



**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.”

**Metropolitan Water Reclamation District of Greater
Chicago
Quarterly Report
4th Quarter 2021**

January 14, 2022



OFFICE OF THE INDEPENDENT INSPECTOR GENERAL

Patrick M. Blanchard, Inspector General

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January 14, 2022

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 (4th 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 October 1, 2021 through December 31, 2021.¹

OIIG Case Activity

In connection with the number of complaints received by the OIIG, please be aware we have received a total of 6 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))). There have been no inquiries upgraded to an OIIG investigation this reporting period while 4 OIIG case inquiries have been initiated during this reporting period and a total of 15 OIIG case inquiries remain pending at the present time.² We

¹ 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.

² 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

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 4th Quarter of 2021, the OIIG did not issue any new summary reports on MWRD matters.³

Outstanding OIIG Recommendations

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 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 3rd Quarter 2021

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

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.

³ 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>.

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.

MWRD accepted these recommendations and rejected all bids for contract.

IIG21-0357. 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,⁴ 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 has been adopted.

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.

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.⁵ 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)

⁴ 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.

⁵ 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.”

of the MRWD Ethics Ordinance when she accepted the appointment and participated on the GAC.⁶ 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.

The MWRD adopted our recommendation, and the subject employee resigned her position with the GAC.

From the 4th Quarter 2020

IIG19-0518. The OIIG received information suggesting that contract participation for the Affirmative Action Program⁷ 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.⁸ We selected specific MWRD contracts to sample for compliance with

⁶ 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.”

⁷ 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.

⁸ The Appendices are found in each contract.

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.⁹ 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.

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

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

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

⁹ 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.

¹⁰ 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*”).

¹¹ 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).

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.
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.

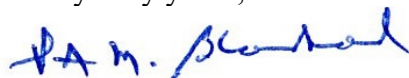
6. Our review identified an intergovernmental agreement (“IGA”) between the MWRD and a workgroup totaling \$4,718,895. The contract had no aspirational goals because the AAP was not provided the IGA for MBE/WBE/SBE participation. Note that the AAP does not have an opportunity to review Furnish and Deliver 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 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 and that its retained consultant requires additional time to complete the study.

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

Hon. Kari K. Steele and Hon. Members of the Metropolitan
Water Reclamation District of Greater Chicago
Board of Commissioners
January 14, 2022
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cc: Mr. Brian A. Perkovich, Executive Director
Ms. Susan T. Morakalis, General Counsel
Mr. John T. Joiner, Administrative Aid to the President