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Inspector General

OFFICE OF INSPECTOR GENERAL
PALM BEACH COUNTY



Inspector General
Accredited

“Enhancing Public Trust in Government”

**Office of Inspector General
Report**

CA-2018-0023

**Solid Waste Authority
Disparity Study**

August 14, 2018

Insight – Oversight – Foresight



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SOLID WASTE AUTHORITY DISPARITY STUDY

SUMMARY

WHAT WE DID

On November 22, 2017, the Palm Beach County Office of Inspector General (OIG) received a request to review the Solid Waste Authority's (SWA or Authority) selection and use of consultants to conduct a disparity study to examine the utilization of small, minority, and woman-owned businesses during fiscal years 2009 through 2013.

The concerns expressed were:

Issue (1): The SWA staff did not inform the SWA Board that the Request for Proposal (RFP) Consultant Dr. George La Noue (Dr. La Noue) would provide consulting services to SWA throughout the duration of the disparity study process;

Issue (2): The RFP Consultant Dr. La Noue and the Disparity Study Consultant Mason Tillman Associates, LTD (MTA) may have had improper communications;

Issue (3): The SWA Executive Director may have approved a contract with the RFP Consultant Dr. La Noue for a period that exceeded his purchasing authority;

Issue (4): The SWA staff may have paid the RFP Consultant Dr. La Noue for consulting services rendered to SWA after their contract expired; and

Issue (5): The SWA staff provided to only one SWA Board member information that should have been provided to all SWA Board members.

Our review included analyzing all the contract and related documents; reviewing SWA Board meeting agendas and minutes; and we interviewed SWA staff who were directly involved in the disparity study's RFP and contracting process from February 12, 2014, the date the disparity study was authorized by the SWA Board, through December 20, 2017.

WHAT WE FOUND

For the concerns identified, we found:

Issue (1): Not Supported. Although the SWA staff did not expressly communicate to the SWA Board that the RFP Consultant Dr. La Noue would provide consulting services to SWA throughout the duration of the disparity study process, we found no policies or procedures requiring that such notice be provided to the SWA Board.

The SWA Board delegated purchasing authority to the SWA Executive Director to

contract with consultants; exempt the transaction from purchasing policies and procedures, within specified parameters; and to determine if a contract is of a sensitive nature and in his judgement should be presented to the Board for approval;

Issue (2): Not Supported. We found no information to support a finding that the RFP Consultant Dr. La Noue and the Disparity Study Consultant MTA had improper communications. Both consultants communicated with SWA staff in performing their duties under their respective contracts;

Issue (3): Supported. We found that the SWA Executive Director exceeded his contracting authority by extending the RFP Consultant's contract beyond three years without SWA Board approval;

Issue (4): Supported. We found that SWA staff paid the RFP Consultant Dr. La Noue for consulting services rendered to SWA after the contract expired; and,

Issue (5): Not supported. We found that staff provided information requested by a SWA Board member, but did not provide it to all SWA Board members. However, there were no SWA Board directives, policies, or procedures regarding the dissemination of information in response to SWA Board member requests, until such direction was provided by the SWA Board at its November 21, 2017 meeting.

In the course of our review, we concluded the following:

Issue (6): The SWA staff did not sufficiently document the set of such unusual circumstances that would preclude the successful application of the purchasing policies and procedures requiring SWA to obtain quotes before selecting RFP Consultant Dr. La Noue, as required by the SWA purchasing policy.

SWA lacked proper approval and authorization to enter into the contract with Dr. La Noue. As a result, we questioned costs of **\$67,978.99¹**, which is the total amount of the contract.

Issue (7): SWA did not properly manage the contract agreements with the Disparity Study Consultant MTA and the RFP Consultant Dr. La Noue, which resulted in overpayment of the authorized MTA contract amount, payments that could not be verified against the scope of work tasks and contract deliverables, payment of incorrect and incomplete invoices, and issuance of purchase orders (POs) totaling more than the authorized MTA contract amount.

SWA improperly authorized work and payment that exceeded the SWA Board approved contract value by \$36,554.04. As a result, we questioned costs of **\$36,554.04** for the improperly authorized payments.

We identified a total of **\$104,533.03** in questioned costs in this review.

¹ Questioned costs are costs or financial obligations that are questioned by the OIG because of an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, other agreement, policies and procedures, or document governing the expenditure of funds; a finding that, at the time of the OIG activity, such cost or financial obligation is not supported by adequate documentation; or, a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable. As such and in this specific case, not all questioned costs are indicative of potential fraud or waste.

WHAT WE RECOMMEND

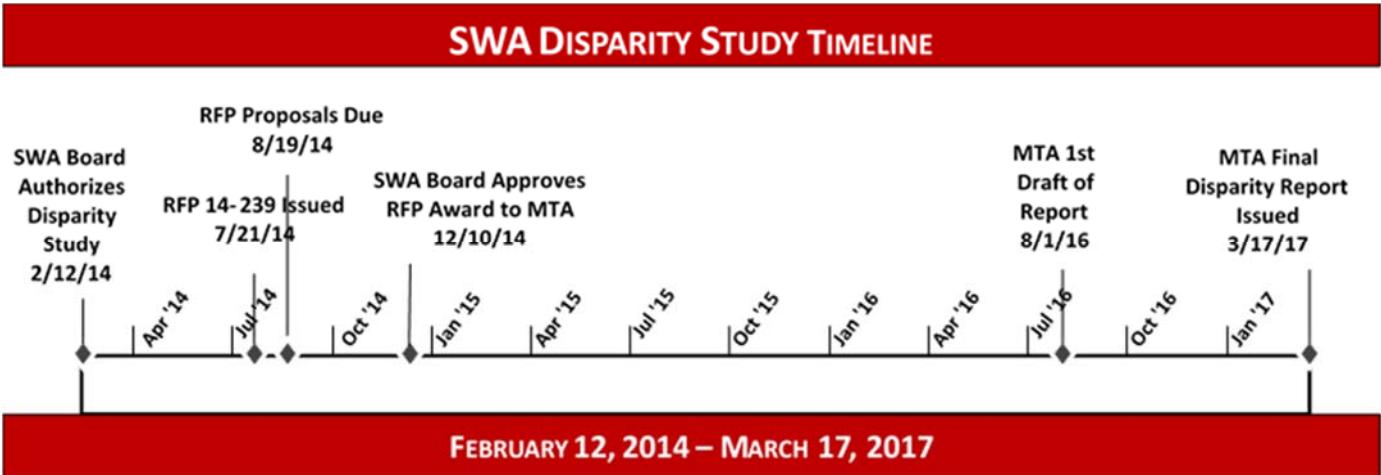
Our report offers nine (9) recommendations. Implementation of the recommendations will 1) assist SWA in strengthening internal controls for contract payments, and 2) assist SWA in complying with agreements.

SWA agreed with six of seven issues identified and all our recommendations. We have included SWA’s response as Attachment E. Additionally, we note and comment on part of SWA’s response on pages 22-24 of this report.

BACKGROUND

The Solid Waste Authority of Palm Beach County (SWA) is a dependent special district governed by the seven elected County Commissioners of Palm Beach County (SWA Board). The Florida Legislature under Chapter 75-473, the Palm Beach County Solid Waste Act, created the SWA in 1975. The SWA Board adopted a Minority and Woman-owned Business Enterprise (M/WBE) Policy in September 1992.

In January 2012, at the request of staff, the SWA Board modified the M/WBE Policy to eliminate race and gender-conscious initiatives and transitioned to a race and gender-neutral Small Business Enterprise (SBE) Program since SWA had not conducted a disparity study compliant with the United States Supreme Court ruling in *City of Richmond vs. J. A. Croson*, 488 U.S. 469 (1984). In that case, the Court applied the “strict scrutiny” standard under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution to race-based set-asides in the award of the City’s public contracts.

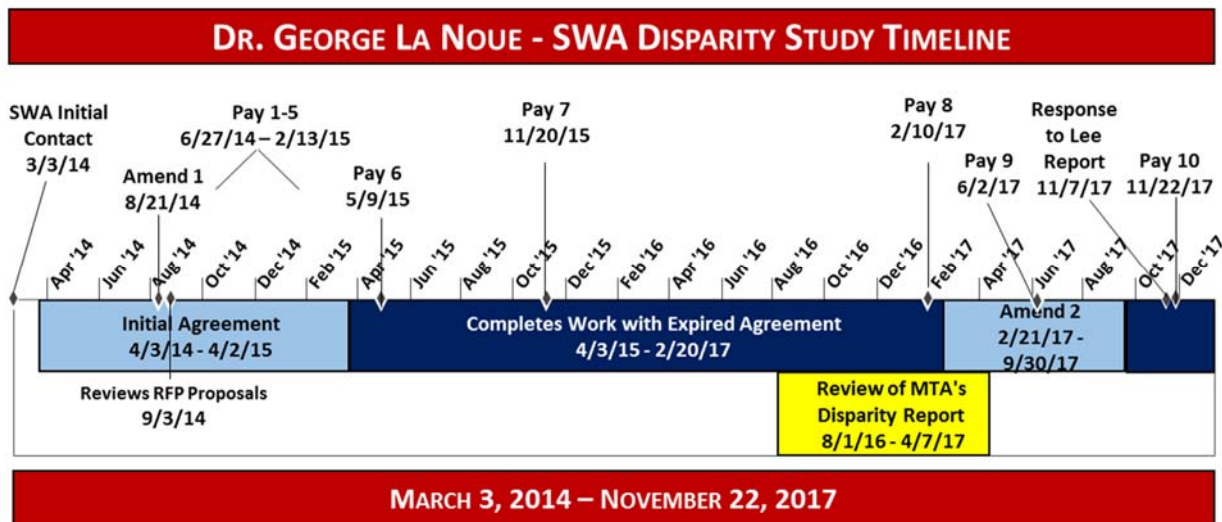


On February 12, 2014, the SWA Board authorized staff to begin work to have a disparity study completed, and to work with County staff to determine whether a joint disparity study with the County would present savings in cost or time. The SWA staff eventually determined that a joint disparity study with the County would not be in the SWA’s best interests because the two entities provide different services and purchase different commodities.

SWA's disparity study was to examine the utilization of ready, willing, and able market-area M/WBEs on SWA contracts for commodities, trade services, construction and professional services during fiscal years 2009 through 2013, and to determine if there were any barriers or instances of discrimination that might have hindered the ability of businesses owned by persons of diverse backgrounds to compete for SWA contracts. Depending upon the findings of the study, the SBE program could be amended to employ legally defensible race and gender-conscious remedies to address any documented disparities.

The objectives of the disparity study were to:

1. Identify best practices that would help the SWA build business programs to stimulate economic growth of local businesses; and,
2. Increase participation of minority and women owned business enterprises on SWA contracts.



On March 3, 2014, SWA staff contacted Dr. La Noue to discuss retaining him to assist in planning, preparing, and developing a RFP to solicit firms to conduct a comprehensive disparity study. SWA entered into an Agreement for Professional Services (La Noue Agreement) with Dr. La Noue effective April 3, 2014, for a one-year period.

ARTICLE 1 - TERM OF SERVICE of the Agreement provided,

The AUTHORITY shall have the option of extending the Agreement **for one (1) additional year as approved by the AUTHORITY**, at the same terms and conditions. Extension of the Agreement beyond the initial period, and any option subsequently exercised, is an AUTHORITY prerogative, and not a right of the CONSULTANT. This prerogative will be exercised only when such continuation is clearly in the best interest of the AUTHORITY. **Such extension shall be in the**

form of a written Amendment to the Agreement executed by both parties.
(Emphasis added)

ARTICLE 2- SERVICES TO BE PERFORMED BY CONSULTANT provided in part,

CONSULTANT shall perform the services stated in the Scope of Work, attached hereto and made a part hereof as Exhibit A, and/or as may be designated and authorized by the AUTHORITY or its Executive Director.

The Scope of Work attached to the La Noue Agreement stated that Dr. La Noue's "engagement shall cover the first phase of the disparity study" and that he was being engaged to work with SWA to:

1. Determine what data exist and what would need to be gathered in the conduct of the disparity study;
2. Write a memorandum on the state of current law governing disparity studies and M/WBE programs;
3. Write a memorandum outlining alternatives and recommendations to include, at a minimum, (1) the advantages and disadvantages of the Authority conducting a disparity study independently or jointly with Palm Beach County, (2) the market area from which will be identified the qualified, willing and able M/WBE firms;
4. Prepare an initial draft of a RFP specific to the needs of the Authority for the purpose of seeking proposals from entities qualified and experienced in the conduct of disparity studies, and structured to assure that the study meets the needs of the Authority in a timely and cost effective manner and that will be politically and legally defensible when finished; and
5. Attend one (1) meeting with the Authority staff in West Palm Beach, Florida to discuss the findings **and the potential to engage the Consultant's services through the completion and presentation of the disparity study.**
(Emphasis added)

ARTICLE 18- ENTIRETY OF AGREEMENT

The AUTHORITY and CONSULTANT agree that this Agreement sets forth the entire agreement between the Parties and that there are no promises or understandings other than those stated herein.... None of the provisions, terms, and conditions contained in this Agreement **may be added to, modified, superseded, or otherwise altered except by written instrument executed by the Parties.** (Emphasis added)

The La Noue Agreement also included **EXHIBIT B**, Phase I Deliverables.

SWA issued a Request for Proposal for the completion of a disparity study (RFP No. 14-239/SLB), which was developed with Dr. La Noue's assistance, on July 21, 2014, with a due date for proposals of August 19, 2014. SWA received three proposals in response to the RFP.

After the proposals were received, the SWA Executive Director and the RFP Consultant Dr. La Noue executed Amendment #1 to the Agreement dated August 21, 2014, to add ten Phase II Deliverables, which, in part, included:

- Performing a review and analysis of the RFP proposals;
- Participating in person or by teleconference in the Q&A, during oral presentation, between the proposers and Selection Committee;
- Providing comments on the draft contract between SWA and the selected firm;
- Commenting on the periodic reports submitted by the disparity study provider;
- Performing evaluation of the draft disparity study report to assure that the study meets the needs of the Authority and will be politically and legally defensible;
- Performing evaluation of the final report; and
- Advising SWA on policy implications of the final report.

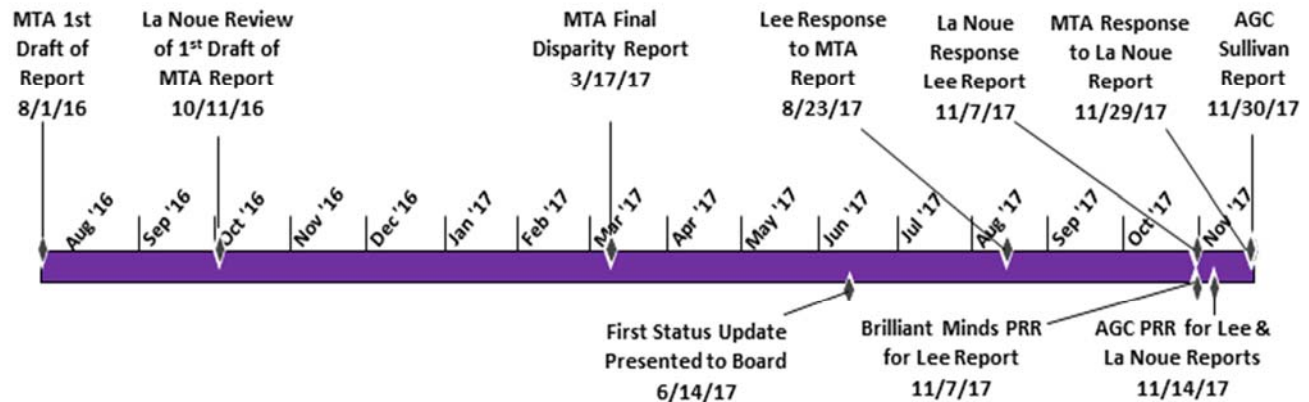
Amendment #1 did not extend the term of the Agreement and expressly stated that all other provisions of the Agreement that were not modified by Amendment #1 “shall remain in full force and effect.”

On October 29, 2014, the RFP Selection Committee met to evaluate the three proposals received. MTA was ranked the highest proposal. The SWA Board approved the award to MTA on December 10, 2014. The Agreement for Professional Services between MTA and SWA (MTA Agreement) became effective on April 30, 2015, several weeks after the Agreement with the RFP Consultant Dr. La Noue, expired on April 2, 2015, by its own terms. The MTA Agreement had a three-year term ending on April 29, 2018, with an option to renew for an additional three years.

Although Dr. La Noue's written Agreement had expired on April 2, 2015, Dr. La Noue billed SWA for 97.25 hours for services rendered between April 3, 2015 and February 20, 2017. During this period, Dr. La Noue assisted SWA staff by drafting study memos to send to MTA, and listening-in on the MTA kick-off meeting, community meetings, and a MTA webinar. He also provided reviews on draft sections of the study submitted by MTA, including anecdotes, market availability, and the capacity survey. Dr. La Noue provided SWA staff with reviews of work plans, data and study methodology, judicial rulings, and other disparity studies including the School District of Palm Beach County and the City of West Palm Beach.

The SWA Executive Director and Dr. La Noue executed Amendment #2 to the Agreement, dated February 21, 2017, which purported to extend through September 30, 2017, the written Agreement that had expired twenty-two months earlier, and added “Review and Analysis of the City of West Palm Beach Disparity Study” as a new Phase II deliverable.

REPORTS - SWA DISPARITY STUDY TIMELINE



AUGUST 1, 2016 – NOVEMBER 30, 2017

The first draft of the SWA Disparity Study by MTA was released to the SWA staff on August 1, 2016, and the Final Disparity Report was issued to SWA staff on March 17, 2017. At the June 14, 2017 SWA Board meeting, SWA staff presented the SWA Board with the first status update on the disparity study. Staff recommended that SWA not proceed with implementation of the Disparity Report recommendations from MTA due to concerns expressed by SWA staff and the RFP Consultant Dr. La Noue. SWA staff also asked to make enhancements to the existing race and gender-neutral SBE program and requested SWA Board approval to hire outside legal counsel, Mr. Lee, to perform a detailed legal review of the disparity study. The SWA Board approved the hiring of Mr. Lee and the SBE program enhancements.

The SWA Executive Director and Mr. Lee executed an Agreement for Professional Services for a six-month period commencing on June 14, 2017, in which Mr. Lee agreed to provide a detailed review and critique of the MTA Disparity Study findings and recommendations.

The Study Review Consultant Mr. Lee submitted his report (Lee Report) on the MTA Disparity Study to SWA staff on August 23, 2017. The RFP Consultant Dr. La Noue provided comments on the Lee Report to SWA staff on August 28, 2017. After Amendment #2 to Dr. La Noue's Agreement expired on September 30, 2017, he performed an additional 8.5 hours of services on November 5, 2017 to write a final memo on the Lee Report.

The August 23, 2017 Lee Report was distributed to the SWA Board at their November 8, 2017 meeting, along with a report by Dr. La Noue dated November 7, 2017 that criticized the Lee Report. As a result of the November 8, 2017 meeting, the SWA Board convened a workshop meeting on November 30, 2017 to discuss the disparity study.

MTA's response to Dr. La Noue's assessment of its Final Disparity Study Report, and the Association of General Contractors legal analysis of the same document were submitted to the SWA Board at the November 30, 2017 workshop.

At the November 30, 2017 workshop, the SWA Board directed staff to delay the receipt date for proposals for the RFP for 2018 Solid Waste and Recycling Collection Services, that was issued on August 30, 2017. The Recycling Collection Services contracts have a combined estimated value of \$450 million and represent a significant SBE subcontracting opportunity for qualified vendors.

A special meeting of the SWA Board was held on December 20, 2017 for presentations by the Study Review Consultant Mr. Lee and the Disparity Study Consultant MTA on their findings, and options for implementation of the disparity study recommendations. The SWA Board approved a delay in awarding the RFP for Solid Waste and Recycling Collection Services, and a one-year extension of the existing contracts while the recommended disparity study changes were considered. The Board also agreed to continue a contractual relationship with Mr. Lee to assist SWA staff with the next steps to implement a new SBE and M/WBE program.

A complete timeline of the SWA Disparity Study period is contained in Attachment A.

ISSUES REVIEWED

ISSUE (1):

The SWA staff did not inform the SWA Board that the RFP Consultant Dr. La Noue would provide consulting services to SWA throughout the duration of the disparity study process.

OIG Review

This issue is not supported. Although the SWA staff did not expressly communicate to the SWA Board that the RFP Consultant Dr. La Noue would provide consulting services to SWA throughout the duration of the disparity study process, we found no policies or procedures requiring that such notice be provided to the SWA Board.

The SWA Board delegated purchasing authority to the SWA Executive Director within certain limits. The Purchasing Manual, Section 1, Authority and Responsibility, 1.1 Solid Waste Authority Board, states:

The Board, having the authority to acquire personal and real property as granted by Chapter 2001- 331, Laws of Florida, as amended, delegated that responsibility to the Executive Director at its regular Board Meeting on April 20, 1988, **with certain limitations**. The Executive Director was thereby authorized to develop, and amend as necessary, the Purchasing Manual and to execute the purchasing function **in accordance with this Manual** to the extent of the limitations established by the Board on the above cited date and as these limitations are amended from time to time by the Board. (Emphasis added)

The SWA Board delegated purchasing authority to the SWA Executive Director to contract with consultants; exempt the transaction from purchasing policies and procedures within specified parameters; and to determine if a contract is of a sensitive nature and in his judgement should be presented to the Board for approval. Although the Purchasing Manual does specify certain limitations in the Executive Director's broad purchasing authority, those limitations did not require the Executive Director to notify the SWA Board prior to or at the time of hiring the RFP Consultant Dr. La Noue that he would provide consulting services to SWA throughout the duration of the disparity study process.

ISSUE (2):

The RFP Consultant Dr. La Noue and the Disparity Study Consultant MTA may have had improper communications.

OIG Review

This issue is not supported. We found no information to support a finding that the RFP Consultant Dr. La Noue and the Disparity Study Consultant MTA had improper communications. Both consultants communicated with SWA staff in performing their duties under their respective contracts. SWA staff served as the central point for all communications and were responsible for coordination of the services received. The majority of written communications were conducted by email. The comments SWA received from one consultant were rewritten and sent to the other consultant as an email or memo from SWA.

SWA staff stated that to their knowledge, the consultants did not directly interact or converse with one another, nor did they recall authorizing any direct communications between the consultants. Dr. Eleanor Ramsey from MTA confirmed in her interview that there was no direct communication between MTA and Dr. La Noue.

OIG staff attempted to interview Dr. La Noue for verification. After multiple attempts to contact him via phone and email, Dr. La Noue responded to OIG via email that, "...I am no longer under contract with SWA as my work for them is finished. SWA will have all records regarding my consulting work with them."

ISSUE (3):

The SWA Executive Director may have approved a contract with the RFP Consultant Dr. La Noue for a period that exceeded his purchasing authority.

OIG Review

This issue is supported. We found that the SWA Executive Director exceeded his contracting authority by extending the RFP Consultant's contract beyond three years without SWA Board approval.

Section 2.10 (D) **Termination limitation of contracts** of the SWA Purchasing Manual states that contracts

... shall be limited to a term of not more than three years unless initially approved by the Board for a different term. Extensions beyond three years may be granted by Board action...

The Agreement with Dr. La Noue, dated April 3, 2014, and executed by Dr. La Noue and the SWA Executive Director was for a term of one year, with an option to renew for a second year. The Agreement, however, was allowed to expire after its first year without renewal. Subsequently, Dr. La Noue and the Executive Director signed Amendment #2, dated February 12, 2017, which extended the contract through September 30, 2017, and added a new Phase II Deliverable. Amendment #2 was executed by the Executive Director, and extended Dr. La Noue's Agreement over a period of three and a half years without SWA Board approval. The Executive Director exceeded his contracting authority.

Recommendations

- (1) We recommend SWA develop and implement written policies and procedures to provide guidance for staff for contract administration.

SWA does not have written policies and procedures to provide guidance for staff about contract administration. An effective contract administration procedure includes a system to manage important dates, such as the expiration date and renewal provisions. This system will allow SWA to avoid extending contracts for three years or more without Board approval.

The National Association of State Procurement Officials recommends as a best practice² developing a contract administration plan to document all aspects of the procurement process from the development of specifications to the contract closeout.

ISSUE (4):

The SWA staff may have paid the RFP Consultant Dr. La Noue for consulting services rendered to SWA after their contract expired.

OIG Review

This issue is supported. We found that SWA staff paid the RFP Consultant Dr. La Noue for consulting services rendered to SWA after their Agreement expired on April 2, 2015, and again, after the Amendment # 2 expired on September 30, 2017.

SWA continued a business relationship with Dr. La Noue from April 3, 2015 to February 20, 2017, (twenty-two months) without a written agreement. During this time period, Dr. La Noue performed 97.25 hours of services at a rate of \$250 per hour.

Amendment #2, issued on February 21, 2017, extended Dr. La Noue's expired agreement through September 30, 2017. Dr. La Noue's final invoice for services included work he completed between May 22, 2017 through November 5, 2017. The invoice contains 8.5

² National Association of State Procurement Officials, *NASPO Contract Administration Best Practices Guide*, July 12, 2017, pg. 5.

hours of work at a rate of \$250 per hour, for the “Final memo on Franklin Lee’s comments on MTA SWA Study” that was submitted to the SWA staff on November 7, 2017. Therefore, this 8.5 hours of work was completed after the expiration of Amendment #2. Thus, Dr. La Noue billed SWA for and SWA tendered payment for 105.75 hours (97.25 hours + 8 hours) of consulting services rendered without the benefit of a written agreement executed by both parties.

Based on interviews with SWA staff, it appears they were confused regarding which department was responsible for managing and monitoring the contract. SWA had no policies or procedures outlining the contract administration process. The Purchasing Department stated that the user department was responsible (i.e. Administration or Finance) for managing the contract, and the Administration staff stated that it was the Purchasing Department and Finance Division’s responsibility. Without written policies and procedures to provide guidance on contract administration, this confusion may continue for future contracts.

We found that while the Purchasing staff maintains a log of agreements, the purpose of the log is not to track expiration dates and notify user departments when a contract is near its expiration date. The Director of Purchasing Services stated that on occasion, the log was used to provide such a notification.

According to SWA’s Managing Director, Chief Financial Officer, and the Director of Purchasing Services, Dr. La Noue had not submitted an invoice in fifteen to eighteen months; therefore, the expiration of the initial agreement went unnoticed. It is noted, however, that payments 6, 7, and 8 were made between May 9, 2015, and February 10, 2017 while the agreement was expired, and before Amendment #2 was signed.

SWA Staff Interviews

OIG Interview of Daniel Pellowitz, SWA Managing Director

Mr. Pellowitz stated that when initially signed, Dr. La Noue’s contract included a Phase I and Phase II, and that contract stated that if the parties were comfortable with each other after Phase I, it would continue into Phase II. SWA was comfortable with Dr. La Noue, and he was providing good advice to them, so they moved forward together. Dr. La Noue’s contract was extended a couple of times because the project continued. SWA received the study from MTA about a year late, which meant Dr. La Noue’s contract had to be extended as well. There was a lapse in getting Dr. La Noue’s contract extended in that period of time. SWA’s Purchasing Department has a system in place where all contracts are tracked, and before the contracts expire the appropriate departments are notified. In the case of Dr. La Noue, it “fell through the cracks.” It came to SWA’s attention when Dr. La Noue finally billed them. He had not billed them for 15 months while he was doing work, and the County does not pay bills if there is not a contract in place. When the bill came in it was realized that the contact had not been extended, so it was done at that time, retroactively. It was a failure on the part of SWA.

OIG Interview of Sandra Brady, SWA Purchasing Director

Ms. Brady told the OIG that Dr. La Noue was originally hired to help with the RFP, but his contract had a Phase I and Phase II. Phase II was for him to do the review of the RFP responses. It had been anticipated all along that SWA would be using Dr. La Noue up until the point that they made a recommendation to the Board for the selection of the firm to do the disparity study.

There was a point when there was a lapse in the term of Dr. La Noue's contract. The contract had unknowingly expired. After Purchasing completes the execution of contracts and provides them to the requesting department or user, that department is responsible for monitoring the contracts. The Purchasing Department is not the contract administrator. In the case of Dr. La Noue, the funding was from Executive Office, making Executive Office the requestor. Ms. Brady thinks that as soon as Purchasing became aware of Dr. La Noue's contract lapse, Purchasing Department put a contract in place to cover the services from that point forward.

The contract specialist within the Purchasing Department maintains a contract registry that lists the expiration dates. If the contract specialist becomes aware that a contract will expire, the Purchasing Department will provide notification to the requestor. In the case of Dr. La Noue, there was an oversight. Ms. Brady did not notify anyone that the contract had expired, so she was surprised when Commissioner Bernard stated publicly that there was a period when Dr. La Noue did not have a written contract in place. Ms. Brady did not believe that Dr. La Noue submitted any invoices during the period when Dr. La Noue did not have a contract in place. She believed that SWA did not pay him during that time. Dr. La Noue had been involved in the RFP process and doing the study analysis, and as such, Ms. Brady speculated that he was selected to continue his contract throughout the study for the sake of continuity. To bring someone different at that point would have been like starting all over again.

OIG Interview of Paul Dumars, SWA Chief Financial Officer

Mr. Dumars stated that when Dr. La Noue's contract was first extended right after the RFP, the SWA had already worked with him and felt like he was very competent and capable of helping them through the process. There also came a time when Dr. La Noue's contract was extended a second time, but before that there was a gap. It occurred during that time when nothing was really happening on SWA's side other than waiting for information. Due to the inactivity, SWA was not aware the contract had expired.

OIG Interview of Mark Hammond, SWA Chief Executive Officer

Mr. Hammond told the OIG that he is now aware that there was a gap in Dr. La Noue's contract, and that the contract had expired. He believes this occurred because although the Purchasing Department is very good at procurements; it was new to Ms. Brady to be so heavily involved in helping to monitor a contract. An additional factor may have been that SWA did not receive a bill from Dr. La Noue for an extended period of time, maybe a year or longer. When a bill finally was received, the Finance Department staff realized SWA had no corresponding contract, and no payment was made.³ It was a mistake.

³ Records reviewed by the OIG show that invoices and payments were made when the contract was not in effect.

Recommendations

- (2) We recommend that SWA review its internal controls and revise the Purchasing Manual to require the user department to verify there is a valid contract in effect prior to requesting work from or making payments to a vendor. Additionally, user departments should verify deliverables are consistent with contracts prior to approving invoices for payment.

SWA should review and consider methods used by other government entities. For example, the State of Florida's Department of Financial Services, Division of Accounting & Auditing, recommends the following payment verification actions:⁴

- Review invoice for accuracy and completeness.
 - Ensure invoices clearly reflect the description of services, number of service units provided, period of services, payment terms as identified in the agreement, payment request/invoice billing period coincides with documentation submitted.
 - Ensure the invoiced amount is in compliance with the terms of the agreement.
 - Verify that any required supporting documentation has been submitted.
 - Review documentation to gain reasonable assurance that services have been satisfactorily provided within the terms of the agreement.
 - Ensure all other steps have been satisfactorily completed, including any agency unique requirements.
- (3) We recommend that SWA revise its policies and procedures to clarify which department has responsibility for each component in the contract administration plan.

National Association of State Procurement Officials recommends that entities hold a meeting with all interested parties, especially for high-risk and high-dollar value contracts⁵ to discuss the roles and responsibilities of the procurement office and user department staff so that there is no confusion as to which department is responsible for the administration of the contract.

- (4) We recommend that SWA provide training to SWA staff about contract administration, the responsibilities of a contract administrator, and applicable policies and procedures and notify staff immediately of changes to policies and procedures.

⁴ State of Florida, Department of Financial Services, Division of Accounting & Auditing, *Contract and Grant User Guide*, July 28, 2015, pg. 33.

⁵ National Association of State Procurement Officials, *NASPO Contract Administration Best Practices Guide*, July 12, 2017, pg. 4.

ISSUE (5):

The SWA staff provided to only one SWA Board member information that should have been provided to all SWA Board members.

OIG Review

This issue is not supported. During the November 21, 2017 SWA Board Meeting, SWA staff acknowledged that after the November 8, 2017 SWA Board meeting, staff responded to a request for disparity study information from one SWA Board Member without providing such information to all SWA Board Members.

In interviews with the OIG, SWA staff advised that they had complied with direction from the SWA Board at its November 21, 2017 Board Meeting to provide copies of the same information to all the SWA Board members. The disparity study information provided to one SWA Board member prior to the November 21st meeting was provided to the remaining Board members prior to the November 30, 2017 workshop meeting. Staff stated there was no intention to withhold or delay providing the disparity study information to the entire SWA Board. Staff related that they had not shared the information with the entire SWA Board because staff wanted to review all reports first for accuracy, and then present them to the SWA Board.

The OIG is unaware of any SWA policies or procedures regarding the dissemination of information in response to a SWA Board member's requests.

Recommendations

We have no recommendations. The SWA Board provided direction to SWA staff at the November 21, 2017 meeting that any information provided to a SWA Board Member should be copied to all SWA Board Members at the same time so that they are all equally informed.

In the course of our review, we also concluded the following:

ISSUE (6):

The SWA staff did not sufficiently document the set of such unusual circumstances that would preclude the successful application of the purchasing policies and procedures requiring SWA to obtain quotes before selecting RFP Consultant Dr. La Noue, as required by the SWA purchasing policy.

OIG Review

On March 17, 2014, SWA staff prepared a Purchasing Services Executive Director's Exemption Data Sheet requesting an exemption from the Request for Quotations process specified in section 2.16 in SWA's Purchasing Manual Rule for the contract with Dr. La Noue. The Exemption Data Sheet stated that the exemption was necessary because

.... The Authority has no internal experience or expertise in the conduction of disparity studies...

SWA's Purchasing Manual provides,

1.3 Executive Director's Authority to Amend or Exempt

The Executive Director may:

....

B. Exempt a transaction from the standard processes of this Purchasing Manual if this transaction presents **a set of such unusual circumstances as to preclude the successful application of the purchasing policies and procedures prescribed in this Manual and which transaction, in the Executive Director's judgment, does not warrant Board involvement.** (Emphasis added)

....

2.16 Requests for Quotations

A. Purpose

The process of requesting price quotations is a means to insure that goods and services required by the Authority are obtained in a cost-effective competitive process.

....

B. Use

Purchase Requisitions with estimated value from \$5,000.01 up to and including \$50,000 require a request-for-quotations competition before award. The request-for-quotations competition may be utilized, at the discretion of the Director Purchasing Services, for Contract Requests for professional services with estimated value from \$20,000.01 up to and including \$50,000.

....

C. Requirements

Quotations from a minimum of three responsible vendors shall be solicited as follows:

1. For estimated values from \$5,000.01 up to and including \$20,000 - A documented verbal/telephone or written quotation.
2. For estimated values from \$20,000.01 up to including \$50,000 - A written quotation on an acceptable vendor form or on an Authority quotation form.

The Executive Director's Exemption does not specify any unusual circumstances that precluded compliance with the purchasing policies and procedures requiring competitive quotes. The notation that SWA did not have internal experience or expertise to conduct disparity studies only describes the reason why SWA needed to hire a consultant to perform the services instead of relying on an employee. The rationale set forth on the Exemption Form did not address the type of services needed, the availability of those services in the market, or outline any unusual circumstances that would explain why quotes could not be obtained to procure those services.

There is no evidence that SWA contacted any potential consultants other than Dr. La Noue prior to deciding to contract with Dr. La Noue. The SWA Managing Director, the Director of Purchasing Services, and the Contract Administrative Officer confirmed that only Dr. La Noue was contacted about drafting the RFP. Mr. Hammond stated during

interviews that before signing the Executive Director's Exemption to hire Dr. La Noue, he would have had to be convinced that Dr. La Noue was the best person for the job or that there were limited alternatives. Mr. Hammond did not indicate what factors would have led him to determine that Dr. La Noue was the best person for the job in comparison with other potential consultants or provide any basis for a conclusion that there were limited alternatives for consultants who could perform the type of services SWA requested from Dr. La Noue.

SWA did not sufficiently document the set of such unusual circumstances that would preclude the successful application of the purchasing policies and procedures requiring SWA to obtain quotes before selecting RFP Consultant Dr. La Noue, as required by the SWA purchasing policy. Therefore, the total amount paid to Dr. La Noue of **\$67,978.99⁶** is questioned costs.

In interviews with SWA staff, the justifications stated for using the Executive Director's Exemption were as follows:

OIG Interview of Dr. Marc Bruner, SWA Chief Administrative Officer at the time

Dr. Bruner was the Chief Administrative Officer during the RFP Consultant solicitation process. He told the OIG that the SWA Board directed SWA to conduct a disparity study. Early in that process, SWA management appointed Ms. Sandra Brady and Mr. Paul Dumars as the primary project managers, and Mr. Dan Pellowitz took a role primarily with data review. Another early decision by SWA management was that because there was no real experience at SWA in conducting a disparity study, there should be someone from the outside helping with the process of drafting a RFP and identifying issues. SWA staff also understood early on that disparity studies generally ended up in lawsuits because one party did not like the result, so the study report needed to be as defensible as possible.

SWA staff looked at disparity study reports, studies, and publications to identify people who SWA might hire. Dr. Bruner was the person who found Dr. La Noue; he reviewed proceedings of a conference and five or six publications. After that, Dr. Bruner did an internet background search of Dr. La Noue; at which time it appeared, Dr. La Noue would be a good person to talk to about SWA's needs. Dr. Bruner also looked into several other people, but part of the reason he selected Dr. La Noue to talk to was because Dr. Bruner concluded that Dr. La Noue was independent and objective. At that point, the focus of SWA's needs was relatively narrow, including how to write a RFP. Dr. Bruner read the proceedings and looked at different perspectives on it, and Dr. La Noue's seemed to be the most objective. He made the first outreach call. He stated that he told Dr. La Noue that SWA was going to be conducting a disparity study and was looking for someone to help them get started.

One of the reasons Dr. La Noue stood out to Dr. Bruner was that Dr. La Noue was an academic, and that he was not a lawyer. It also appeared that Dr. La Noue had experience advocating both for and against the viability of various disparity studies.

⁶ Detailed information for questioned cost total is in Attachment B.

Initially, the thought was that the person SWA hired would assist with the RFP, but not be involved with the actual study. As such, Dr. Bruner was not sure that there was any further discussion about trying to find anyone else to talk to before hiring Dr. La Noue, as it was only supposed to be a short-term engagement. SWA has a procurement process called a Personal Services Agreement which Dr. Bruner thought could be used for \$20,000 or \$25,000 per service. Dr. Bruner did not recall that an Executive Director's Exemption was issued, but knew that such exemptions are issued as a result of purchasing limits. Therefore, the spending in this case would have exceeded the \$20,000 or \$25,000 threshold. In the alternative, a personal services agreement would have been issued, and then it would become clear that the amount was going to be exceeded.

OIG Interview of Sandra Brady, SWA Purchasing Director

The Board authorized Executive Director Hammond to exempt certain procurements, and this was one of the exemptions that was granted to him by policy. SWA has thresholds that state that if they are going to expend \$50,000 or more there should be competition, unless there is an exemption based on strong justification not to put out competition. Ms. Brady received a requisition to develop a contract for Dr. La Noue, and also signed off on such an exemption, which was signed March 17, 2014. It came from the requesting director, and then Ms. Brady and Mr. Hammond signed it. The justification to waive competitive quotes for professional services stated SWA had no internal experience or expertise in conducting disparity studies and cited Dr. La Noue's extensive experience.

OIG Interview of Daniel Pellowitz, SWA Managing Director

It was a joint decision to have Mr. Hammond issue an Executive Director's Exemption to hire Dr. La Noue. At one point, Mr. Pellowitz said there was going to be an exemption in the interest of time. SWA had been told by the SWA Board to expedite this matter, and if SWA had to spend a couple of months developing a RFP to hire a consultant to help draft a RFP, that would not have been efficient and would have slowed down the process. Dr. La Noue was identified and was highly qualified. He was a university professor, which was viewed by SWA as a positive as opposed to a typical paid consultant. He had extensive experience - the largest library of disparity studies done - and it was SWA's objective to "do it right". SWA staff read Dr. La Noue's background and resume; spoke with Dr. La Noue on the phone; and Dr. La Noue seemed willing to do the work. SWA was looking for an objective analysis of SWA's purchasing programs. Mr. Pellowitz was aware that Dr. La Noue had testified as an expert witness, and that he had been on the prevailing side the overwhelming majority of the time. SWA's objective was to complete the study correctly and to avoid any legal ramifications.

OIG Interview of Mark Hammond, SWA Executive Director

Mr. Hammond told the SWA Board early in the disparity study process that there was no expertise in such matters at SWA. Mr. Hammond told the SWA Board, whose membership is different than the SWA Board now, that SWA had retained Dr. La Noue, who was an expert, to help them through the process. Mr. Hammond stated that all the SWA Board members at the time told him to do what he thought was best. He continued that the SWA Board has entrusted him and SWA staff with a lot of responsibility and has given them a lot of latitude in managing the operation.

Mr. Hammond did not recall exactly how SWA came to hire Dr. La Noue or who specifically researched the hire. He recalled that it was presented to him, and he made the final decision. Mr. Hammond himself was not deeply involved in the actual study process, but was kept informed by his staff.

Mr. Hammond concluded that before signing the Executive Director's Exemption for hiring Dr. La Noue, he would have had to be convinced that Dr. La Noue was the best person for the job, or that there were limited alternatives. After the RFP was issued and MTA was hired, Dr. La Noue continued to work for SWA. Mr. Pellowitz, who is a very knowledgeable data miner, had questions about the data coming in, and Dr. La Noue was retained to help avoid problems later on.

Recommendations

- (5) We recommend that SWA ensure that its use of the Executive Director's Exemption complies with the requirements of the Purchasing Manual.
- (6) We recommend that the Purchasing Manual is revised to require SWA staff to regularly notify the SWA Board when the purchasing policies and procedures are waived to make a purchase.

Such notification should be done at least quarterly in the same manner as the Purchasing Sole Source Justifications, as specified in the Purchasing Manual – 2014, Section 2.15, Sole Source Purchases.

ISSUE (7):

SWA did not properly manage the contract agreements with the Disparity Study Consultant MTA and the RFP Consultant Dr. La Noue resulting in: (1) overpayment of the MTA contract amount, (2) payments that could not be verified against the scope of work and contract deliverables, (3) payment of incorrect and incomplete invoices, and (4) issuance of purchase orders (POs) totaling more than the MTA contract amount. (See Attachments C, and D for detailed information.)

OIG Review

On December 10, 2014, the SWA Board approved a contract with MTA, which became effective on April 30, 2015. Exhibit B to the MTA Agreement for Professional Services provided that the grand total for milestones and categories was \$342,595.50. SWA, however, made payments to MTA totaling \$379,149.54, as of December 15, 2017.

The MTA Agreement provided,

ARTICLE 21- ENTIRETY OF AGREEMENT

The AUTHORITY and the CONSULTANT agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein.... None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

Article 22 – MODIFICATION

The Agreement may not be modified unless such modifications are evidenced in writing signed by both AUTHORITY and CONSULTANT. Such modifications shall be in the form of a written Amendment executed by both parties.

SWA did not amend the Agreement by written instrument executed by the parties to increase the value prior to December 15, 2017. Therefore, the payments exceeding the approved contract amount are considered questioned costs of **\$36,554.04**.

| MTA Contract Amount and SWA Payments | |
|--|---------------------------------------|
| SWA Contract Payments to MTA as of December 15, 2017 | \$379,149.54 |
| MTA Contract Total | \$342,595.50 |
| Payments Exceeding Approved Contract (Questioned Costs) | <u>\$36,554.04</u>⁷ |

The Director of Purchasing Services stated in an interview that during a teleconference with MTA, there might have been some additional effort that SWA asked MTA to perform. MTA said they would have to charge more for the additional work. The Director of Purchasing stated she did not remember the specific issue and how it was to be handled.

Contract Management Issues

Additionally, during our review we noted the following:⁸

1. MTA submitted four invoices totaling \$134,238 for services provided that could not be clearly allocated to a specific task as specified in the MTA Agreement, Exhibit B, Fee Schedule, Table A: Cost Summary for Milestones and Categories.

For example, invoice 5 dated January 28, 2016 was paid on March 4, 2016 in the amount of \$26,987.50. The invoice identified that deliverables from tasks 5, 8 and

⁷ Detailed listing of payment amounts compared to the contract amount are in Attachment C.

⁸ OIG staff did not consider these issues to be questioned costs, because there was not a violation of a specific policy, procedure or contract requirement identified. These items are considered a lack of proper contract administration and oversight.

11 were completed. The invoice did not specify how many of the hours billed were for each of the tasks. Therefore, SWA did not reconcile costs against the task payment amount provided in MTA's Agreement in Exhibit B.

2. Invoices submitted by both Dr. La Noue and MTA had mathematical errors that were not corrected or resolved prior to SWA issuing payment.

For example, invoice number 6, AP150816 paid on May 9, 2015 was for a total of \$5,000. The invoice listed 11 task entries. The sum of the hours for the 11 tasks was 21.75 hours but the invoice showed a total of 20 hours for which Dr. La Noue was paid. Based on the sum of the hours billed for the 11 tasks, there was an underpayment to Dr. La Noue for 1.75 hours.

3. SWA entered into a contract with the Diversity Study Consultant MTA for a total of \$342,595.50. SWA staff approved Purchase Orders for this contract totaling \$480,231.00. SWA provided no documentation for the reason that Purchase Orders issued were \$137,635.50 higher than the total SWA Board authorized contract amount.

Additional contract management issues identified in the review for these areas are included in Attachment D.

The importance of contract monitoring increases when contracts are of high dollar value and when the terms and conditions of the contract are complex. The National Institute of Governmental Purchasing (NIGP), Inc. notes,

Contract administration must focus on achievement of stated goals and objectives that fall within the framework of the negotiated contract. Contract administration protects the rights of the parties and ensures that the obligations of the parties are met. From the public sector perspective, contract administration concerns itself with the wise expenditure of public funds and the design and application of a decision-making process, which results in outcomes that are in the best interests of the citizens it serves.⁹

Recommendations

- (7) We recommend that SWA develop internal procedures that will ensure that purchase orders do not exceed the value specified in the contract.
- (8) We recommend that SWA ensure that invoices are accurate prior to authorizing and issuing payment.
- (9) We recommend the Purchasing Manual be revised to include that the user department must verify the contract payment terms prior to approving payment of any invoice.

⁹ Elisabeth Wright, Ph.D., CPCPM, and William D. Davison, CPPO, *Contract Administration in the Public Sector, Second Edition*, (Herndon: National Institute of Governmental Purchasing, Inc. (NIGP), 2011), 11.

Recommendations in this report highlight the need for an effective contract administration process and plan.

QUESTIONED COSTS

Questioned Costs Total = **\$104,533.03**

SUMMARY OF OIG RECOMMENDATIONS

The following is a summary of the recommendations made herein:

- (1) We recommend SWA develop and implement written policies and procedures to provide guidance for staff for contract administration.
- (2) We recommend that SWA review its internal controls and revise the Purchasing Manual to require the user department to verify there is a valid contract prior to requesting work from a vendor. Additionally, user departments should verify deliverables are consistent with contracts prior to approving invoices for payment.
- (3) We recommend that SWA revise its policies and procedures to clarify which department has responsibility for each component in the contract administration plan.
- (4) SWA should provide training to SWA staff about contract administration, the responsibilities of a contract administrator, and applicable policies and procedures and any amendments thereto.
- (5) We recommend that SWA ensure that its use of the Executive Director's Exemption complies with the requirements of the Purchasing Manual.
- (6) We recommend that the Purchasing Manual is revised to require SWA staff to regularly notify the SWA Board when the purchasing policies and procedures are waived to make a purchase.
- (7) We recommend that SWA develop internal procedures that will ensure that purchase orders do not exceed the value specified in the contract.
- (8) We recommend that SWA ensure that invoices are accurate prior to authorizing and issuing payment.
- (9) We recommend the Purchasing Manual be revised to include that the user department must verify the contract payment terms prior to approving payment of any invoice.

RESPONSE FROM MANAGEMENT

On August 7, 2018, the SWA Executive Director provided a response to the report (Attachment E). The response stated, in part:

We concur with the recommendations suggested by the OIG...report. SWA will evaluate existing procedures and amend them as necessary to improve internal controls and to ensure that staff involved in contract administration are properly trained. SWA will also provide guidance on department responsibilities regarding contract oversight including verifying elements such as deliverables, payment schedules, completion schedules and change orders.

SWA, however, disagreed with this report's conclusion regarding Issue (6) that:

The SWA staff did not sufficiently document the set of such unusual circumstances that would preclude the successful application of the purchasing policies and procedures requiring SWA to obtain quotes before selecting RFP Consultant Dr. La Noue, as required by the SWA purchasing policy.

SWA's reply to Issue (6) was:

The phrase "unusual circumstances" is not a defined term in the SWA's Purchasing Manual, and as such, is not a prescriptive term with defined limits. When taken in the entire context of the sentence, it is ultimately the Executive Director's judgment as to whether a transaction should be exempt or not. Use of judgment provides for the application of experience, knowledge and flexibility to exercise discretion in the decision making process. It is the opinion of SWA staff that the exemption was justified.

As such, the OIG's opinion that the entire value of the contract with Dr. La Noue is a Questioned Cost is overstated and misleading. Staff agrees that the OIG's classification of the costs incurred during the period of time that the contract had lapsed as Questioned Costs is legitimate and appropriate. Staff does not agree that the costs incurred during the contract period should be so classified.

OFFICE OF INSPECTOR GENERAL RESPONSE

SWA's response asserts that since the phrase, "unusual circumstances," is not a defined term in SWA's Purchasing Manual, it "is not a prescriptive term with defined limits."

We do not agree the Executive Exemption sufficiently documented the "set of such unusual circumstances" that would preclude the successful application of the purchasing policies and procedures, thus requiring SWA to obtain quotes before selecting RFP Consultant Dr. La Noue, as required by the SWA purchasing policy.

Our issue is not with the SWA Executive Director's authority to grant specific exemptions. The issue is with providing sufficient documentation that would qualify as "**a set of such unusual circumstances**" (Emphasis added) that would justify such an exemption.

It is understandable that SWA did not have in-house expertise to write a disparity study RFP. Most contracts are sought because organizations do not have the personnel or resources to perform the function. The need to procure services, in itself, is not sufficient justification why other quotes could not have been obtained.

The term "questioned costs" comes from the IG Act of 1978, and is defined in Section 5, (f)1. The term is used by all federal statutory OIGs and many state and local OIGs.

The Palm Beach County OIG's policy on questioned costs corresponds to the federal standard in defining such as costs or financial obligations that are questioned by the OIG because of:

- An alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, other agreement, policies and procedures, or document governing the expenditure of funds;
- A finding that, at the time of the OIG activity, such cost or financial obligation is not supported by adequate documentation; or
- A finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.

Hence, costs often fall under this classification, as in this specific case, not because the service was unnecessary, unreasonable, or indicative of potential fraud or waste, but because the costs were incurred pursuant to an alleged violation of, "policies and procedures, or document governing the expenditure of funds," and "a finding that, at the time of the OIG activity, such cost or financial obligation is not supported by adequate documentation."

In other words, we are not questioning the validity of obtaining a consultant, or even specifically Dr. La Noue. We question the cost of the contract in that we conclude SWA either should have obtained the service through obtaining quotes or articulated the "set of such unusual circumstances" that justified an exemption to this process.

We suggest the SWA Board provide the Executive Director guidance/direction to revise the SWA Purchasing Manual, Section 1.3, Executive Director's Authority to Amend or Exempt, to define "unusual circumstances" and advise the Executive Director how to articulate such when used in the future.

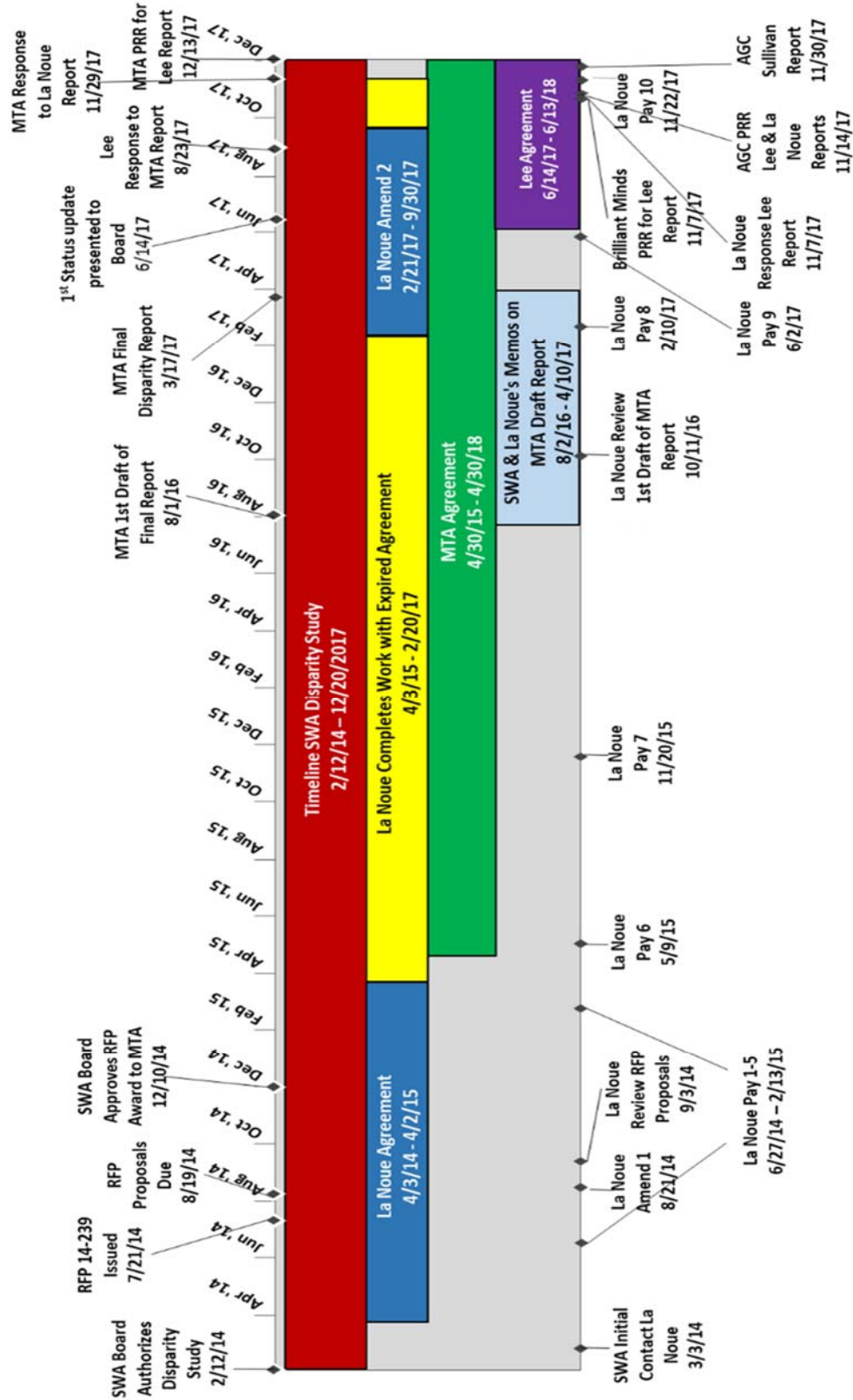
ACKNOWLEDGEMENT

The Office of Inspector General would like to extend our appreciation to the Solid Waste Authority for the cooperation and courtesies extended to us during this oversight process.

This report is available on the OIG website at: <http://www.pbcgov.com/OIG>. Please address inquiries regarding this report to the Office of Inspector General by email at inspector@pbcgov.org or by telephone at (561) 233-2350.

ATTACHMENT A

**Report Timeline - SWA Disparity Study
2/12/14-12/20/17**



ATTACHMENT B

| SWA Payments to Dr. George La Noue | | | | | | | | |
|------------------------------------|--------------|-------------------|-----------------|--------------|----------------|-------------|---------------|--------------------|
| Number | Invoice Date | Service Date From | Service Date To | Payment Date | Payment Number | Hourly Rate | Hours | Payment Total |
| 1 | 06/24/14 | 04/01/14 | 04/30/14 | 06/27/14 | AP140923 | \$ 250.00 | 19.75 | \$ 4,937.75 |
| 2 | 06/24/14 | 05/01/14 | 05/30/14 | 06/27/14 | AP140923 | \$ 250.00 | 14.00 | \$ 3,500.00 |
| 3 | 09/10/14 | 06/01/14 | 07/30/14 | 09/19/14 | AP141214 | \$ 250.00 | 19.00 | \$ 4,750.00 |
| 4 | 10/27/14 | 09/01/14 | 09/30/14 | 10/31/14 | AP141328 | \$ 250.00 | 51.00 | \$ 13,228.74 |
| 5 | 01/05/15 | 10/01/14 | 12/30/14 | 02/13/15 | AP150509 | \$ 250.00 | 17.00 | \$ 4,375.00 |
| 6 | 05/08/15 | 01/01/15 | 04/30/15 | 05/09/15 | AP150816 | \$ 250.00 | 20.00 | \$ 5,000.00 |
| 7 | 11/05/15 | 04/01/15 | 10/15/15 | 11/20/15 | AP151338 | \$ 250.00 | 12.00 | \$ 3,000.00 |
| 8 | 12/19/16 | 12/15/15 | 12/15/16 | 02/10/17 | AP170525 | \$ 250.00 | 65.50 | \$ 16,375.00 |
| 9 | 04/22/17 | 12/15/16 | 04/21/17 | 06/02/17 | - | \$ 250.00 | 34.25 | \$ 8,562.50 |
| 10 | 11/17/17 | 05/01/17 | 11/15/17 | 11/22/17 | AP170525 | \$ 250.00 | 17.00 | \$ 4,250.00 |
| Total Paid: | | | | | | | 269.50 | \$67,978.99 |

ATTACHMENT C

| SWA Payments to Mason Tillman Associates, LTD | | | | | | |
|---|--------------|-------------------|-----------------|--------------|----------------|----------------------|
| Invoice Number | Invoice Date | Service Date From | Service Date To | Payment Date | Payment Number | Amount Paid |
| 1 | 05/12/15 | 04/01/15 | 05/25/15 | 06/12/15 | AP150911 | \$ 14,700.00 |
| 1 | 05/27/15 | 04/01/15 | 05/25/15 | 07/17/15 | AP151011 | \$ 6,010.00 |
| 2 | 07/30/15 | 05/16/15 | 07/29/15 | 08/28/15 | AP151112 | \$ 12,512.50 |
| 3 | 09/03/15 | 07/01/15 | 09/03/15 | 10/02/15 | AP151217 | \$ 35,495.00 |
| 4 | 11/24/15 | 09/04/15 | 11/09/15 | 12/18/15 | AP160317 | \$ 19,050.00 |
| 5 | 01/28/16 | 11/10/15 | 01/22/16 | 03/04/16 | AP160601 | \$ 26,987.50 |
| 6 | 03/23/16 | 01/23/16 | 03/23/16 | 06/03/16 | AP160905 | \$ 40,115.50 |
| 7 | 05/02/17 | 03/24/16 | 04/22/16 | 06/03/16 | AP160905 | \$ 31,640.00 |
| 8 | 07/14/16 | 04/25/16 | 05/23/16 | 08/12/16 | AP161015 | \$ 18,000.00 |
| 9 | 07/14/16 | 05/20/16 | 06/20/16 | 08/12/16 | AP161110 | \$ 22,835.00 |
| 10 | 08/17/16 | 05/24/16 | 08/09/16 | 09/16/16 | AP161124 | \$ 9,000.00 |
| 10 | 08/17/16 | 05/24/16 | 08/09/16 | 09/16/16 | AP161215 | \$ 119,087.50 |
| 11 | 03/14/17 | 10/03/16 | 10/03/16 | 07/14/17 | AP171011 | \$ 5,151.54 |
| 12 | 12/07/17 | 11/01/17 | 11/30/17 | 12/15/17 | AP180310 | \$ 18,565.00 |
| Total Paid: | | | | | | \$ 379,149.54 |
| Contract Total: | | | | | | \$ 342,595.50 |
| Amount Paid Over Contract Total: | | | | | | \$ 36,554.04 |

ATTACHMENT D

Other Contract Administration Issues

SWA did not properly manage the contract agreements for the RFP Consultant Dr. La Noue and Disparity Study Consultant Mason Tillman Associates, LTD (MTA), resulting in payments that could not be verified against the scope of work tasks, invoices submitted with calculation errors that were not corrected or resolved prior to payment; payment of incomplete invoices, and issuance of purchase orders (POs) totaling more than the MTA contract amount.

1. MTA submitted four invoices totaling \$134,238 in services provided that could not be clearly allocated to a specific task as specified in the MTA Agreement, Exhibit B, Fee Schedule, Table A.: Cost Summary for Milestones and Categories.

| MTA Invoices Without Costs Allocated to a Specific Task | | | | |
|---|--------------|--------------|---|---------------------|
| Invoice Number | Invoice Date | Payment Date | Tasks Billed | Amount Paid |
| 3 | 09/03/15 | 10/02/15 | 4. Review Procurement & Contracting Policies 5. Perform Utilization Analysis | \$ 35,495.00 |
| 5 | 01/28/16 | 03/04/16 | 5. Perform Utilization Analysis 8. Perform Availability Analysis 11. Conduct Anecdotal Analysis | \$ 26,987.50 |
| 6 | 03/23/16 | 06/03/16 | 6. Identify Categories of Contracts 8. Perform Availability Analysis | \$ 40,115.50 |
| 7 | 05/02/17 | 06/03/16 | 5. Perform Utilization Analysis 7. Define Geographic Market Area 8. Perform Availability Analysis | \$ 31,640.00 |
| Total Paid: | | | | \$134,238.00 |

The invoices listed in the chart above were submitted without allocating time worked to each contract task. Instead, the hours worked were grouped for two or three tasks together as a lump sum.

ATTACHMENT D

2. Invoices submitted by both Dr. La Noue and MTA had calculation errors that were not corrected or resolved prior to SWA issuing payment.

| MTA Invoice Payments with Hourly Calculation Errors | | | | | |
|---|--------------|-------------------------|--------------------------------|------------------------|-------------|
| Invoice Number | Invoice Date | Total Hours Per Invoice | Sum of Individual Hours Listed | # Hours Not Reconciled | Amount Paid |
| 4 | 11/24/15 | 191.00 | 191.25 | 0.25 | \$19,050.00 |
| 5 | 01/28/16 | 236.00 | 260.25 | 24.25 | \$26,987.50 |
| 7 | 05/02/17 | 269.75 | 289.75 | 20.00 | \$31,640.00 |
| 8 | 07/14/16 | 179.50 | 188.00 | 8.50 | \$18,000.00 |
| Total: | | 876.25 | 929.25 | 53.00 | |

Dr. La Noue's invoice AP150509, dated 1/5/2015, incorrectly totals the task hours as 17 hours. The correct total should be 17.5 hours, which is \$4,375. The extended total on the invoice incorrectly shows 17 hours @ \$250 per hour = \$4,375. The correct total for 17 hours is \$4,250. This invoice has an undetermined error of 0.5 hours, or \$125.

Dr. La Noue's invoice AP150816, dated 5/8/2015, incorrectly totals the task hours as 20 hours. The correct total should be 21.75 hours. The extended total on the invoice incorrectly shows 20 hours @ \$250 per hour = \$5,000. The correct total for 21.75 hours is \$5,437.50. This invoice has an undetermined error of 1.75 hours, or \$437.50.

Dr. La Noue's invoice AP140923, dated 6/24/2014 has a calculation error, totaling 19.75 hours @ \$250 per hour = \$4,937.75 in lieu of \$4,937.50. This invoice was overpaid by \$0.25.

Additionally, Dr. La Noue's invoice AP150816 has two entries that do not include a description of the work performed: 3/25/2015 for 0.5 hours, and 4/29/2015 for 1.0 hour. This invoice has 1.5 hours @ \$250 per hour (\$375) of charges for which work completed was not specified.

ATTACHMENT D

3. SWA entered into a contract with the Diversity Study Consultant MTA for a total of \$342,595.50. SWA staff approved Purchase Orders for this vendor under this contract totaling \$480,231.00. SWA provided no documentation for the reason that Purchase Orders issued were \$137,635.50 higher than the total contract amount.

| MTA Purchase Orders Issued By SWA | | | |
|--|------------------|----------------|----------------------|
| Fiscal Year | PO Number | PO Date | PO Amount |
| FY 15 | PO 15224CT | 5/29/2015 | \$ 193,515.50 |
| FY 16 | PO 160702 | 12/15/2015 | \$ 180,000.00 |
| FY 16 | CO 160702 | 8/9/2016 | \$ 106,715.50 |
| PO Total: | | | \$ 480,231.00 |
| Contract Amount: | | | \$ 342,595.50 |
| PO amount in excess of contract amount: | | | \$ 137,635.50 |

ATTACHMENT E

Solid Waste Authority's Response



Sent via email
kmayer@pbcgov.org
and USPS

August 7, 2018

Karen L. Mayer
Contract Oversight Director
Office of Inspector General
PO Box 16568
West Palm Beach, FL 33416-6568

**Subject: Response to Palm Beach County Inspector General Report
CA-2018-0023 SWA Disparity Study**

Dear Ms. Mayer,

The Solid Waste Authority (SWA) would like to thank the Office of Inspector General (OIG) for their comprehensive review of SWA's Disparity Study.

We concur with the recommendations suggested by the OIG on page 25 of the report. SWA will evaluate existing procedures and amend them as necessary to improve internal controls and to ensure that staff involved in contract administration are properly trained. SWA will also provide guidance on department responsibilities regarding contract oversight including verifying elements such as deliverables, payment schedules, completion schedules and change orders.

We respectfully disagree with the OIG's opinion regarding ISSUE (6) on page 17 of the report.

ISSUE (6):

The SWA staff did not sufficiently document the set of such unusual circumstances that would preclude the successful application of the purchasing policies and procedures requiring SWA to obtain quotes before selecting RFP Consultant Dr. La Noue, as required by the SWA purchasing policy.

ATTACHMENT E

Karen Mayer
Office of Inspector General
RE: SWA Disparity Study
August 7, 2018

RESPONSE TO ISSUE (6):

The phrase "Unusual circumstances" is not a defined term in the SWA's Purchasing Manual, and as such, is not a prescriptive term with defined limits. When taken in the entire context of the sentence, it is ultimately the Executive Director's judgment as to whether a transaction should be exempt or not. Use of judgment provides for the application of experience, knowledge and flexibility to exercise discretion in the decision making process. It is the opinion of SWA staff that the exemption was justified.

As such, the OIG's opinion that the entire value of the contract with Dr. La Noue is a Questioned Cost is overstated and misleading. Staff agrees that the OIG's classification of the costs incurred during the period of time that the contract had lapsed as Questioned Costs is legitimate and appropriate. Staff does not agree that the costs incurred during the contract period should be so classified.

Again, we thank the Office of Inspector General for their recommendations and will move forward with the development of a more robust contract management program. Further, the Authority has recently hired a Director of Business Development and Compliance whose responsibility includes contract oversight.

We also appreciate the professional manner in which the Inspector General and his staff have conducted this investigation.

Sincerely,



Mark Hammond
Executive Director

cc: Dan Pellowitz, Managing Director