



**Metropolitan Water  
Reclamation District  
of Greater Chicago**



# **Office of the Independent Inspector General**

*“[T]o detect, deter and prevent corruption, fraud, waste, mismanagement, unlawful political discrimination or misconduct in the operation of County government.”*

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**Metropolitan Water Reclamation District of Greater  
Chicago  
Quarterly Report  
3rd Quarter 2021**

**October 15, 2021**



## OFFICE OF THE INDEPENDENT INSPECTOR GENERAL

Patrick M. Blanchard, Inspector General

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October 15, 2021

*Transmittal via electronic mail*

Honorable Kari K. Steele  
and Honorable Members of the Metropolitan  
Water Reclamation District of Greater Chicago  
Board of Commissioners  
100 East Erie Street  
Chicago, Illinois 60601

Re: Independent Inspector General Quarterly Report (3rd Qtr. 2021)

Dear President Steele and Members of the Board of Commissioners:

As you know, on April 18, 2019 the Board of Commissioners of the Metropolitan Water Reclamation District of Greater Chicago (MWRD) adopted Ordinance O19-003 entitled Office of the Independent Inspector General (MWRD OIIG Ordinance) that has been designed to promote integrity and efficiency in government and provide independent oversight of the MWRD. Additionally, an Intergovernmental Agreement between the County of Cook and MWRD became effective by full execution of the parties on May 17, 2019 (Sec. II. Term of Agreement) thereby authorizing the OIIG to initiate operations relating to the MWRD. This quarterly report is written in accordance with Section 2-287 of the MWRD OIIG Ordinance to apprise you of the activities of this office during the time period beginning July 1, 2021 through September 30, 2021.<sup>1</sup>

### **OIIG Case Activity**

In connection with the number of complaints received by the OIIG, please be aware we have received a total of 20 new complaints during this reporting period. This number also includes those matters resulting from the exercise of my own initiative (MWRD OIIG Ordinance Section Two (citing Cook County Code, Sec. 2-284(2))). Three OIIG investigations have been opened and 15 OIIG case inquiries have been initiated during this reporting period while a total of 16 OIIG

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<sup>1</sup> In accordance with the MWRD OIIG Ordinance, this office reports quarterly the number of investigations initiated and concluded during the subject time period along with other relevant data concerning the activities of the office. Quarterly reports also set forth OIIG recommendations for remedial or other action following the completion of an investigation and track whether recommendations were adopted in whole or in part or otherwise not implemented by the MWRD. Finally, quarterly reports also describe miscellaneous activities of the OIIG that may be of interest to MWRD officials, employees, contractors and members of the public.

case inquiries remain pending at the present time.<sup>2</sup> We have referred no matters to management or other enforcement or prosecutorial agencies for further consideration this reporting period. The OIIG currently has no matters open more than 180 days of the issuance of this report.

### **OIIG Summary Reports**

During the 3rd Quarter of 2021, the OIIG issued four summary reports on MWRD matters. The following provides a general description of the matters and states whether OIIG recommendations for remediation or discipline have been adopted. Specific identifying information is being withheld in accordance with the OIIG Ordinance where appropriate.<sup>3</sup>

IIG20-0342. The OIIG initiated this matter to investigate whether discriminatory intent or other impropriety by MWRD employees may have formed the basis for the MWRD's decision to not renew the contract with its cafeteria vendor ("CV") which expired on June 30, 2020. OIIG investigators interviewed the CV, the attorney who represented CV (the "Attorney"), the former Administrative Services Officer ("ASO"), the Senior Budget Management Analyst ("SBMA") and the Executive Director ("ED"). This office also reviewed the CV's contract, MWRD correspondence and video related to the June 4, 2020 MWRD Board of Commissioners meeting.

The preponderance of evidence revealed no discriminatory intent or impropriety related to MWRD staff's decision to not renew CV's contract. CV's and Attorney's assertions that they did not know why MWRD staff did not renew the contract appears disingenuous. The conditions that were triggered by the COVID pandemic were well-known and widespread. Moreover, the former ASO, through the SBMA, expressly communicated this to CV on May 6, 2020. The CV's email acknowledgement demonstrates his awareness and understanding of the circumstances created by the pandemic when he stated he was "aware of the restoration plan for Illinois and understood at the moment that we have to wait for more updates." Moreover, the Contract did not require any other formal notice as suggested by the Attorney during an MWRD Board meeting.

Similarly, we found no evidence of pretext in connection with MWRD's extension of the vending machine contract during the same time period in which CV's contract expired. The MWRD's decision was founded upon the rationale that maintaining a cafeteria service in buildings where there are few employees to serve is unnecessary considering the availability of vending

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<sup>2</sup> Upon receipt of a complaint, a triage/screening process of each complaint is undertaken. In order to streamline the OIIG process and maximize the number of complaints that will be subject to review, if a complaint is not initially opened as a formal investigation, it may also be reviewed as an "OIIG inquiry." This level of review involves a determination of corroborating evidence before opening a formal investigation. When the initial review reveals information warranting the opening of a formal investigation, the matter is upgraded to an "OIIG Investigation." Conversely, if additional information is developed to warrant the closing of the OIIG inquiry, the matter will be closed without further inquiry.

<sup>3</sup> The OIIG issues a Quarterly Report relating to the MWRD separate from the one it issues for other government agencies under its jurisdiction. The Quarterly Reports issued involving MWRD matters can be found at <https://www.cookcountyil.gov/service/metropolitan-water-reclamation-district-greater-chicago>.

machines to provide an alternative for the small number of essential employees still working in the buildings during the stay-at-home orders implemented during the pandemic. To do otherwise would have been a windfall to CV and a waste of MWRD resources.

IIG21-0254. The OIIG received information that one of the MWRD's contractors was the subject of an investigation by the City of Chicago Inspector General ("City IG") and that a Summary Report ("Report") issued by the City IG resulted in the permanent debarment of the contractor from participating in future projects for the City of Chicago. The City IG concluded that the contractor had engaged in a multifaceted fraudulent scheme misrepresenting over 70,000 labor hours in certified payrolls in an effort to appear in compliance with the Chicago Residency Ordinance (CRO) during the lifespan of four contracts worth millions of dollars with the City over a period of several years. This office initiated this review to determine whether the City IG Report and subsequent debarment of the contractor by the City implicated any issues relating to the MWRD's awarding of contracts to the subject contractor. The OIIG reviewed the City IG's Summary Report, the City of Chicago's Notice of Debarment, the subject contractor's Response, and relevant statutes and caselaw.

Section 70 ILCS 2605/11.24(a) of the MWRD statute provides that "[a] person or business entity shall be disqualified from doing business with the [MWRD]" if that person or business entity has been convicted or entered a plea of *nolo contendere* of a number of offenses including but not limited to, bribing a government official, bid-rigging, price-fixing, defrauding a governmental entity or attempting any of the aforementioned offenses. As the subject contractor has not been charged, let alone convicted, the MWRD is not required to disqualify the contractor pursuant to Section 11.24. That said, the question remains whether MWRD should deem the subject contractor as a "responsible bidder." For the reasons stated below, this office determined that a preponderance of the evidence demonstrates that the subject contractor may not be considered a responsible bidder and may be disqualified from participation in MWRD contracts.

Section 70 ILCS 2605/11.12 of the MWRD statute permits the Director of Procurement and Materials Management to reject bids "if the bidders are not deemed responsible, or the character or quality of the services, supplies, materials, equipment or labor do not conform to requirements, or if the public interest may be better served thereby." Section 11.11 further states that:

In determining the responsibility of any bidder, the director of procurement and materials management may take into account, in addition to financial responsibility, past records of transactions with the bidder, experience, adequacy of equipment, ability to complete performance within a specified time and other pertinent factors, including but not limited to whether the equipment or material is manufactured in North America.

Illinois courts generally allow public bodies broad discretion in determining what or who is a responsible bidder permitting them to look at factors outside of financial responsibility and

ability to perform contract, including social responsibility. *See, e.g., Court Street Steak House v. County of Tazewell*, 163 Ill.2d 159 (1994)(Court upheld County’s decision to select higher bidder who offered mental handicap training program); *S.N. Nielsen Co. v. Public Building Commission*, 81 Ill.2d 290 (1980)(Court upheld Commission’s decision to award contract to contractor with higher percentage of hours worked by minority members on the premise that an affirmative action commitment is a proper consideration).

After reviewing the City of Chicago IG Report and the statutory language as it applies to the MWRD bidding process, we determined that there exists sufficient justification for the MWRD to deem the subject contractor as being not responsible. The MWRD statute affords the Director of Procurement and Materials Management the authority to deem a bidder not responsible “if the public interest may be better served.” As honesty and integrity of a company are always valid considerations in hiring contractors for public works contracts, the facts revealed by the City IG in its report present a strong showing that the subject contractor lacks the integrity necessary to deliver the MWRD and its taxpayers honest services.

Based on the foregoing, this Office recommended that the Director of Procurement and Materials Management consider the information contained in the OIIG report in determining whether the subject contractor qualifies as a responsible bidder and whether to disqualify the subject contractor from future contracts for a term deemed reasonable under the circumstances.

These recommendations are currently pending.

IG21-0357. The OIIG received an anonymous complaint alleging that an MWRD Commissioner allowed her child to accompany her into her MWRD Office while she was conducting MWRD business. The complaint was augmented with a photograph purportedly depicting the Commissioner at her computer while her child was sitting at the Commissioner’s desk. The photograph appears to have been posted by the Commissioner to a social media website and included a comment attributed to the Commissioner relating to her bringing her child into the workplace during the COVID-19 Pandemic. A caption to the photograph ostensibly written by the Commissioner read:

*#WorkingMomThings: Logging in while your daughter colors at your desk and listens to Senator Tammy Duckworth read ‘Lhama’. Working and raising our next generation during COVID-19 hasn’t always been easy. Much love to the parents balancing it all. #PandemicParenting.*

The copy of the photograph submitted by the complainant included a notation stating that bringing children into the workplace is a violation of MWRD Administrative Procedure 10.14.0.

Section 10.14.0 of the MWRD Administrative Procedures Manual is entitled, “Children in the Workplace.” The policy states it is inappropriate for children to be present in any MWRD workplace for anything other than a brief visit during working hours. The policy cites safety

concerns and the distraction children can cause which may impede employees in the performance of their duties and responsibilities.

During her OIIG interview, the subject Commissioner acknowledged bringing her children into the MWRD workplace “on two or three occasions” in the past. She stated her children did not spend the entire day at her office, but were there for “maybe a few hours.” She could not recall the exact amount of time her children spent with her on each visit. The Commissioner explained she brought her children to her office on occasion out of an abundance of caution due to the COVID-19 Pandemic. She believed her children were safer from contracting the COVID virus if they accompanied her to the MWRD office as opposed to leaving them at a daycare center. The Commissioner asked if there was a specific MWRD rule restricting the bringing of children into the MWRD workplace, and she was advised of the above referenced MWRD Human Resource policy.

The preponderance of the evidence developed during the course of this investigation establishes that the subject Commissioner violated Section 10.14.0 when she brought children into the MWRD workplace. The Commissioner acknowledged bringing her children with her to work on more than one occasion and informed OIIG Investigators that she was unaware of an MWRD policy prohibiting such a practice.

In light of this being the second OIIG summary letter addressing this issue,<sup>4</sup> we recommended that the MWRD consider highlighting this policy for all staff or minimally those assigned to the Main Office Building to ensure there is no ambiguity in the application of Section 10.14.0. This recommendation is currently pending.

IIG21-0385. The OIIG opened this investigation after receiving an allegation that an MWRD employee is also serving as a member of the Ground Water Advisory Council (GAC) for the Illinois Environmental Protection Agency (IEPA) which may be in conflict with her MWRD position because the GAC has the authority to make recommendations that can impact MWRD ground water programs. It was also alleged that the subject employee attends GAC meetings during MWRD duty hours and does not take any personal or vacation time to attend the meetings.

During its investigation, this office reviewed the IEPA related information, MWRD time and attendance records, human resources documents, and MWRD employee and ethics policies. In addition, the OIIG interviewed MWRD employees including the subject employee.

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<sup>4</sup> On March 12, 2021, the OIIG issued a confidential summary report involving anonymous allegations that a MWRD senior official brought her grandchild to work on numerous occasions. The OIIG investigation established a violation of Section 10.14.0, and the OIIG recommended the senior official be admonished and/or disciplined in accordance with past MWRD practice. The general subject matter of this investigation was publicly reported on April 15, 2021 in the OIIG Quarterly Report. In the OIIG July 15, 2021 Quarterly Report, it was publicly reported that the MWRD adopted the OIIG recommendation of March 12, 2021.

The preponderance of the evidence in this investigation supports the conclusion that the subject employee violated Section VII, Employee Conduct A(1)(a) when she participated in two GAC meetings during MWRD work hours.<sup>5</sup> When interviewed by the OIIG, the subject employee admitted to participating remotely in both GAC meetings on June 16, 2021 and July 19, 2021, respectively, for less than one hour each day. MWRD time and attendance records confirmed that the subject employee worked both days and did not take any accrued leave to attend the meetings. While the subject employee's duties at the MWRD are administrative and do not overlap with any MWRD environmental interest, we understand how the subject employee could have believed otherwise. For this reason and the *de minimus* amount of MWRD time used by her, we did not recommend discipline be imposed against the subject employee for this violation.

The preponderance of the evidence in this investigation also supports the conclusion that the subject employee violated Article II, Substantive Code of Conduct Provisions, Section C (1)(f) of the MRWD Ethics Ordinance when she accepted the appointment and participated on the GAC.<sup>6</sup> When interviewed by the OIIG, the employee acknowledged being a member of the GAC for the last three to four months and that she did not obtain permission or seek advice from the Ethics Advisor before joining the GAC. The subject employee contends that her participation on the GAC does not generate a conflict with her employment at the MWRD because the GAC serves in an "advisory role" to IEPA. However, it is clear that one of the duties of the GAC is to review, evaluate and make recommendations regarding state laws, regulations and procedures that relate to groundwater protection. Those recommendations, if adopted, can have an impact, directly or indirectly on the MWRD through the possible regulation of the PFAS program. The Ethics Ordinance specifies that no employee shall engage in any non-District activity that conflicts with the daily operations of the District. The subject employee's participation on the GAC represents such a violation.

Based on all of the forgoing, we recommended that the subject employee be directed to remove the conflict of interest between her MWRD employment and GAC appointment. This may be accomplished by her resigning from her appointment to the GAC and not having any further participation with the GAC while employed with the MWRD.

This recommendation is currently pending.

### **Outstanding OIIG Recommendations**

In addition to the new cases being reported this quarter, the OIIG has followed up on outstanding recommendations for which no response was received at the time of our last quarterly report. Under the OIIG Ordinance, responses from management are required within 45 days of an

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<sup>5</sup> Section VII, Paragraph A(1)(a) states: Employees are expected to perform the duties of their position in a satisfactory and competent manner, to devote their work hours to performance of their duties, to follow written and verbal instructions and assignments as determined by their supervisors, and to conduct themselves in a manner acceptable in the workplace."

<sup>6</sup> Article II, Section C(1)(f) states: "No Commissioner, Officer, or Employee shall engage in any non-District activity that conflicts either directly or indirectly with daily operations of the District."

OIIG recommendation or after a grant of an additional 30-day extension to respond to recommendations. Below is an update on the outstanding recommendations.

#### From the 2<sup>nd</sup> Quarter 2021

IIG20-0475. During 2020, the OIIG received a complaint from a concerned resident alleging that the MWRD is not efficiently and effectively managing construction contracts. Additionally, the resident stated that construction contracts experience very long delays and cost overages that far exceed the original contract awarded amounts and estimated times for completion. The OIIG subsequently initiated this review to assess the MWRD's contract delivery processes and contract costs.

During our review, we gathered information from key MWRD senior officials familiar with the MWRD's procurement process and contract monitoring activities. These individuals include the Director of Procurement, Director of Engineering, and two Assistant Directors of Engineering. Additionally, we interviewed MWRD design and resident engineers directly responsible for specific construction projects under contract. We also made inquiries to the Cook County Chief Procurement Officer to develop insight into certain industry practices. In addition to our contacts and interviews with MWRD senior officials and engineers, the OIIG reviewed the following files, reports, and guiding law and policy as part of this evaluation:

1. Contract Files (contracts, change orders; vendor correspondence);
2. Department of Engineering Managerial Reports (Projects Under Construction Reports; Schedule Status Reports; Value of Current Pay Applications Reports); and
3. State laws, Procurement rules, and procedures in connection with construction contracts.

We also conducted site inspections involving three construction projects.

#### Scope and Methodology

The OIIG made requests to the Department of Engineering for reports related to contract monitoring for those issued during the 2017-2020 timeframe which include project description, awarded amount, original completion date, projected completion date, and contract sum to date. The Director of Engineering ("Director") provided us this information with three reports referred to as the Contract Schedules, Current Payments, and Contract Values for construction projects.

The Director explained that their goal is to finish each project within budget and on schedule. However, 'best in class' is considered to be within 5% of the original budget (cost) and within 20% of original schedule (time). We selected a sample of 10 construction projects from the reports for further examination. We were also provided access to all relevant change orders, contractor correspondence, contracts, etc. ("Contract Files").



### OIIG Findings, Conclusions and Recommendations

This office sought to assess MWRD compliance with both its internal policies and Illinois law regulating change orders in public construction contracting. We found that the MWRD is in substantial compliance with these requirements. Our finding included a careful examination of the contract files of the selected sample group with a focus on whether the determination to grant the change order request was appropriately documented and based on the criteria set forth under Illinois law and in accordance with MWRD policy. Below are some of our specific findings and recommendations:

1. Five of the 10 contracts in our sample exceeded the MWRD's 5% benchmark for cost overages. Our review revealed that the contract overages were caused by structures being underwater or underground (e.g., pumping stations columns, tunnels, sewers, reservoirs, etc.), as well as unforeseen issues caused by the age of structures. Therefore, the MWRD contractors frequently encountered more deterioration than could be identified during the planning stages for the contracts. We did not identify any deviations from the MWRD's internal procedures or Illinois law regulating change orders in public construction contracting in connection with cost overages.
2. Each construction project in our sample exceeded the originally scheduled completion date by at least 100%. We conducted a review of five of these contracts. In general, the contractors' reasons for time delays included weather conditions (rain or winter), the COVID Pandemic, structures underwater or underground, and more deterioration than could be identified during the planning stages for the contract. We determined that the contract files involving change orders contained the requisite information to support the change orders based on time delay.

Additionally, it was noted that the Department of Engineering authorizes change orders for time delays without the necessity of securing Board approval. The information provided to the Board for reporting purposes, at times, failed to contain information sufficient for the Board and public to understand the basis for the change orders. Although not required, we believe the provision of additional information demonstrating the reasons for the change orders should be provided to the Board and public as well in the Report of Change Orders.

3. A Resident Engineer stated that the current contract specifications are overly complex. This causes problems for the Resident Engineer to modify and maintain an updated construction schedule. Also, there are specifications or design drawings the Resident Engineers do not understand. The MWRD should ensure that the Resident Engineers completely understand the contract specifications and keep them in mind when drafting contract specifications.

The MWRD accepted all the OIIG's recommendations.

From the 1<sup>st</sup> Quarter 2021

IIIG19-0579. The OIIG received an anonymous complaint that an MWRD senior official hired a friend of a family member to be her Secretary to Officer. As a result, this office opened an investigation to determine the circumstances of the hire.

This office examined documents related to the hiring sequence in question and determined that the Human Resources Department (“HR”), working with the subject senior official, assisted in the development of the posting for the position, posted the position and ranked the 167 ensuing applicants based on the applicants’ individual qualifications. We immediately observed that the person hired, hereinafter “Employee C,” was, per HR screening, among the lowest scoring applicants for the position yet was among seven candidates selected for interview. During the investigation, we reviewed various documents relating to the subject hiring sequence and interviewed various witnesses involved in the hiring process, including the subject senior official and Employee C, as well as a family member of the subject official who is also employed at the MWRD.

The preponderance of the evidence developed by the investigation showed that Employee C received special considerations in her application for employment at the MWRD. Further, those special considerations, including an offsite private meeting with the subject official prior to formal interviews, flowed exclusively from Employee C’s relationship with the subject senior official’s family. The special considerations given to Employee C elevated Employee C’s standing among all applicants despite the contrary professional judgement of HR that Employee C was among the least qualified. Thus, the special considerations and ensuing hire of Employee C constituted a breach of the subject senior official’s fiduciary duty to the MWRD given that these circumstances create a strong appearance of impropriety.

During the investigation, witnesses asserted that Employee C was never expressly promised the position and has been successful at the MWRD. Further, it has been asserted that the scoring method used by HR to assess qualified candidates was not optimal given the needs of the department and that the position is, after all, exempt from civil service requirements. All of that may be accurate. However, those circumstances are insufficient to overcome the clear appearance of impropriety in this hire. Despite the assertion of Employee C’s qualifications and the attestations that no promises were made and every applicant was given equal and fair consideration, the larger circumstances surrounding this hire demonstrate otherwise. Those additional circumstances include that the subject senior official, based on a referral from a family member, chose to disregard the judgement expressed in HR rankings by elevating Employee C, a family friend, from the bottom of those rankings. That the subject senior official arranged, even before the position was posted, a private offsite meeting with Employee C to discuss the position compels the conclusion that the special considerations afforded Employee C were dispositive and the ensuing HR posting activities meaningless.

We note the posting for the position in question contained the following language:

The Metropolitan Water Reclamation District of Greater Chicago is committed to hiring and employment practices that base employee selection on an applicant's knowledge, skill and ability to perform effectively on the job; provide equal employment opportunity to all qualified applicants; *prohibit the entry of political reasons or factors and other improper considerations into any stage of the selection and hiring processes; and create a transparent, honest and fair hiring system.* (Emphasis added.)

This office takes this language to mean all applicants were on an equal footing when they applied for this position. Yet the evidence developed by the investigation demonstrates this was not the case, and it is doubtful the other applicants for public position would view the considerations afforded Employee C as part of a "transparent, honest and fair hiring" sequence.

Finally, the evidence developed by the investigation highlighted that the hiring procedures used in filling vacant Secretary to the Officer positions have been inconsistent. The civil service exemption codified in the MWRD statute has allowed for a practice of inconsistent hiring procedures and, in this hire, an appearance of impropriety resulting from significant special considerations afforded a family friend.

Accordingly, based upon the foregoing, we respectfully recommended that the MWRD:

1. Create a uniform process to be utilized by HR and officers for the hiring of Secretaries to Officers which includes:
  - a. Job descriptions including minimum qualifications;
  - b. Public posting of vacant positions;
  - c. A requirement that all employment recommendations be in writing and based on the author's personal knowledge of the candidate's work experience, skills or other job-related qualifications.
2. Counsel and admonish the subject senior official against such future hiring decisions creating an appearance of impropriety by the MWRD.

The MWRD adopted the second recommendation and substantially adopted the first recommendation.

From the 4<sup>th</sup> Quarter 2020

IIG19-0518. The OIIG received information suggesting that contract participation for the Affirmative Action Program<sup>7</sup> entities may be substantially below the MWRD's aspirational goals. The OIIG subsequently initiated this review to assess the MWRD's Affirmative Action Program ("AAP").

During our review, we interviewed key MWRD senior officials familiar with the MWRD's procurement process and AAP. These MWRD officials include a member of the MWRD Board of Commissioners, the Director of Procurement, the Director of Maintenance & Operations, and the Diversity Administrator. We also interviewed the Director of the Cook County Contract Compliance Office to obtain insights from a different government unit administering a MWBE Program.

The OIIG received Appendices from the Diversity Administrator that describe the contract participation for the AAP.<sup>8</sup> We selected specific MWRD contracts to sample for compliance with the Appendices. We assessed the AAP actual contract participation according to the stated contract goals and assessed the process for monitoring AAP contract participation.

The OIIG reviewed MWRD Board meeting information on the legistar website for contracts that the MWRD awarded over a three-year period (2016-2019). This timeframe served as the baseline period for our AAP review. We arranged the list according to the highest dollar amount, and our judgmental sample resulted in 20 contracts worth \$193,282,707. The actual level of contract distribution amounted to \$118,192,474.

We compared the aspirational goals stated in the contracts to the aspirational goals in the Appendices. The MWRD does not generate reports that compare disbursements made to the prime contractor to payments made to the AAP participants. Therefore, the OIIG received payment information made to the prime contractors provided by the Finance and Procurement Departments. We compared the Finance Department's disbursements to prime contractors to the payments AAP participants reported to the AAP. The AAP are required to report their payments to the AAP.<sup>9</sup> As discussed below, this methodology presented challenges to compare relevant payment information between the prime contractors to the AAP participants during the same baseline period.

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<sup>7</sup> The "SBE" reference in this report includes both SBE and VBE. VBE and SBE have different criteria, but are combined for SBE participation pursuant to the MWRD's policies. There is no separate tracking and reporting for VBE and SBE.

<sup>8</sup> The Appendices are found in each contract.

<sup>9</sup> The AAP Director provided the OIIG with payment information as of January 2020. The Director of Finance provided us with disbursements made pursuant to the respective contracts through May 2020. Therefore, there could be some timing differences between payments and reporting.

The mission of the AAP includes reviewing contracts, setting aspirational goals, and monitoring contract participation. The AAP operates in accordance with the contract Appendices.<sup>10</sup>

The Appendices establish the “aspirational goals” for AAP participation in contracts that exceed certain prescribed monetary thresholds.<sup>11</sup> These aspirational goals are as follows:

<b>Type of Contract</b>	<b>Minority</b>	<b>Women</b>	<b>SBE</b>
Consulting/Professional/ Services	20%	10%	10%
Construction	19.6%	6.9%	0%
Goods	0%	0%	0%

There are two general exclusions in connection with the AAP. For one, the MWRD has no Appendix for AAP participation with contracts for goods. Additionally, construction contracts do not have a provision for SBE participation.

Based upon all of the foregoing, we respectfully offered the followings recommendations:

1. The Engineering Department met the AAP’s aspirational goals for 4 MBE’s and 6 WBE’s in the 10 contracts our Office examined for this review. While there will likely be variations on AAP participation based on different contracts and timing, the data nonetheless provides a snapshot at a moment in time. The OIIG recommended that the MWRD Board request quarterly reports from senior management that show the aspirational goals and actual outcomes. This could provide the basis for constructive discussions from the AAP, contract managers or resident engineers, and contractors – including the MBE, WBE, VBE, and SBE participants.
2. When we reviewed the Engineering Department contracts, 9 of 10 contracts had dual representation where the SBE was also the MBE or WBE. For dual representation, the MWRD does not increase the percentage of proceeds that goes to the MBE/WBE and SBE. The MBE/WBE percentage covers the SBE’s percentage. In effect, the general contractor is allowed to retain more of the contract proceeds than if he/she included a different SBE to participate in the contract through this loophole. We recommended increased aspirational goals for dual participation scenarios.

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<sup>10</sup>Appendix A covers *MBE, WBE, and SBE* participation in professional services contracts; Appendix C covers *MBE and WBE* participation in construction contracts; Appendix K covers *MBE and WBE* apprenticeships in contracts; and Appendix V covers *VBE and SBE* participation in professional services and construction contracts (collectively “*SBE*”).

<sup>11</sup> The monetary threshold for AAP participation for service contracts and apprenticeships are the total estimated expenditures exceeding \$100,000. The threshold for AAP participation for construction contracts is contracts that are estimated to exceed \$10,000 (applies to Cook County only).

3. The Engineering Department uses dual participation that could be undermining the spirit of the SBE classification. SBE's provide opportunities for business owners within a certain entity size despite their race or gender. We recommended that the MWRD reviews this practice to determine the intent supporting small business participation and adjust this practice – if necessary. Accordingly, the MWRD should establish and track separate goals for SBE's.
4. Our review revealed that the AAP does not include Furnish and Deliver contracts because the MWRD deems this practice commercially useful. Furnish and Deliver contracts are issued for goods and commodities. The three furnish and deliver contracts in our review generated \$28,917,207 (54.9%) in contract activity for our M&O sample. The OIIG recommended that the MWRD Board of Commissioners ensures that that the external consultant hired to conduct a Disparity Study assesses this policy and determine whether AAP should also apply to furnish and deliver contracts.
5. Our investigators had to create reconciliations to assess the level of MWBE participation for our review. This methodology presented challenges to compare relevant payment information amongst the MWRD, the prime contractors and the AAP participants during the same baseline period. The AAP is currently working to implement new tracking software set to go online in early 2021. MWRD senior management should ensure the AAP has the resources and assistance to meet this goal through implementation and thereafter.
6. Our review identified an intergovernmental agreement (“IGA”) between the MWRD and a workgroup totaling \$4,718,895. The contract had no aspirational goals because the AAP was not provided the IGA for MBE/WBE/SBE participation. Note that the AAP does not have an opportunity to review Furnish and Deliver contracts. The AAP's inability to directly participate in the MWRD's overall mission and strategic planning endeavors may put the AAP at a disadvantage. The OIIG recommended that the MWRD determine whether diversity and inclusion could be improved if the AAP is elevated to a department and included as part of the Executive Team.
7. We identified circumstances where contracts with no or low aspirational goals failed to include documentation that explained the reasons for modifying the aspirational goals. In our experience, documentation serves as an important internal control and provides an audit trail. Moreover, the practice would provide sources of information to evaluate the effectiveness and shortcomings of the AAP. The OIIG recommended that the AAP document the reasons for setting tailored goals. We do not believe that this practice would unduly impede upon the Diversity Administrator's professional discretion as suggested.
8. We received statements that MBE/WBE/SBE businesses do not bring concerns to the AAP about the lack of inclusion in their contracts. We recommended the MWRD encourage prime contractors and subcontractors to report issues implicating AAP goals to either AAP

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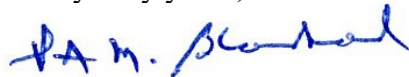
or to the Inspector General's Office. This may be achieved by adding a general condition requiring the same.

In its response, the MWRD accepted recommendations 5, 6, and 7. The remaining five recommendations are pending as the MWRD is waiting for the results of the above-referenced Disparity Study to make a decision on those recommendations. The MWRD recently indicated that the Disparity Study is still ongoing with an expected completion date either at the end of this quarter or beginning of the fourth quarter of 2021.

### **Conclusion**

Thank you for your time and consideration to these issues. Should you have any questions or wish to discuss this report further, please do not hesitate to contact me.

Very truly yours,



Patrick M. Blanchard  
Independent Inspector General

cc: Mr. Brian A. Perkovich, Executive Director  
Ms. Susan T. Morakalis, General Counsel  
Mr. John T. Joiner, Administrative Aid to the President