get my top vote simply because I do not believe them to be as capable as these three firms. There are no policies, ordinances, or statutes that require me to recuse myself from these votes. In fact, I am required to vote as long as my relationship is not one for which I have a direct benefit. Other members of the selection committee also maintain personal relationships with staff from design firms vying for County contracts.

I am not sure why the conflict of interest form was mentioned here. This form requires that firms state any associations that would or could impact their ability to fairly perform the County's contract. The implication that I would be such a conflict is ludicrous. Also, as you have gone to pains to point out, our relationships are personal and the form deals with business interests.

Since your investigation yielded no violations, I fail to see how your finding can be inconclusive.

Allegation (2)

Your report has not acknowledged any actual statements or described any actions taken to subordinate staff members after a vote. Since I have never addressed my staff about their votes, I am interested in knowing exactly what I supposedly have said or done. I do not review the votes and so am never aware of who votes for which firms. That is of no interest to me. And so, not knowing this information, I would not be in a position to influence staff for the future. You interviewed the entire committee, so I have to believe that specifics were provided though none are stated in the report. Again, I fail to see how a finding of inconclusive can be reached when there were no violations found.

Allegation (3)

The voting methodology is not based on the number of proposals received. As explained to you, a certain number of firms are required to be selected for the short list. If the number of proposals received is that number or less, then all the firms are automatically placed on the short list. If more than the required number of proposals is received, then there is a vote to select the short list. The consultants are invited to be present during the selection process and so are aware of any discussions or statements made concerning their firms. Each Committee member has a vote based on their own opinions of which firms are best suited for a project. There is no collusion that I am aware of, and with the consultants present, how much more open could we be? All proposers, whether selected or not, can see the votes upon request and are welcome to discuss the results with members of the Committee.

It appears that all three allegations are not supported.

What We Recommend

1. The reasons for a recommended personnel action are unclear. Since evidence has proven no violations on my part, exactly for what should I be disciplined?
2. Professional relationships are vital to our ability to get our jobs done. We all have our opinions on the firms that provide our design services, both good and bad. That opinion in and of itself could be perceived as bias, either for or against a firm. A member who has a personal or professional relationship with a firm best suited for a particular job – is that a conflict? As it is, the selection process is not one that I enjoy and I will happily step aside from further selections.

3. We all work together. Friends and coworkers are always in a position to influence each other if they so wish.
4. That is not my decision to make; however, I am still unsure of what exactly that achieves. Likely, the same firms would still be selected.

Background

Again, my role on the committee is to select the best firms for a job. My selections are far from arbitrary. The firms receiving my votes are acknowledged to be some of the best. The case for any arbitrary selection of my favorite firms would have been better served if my votes were for firms of far lesser caliber.

Allegations and Findings

Allegations (1) and (2) Findings:

I have addressed these findings earlier in my response. Again, none of the "multiple examples of statements to subordinate staff members and/or actions following their votes" have been provided as part of the report. This seems unfair as I therefore have not been given the opportunity to respond to these allegations.

Comments Provided by Staff

The Engineering Department has over 400 employees. I am hard pressed to believe that it is common knowledge throughout this department that I am friends with these firms.

[REDACTED]

My vacations with Mr. Rheault ended over 10 years ago. I was the one who actually mentioned this to you in my interview, as did Mr. Rheault. I am surprised that Committee members would be aware of and find it relevant at this time.

Staff would be aware of my golfing with Mr. Last at the FES tournament since some of them also have taken part on teams with other consultants in past tournaments.

Mr. Webb pursued Mr. Last for the position of Assistant County Engineer. There was no one more relieved than I when he turned the offer down. I had no interest in having Mr. Last be my right-hand in helping Mr. Webb and I run the Department.

I do not ever remind the 5 directors (I include the Assistant County Engineer) that they are "at will" in any serious environment. If ever said, it has been in a joking environment where

everyone was joking around. To insinuate that is done relative to the selection process is unfair and inaccurate. The implication is that these 5 directors fear for their jobs should they make negative comments or not vote for them. Interesting since negative comments have been made and all directors are still on staff. I myself have made negative comments about some of these firms. I also had staff actively pursue payment from these firms for errors and omissions. If there is ever a need to discuss an issue with a director or any other staff member for that matter, my Director of Administrative services is always present and can attest to the fact that I never threaten anyone with their "at will" status. It is disappointing that my directors, the "at will" employees, have taken office banter and made it into more than it was.

Anger is not a veiled response. Neither is disgust. It is unfortunate that the member receiving complaints has not discussed them with me or my boss. My voting for the best firms, who also happen to be friends, has already been addressed. You interviewed the members – did they tell you directly that they were intimidated? How did I intimidate them? And as for personally hearing me address other members about their voting, your report shows that no member interviewed stated that I directly influenced their choices before, during or after selections. Did anyone interviewed actually relate a case where I addressed them about their vote?

I would like examples of my alleged vindictiveness. As with the other allegations made, there are no facts provided to support them. As a matter of fact, the integrity of this particular person should be questioned along with all that he/she has testified. There is not, and never has been, a sign over my secretary's desk stating "I serve at the will of Tanya McConnell." That would have been easy for your office to verify, but apparently you failed to do so. It should also be noted that my secretary is protected by the merit rules and is not, in fact, an "at will" employee.

As an aside, I wonder how many of the members are actually quoted here – one or two? And if they are all so intimidated and in fear of their jobs, shouldn't the voting records (which you have not mentioned at all) show them voting in lockstep with me?

As before, the members said I have never directly approached them

[REDACTED]

Again, your interviews did not yield evidence supporting the two separate incidents where he/she says that I exchanged words with members about their votes after a committee meeting. Staff is encouraged to speak up during the selection process. If they choose not to do so, that should not be blamed on me. As I said before, I myself have shared negative comments

about firms where I have friends. And as for the joking comment, if said, your report itself says it was joking.

I have never asked such a questions of any committee member about not voting for my friends. As for searching through the tally sheets to find a particular one in front of a room full of consultants, that would be just plain stupid.

The member who has noted reluctance on the part of other members – how did they perceive this? They also know the reasons behind the perceived reluctance? Is that actual fact or just their opinion? If there are issues with a project, shame on them for not speaking up. We expect quality work from the firms working for the County. If they are providing less than that, it should be so noted not only at the selection meeting, but also on the evaluations done by staff during the design process.

I have not sensed that my directors are walking around scared for their jobs. Have they actually told you this? As for the rest of the charges, this sounds like the rant of a disgruntled employee. You know as well as I do that there will be times when staff may not like a decision or action taken by the head of a department. The report has provided nothing substantive to back these up.

I will ignore the blowback comment.

Statement of Brian Rheault

The report gives the impression that my husband and I have vacationed as a couple with Mr. Rheault and his wife. Just for the record, the vacations always involved several families who are mutual friends.

Statement of Tanya McConnell

Regarding Brian Rheault – for clarity, I also explained that we paid for food and drinks for the entire group, and in so doing, contributed to our share of the expenses. We stopped going on those trips shortly after I began my current job.

Regarding David Wantman – while our families know each other, I would not categorize them as friends.

Your recounting of the incident is inaccurate. As I recall, there were several staff members in my office, it was not held after a vote, and the discussion was not relative to a vote. It had to do with what I perceived as a firm being treated differently. I brought this up during my interview because it was the only time I remember having any conversation with any staff regarding these firms. The investigator's interviews with staff again stated no direct influence but this may have been construed as indirect influence; however, that was not the intent.

Allegation (3) Finding

I have already addressed your statement regarding the process being based on the number of proposals received. The committee members stated that their votes are based on their own personal knowledge and experience of the proposals – as is mine. It does make it difficult for an unknown firm to break in, but these firms can meet with the members outside of the selection process to present their capabilities and accomplishments. This is encouraged and has occurred before.

Statement of Tanya McConnell

My opinion that the previous process met CCNA standards was based on the fact that an attorney was involved in putting the PPM together, and their opinion was stated after the OIG's release of notification.

Recommended Corrective Actions

Allegations (1) and (2)

1. There has been no evidence provided to support a disciplinary action. Persecution by hearsay cannot be the basis for such an action.
2. There are multiple Committee members who also have friends in the industry.
3. I directly supervise only 5 of the Committee members. I will happily step aside from being a part of the Committee. The voting results, which you have not mentioned or included in your report, show no evidence that the members are intimidated, threatened or afraid as they certainly are not voting in lockstep with me. We have been doing these selections for all of the years that I have had this position and no one has been fired, disciplined, or demoted by me for their votes.

Allegation (3)

Herein lays the crux of the matter. The IG's Office has wanted our selection process changed for some time. Here was the perfect opportunity to use me to try to hammer this home. It is my understanding that our attorney offered to meet with the OIG's attorney to discuss the issues when your first findings were finalized, but that never came to fruition. Changes to the PPM will be up to my superiors and our attorneys. We are always open and available to discuss ways to make the system better.

Again, thank you for the opportunity to provide comments.

Sincerely,



Tanya N. McConnell, P.E. Deputy County Engineer
Palm Beach County Board of County Commissioners