

**METROPOLITAN SEWER DISTRICT OF GREATER CINCINNATI
HAMILTON COUNTY**

SPECIAL AUDIT

FOR THE THE PERIOD JANUARY 1, 2009 THROUGH DECEMBER 31, 2015



Dave Yost • Auditor of State

**METROPOLITAN SEWER DISTRICT OF GREATER CINCINNATI
HAMILTON COUNTY**

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FRAUD EXAMINATION REPORT

Metropolitan Sewer District of Greater Cincinnati
1600 Gest Street
Cincinnati, Ohio 45204

Background

In early 2016, in light of concerns about the Metropolitan Sewer District of Greater Cincinnati's (the District's) expenses related to activity associated with a Consent Decree previously entered into with Federal authorities and the District in the United States District Court for the Southern District of Ohio, local officials requested that the Auditor of State's Office (AOS) conduct an audit of the District. The request was considered by the AOS Special Audit Task Force on February 4, 2016, and, at that time, the Task Force authorized the initiation and pursuit of a Special Audit of the District. The purpose of the Special Audit is to consider the activities and expenditures of the District, and not to opine on the breadth of the Federal court's decision or its effect on the relationship between Hamilton County and the City of Cincinnati incident to the operation of the District.

Governance

The District was formed in 1968 as a county sewer district created under Chapter 6177 of the Ohio Revised Code, and continues to be such an entity. Prior to the creation of the District, the City of Cincinnati (the City) operated an independent municipal sewer district that served the residents of the city and twenty-three area communities. On April 10, 1968, the City and the County entered into a fifty year agreement providing for the operation of the District. Pursuant to that Agreement, the City is responsible for the management and operation of the District, while the Board of Commissioners of the County (the Board) retains the authority to establish sewer service charges, to adopt rules and regulations related to the provision of sewer services, and to approve operating and capital improvement program (CIP) budgets. Since the entry into this Agreement, the City and the County have approved several amendments which have modified the roles of the City and the County, and affected the operations of the District. By its terms, the Agreement expired on April 30, 2018, but the City and the County agreed to extend its effect through September 30, 2018. As part of its administrative operations under the direct supervision and control of the City, the District has utilized City policies and procedures. The overview of the governance and the description of the operating relationship provides a framework under which this audit was conducted. By virtue of the agreement with the City to operate the District, the policies and procedures of the operator are imported into the operation of the District and are referenced in this report as guidance.

Consent Decree

33 United States Code (USC) § 1251, establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Enacted in 1948 as the Federal Water Pollution Control Act, it was significantly reorganized and expanded in 1972. Subsequent to this reorganization, the Clean Water Act (CWA) became its common name.

Starting in the 1980s, the US EPA, through the CWA, started requiring the elimination of sanitary sewer overflows¹ (SSOs) and reductions in discharges from combined sewer overflows (CSOs).² In 1992, the District established a program designed to begin identifying and remediating SSOs through inflow and infiltration reduction and the rehabilitation and construction of sewers.

In February 2002, the City and the County entered into the Interim Partial Consent Decree on Sanitary Sewer Overflows with the US EPA. This represented a settlement of alleged violations of the CWA brought by the US EPA in the US District Court of Southern Ohio, Western Division. Specifically, the violations alleged that the District still had SSOs within its system. Among the issues agreed upon in the Interim Partial Consent Decree were the continuance of work already begun by the District to address certain SSOs through the implementation of capital improvement projects which had already been planned, the implementation and permanent remedial measures at SSO 700,³ and the evaluation of the sewer system in order to allow for the development and proposal of a comprehensive SSO elimination program. Included in this decree was the identification of 17 SSO projects to be completed.

In June 2004, the City and County entered into the Global Consent Decree with the US Department of Justice, the US EPA, the Ohio EPA, and the Ohio River Valley Water Sanitation Commission (ORANSCO) the purpose of which was to address the reduction of CSOs through the creation of a long term control plan (LTCP) and the Water in Basement⁴ (WIB) Program. In addition, the continuance of the SSO correction plan established in the Interim Partial Consent Decree and capacity related issues at certain wastewater treatment plants were included. This decree identified 23 CSO projects required to be completed.

In January 2010, the Final Wet Weather Improvement Program (WWIP) was approved by the US EPA, the Ohio EPA, and ORANSCO. The WWIP fulfills the consent decree requirements associated with the LTCP and the Capacity Assurance Program Plan (to determine capacity limits and plan for future needs) and incorporates the remaining work of both the Interim Partial and Global Consent decrees into a final schedule. The WWIP is being conducted in two phases: Phase 1 (i.e., 2009 through 2018) and Phase 2 (i.e., estimated to begin in 2020). In total, costs associated with the completion of both phases of the Final WWIP are expected to be approximately \$3.1 billion.

Scope

In conducting our special audit of the District, we utilized the information provided to us by the City and County when the engagement was requested as well as our own preliminary findings to define the areas we should investigate and the relevant time period. This helped define our specific objectives, or questions, which could be audited (i.e., either documents existed or at least should exist which could be tested, there were relevant laws or internal procedures in place) and would answer whether the District spent public money appropriately.

¹ The US EPA defines an SSO as a condition where raw sewage can spill into basements or out of manholes and onto city streets, playgrounds, and into streams, before it can reach a treatment facility. The US EPA has found that SSOs caused by poor sewer collection system management pose a substantial health and environmental challenge.

² According to the US EPA, a combined sewer system (CSS) collects rainwater runoff, domestic sewage, and industrial wastewater into one pipe. Under normal conditions, it transports all of the wastewater it collects to a sewage treatment plant for treatment and eventual discharge. When the volume of wastewater exceeds the capacity of the CSS or treatment plant (e.g., during heavy rainfall or snowmelt) a CSO occurs. CSOs result in untreated water discharging directly without proper treatment. CSOs may contain untreated or partially treated human and industrial waste, toxic materials, and debris as well as stormwater.

³ SSO 700 is the District's largest SSO covering 35 square miles, or 12 percent, of the District's service area and is comprised of all or parts of 16 local communities. Due to its size and impact on the overall system, the District's submitted a revised final remedy that includes an Integrated Watershed Action Plan (IWAP) and reliability improvements specifically detailed for this SSO.

⁴ WIB refers to residential basement flooding caused by sewer system backups.

In order to answer whether the District spent public money appropriately, we audited for compliance with applicable Revised Code provisions; and for compliance with internal procedures, such as rules governing the awarding of contracts and subsequent payment of those obligations. We defined our audit period as covering January 1, 2009 through December 31, 2015 (the Period) based on the risk factors identified. Having defined our objectives and period, we developed specific procedures designed to answer each of our objectives.

The objectives and procedures are described more fully in the attached Supplement to the Special Audit Report for the Period.

The specific objectives we tested to determine whether fraud was committed at the District and, if so, to what extent, are as follows:

- Examine records related to Master Service Agreements (MSA's) executed by the District to determine if they were in compliance with their procedures and examine expenses related to MSA's to determine if they were for operations of the District and within the scope of the MSA's and task orders.
- Examine Professional Service Agreements (PSA) to determine if the District was in compliance with procurement procedures and examine expenses related to certain PSA's to determine if they were properly supported, for operations of the District, and within the scope of the PSA's.
- Examine inter-departmental (ID) bills to determine if the District obtained proper supporting documentation and to determine if the expenses were related to the operations of the District.
- Examine payroll transactions recorded by the District to determine if they were related to the operations of the District and were properly recorded.
- Examine selected non-payroll disbursements to determine if the expenses had proper supporting documentation and were for operations of the District.

In order to test these objectives, we reviewed available documentation, subpoenaed vendor records, and interviewed key District personnel.

This engagement was conducted in accordance with the Quality Standards for Inspection and Evaluation established by the Council of the Inspectors General on Integrity and Efficiency (January 2012).

Findings

After completing our audit work, we determined there were instances where District personnel used public funds to make illegal purchases and failed to follow internal procedures. Our report includes multiple findings for recovery. A finding for recovery generally constitutes a finding that an individual or entity (e.g., a vendor) illegally received public money. Pursuant to Ohio Rev. Code section 117.28, when the Auditor of State's office issues a finding for recovery, the individual or entity can repay the amount voluntarily; however, the finding for recovery empowers the public office's statutory legal counsel or the Attorney General's office to institute legal proceedings to collect that amount.

We issued 15 findings for recovery against 7 vendors, the City of Cincinnati and Hamilton County totaling \$779,164. Repayments totaling \$182,476 were made by some of those named after being notified about the findings for recovery.

The details are discussed more fully in the attached supplement, but below is a summary of findings we are issuing:

MSA's

In 2010 and again in 2015, the District and Ribway Engineering Group (Ribway) entered into agreements pursuant to established MSA's for Ribway to provide planning support services for the District, collaborating closely with the City's Planning Department. Ribway provided an Urban Planner to perform the services for both of these agreements and invoiced the District monthly for the services performed. The Urban Planner worked in the City's Planning Department. During our review of the monthly activity reports related to both agreements we identified activities reported under an invoice category labeled Plan Cincinnati that were for the benefit of the Planning Department and not related to the operations of the District. The District paid \$47,071 related to these activities. We issued a finding for recovery against the City Planning Department totaling \$47,071. The City repaid this amount in full.

In 2011, the District entered into an agreement pursuant to a MSA with Focus Solutions to provide as-needed professional services. In relation to this work, Focus Solutions submitted timesheets for their President, Zola Stewart, as support for invoices where payment was being requested. We identified 23 instances on the timesheets in which Ms. Stewart reported 24 or more hours being worked in one day. Since these timesheets reported they were for Ms. Stewart and it is impossible to work more than 24 hours in one day and highly unlikely for one person to work 24 hours in one day we determined the hours reported by Focus Solutions for Ms. Stewart were incorrect, totaling \$74,373. In addition, we also noted Focus Solutions was paid by the District for work that was not considered a proper public purpose as it was not related to the operations of the District, but rather was for the operations of a nonprofit foundation. This activity totaled \$88,888. As a result we issued a finding for recovery against Focus Solutions totaling \$163,261. James Parrott and Margie Anderson, Superintendent of Wastewater Administration, were named jointly and severally liable for \$75,888 and \$87,373, respectively, of this amount.

We also issued findings for recovery against three other vendors for unsupported expenses, overbillings, and expenses that were not for a proper public purpose totaling \$150,750. \$16,885 of this amount was repaid under audit. James Parrott was named jointly and severally liable for \$91,706 of the remaining unpaid amount.

We issued 11 management recommendations regarding the MSA solicitation and award processes, application of multipliers, the completion of task orders, vendor performance evaluations, the use of consultants, services being performed prior to a task order being executed, and invoice approvals.

PSA's

In November 2011, the District and the law firm of Bricker & Eckler executed an engagement letter to have Bricker & Eckler assist with advising the District on the administration and monitoring of compliance with the District's Small Business Enterprise (SBE) Program. The engagement letter stated that the District was requesting Bricker & Eckler to engage with Urban Strategies & Solutions as a consultant for this work, which they did. After that scope of work was completed, in December 2012, the District developed a second scope of work to be performed by Urban Strategies & Solutions. At that time, however, the District did not have an agreement with Urban Strategies & Solutions, and Bricker & Eckler had no involvement with the second scope of work besides submitting invoices received from Urban Strategies & Solutions to the District for payment and issuing those payments to Urban Strategies & Solutions. For the period of January 2013 through May 2015, Urban Strategies & Solutions invoiced Bricker & Eckler \$294,000 for services related to work performed for which no documentation existed to support the work performed or the resulting payments. We issued a finding for recovery against Urban Strategies & Solutions totaling the \$294,000.

We also issued findings for recovery against two other vendors for unsupported expenses, duplicate billings, and expenses that were not for a proper public purpose totaling \$24,339. \$18,777 of this amount was repaid under audit. Margie Anderson was named jointly and severally liable for \$626 of the remaining unpaid amount.

We issued three management recommendations regarding PSA documentation, use of sub-consultants, payments related to PSA's, and execution of direct awards.

Inter-Departmental Billings

We examined the District's inter-departmental (ID) bills for the period of January 1, 2011 through December 31, 2015 and noted some instances in which the District was otherwise properly billed by other City departments, but due to various mathematical errors in the billings, the District was overbilled. As a result, we issued four findings for recovery against the City totaling \$90,671. The City repaid this amount in full.

We issued one management recommendation regarding the execution of written memorandums of understanding.

Payroll Expenses

During the period of January 1, 2011 through December 31, 2015, we performed various procedures over the District's payroll expenses to ensure the activity was appropriate. We reviewed employees' last day of work and last payment dates to verify all payments were proper; obtained a list of employees who transferred into and out of the District from other City departments and verified the employees were paid by the proper department after the transfer; and scanned the payroll registers to determine if there were any employees reported on the payroll registers that should not have been paid with District funds. Our procedures did not identify any improper expenses.

Non-Payroll Expenses

Our review of District non-payroll expenses included reviewing the activity related to Hamilton County's program monitoring services for the period of January 1, 2013 through December 31, 2015. The County and Plante Moran had an agreement for Plante Moran to provide services related to the monitoring program to help ensure the County was in full compliance with the Consent Decree. Our review noted some instances in which the County submitted invoices from Plante Moran to the District which represented duplicate invoices, improper payments, and overbillings totaling \$9,072. Of this amount, improper payments comprised of reimbursements for alcohol amounted to \$35. The County repaid the \$9,072 in full.

We also reviewed the District's travel related p-card expenses during the period of January 1, 2013 through December 31, 2015. We issued a management recommendation related to this activity.

We issued two management recommendations regarding Hamilton County oversight expenses and District travel expenses.

On September 5, 2018, we held an exit conference with the following individuals:

Diana Christy, District Interim Director
MaryLynn Lodor, District Deputy Director
Ihab Tadros, District Deputy Director / CFO
Patrick Arnette, District Deputy Director of Engineering
Lauren DeGoricia, District General Counsel
Ann Newsom, District Supervising Management Analyst
Reginald Zeno, City of Cincinnati Finance Director
Jeffrey Aluotto, County Administrator
James Harper, County Chief Assistant Prosecuting Attorney
Charles Anness, County Assistant Prosecuting Attorney

The attendees were informed that they had five business days to respond to this special audit report. Responses were received on September 12, 2018 from both the District and the County. The responses were evaluated and changes were made to this report as we deemed necessary.

A handwritten signature in black ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping initial "D".

Dave Yost
Auditor of State

September 4, 2018

Supplement to the Special Audit Report

Objective No. 1 – Examine records related to Master Service Agreements (MSA's) executed by the District to determine if they were in compliance with their procedures and examine expenses related to MSA's to determine if they were for operations of the District and within the scope of the MSA's and task orders.

PROCEDURES

In order to test Objective 1, we performed the following procedures:

We identified all MSA's executed by the District during the period of January 1, 2009 to December 31, 2015.

We obtained and reviewed all of the MSA's identified during the period and determined how the District selected the firms.

We identified all task orders (TO's) executed by the District during the period of January 1, 2009 to December 31, 2015 related to MSA's executed during the same period.

We performed analysis of all the TO's executed by the District for the period by service category.

We examined expenses related to certain TO's and determined if they were properly supported, for the operations of the District, within the scope of the MSA and TO, and in compliance with the MSA and TO.

RESULTS

MSA's were used to obtain professional services on an as-needed basis for project tasks. MSA's were intended to be open for a period of two years, with a maximum monetary limit per each task order and a maximum overall monetary limit per MSA in a twelve-month period.

On November 15, 2007, the City Manager, Milton Dohoney, issued a memorandum to the District's Executive Director, James Parrott to give him the authority to sign on behalf of the City any documents, including contracts that pertain to the City's operation of the District.

The City's Administrative Regulation No. 23 – Policy Guidelines and Minimum Requirements for Professional Services summarized the City policies and minimum requirements for selecting, contracting with, monitoring, and evaluating providers of professional services. Contracts for professional services were to be awarded through an open and fair competitive process. Also, the City allowed professional services to be awarded with no competition if the City Manager's office approved a waiver of competition in accordance with Cincinnati Municipal Code (CMC) 321-87.

The Council of the City of Cincinnati passed ordinances in 2012 enacting CMC 318 related to "Local Hire Requirements", CMC 320 related to "Responsible Bidder" policy, and modifying CMC 321, related to procurement and disposal of supplies, services and construction, also known as "Local Preference".

On June 26, 2014, a United States District Court Magistrate Judge ordered that the City was enjoined from using CMC 318, CMC 320, and CMC 321 in the procurement of contracts for Consent Decree sewer projects and was ordered to follow the County's rules, regulations, and resolutions and Ohio state law in procuring Consent Decree sewer projects both within and outside of the City boundaries. The judgment was related to Case No. 1:02-cv-107, United States of America versus Board of Hamilton County Commissioners.⁵

⁵This references the Magistrate's Opinion as appropriate guidance for the review of contracts entered into by the District. By this reference, the AOS offers no opinion as to the breadth of the limitations imposed by the Court.

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The City approved Administrative Regulation No. 62, effective March 23, 2015, which established procedures for the City Manager to review and approve bids, Request for Proposals (RFP), Request for Qualifications (RFQ), and contracts prior to release. Effective May 5, 2015, this policy applied to any amendments to any existing or new contracts, change orders issued pursuant to existing or new contracts, and task orders, purchase orders, work orders, statements of work, or similar methods of procuring goods or services issued to existing or new contracts in which the amendments or orders cost more than \$50,000. Additionally, the policy indicated the Chief Procurement Officer would oversee the District's procurement activities, processes, and decisions, and procurement staff. The Director of Economic Inclusion would oversee District contract compliance and SBE Program activities, processes, and decisions. The Chief Procurement Officer and Director of Economic Inclusion's oversight was to conform with all orders issued by the federal court in relation to the Consent Decree in Case No. 1:02-cv-107.

The solicitation and selection procedures associated with MSA's were generally completed on a qualification basis. The qualification phase was used to ensure that the District received applications from firms that were qualified to perform the as-needed services. The District established selection committees for each Request for Qualification (RFQ) that evaluated the qualifications submitted by each firm related to each service category. The selection committee, as a group, issued recommendations on which firms should be selected to receive an MSA by service category. The selection committee recommendations were reviewed and approved by the District's Executive Director after which the District would execute a MSA with the firm.

During the period of 2009 through 2011, the District issued 14 RFQ's related to 22 MSA service categories. There were three other MSA service categories where RFQ's were not performed but should have been. We also noted two additional service categories where MSA's were issued through a direct award process, in which no solicitation of qualifications was performed. The District executed 106 MSA's with firms related to the 27 service categories. Some firms were awarded an MSA for multiple service categories. During the period of January 1, 2009 through December 31, 2015, the District executed 1,072 TO's totaling \$275,399,466 related to these 106 MSA's.

In 2013, the District issued RFQ's to execute new MSA's for as-needed professional services that included more defined service categories. The District issued six RFQ's related to 39 MSA service categories, resulting in the execution of 73 MSA's. Some firms were awarded an MSA for multiple service categories. During the period of January 1, 2015 through December 31, 2015, the District executed 51 TO's totaling \$11,189,814 related to these 73 MSA's.

MSA Selection Process

For the RFQ's issued during January 1, 2009 through December 31, 2015, the District provided us with the RFQ's, lists of selection committee members, selection committee evaluation forms, and recommendation letters signed by the selection committees and approved by the Executive Director.

During review of the records we identified the following issues related to the RFQ's issued during 2009 through 2011:

- Some selection committee recommendation letters were unable to be located;
- Some selection committee recommendation letters were provided in an electronic format but the signed letters were not maintained;
- Some selection committee evaluation forms were not maintained

We reviewed the records the District did maintain and corroborated the firms who were awarded an MSA by service category. However, there were two service categories in which we did not have enough documentation to corroborate how the District selected the firms to be awarded a MSA:

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- The District awarded three firms a MSA for value engineering services in 2009. The District was unable to provide selection committee recommendation letters or selection committee evaluation forms related to this service category. The only document provided was a spreadsheet to evaluate eight firms but no evaluation was documented.
- The District awarded seven firms a MSA for green infrastructure services in 2009. The District was unable to provide selection committee recommendation letters or selection committee evaluation forms related to this service category. The only document provided was a spreadsheet reporting 27 firms who submitted qualifications.

During our review of MSA's executed by the District, we identified instances where firms were not initially recommended by the selection committee for a particular service category but were approved by the Executive Director to receive a MSA for that service category. The respective MSA's were later amended to include those service categories. The instances identified were as follows:

- In 2009, the District issued a RFQ for wastewater administration departmental support services. The selection committee recommendation letter reported 23 firms submitted qualifications with recommendations that 14 firms be awarded a MSA and the Executive Director consider an additional four firms to be awarded if desired. Jacobs was one of the four firms to be considered, however they were not awarded a MSA for this service category.

In 2009, the District issued a RFQ for staff supplementation services related to project design and engineering support services. The selection committee letter reported 33 firms submitted qualifications and the committee recommended 13 firms be awarded a MSA. Jacobs submitted qualifications for this RFQ but was not recommended by the selection committee and was not approved by the Executive Director to receive an award.

In 2009, Jacobs was awarded a MSA for three service categories (Communication and Community Engagement, Facility Design, and Collection System Design). On October 25, 2011, the District's Supervising Management Analyst submitted an interdepartmental correspondence memo to the Executive Director requesting to amend Jacobs' MSA to add departmental support and staff supplementation services. The correspondence reported they were using this MSA for various services related to the Wet Weather Program Enterprise Integration project and these services were being provided under the communications and community engagement category; however, most of the services would be more appropriately categorized under either the departmental support or staff supplementation services category. On November 3, 2011, the Executive Director approved the District to add departmental support and staff supplementation services to Jacobs' MSA. Prior to amending the MSA, the District had executed two TO's with Jacob's Engineering Group totaling \$1,231,471 related to the project. After Jacobs' MSA was amended to add the service categories, they were awarded nine TO's totaling \$6,023,809 for departmental support services and three TO's totaling \$641,550 for staff supplementation services.

- In 2009, the District issued a RFQ for collection system design services. The selection committee recommendation letter stated 41 firms submitted qualifications and the committee recommended the top eight evaluated firms be awarded a MSA, none of which were small business enterprise (SBE) firms.

In 2009, the District issued a RFQ for facility design and support services. The selection committee recommendation letter reported 29 firms submitted qualifications and the committee recommended seven firms, which included one SBE firm, be awarded a MSA.

In 2009, the District issued a RFQ for green infrastructure engineering and support services. The District received qualifications from 27 firms and the District awarded a MSA to seven firms, which included one SBE firm.

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On January 29, 2010, the District's Contract Administration Section Supervisor issued an interdepartmental correspondence memo to the Executive Director regarding the analysis and ranking of qualifications submitted by firms for collection system design projects, facility design projects, and green infrastructure engineering and support services. The memo reported the District was in the process of finalizing SBE program guidelines which included specific participation targets and it was imperative that they meet these targets. The memo reported the overall ranking for each firm by category based on the scoring done by the selection committees and it also reported all the SBE firms and their ranking by category.

During our review of MSA's, we identified SBE firms who were awarded MSA's for collection system design projects, facility design projects, and green infrastructure engineering and support services after the RFQ selection process was completed, which appeared to be in relation to the memo issued on January 29, 2010.

On May 24, 2010, the District awarded MSA's to four SBE firms for collection system design services. The four SBE firms were ranked 14th, 20th, 23rd, and 30th out of 41 firms by the selection committee. Six SBE firms submitted qualifications for collection system design services. The two SBE firms not awarded a MSA were ranked 25th and 37th. The District did not have any documentation to support the reasoning for which SBE firms were selected to receive a MSA.

On May 24, 2010 and June 11, 2010, the District awarded MSA's to two SBE firms for facility design services. The two SBE firms were ranked 13th and 21st out of 29 firms by the selection committee. Five SBE firms submitted qualifications for facility design services. The two SBE firms not awarded a MSA were ranked 24th and 28th and the firm which was initially recommended by the selection committee was ranked 5th. The District did not have any documentation to support the reasoning for which SBE firms were selected to receive a MSA.

On May 24, 2010, the District awarded a MSA to one SBE firm for green infrastructure engineering and support services. The SBE firm was ranked 14th out of 27 firms by the selection committee. Three SBE firms submitted qualifications for green infrastructure engineering and support services. The one SBE firm not awarded a MSA was ranked 25th and the firm which was initially recommended by the selection committee was ranked 19th. The District did not have any documentation to support the reasoning for which SBE firms were selected to receive a MSA.

Direct Awards

During our review of MSA's executed by the District, we identified ten firms that received a MSA after the District had completed the qualification process to contract with firms. The District awarded these MSA's through a direct award process which waived the competitive process when the City's purchasing agent determined the firm was the only suitable or acceptable firm to provide the services. We reviewed the direct award requests approved by the City and determined five of the ten requests did not clearly document why another firm was not suitable or acceptable to meet the services needed.

Task Orders (TO's)

Actual services assigned under a MSA needed to be identified in written TO's executed by the District. TO's were essentially extensions of the parent MSA. To initiate the execution of a TO, a District employee at the department level prepared a TO request form. The request form documented who was requesting the TO, the project name, the MSA category, and it provided the requestor the opportunity to select a firm they preferred to work on the project. If the requestor reported a preferred firm they had to document a reason to justify their selection. If the requestor did not have a preference to which firm worked on the project they would work with the District's procurement section to identify a firm. Effective March 23, 2015, firms selected for TO's were to be assigned on a rotational basis or via an abbreviated request for qualifications or proposal process. TO request forms were reviewed and approved by division superintendents and the District's contract manager. Once a TO request form was approved the District worked with the firm to create a TO which usually reported a description of the project, scope of work, project team members, compensation, term including a notice to proceed, and, if applicable, performance evaluation requirements.

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All TO's executed from January 1, 2009 through May 4, 2015 were reviewed and approved by the District's Executive Director. Effective May 5, 2015, all TO's and amendments were required to be reviewed and approved by the City Manager.

For the period of January 1, 2009 through December 31, 2015, we identified 1,123 TO's executed by the District. We performed analysis of all the TO's executed by the District for the period by service category. During our review of the TO request forms, TO's and related amendments we identified the following:

- TO's or budgets attached to the TO did not clearly document the agreed upon hourly rates between the District and the firms.
- Per MSA's, maximum payments per TO were \$1,000,000 however, some MSA's were amended to allow the Executive Director to waive the maximum amount on a case-by-case basis through a written waiver. The District had 21 TO's exceed \$1,000,000 for which there were no written waivers obtained for nine of these
- TO requestors often identified preferred firms they wanted to complete the work, but there was no indication that cost of the services was taken into consideration.
- MSA service categories reported on the TO request forms did not agree to the service categories reported on the TO. Some firms had multiple service categories and each service category had different multipliers that could be applied to the hourly rate of employees.
- MSA service categories being used for the TO were not clearly documented on the TO. Some firms had multiple service categories and each service category had different multipliers that could be applied to the hourly rate of employees.
- 289 TO's reported a performance evaluation would be completed at the end of the project. The District had no record that performance evaluations were completed for 243 of these TO's.
- Amendments to TO's had language that conflicted with the original TO's.
- TO's had language that conflicted with the MSA.

Services Performed Prior to TO Executed by District

Services performed under a TO were to commence upon the execution of a TO by the District's Executive Director. During review of TO's, we identified several instances of work being performed prior to the execution of the TO. Some of the instances we identified were as follows:

- On July 2, 2012, the District executed TO #109900066 with Ribway to provide grant writing and invoice auditing support services to the Office of the Director. Ribway subcontracted with Richardson and Associates to perform the tasks documented in the TO. The first invoice submitted by Ribway was dated September 23, 2012, for services performed during the period of January 1, 2012 through July 31, 2012. Ribway's invoice included services performed by Ribway and Richardson and Associates during the period of January 1, 2012 through June 30, 2012 totaling 921.5 hours and a cost of \$72,574 which occurred prior to the execution of the TO.
- On July 25, 2012, the District executed TO #2280900108 with RA Consultants to provide staff for green engineering and support services for green infrastructure projects. RA Consultants submitted an invoice dated August 9, 2012 for services performed during the period of June 1, 2012 through July 31, 2012 totaling 313.5 hours and a cost of \$20,535 which occurred prior to the execution of the TO.

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- On October 3, 2014, the District executed TO #0410000603 with Focus Solutions to provide service for contractor outreach and SBE strategy. Focus Solutions submitted eight invoices totaling 216 hours and a cost of \$27,001 for services performed during the period of May 23, 2014 through August 15, 2014 which occurred prior to the execution of the TO. In addition, these eight invoices documented the work was related to TO #029900046 and was for the continuation of services as needed by the Executive Director on the local hire requirements.
- On November 4, 2014, the District executed TO #059901406 with Focus Solutions to provide project inclusion and community outreach services related to the wet weather program. Focus Solutions submitted an invoice totaling 67 hours and a cost of \$16,750 for services performed during the period of September 15, 2014 through October 31, 2014 which occurred prior to the execution of the TO.
- On February 6, 2015, the District executed WO #4510000637 with Environmental Technologies & Communications (ETC) to provide customer service personnel to the Collections Division. ETC submitted an invoice dated January 31, 2015, for services performed during the period of January 1, 2015 through January 31, 2015 totaling 542.5 hours and a cost of \$42,996 which occurred prior to the execution of the WO.
- On March 3, 2015, the District executed TO #079901505 with Focus Solutions to provide project inclusion and community outreach services related to the wet weather program. Focus Solutions submitted an invoice dated March 5, 2015, totaling 82 hours and a cost of \$20,500 for services performed during the period of January and February 2015 which occurred prior to the execution of the TO. On March 6, 2015, a District employee requested James Parrott, the Executive Director, to approve the invoice because the work was performed prior to the execution of the TO. Mr. Parrott approved the invoice.
- On May 26, 2015, the District executed WO #404005206 with Jacobs to provide construction management services. Jacobs used Ribway Engineering as a sub-consultant on the project. Jacobs submitted an invoice dated October 20, 2015 that included three invoices from Ribway Engineering. One of the invoices submitted by Ribway was dated July 24, 2015 for services performed during the period of April 21, 2015 through June 30, 2015. The Ribway invoice included 366 hours of labor and a cost of \$39,881 performed from April 21, 2015 through May 25, 2015 which occurred prior to the execution of the WO.

Multipliers

MSA's documented that payment for a firm's services shall be in accordance with a TO as a lump sum payment or based on actual salaries paid using agreed upon rates multiplied by a factor detailed in the MSA. A multiplier is a factor applied to a firm's direct labor rate to cover the cost of direct labor, overhead, and profit. The District established labor rate multipliers for each MSA service category.

Per the MSA's, multipliers for staff supplementation services were dependent on the duration of the project. If the project was under 12 months the multiplier was 2.6 and if the project was more than 12 months, the multiplier was 2.1. This was the only service category that had a multiplier which could vary based on the duration of the project. While reviewing TO's for staff supplementation services we identified instances where the multipliers documented and agreed to in the TO contracts did not match the multipliers documented in the related MSA's based on the duration of the projects. During our review we identified the following issues:

- We identified three TO's reporting a project term exceeding 12 months and a multiplier of 2.6 was applied rather than 2.1. The higher multiplier resulted in potential additional costs of \$206,130.

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- The District did not consistently reduce the multiplier from 2.6 to 2.1 when a TO was amended and the duration of the project extended past 12 months. We identified six TO's that initially were for projects less than 12 months but they were later amended to extend beyond 12 months. The multiplier was not adjusted on these six TO's. The higher multiplier resulted in potential additional costs of \$419,871 for these projects.
- We identified instances where a TO expired and the District executed a new TO for the same services. When the new TO was executed the project duration was less than 12 months and a multiplier of 2.6 was applied. If the original TO was amended rather than executing a new TO, the District could have reduced the multiplier to 2.1. We noted examples of this occurred in contracts with 14 different firms and resulted in potential additional costs of \$1,336,349 for these projects.

During review of the TO's, we identified instances where firms had multiple TO's for similar scopes of work but the TO's were assigned to different service categories which had different multipliers. Also, we identified instances where firms provided similar services but the TO's were assigned under different service categories which had different multipliers. The instances we identified were as follows:

- In 2010, the District executed a TO with RA Consultants to provide right-of-way (ROW) services under the service category of staff supplementation. The TO had a multiplier of 2.6 and was reduced to 2.1 when the TO was amended to extend beyond a year. In 2012 and 2013, the District executed TO's with RA Consultants for ROW services under the service category of green infrastructure engineering and support services which had a multiplier of 2.97. Assigning this work under green infrastructure engineering and support services rather than staff supplementation could have resulted in additional cost totaling \$406,935.

In 2010 and 2011, the District executed TO's with Northstar Consulting Group to provide ROW services under the service category of staff supplementation using a multiplier of 2.6 and 2.1.

- In 2013, the District executed a TO with CH2M Hill to provide ROW services under the service category of departmental support services which had a multiplier of 2.95. Assigning this work under departmental support services rather than staff supplementation could have resulted in additional cost totaling \$268,642.
- In 2011, the District executed a TO with CH2M Hill to provide environmental program management services under the service category of departmental support services with a multiplier of 2.95. In 2012, the District executed a TO with CH2M Hill to provide the same services under the service category of staff supplementation services with a multiplier of 2.6. Assigning this one of these TO's under departmental services rather than staff supplementation could have resulted in additional cost of \$61,985.

We identified four TO's executed with Environmental Technology and Communications (ETC) to provide environmental technicians under the service category of pipeline assessment certification process (PACP) support. Per ETC's MSA, the multiplier reported for PACP support was 2.1. We identified 12 TO's executed with ETC for staff supplementation to provide document control and invoice quality assurance reviews under the service category of program management support for document control and invoice QA/QC reviews. Per ETC's MSA, the multiplier reported for program management support was 2.1. The 16 TO's reported they would apply a 2.1 multiplier to direct labor and a 2.95 multiplier to management however, the MSA did not report a different multiplier for management.

We identified two TO's totaling \$183,309 executed with Stantec Consulting Services to provide supplemental staff to deliver PACP technical support to the District. Stantec did not have an MSA for PACP support. The two TO's executed by the District with Stantec included a multiplier of 2.95 which was higher than the 2.1 multiplier applied to the TO's executed with ETC for the same services. The use of a higher multiplier resulted in potential additional cost of \$52,818.

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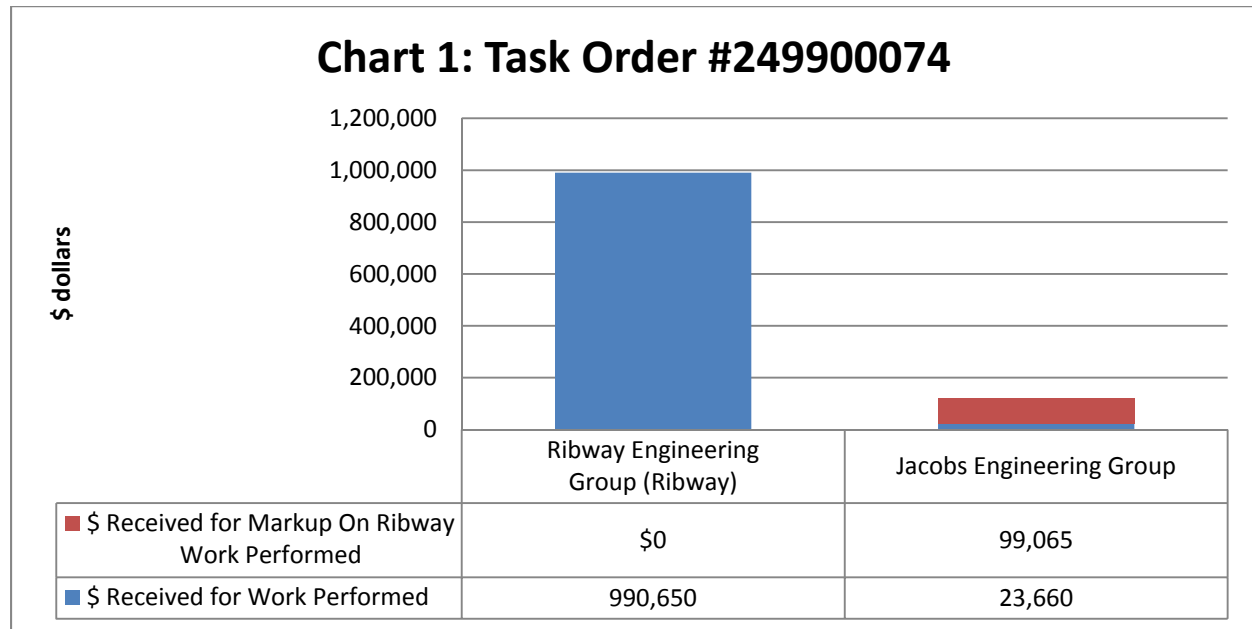
Markups

Firms awarded work through a TO were allowed to use sub-consultants to perform work if approved by the District. The firm was allowed to markup the cost of work performed by the sub-consultant up to a maximum of 10 percent.

During review of the TO's, we identified 18 TO's executed by the District in which the firms awarded the TO's were approved to use a sub-consultant but the sub-consultant had a MSA for the same service category. The firms awarded these TO's charged a markup on the sub-consultants' work. If the work assigned to the sub-consultant would have been done directly there would have been no markup costs. One such example of the District contracting directly with the firm actually doing the work and not incurring a markup occurred in May 2010, when the District executed a TO (#011000248) with Ribway for a construction manager to provide services during construction under the service category of staff supplementation. All of the work performed under this TO was done by Ribway. In contrast, the following are examples where the District was charged a markup because they did not contract directly with the firm performing the services:

- In December 2012, the District executed a TO (#249900074) with Jacobs to provide a construction manager to support the Office of the Director under the service category of departmental support services. Jacobs used Ribway as a sub-consultant to provide the construction management services under the MSA service category of staff supplementation and charged a 10% markup. Jacobs provided staff for project management, technical and administrative support services and charged a 2.95% multiplier.

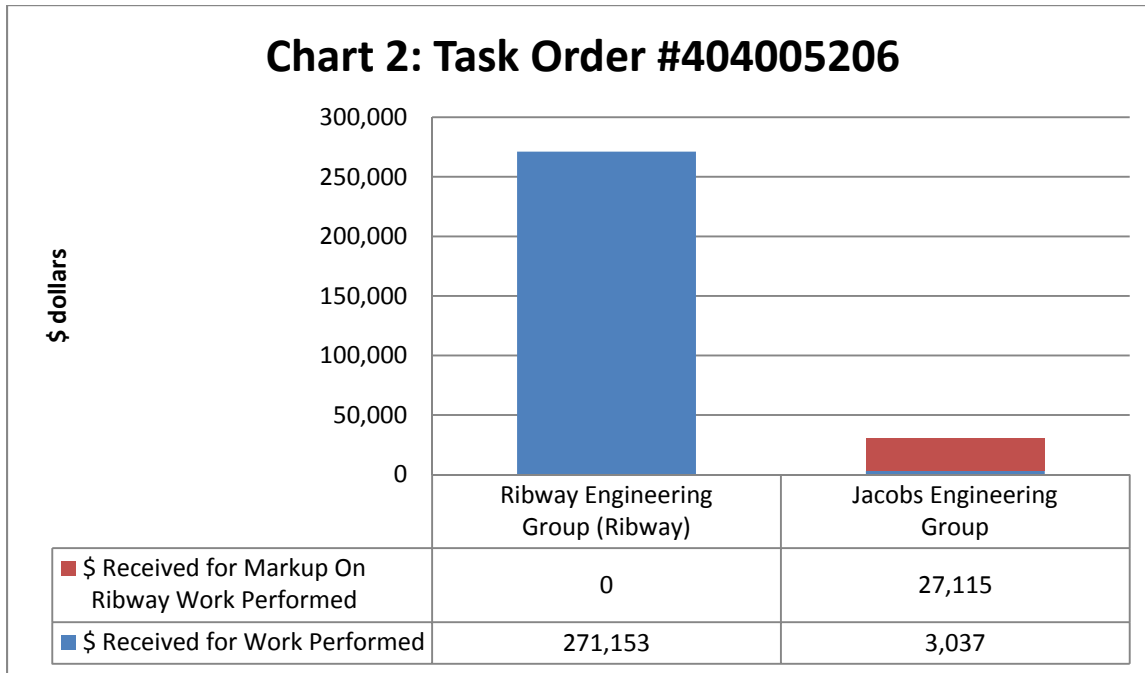
Chart 1 shows the expenses paid to Ribway as a sub-consultant in comparison to Jacobs as the consultant. It also shows the expenses paid to Jacobs for the markup on services provided by Ribway.



- In May 2015, the District executed a TO (#404005206) with Jacobs to provide construction manager services under the service category of staff supplementation services. Jacobs used Ribway as a sub-consultant to provide the construction management services under the MSA service category of staff supplementation and charged a 10% markup for the services provided by Ribway. Jacobs provided staff for project management, technical and administrative support services and charged a 2.6% multiplier.

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Chart 2 shows the expenses paid to Ribway as a sub-consultant in comparison to Jacobs as the consultant. It also shows the expenses paid to Jacobs for the markup on services provided by Ribway.

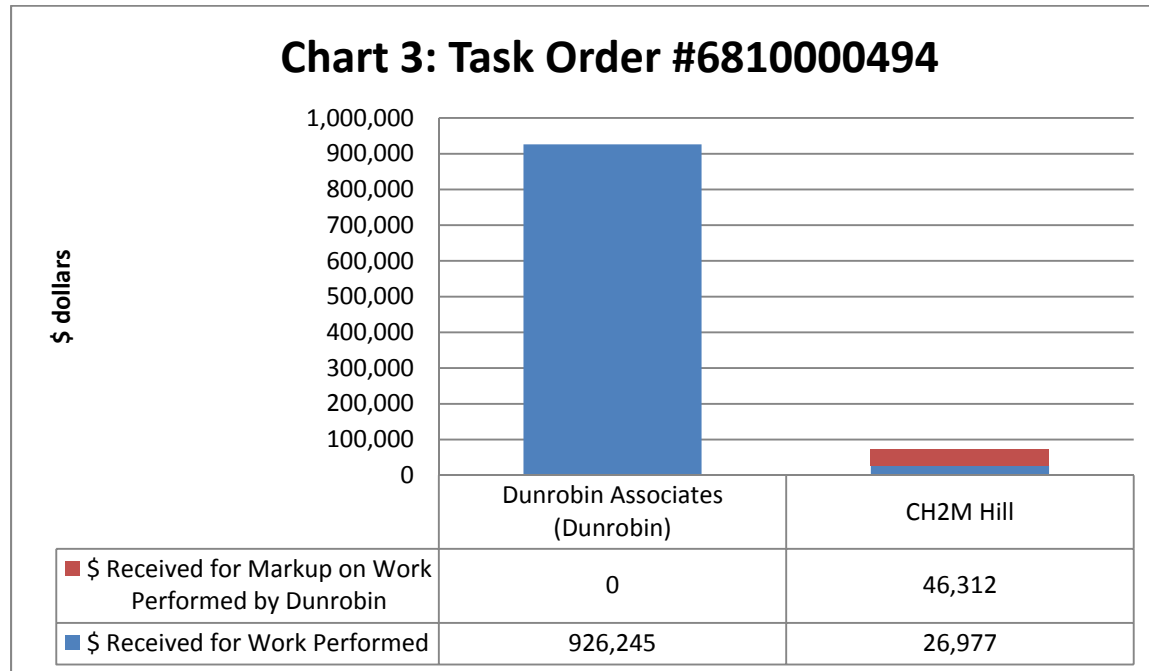


Jacobs and Ribway both had MSA's with the District for staff supplementation and departmental support services. As noted above, in 2010, the District executed a task order for construction manager services directly to Ribway. The District could have issued TO #249900074 and TO #404005206 directly to Ribway rather than executing the TO's with Jacobs resulting potentially in less cost totaling \$152,877.

- On February 7, 2013, Dotty Carman, Assistant City Solicitor prepared a TO request form for CH2M Hill to be selected to perform ROW services. At the time the TO was requested the District was using RA Consultants and Northstar Consulting for ROW services. On February 14, 2013, the District executed a TO (#681000494) with CH2M Hill Engineer's to provide sustainable engineering and support services which included ROW services under the MSA service category of departmental support services. CH2M Hill used Dunrobin Associates as a sub-consultant to provide the ROW acquisition services and charged a 5% markup for those services. CH2M Hill Engineer's provided oversight of the administration of this TO including billing for services rendered and charged a 2.95% multiplier.

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Chart 3 shows the expenses paid to Dunrobin as a sub-consultant in comparison to CH2M Hill as the consultant. It also shows the expenses paid to CH2M Hill for the markup on services provided by Dunrobin.



Dunrobin Associates was founded by a former City law department employee, Beth Sutherland. Dunrobin Associates registered as a limited liability corporation with the Secretary of State of Ohio on February 11, 2013. Beth Sutherland was working as an independent contractor for RA Consultants during the period of March 2010 through April 2013, which was providing ROW services for the District through a TO.

CH2M Hill submitted an invoice for the period June 29, 2013 through July 26, 2013 totaling \$58,018. The invoice was approved by two consultants working for the District. One of the consultants, Sharon Jean-Baptiste, worked for CH2M Hill.

In March 2015, CH2M Hill submitted an invoice for services totaling \$18,900 provided by Dunrobin Associates for the period of January 1, 2014 through March 15, 2014. The invoice submitted by CH2M Hill included an invoice from Dunrobin Associates which reported 120 hours of labor provided by Dotty Carman. On September 25, 2015, the District's Enterprise Manager sent a letter to Ms. Sutherland explaining why the District could not issue payment for the services provided by Ms. Carman during the period of January 1, 2014 through March 15, 2014. The letter explained payment could not be issued due to conflicts associated with Ms. Carman's previous employment with the City. In addition, it reported it was not appropriate for Ms. Carman to provide services to the firm she recommended be sole-sourced for the work and the City has a policy whereby City employees must wait one year to provide outside consulting services for projects they were actively engaged with as a City employee.

- On December 24, 2015, the District executed a TO with RA Consultants to install and configure new implementation of an OnBase production system. The OnBase production system was a software system used for the scanning, storage and retrieval of paper documents as well as the importing, storage, and retrieval of electronic files. The District needed to separate from the Cincinnati Water Works OnBase system and create its own system. Per the TO, RA Consultants was approved to use a vendor called Prosource as a sub-consultant to perform the services and RA Consultants was going to provide project management and support services. RA Consultants was approved to charge a 10% markup on the services provided by Prosource.

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Prosource submitted an invoice on January 4, 2016 for OnBase licensing and an annual maintenance fee totaling \$100,787. RA Consultants was paid \$10,078 for the markup on these items. RA Consultants had yet to charge any time to this project when Prosource submitted the invoice.

District's Use of Consultants

During our review of the MSA's, TO's, and related invoices we identified instances where consultants hired by the District were used to perform duties that would have been more appropriately performed by District employees. The items we identified during our review were as follows:

- Two consultants were on separate selection committees that reviewed qualifications submitted by firms related to a RFQ issued for a MSA service category.
- We identified numerous instances of consultants preparing TO requests and requesting a preferred firm to perform services related to the tasks. Also, we identified numerous instances of consultants approving TO request forms, some of which were requested by other consultants.

We identified two instances where employees of Jacobs working as consultants for the District requested a TO and recommended Jacobs be selected for the work. One of the TO request forms was approved by another Jacobs employee working as a consultant for the District. These two TO's were executed by the District with Jacobs totaling \$211,000.

We identified one instance where an employee of CDM Smith working as a consultant for the District requested a TO and recommended CDM Smith be selected for the work. CDM Smith was awarded the TO.

We identified one instance where an employee of URS working as a consultant for the District requested a TO and recommended URS be selected for the work. URS was awarded the TO.

- We identified instances of consultants reviewing and approving invoices of other consultants.
- We identified eight performance evaluations completed by consultants related to work performed by other consultants.

Ribway Engineering

TO #038090071 and TO #0110000675

On October 13, 2010, the District and Ribway executed TO #038090071 pursuant to MSA #95x10666 to provide planning oriented support services for the District's green program community planning and communications tools project. Ribway provided an Urban Planner to work for the District; however, the Urban Planner worked in the City's Planning Department.

Ribway had two different Urban Planner's working in the Planning Department for the period of October 13, 2010 through August 11, 2014 related to TO #038090071. The first Urban Planner worked during the period of October 13, 2010 through July 13, 2012. During the period of August 2012 through November 2012, Ribway did not have an Urban Planner working in the Planning Department related to TO #038090071.

Per discussion with the Planning Department's Senior Administrative Specialist she stated they had a person working in their department through a staffing agency and the contract was scheduled to expire on October 1, 2012. The Senior Administrative Specialist stated the Planning Department wanted to hire the person working through the staffing agency full time; however, the Planning Department was not able to hire them as a full time employee.

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Beginning in December 2012, Ribway had a new Urban Planner working in the Planning Department to replace the person who left in July 2012. The new Urban Planner was the same person who had previously worked in the Planning Department through the staffing agency.

Ribway invoiced the District on a monthly basis for the services provided under this TO. The invoices submitted included a report documenting the hours of work performed by the Urban Planner under two categories which were 1) Communities of Future Planning and 2) Plan Cincinnati. In addition, Ribway submitted a monthly report documenting the work activities performed for the two categories; however, this report did not document the hours worked for each activity.

During our review of the monthly activity reports we identified activities reported under the Plan Cincinnati category that did not appear to be related to the operations of the District. We spoke with representatives from both the District and the City Planning Department, requesting them to review the activities we identified and determine if they were related to the operations of the District. After receiving feedback from the District and the City Planning Department we determined some of the activities reported by Ribway were not related to the operations of the District. Some of these activities included:

- Setting up room and audio for planning commission meetings; preparing packets for planning commission meetings; attending planning commission meetings; and taking minutes for the planning commission meetings
- Performing research and preparing staff reports for work related to the Planning Department
- Working on developing a Plan Cincinnati video for the American Planning Association conference
- Working on City Planning Department's website

On September 29, 2014, MaryLynn Lodor, the District's Deputy Director, sent an email to Ribway's President, Andrew Eribo, related to TO #038090071, stating "Based on the budgetary reductions we are facing and the fact that we do not currently have a modified TO underway, please do not spend time beyond what you are authorized for under the current TO." On the same date, Ms. Lodor approved two invoices for Ribway for work performed during the period of May 1, 2014 through July 31, 2014. The balance remaining on TO #038090071 after these two invoices were approved totaled \$4,082.

On June 25, 2015, Ms. Lodor sent an email to some District employees stating Mr. Parrott had agreed with Charles Graves, the City Planning Director, to have the Planning Department pay 20% of the cost of TO #0110000675. We did not see a written agreement regarding the 20%. Per our interview with the Planning Department's Senior Administrative Specialist this was a verbal agreement.

On July 8, 2015, the District's Project Manager for TO #0110000675 emailed Ms. Lodor and reported she met with Ribway's Urban Planner and the Urban Planner was adjusting their work to include more District activities and less general planning activities as requested by Ms. Lodor.

On August 3, 2015, Ribway submitted an invoice for services performed totaling \$131,933 for an eleven month period covering August 1, 2014 through June 30, 2015. The invoice reported an Urban Planner worked 1,764.50 hours during the period. A monthly activity report for February 2015 documented Ribway's Urban Planner met with Ms. Lodor to discuss work. Ms. Lodor told us she was not sure when she first became aware that Ribway still had an employee working at the City Planning Department. Ms. Lodor told us she didn't approve the invoice because the work had been performed without an approved TO. The TO was approved by Mr. Parrott.

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In March 2016, the Project Manager began discussions with the City Planning Department's Senior Administrative Specialist for the District to be reimbursed based on the verbal agreement between Mr. Parrott and Mr. Graves. The Project Manager was told by the Senior Administrative Specialist that the District suggested they pay 20% of the TO, however, City Planning never agreed to it and countered with 10%. Also, the Planning Department told the Project Manager they were not comfortable paying the District for work performed prior to July 1, 2015 because it preceded the approval of the TO.

We spoke with the Planning Department's Senior Administrative Specialist and she said the Planning Department didn't agree to 20% because the Planning Department could not afford to pay that much.

The Project Manager reviewed invoices submitted by Ribway for the period of July 1, 2015 through January 31, 2016 and determined the Urban Planner spent 13% of her time working on City planning activities. The City Planning Department agreed to pay 13% of the TO, not including the first invoice submitted by Ribway. On April 22, 2016, the City issued an ID bill totaling \$13,394 to reimburse the District for services performed by Ribway related to the Planning Department.

During our review of the invoices submitted by Ribway related to TO #0110000675 we determined they billed the District for work performed by the Urban Planner at a rate of \$28 per hour and applied a multiplier of 2.6 for a total hourly rate of \$72.80. Per the TO, the District and Ribway agreed to an hourly rate of \$67.60 for the Urban Planner. Ribway billed the District 3,085.5 hours at the incorrect rate resulting in the District overpaying Ribway by \$16,045.

As previously reported on page 17, we identified work performed by the Urban Planners that was for the benefit of the Planning Department and not related to the operations of the District. The issues we identified were as follows:

TO #038090071

For the period of September 2010 through August 2014, we determined 31 of the 40 invoices submitted by Ribway included some activities under the Plan Cincinnati category that were not for the operations of the District. The total amount paid by the District related to these activities totaled \$34,996.

WO #0110000675

For the period of August 2014 through June 2015, only one invoice was submitted by Ribway. This invoice included some activities under the Plan Cincinnati category that were not for the operations of the District. The total amount paid by the District related to these activities totaled \$13,003. Additionally, Ribway billed the wrong rate for the Urban Planner which is reported above, resulting in the District overpaying Ribway by \$928.

The total amount billed by Ribway and paid by the District related to the Plan Cincinnati category for the 32 invoices, not including the amount billed at the wrong rate, totaled \$47,071.

TO #0410000341

On October 11, 2010, the District's Executive Director, James Parrott, authorized TO #0410000341 with Ribway to provide support for research and development to launch "Project Rebuild", a workforce development model to be shared with other utilities facing consent orders. The scope of the task order was to build upon the established foundation of internships and co-op assignments so as to engage and partner with apprenticeship programs, vocational, trades, and various labor workforce programs that assist with job placements. The scope also included evaluating research efforts and reinforcing successful performance measures. Tasks assigned to Ribway in this task order included the following:

- Research the establishment of a foundation
- Research governance structure of a foundation

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During review of invoices and progress reports submitted by Ribway related to this task order we identified the following activities performed by them that were related to the Project Rebuild Workforce Collaborative Foundation, Inc.:

- Attended Project Rebuild Team Meetings
- Reviewed Meeting Minutes
- Worked on developing Project Rebuild program schedule and structure
- Researched foundation organization and structure
- Reviewed business plan for Project Rebuild

These activities performed by Ribway were related to the development of a non-profit foundation known as the Project Rebuild Workforce Collaborative Foundation, Inc., and are not considered to be for a proper public purpose because they were not related to the operations of the District, but instead were related to the development of the non-profit foundation. Ribway submitted 11 invoices totaling \$80,480 that included these activities and the invoices were paid by the District. The invoices submitted by Ribway did not document the hours worked for each activity performed.

Ribway invoiced the District for services provided by three sub-consultants, DeVaughn Business Solutions, Richardson and Associates, and LAPS Sales Seminar. These three sub-consultants were not reported in the TO and there was no written approval by the District. The District paid Ribway \$198,156 for the services performed by the three consultants.

During review of the invoices and progress reports submitted by Ribway for DeVaughn Business Solutions we identified the following activities performed by them:

- Attended Project Rebuild Team Meetings
- Worked on Project Rebuild Team Meeting Minutes
- Research foundation – Fiscal agents and board member bio's
- Reviewed business plan for Project Rebuild

These activities performed by DeVaughn Business Solutions were related to the development of the Project Rebuild Workforce Collaborative Foundation, Inc. and were not related to the operations of the District and are not considered to be for a proper public purpose. DeVaughn Business Solutions submitted 12 invoices that included these activities and reported they worked 183.9 hours totaling \$11,034. In addition, DeVaughn Business Solutions submitted a receipt for reimbursement totaling \$192 for Project Rebuild business cards for James Parrott and Margie Anderson. The District paid Ribway for these expenses.

Also, during review of invoices submitted by Ribway for DeVaughn Business Solutions we identified eight invoices for the period of November 1, 2010 through May 31, 2012 that documented 14 hours of work for "Invoice/Billing" totaling \$840 and was paid by the District. For the period of June 1, 2012 through July 31, 2012, DeVaughn Business Solutions submitted two invoices that documented two hours of work for "Invoice/Billing" and the hours were denied and not paid by the District because they stated "preparing invoices is typically NOT administrative support but overhead and not billable." Since the District denied the hours for invoice/billing on two invoices the District should have denied, and it should not have paid the hours billed for the other eight invoices.

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Focus Solutions

On April 29, 2011, Mr. Parrott requested for the City to waive City Administrative Regulation No. 23 and enter into a direct award with Focus Solutions for the development of a comprehensive sustainable apprenticeship training and placement program. The waiver was approved by the City's Assistant City Manager on May 2, 2011. The waiver request did not document why another firm was not suitable or acceptable to meet the services needed. On May 1, 2011, the District executed a MSA (#15x11095) with Focus Solutions for the service category of departmental support services. The MSA was signed on April 26, 2011 by Zola Stewart, the Focus Solutions President, before the District requested the direct award and obtained approval from the City.

TO #019900037

On May 12, 2011, the District executed TO #019900037 pursuant to MSA (#15x11095) with Focus Solutions for \$47,580 to provide the District with a comprehensive sustainable apprenticeship training and placement program. On August 24, 2011, Focus Solutions submitted an invoice totaling \$9,265 for services performed during the period of June 1, 2011 through August 31, 2011 however, there were no funds remaining on the TO. The invoice was eventually paid by the District under TO #029900046.

TO #029900046

On November 22, 2011, the District and Focus Solutions executed TO #029900046 pursuant to MSA (#15x11095) totaling \$367,500 to provide the District with program implementation and support services related to Project Rebuild.

We obtained invoices from the District submitted by Focus Solutions related to this TO. The invoices submitted by Focus Solutions included timesheets for Ms. Stewart and support staff. During our review of the timesheets for Zola Stewart we identified numerous days reporting 24 or more hours for one day. We spoke with Ms. Stewart and she told us the hours reported on the timesheets for Zola Stewart included hours for other Focus Solutions employees. In addition, Ms. Stewart told us Focus Solutions was billing the District and not getting paid in a timely manner and was requested by Margie Anderson, the District's Superintendent, to consolidate old invoices and resubmit. Ms. Stewart provided us with an email from one of her employees that they were being requested by Ms. Anderson to resubmit old invoices with manipulated invoice dates.

Ms. Stewart provided us with copies of some of the invoices her firm originally submitted to the District related to TO #029900046 before Ms. Anderson requested Focus Solutions to consolidate and resubmit. Focus Solutions submitted 13 invoices totaling \$88,472 for 756 hours of work performed for the period of August 21, 2011 through November 19, 2011 prior to having a TO approved by the District. We compared the invoices and timesheets given to us by Ms. Stewart that were originally submitted by Focus Solutions as well as information from her factoring company for this period of time to the consolidated invoices and timesheets submitted by Focus Solutions at the request of Ms. Anderson. The timesheets submitted with the consolidated invoices had the original dates removed and new dates handwritten on the timesheets. Ms. Anderson requested Focus Solutions to consolidate and resubmit the invoices and timesheets because the work performed by Focus Solutions was done prior to the TO being executed. The language in the TO noted the services would commence upon execution of the TO.

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Tables 1, 2, and 3 document original invoices submitted by Focus Solutions but later requested to be consolidated into one invoice and paid by the District.

Table 1: Original invoices submitted and consolidated into invoice #588				
Original Invoice #	Actual Periods of Service	Amount of Original Invoice	Consolidated Invoice #	Amended Dates of Service
414	6/7/11 – 8/19/11	\$9,265	588	11/22/11 – 12/3/11
415	8/21/11 – 8/27/11	3,125	588	Unable to Determine
431	8/28/11 – 9/3/11	5,000	588	Unable to Determine
442	9/4/11 – 9/10/11	6,875	588	11/27/11 – 12/3/11
465	9/11/11 – 9/17/11	14,875	588	Unable to Determine
481	9/18/11 – 9/24/11	8,247	588	Unable to Determine
		\$47,387		

Table 2: Original invoices submitted and consolidated into invoice #589				
Original Invoice #	Actual Periods of Service	Amount of Original Invoice	Consolidated Invoice #	Amended Dates of Service
486	9/25/11 – 10/1/11	\$8,600	589	12/18/11 – 12/24/11
504	10/2/11 – 10/8/11	5,375	589	12/18/11 – 12/24/11
514	10/9/11 – 10/15/11	5,750	589	12/25/11 – 12/31/11
527	10/16/11 – 10/22/11	5,750	589	12/25/11 – 12/31/11
541	10/23/11 – 10/29/11	5,750	589	1/1/12 – 1/7/12
549	10/30/11 – 11/5/11	5,750	589	1/1/12 – 1/7/12
555	11/6/11 – 11/12/11	7,625	589	1/8/12 – 1/14/12
575	11/13/11 – 11/19/11	5,750	589	1/8/12 – 1/14/12
		\$50,350		

The District issued checks to pay invoice #588 and #589 on December 23, 2011 and January 27, 2012 respectively. Since Ms. Anderson requested Focus Solutions to consolidate their invoices and amend the dates of services on the timesheets for the period of August 21, 2011 through November 19, 2011, Ms. Anderson had to continue to request for invoices to be consolidated and timesheet dates amended, otherwise it would have brought attention to the initial altered invoices.

Table 3: Original invoices submitted and consolidated into invoice #714				
Original Invoice #	Actual Periods of Service	Amount of Original Invoice	Consolidated Invoice #	Amended Dates of Service
590	11/20/11 – 11/26/11	\$11,250	714	1/15/12 – 1/21/12
597	11/27/11 – 12/3/11	6,350	714	1/15/12 – 1/21/12
612	12/4/11 – 12/10/11	6,875	714	1/15/12 – 1/21/12
617	12/11/11 – 12/17/11	7,625	714	1/22/12 – 1/28/12
640	12/18/11 – 12/24/11	7,437	714	1/29/12 – 2/4/12
652	12/25/11 – 12/31/11	7,625	714	1/29/12 – 2/4/12
655	1/1/12 – 1/7/12	14,075	714	2/5/12 – 2/11/12
679	1/8/12 – 1/14/12	18,150	714	2/5/12 – 2/11/12
695	1/15/12 – 1/21/12	18,875	714	2/12/12 – 2/18/12
		\$98,262		

As part of our review of the original and consolidated invoices we identified 23 instances on the timesheets in which Ms. Stewart reported 24 or more hours being worked in one day. All invoices submitted by Focus Solutions were approved by the District's Superintendent of Wastewater Administration, Margie Anderson.

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Table 4 documents the 23 instances in which Ms. Stewart reported 24 or more hours being worked in one day.

Table 4: Timesheets that documented Ms. Stewart working 24 or more hours in one day						
	Invoice #	Invoice Date	Time Sheet – Week Period	Day	Hours Reported	Amount (Hours x \$125/hr. rate)
1	714	2/15/12	1/8/12 – 1/14/12	1/11/12	25	\$3,125
2	714	2/15/12	1/15/12 – 1/21/12	1/17/12	24	3,000
3	802	3/1/12	1/22/12 – 1/28/12	1/23/12	32.5	4,062
4	802	3/1/12	1/22/12 – 1/28/12	1/24/12	32.5	4,062
5	802	3/1/12	1/22/12 – 1/28/12	1/25/12	31.5	3,937
6	802	3/1/12	1/22/12 – 1/28/12	1/26/12	25.5	3,187
7	802	3/1/12	2/5/12 – 2/11/12	2/6/12	26	3,250
8	802	3/1/12	2/5/12 – 2/11/12	2/7/12	26	3,250
9	802	3/1/12	2/5/12 – 2/11/12	2/8/12	26	3,250
10	802	3/1/12	2/5/12 – 2/11/12	2/9/12	26	3,250
11	802	3/1/12	2/5/12 – 2/11/12	2/10/12	26	3,250
12	802	3/1/12	2/12/12 – 2/18/12	2/13/12	24	3,000
13	802	3/1/12	2/12/12 – 2/18/12	2/14/12	24	3,000
14	802	3/1/12	2/12/12 – 2/18/12	2/15/12	24	3,000
15	802	3/1/12	2/12/12 – 2/18/12	2/16/12	24	3,000
16	802	3/1/12	2/12/12 – 2/18/12	2/17/12	24	3,000
17	788	3/6/12	2/26/12 – 3/3/12	2/27/12	24	3,000
18	788	3/6/12	2/26/12 – 3/3/12	2/28/12	24	3,000
19	788	3/6/12	2/26/12 – 3/3/12	2/29/12	24	3,000
20	788	3/6/12	2/26/12 – 3/3/12	3/1/12	24	3,000
21	788	3/6/12	2/26/12 – 3/3/12	3/2/12	24	3,000
22	815	3/20/12	3/11/12 – 3/17/12	3/15/12	27	3,375
23	815	3/20/12	3/11/12 – 3/17/12	3/16/12	27	3,375
						\$74,373

Per Exhibit A – Scope of Work in the TO, it stated “Focus Solutions will assist [the District] with implementing the Project Rebuild program to achieve its mission of partnering with local schools to expose and educate youth to public sector careers in water resources and environmental management business practices. This initiative benefits our community and develops the future workforce for job opportunities related to the wastewater industry. Project Rebuild will also offer apprenticeship training courses in the construction labor crafts needed on wastewater industry related jobs as well as engage with the business community and other government entities in building small business capacity to foster partnerships and collaborate efforts and accomplishing goals and strategies set forth in meeting today’s infrastructure needs to sustain it for future generations.”

At the time the TO was executed, Project Rebuild was a fund being administered by the Greater Cincinnati Foundation. The District was in the process of obtaining a 501(c)(3) charitable status designation from the Internal Revenue Service for Project Rebuild to become a foundation which would be eligible to receive grant funding. The purpose of the program was to focus on three workforce initiatives for the District.

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Exhibit A further stated the following:

The first initiative is to provide opportunities to youth, the next generation workforce, and others who may require mentoring, training, or co-op assignments, through partnerships with local high school districts as well as secondary educational institutions throughout the region.

The second initiative of the program to develop an apprenticeship program to provide job skills training and education to the disadvantaged community (unemployed, underemployed, and hard to employ) who seek opportunities to re-enter the workforce. The purpose of the training is to create a sustainable pipeline of workers needed for the increased number of projects earmarked for the future.

The third initiative is to build small business capacity through outreach and support to small, minority, disadvantaged and women-owned businesses with developing their capacity and capability to compete for public sector contracts.

The initial TO documented six tasks to be performed by Focus Solutions. The TO was amended four times to include three additional tasks. The nine tasks to be performed by Focus Solutions were as follows:

- 1) Develop model for self-sustaining job creation initiatives;
- 2) Assist with SBE capacity building;
- 3) Provide support to the Project Rebuild 501(c)(3) advisory board;
- 4) Research and grant writing;
- 5) Funding strategies;
- 6) Outreach, marketing, and event coordination;
- 7) Stakeholder engagement;
- 8) Consulting services to the Executive Director related to local hire requirements; and
- 9) Continuation of services as needed by the Executive Director related to local hire requirements.

Task #1 – Develop model for self-sustaining job creation initiatives

Focus Solutions, Inc. was to assist the District's project manager, Margie Anderson, with establishing practices and procedures to administer the Project Rebuild program for optimal results of neighborhood reinvestment, jobs creation, and workforce development to carry out the voluminous capital initiatives earmarked by the District in the future.

Focus Solutions President, Zola Stewart and the District's Executive Director, James Parrott, prepared a 'Workforce Development Initiative' dated August 16, 2011. The initiative developed two strategies to enhance the process of getting people to work, or back to work based on the economic conditions. One of the strategies reported was to create a local hire initiative to place disadvantaged and local residents into jobs. The initiative reported the objective was to develop a method of providing individualized occupational skills training for dislocated workers and low-income adults with the goal of placing participants in occupations that would enhance their prospects for long term employment, and/or advanced employment that would permit them to become self-sufficient. The initiative reported the program would be a "hire-first" model in which the employer, either public or private, would agree to hire, train, and retain the individual upon successful completion of the training program. The initiative included an 'Apprenticeship Application and Placement Process'.

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Activity Summary Reports prepared by Focus Solutions reported it developed a partnership with Kokosing Construction, a contractor working on projects at the District. Focus Solutions developed and implemented a pre-screening process to specifically meet the needs of the District. Focus Solutions utilized this pre-screening process in their partnership with Kokosing to provide potential applicants to be interviewed and hired for one entry level laborer position that would work on District related projects. Focus Solutions reviewed over 1,200 applications for potential employment with Kokosing and selected 150 applicants to go through the pre-screening process. Focus Solutions narrowed the 150 applicants to 80 and eventually narrowed it to 21 candidates for the one position. Focus Solutions reported in February 2012 Kokosing hired one of the applicants to work on a District project.

Per review of invoices submitted by Focus Solutions we determined they invoiced the District for 803.5 hours totaling \$86,013 for services provided for task #1 during the period of September 18, 2011 through March 31, 2012. We determined expenses made by the District for items related to task #1 were not considered a proper public purpose because they were not related to the operations of the District.

Task #3 – Provide Support to the Project Rebuild 501(C)(3) Advisory Board

Focus Solutions was to provide the following services related to task #3:

- Assist the board with structural guidance as needed, such as chartering, bylaws development or program administration;
- Make recommendations to the board for the program that would optimize its ability to raise funds;
- Provide training for the board on roles, responsibilities and oversight as required by the District;
- Assist project manager with developing the articles of incorporation for Project Rebuild including defining the fundamental roles and responsibilities, purpose and operating characteristics. All procedures, instructions, and written elements of the Articles of Incorporation to be contained in a written manual.

Activity Summary Reports prepared by Focus Solutions reported that employees of Focus Solutions performed preliminary work for Project Rebuild board development and identified potential board members. In addition, Focus Solutions met with the law firm of Crabbe, Brown, & James, which was engaged by the District regarding the status of the 501(c)(3) application, program name changes, and various pertinent issues surrounding the Project Rebuild business plan.

Focus Solutions prepared a Project Rebuild business plan that was dated October 6, 2011. On February 8, 2012, Crabbe, Brown, and James filed Articles of Incorporation for the Project Rebuild Workforce Collaboration Foundation, Inc., with the Ohio Secretary of State.

Per review of invoices submitted by Focus Solutions, we determined Focus Solutions invoiced the District for 160 hours totaling \$20,000 for services provided during the period of January 22, 2012, through March 24, 2012, for task #3. We determined expenses made by the District for items related to task #3 were not considered a proper public purpose because they were not related to the operations of the District, but rather were related to the operations of the Project Rebuild Workforce Collaboration Foundation and to support the goals and mission of the private Foundation.

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Task #9 – Continuation of services as needed by the Executive Director related to local hire requirements

The task order did not document in detail the services to be provided for task #9.

Focus Solutions submitted to the District four invoices dated July 15th, July 23rd, August 5th, and August 19th of 2014 totaling \$13,000 for services provided related to task #9 during the period of June 30, 2014 through August 15, 2014. All four invoices provided the same description of services and stated “Task #9 – Continuation of services as needed by the Executive Director on the “Local Hire Requirements” Communication – Coordination – Consulting Fees”. The services provided during this period were related to the local hire requirements and should not have been allowed since a Federal court order had enjoined the District from using the local hire requirements (CMC 318).⁶ While the invoices documented the services were for TO #029900046, they were actually paid under TO #0410000603.

Brown & Caldwell

We identified five TO request forms prepared by Ali Bahar, a District Engineer, who requested services to be provided by Brown & Caldwell. Per review of the TO's, we noted Ali Bahar's son worked for Brown & Caldwell and was assigned to work on the projects related to each of the TO's. Ali Bahar was assigned as the Task Leader for two of the TO's, the Principal Engineer on another one of the TO's, and as the Project Manager on the other two TO's. Upon review of the related invoices for these five TO's, we identified 34 invoices that reported hours worked by his son in which the invoices were reviewed and approved by Ali Bahar. The invoices reported his son worked 702.5 hours and Brown & Caldwell was paid \$63,691 related to his services.

Ellington Management Services

On June 11, 2015, Harry Black, the City Manager, authorized a work order (WO) with Ellington Management Services (EMS), owned by Eugene Ellington, to provide highly qualified assistance and resources to support and facilitate program policy review as well as to enhance economic inclusion efforts in order to sustain the SBE program. The total compensation for this WO was not to exceed \$43,000. Per the WO, one of the four tasks to be provided was to assist the District with review of its current SBE rules and guidelines to ensure that it fulfilled the intent of increasing business opportunities and fulfilling the commitment of the betterment of the economy. EMS was to submit revisions, modifications, and/or cancellations of the rules and guidelines to the District's Executive Director. The revisions were to be consistent with the City and the Hamilton County Commissioners' policy direction.

Gerald Checco, the Executive Director at the time, told us he reviewed the draft submitted by Mr. Ellington and noted it was the same as the District's current SBE policy except Mr. Ellington had made slight changes to replace SBE with MWBE (Minority and Women Business Enterprise).

We obtained a copy of the draft submitted by Mr. Ellington. The draft document was titled 'Metropolitan Sewer District of Greater Cincinnati Minority and Women Business Enterprise Program Rules and Guidelines'. We compared the draft prepared by Mr. Ellington to the District's SBE Program Rules and Guidelines and determined the two documents were essentially the same. Mr. Ellington made changes to the following references:

- Small Business Enterprise was changed to Minority Women Business Enterprise;
- SBE was changed to MWBE; and
- Small Business Manager was changed to Economic Inclusion Manager.

The draft also removed and added a few items, such as definitions, but there were no significant changes to the document.

⁶This references the Magistrate's Opinion as appropriate guidance for the review of contracts entered into by the District. By this reference, the AOS offers no opinion as to the breadth of the limitations imposed by the Court.

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EMS submitted two invoices dated 12/17/15 and 12/31/15 that did not include any detail of the work performed but rather generically noted the billings were for “consulting services”. The two invoices totaled \$12,000 and were paid by the District.

On January 21, 2016, Mr. Ellington emailed Mr. Checco asking if he had reviewed the draft that was previously submitted. On January 27, 2016, Mr. Checco responded to Mr. Ellington telling him the policy revisions needed to be consistent with the “Hamilton County Commissioner’s policy direction”. On January 28, 2016, Mr. Checco emailed Mr. Ellington and told him they were processing the invoices but to hold on beginning the next phase of the WO because the District was assessing if the WO needed to be modified.

On July 20, 2016, the City’s Chief Procurement Officer emailed Mr. Ellington and notified him that the District had determined they no longer needed Mr. Ellington to complete the remaining tasks (2-4) reported in the WO and terminated the work order with him.

RA Consultants

Task Order #0810000273

On March 2, 2010, the District and RA Consultants executed TO #0810000273 pursuant to MSA #95x10635. The primary purpose of the TO was to provide staff to assist the District’s right-of-way (ROW) section on projects requiring realty services and negotiation.

RA Consultants submitted invoice #6-10-0008 dated October 1, 2010 to the District for payment and it included two hours totaling \$187 for work performed by Beth Sutherland on a project reported as ‘Lebanon-PH 2’. These hours, however, were not included on Ms. Sutherland’s time sheet submitted with the invoice. On November 23, 2010, the District e-mailed RA Consultants to inquire about this issue. RA Consultants responded on November 24, 2010 and stated the hours should not have been included on the invoice because the project was related to the Cincinnati Water Works. As a result the District deducted the \$187 from the invoice and paid the remaining amount.

RA Consultants submitted invoice #5-10-0008 dated August 31, 2010 to the District for payment. That invoice included two and one half hours totaling \$234 for work performed by Beth Sutherland on a project reported as ‘Lebanon-PH 2’. The District paid the entire invoice. Based on the information presented above, the work performed for ‘Lebanon-PH2’ was for the Cincinnati Water Works and not the District and should not have been paid by the District. This resulted in the District paying \$234 for services not related to the operations of the District.

TO #0810000273 – Modification #2

On October 31, 2011, the District and RA Consultants executed modification #2 for TO #0810000273. The primary purpose of the TO modification was to provide the District with ROW support services for the wet weather improvement plan, and the TO included a modification of the original budget. The modified budget reported the hourly rate for both Beth Sutherland and Gina Wendling, two employees of the consultant who were assigned to work on the project.

For the period of February 1, 2012 through June 30, 2012, RA Consultants billed the District for 52.5 hours of service performed by Kristen Eatmon, an employee of RA Consultants. The invoices reported Ms. Eatmon’s hourly rate as \$44.57 per hour and included a 2.1 multiplier for an overall rate of \$93.60. Ms. Eatmon was not reported as one of the employees assigned to work under the TO.

We obtained payroll records from RA Consultants and identified that Ms. Eatmon’s actual hourly rate paid by RA Consultants for the period of February 1, 2012 through June 30, 2012 was \$41.60 per hour. Therefore, we determined the allowable rate to be charged by RA Consultants for Ms. Eatmon related to this TO was \$87.36 per hour ($\41.60×2.1) resulting in RA Consultant’s over billing the District for Ms. Eatmon’s services by \$6.24 per hour. This calculated to a total overbilled amount of \$327 ($\6.24×52.5 hours).

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TO #2280900108

On July 25, 2012, the District and RA Consultants executed TO #2280900108 pursuant to MSA #95x10635 in which RA Consultants was to provide the District with necessary staff for the green engineering and support services for green infrastructure projects.

For the period of August 1, 2012 through June 30, 2013, RA Consultants billed the District for 1,581.5 hours of service performed by Kimberly Gray. The invoices reported Ms. Gray's hourly rate as \$30 per hour and included a 2.97 multiplier for an overall rate of \$89.10.

We obtained payroll records from RA Consultants and identified Ms. Gray's actual hourly rate paid by RA Consultants at the time of the execution of this task order was \$25 per hour. RA Consultants told us the invoices that included the rate of \$30 per hour were a clerical error. They stated the wrong rate was used and once the error was discovered the rate was changed.

For the period of July 1, 2013 through August 7, 2013, RA Consultants billed the District for 190.5 hours of service performed by Kimberly Gray. The invoices reported Ms. Gray's hourly rate as \$25 per hour and included a 2.97 multiplier for an overall rate of \$74.25.

Based on the information above, the allowable rate to be charged by RA Consultants for Ms. Gray was \$74.25 (\$25 x 2.97). Thus, RA Consultants overbilled the District for Ms. Gray's services by \$14.85 per hour for the period of August 1, 2012 through June 30, 2013. As a result, RA Consultants overbilled the District a total of \$23,485 (\$14.85 x 1,581.5 hours) as it related to Ms. Gray.

Work Order (WO) #044000022

On July 31, 2015, the District and RA Consultants executed WO #044000022 pursuant to MSA #45x11895 which tasked RA Consultants to provide ROW acquisition and support services. Per section 4 of the WO the "total compensation paid to the Consultant for the authorized services provided under this work order shall not exceed \$437,756 without prior approval by the City. The project budget breakdown is provided in Exhibit B – Budget." The budget reported a cost of \$152,019 and 2,080 hours for Kimberly Gray. This would equate to a rate of \$73.09 per hour.

On the basis of the invoices submitted by RA Consultants for WO #044000022, the District was billed for the services performed by Ms. Gray at a rate of \$80.46 per hour. RA Consultants billed the District a total of 829.5 hours for Ms. Gray totaling \$66,741.

Based on the budget reported in Exhibit B of the WO, the District and RA Consultants agreed to an overall labor rate of \$73.09 per hour. RA Consultants billed the District a total of 829.5 hours for Ms. Gray, therefore, the total amount billed should have been \$60,628 resulting in RA Consultants' over billing the District by \$6,113.

FINDING FOR RECOVERY REPAID UNDER AUDIT (FFRRUA)

FFRRUA-001: Services Performed for the City Planning Department Paid by the District

State ex rel. McClure v. Hagerman, 155 Ohio St. 320 (1951), provides that expenditures made by a governmental unit are to serve a public purpose. Typically the determination of what constitutes a "proper public purpose" rests with the judgment of the governmental entity, unless such determination is arbitrary or unreasonable. Even if a purchase is reasonable, **Ohio Attorney General Opinion 82-006** indicates that it must be memorialized by a duly enacted ordinance or resolution and may have a prospective effect only. **Auditor of State Bulletin 2003-005** Expenditure of Public Funds/Proper Public Purpose states that the Auditor of State's Office will only question expenditures where the legislative determination of a public purpose is manifestly arbitrary and incorrect.

On October 13, 2010, the District and Ribway executed TO #038090071 pursuant to MSA #95x10666 to provide planning oriented support services for the District's green program community planning and communications tools project.

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On June 23, 2015, the District and Ribway executed WO #0110000675 pursuant to MSA #45x11897 pursuant to which Ribway was to assist in the development, and completion of the land development code pertaining to stormwater management, associated best management practices, and incentive programs.

Ribway provided an Urban Planner to perform the services for both of these orders. Ribway invoiced the District monthly for the services performed by the Urban Planner provided by Ribway. The invoices submitted hours of work performed by the Urban Planner under two categories which were 1) Communities of Future Planning and 2) Plan Cincinnati. During our review of the invoices related to both orders we identified work performed by the Urban Planner in the Plan Cincinnati category that was for the benefit of the Planning Department and not related to the operations of the District.

For the period of September 2010 through June 2015, we determined 32 of the 41 invoices submitted by Ribway and paid by the District included some activities for services performed that were not related to the operations of the District. The total amount paid by the District related to these activities totaled \$47,071.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code § 117.28, a Finding for Recovery for public monies illegally expended is issued against the City of Cincinnati's Planning Department in the amount of \$47,071 in favor of the District.

The City of Cincinnati prepared an ID bill (#18028) totaling \$47,071 to reimburse the District which was recorded in CFS on September 5, 2018 resulting in the full repayment of this finding for recovery.

FFRRUA-002: Ribway Engineering – Work Order #0110000675

On January 8, 2015, the District and Ribway Engineering Group, Inc. (Ribway) executed Master Service Agreement #45x11897. Article 3 of the agreement sets out terms related to compensation.

Article 3.2 of the agreement states "Compensation for Work shall be in accordance with terms contained in a Work Order and as either (1) a lump sum payment, or (2) a not-to-exceed amount using agreed-upon rates of labor as defined in an executed Work Order."

Article 3.5 of the agreement states "Compensation for Work based upon a not-to-exceed amount shall be based on the agreed-upon rates of labor as defined in an executed work order."

Article 3.5.1 of the agreement states "Compensation for Work based upon a not-to-exceed amount may be multiplied by a factor as detailed in the Work category description(s) contained in Exhibit A of this agreement."

On June 23, 2015, the District and Ribway executed WO #0110000675 pursuant to MSA #45x11897. Per Exhibit B of the WO, it reported Ribway's Urban Planner, Rehka Kumar's rate was \$26 x 2.6 = \$67.60.

During the period of August 1, 2014 through May 31, 2016, Ribway invoiced the District for services provided by Rehka Kumar at a rate of \$72.80 (\$28 x 2.6) for 3,085.5 hours totaling \$224,624. Based on the rate agreed upon by Ribway and the District in the WO, the amount invoiced for Ms. Kumar's services should have been \$208,579 (\$67.60 x 3,085.5) resulting in Ribway overbilling and being overpaid by the District in the amount of \$16,045.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code § 117.28, a Finding for Recovery for public monies illegally expended is issued against Ribway in the amount of \$16,045 and in favor of the District's operating fund totaling \$7,573, the City's Stormwater Management Utility fund totaling \$7,573, and the City's Planning Department fund totaling \$899.

On September 11, 2018, the District received and deposited a check from Ribway in the amount of \$16,045 resulting in the full repayment of this finding for recovery.

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FINDING FOR RECOVERY PARTIALLY REPAID UNDER AUDIT

FFR-003: Project Rebuild Expenses – Ribway Engineering

State ex rel. McClure v. Hagerman, 155 Ohio St. 320 (1951), provides that expenditures made by a governmental unit are to serve a public purpose. Typically the determination of what constitutes a “proper public purpose” rests with the judgment of the governmental entity, unless such determination is arbitrary or unreasonable. Even if a purchase is reasonable, Ohio Attorney General Opinion 82-006 indicates that it must be memorialized by a duly enacted ordinance or resolution and may have a prospective effect only. **Auditor of State Bulletin 2003-005 Expenditure of Public Funds/Proper Public Purpose** states that the Auditor of State’s Office will only question expenditures where the legislative determination of a public purpose is manifestly arbitrary and incorrect.

On October 11, 2010, the District’s Executive Director, James Parrott, approved to execute a task order (#0410000341) with Ribway Engineering Group Inc. (Ribway) to provide support for research and development to launch “Project Rebuild”, a workforce development model to be shared with other utilities facing consent orders.

During review of invoices and progress reports submitted by Ribway related to this task order we identified activities performed by them that were related to the Project Rebuild Workforce Collaborative Foundation, Inc. Ribway submitted 11 invoices totaling \$80,480 that included these activities and the invoices were paid by the District.

The invoices submitted by Ribway did not document the hours worked for each activity performed. Therefore, since we were unable to determine the hours worked on each activity, the entire amount invoiced by Ribway for these 11 invoices is being included as a finding for recovery.

In addition, Ribway invoiced the District for services provided by a sub-consultant, DeVaughn Business Solutions (DeVaughn). During review of the invoices and progress reports submitted by Ribway for DeVaughn we identified activities performed by DeVaughn that were related to the development of the Project Rebuild Workforce Collaborative Foundation, Inc. DeVaughn submitted 12 invoices that included these activities and reported they worked 183.9 hours totaling \$11,034. In addition, DeVaughn submitted a receipt for reimbursement totaling \$192 for Project Rebuild business cards for James Parrott and Margie Anderson. The District paid Ribway for these expenses. In addition, we identified eight invoices submitted by DeVaughn for the period of November 1, 2010 through May 31, 2012 that documented 14 hours of work for “Invoice/Billing” totaling \$840 and was paid by the District.

It has been suggested by Ribway that the expenditure of District funds derived from sewer use charges for the purpose of engaging and utilizing Ribway’s services in the creation of the Project Rebuild Foundation constitutes a proper public purpose because it was authorized by some prospective “legislative action.” Clearly, the mere declaration by a legislative body that an expenditure of public funds will serve a proper public purpose, although persuasive, is not determinative of the issue. Such legislative actions, however, will be given deference by the Auditor of State’s Office, and by the courts, and will not be found to be inappropriate unless they are determined to be arbitrary and incorrect. In support of its contention, Ribway points to the legislative adoption of appropriations from which the moneys expended were derived. In the context of a declaration of public purpose, however, the supporting legislative action must constitute an enunciation by the legislative body of its determination that the particular expenditure involved will serve a proper public purpose of the subdivision and constitute an appropriate expenditure of the funds at issue, with justification of its position. The goal is to afford to the elected or otherwise properly designated representatives of the public the option in the first instance, to exercise studied discretion in this regard. In this context, there is no such legislative action or declaration, but gross appropriations to be designated for specific expenditure on the basis of determinations by various executive and administrative governmental functionaries.

Supplement to the Special Audit Report

Ribway suggests that the payment to it for the provision of services incident to the formation of the Foundation serve a proper public purpose because the object of the same was "...the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the ..." subdivision. SEE: *State ex rel. McClure vs. Hagerman*, 155 Ohio St. 320 (1951). The entity argues that the work of the Foundation is an "...excellent example of public-private partnership." The Auditor of State's Office does not render judgment as to the efficacy of the programs undertaken by the Foundation, or of similar programs which were directly administered by the District. There are countless private foundations throughout Hamilton County which raise and expend money for benefit to the community, but such service, in and of itself, does not render any of them appropriate recipients of the largesse of a public entity. The issue here is the propriety of the expenditure of tens of thousands of dollars in public funds to form a private not-for-profit entity, without specific prospective legislative action explicitly authorizing the use of rate user funds and justification of the same.

Implicit to the requirement that any expenditure of public funds serve a proper public purpose is the requirement that the expenditure be for a purpose within the parameters of legal obligation of the public entity, and an authorized use of public money expended. Here, without expression of reason or potential benefit, the District spent public dollars to form a private not-for-profit entity. The funds utilized were derived from sewer user fees. Section 6117.02(C)(4) requires that "[a]ll moneys collected as sanitary rates, charges, or penalties...for any sewer district shall be paid to the county treasurer and kept in a separate and distinct fund established by the board for the credit of the district." That section designates the specific purposes incident to the operation of the sewer district for which money generated by user charges may be utilized, and indicates that such funds "...shall **not** be expended other than for the use and benefit of the district." (emphasis added) The moneys here at issue were expended from sewer user fees. It is fundamental that rents, fees, and charges derived from consumers of a water or sewer enterprise fund do not constitute taxes; and it is not permissible to divert the same to a subdivision's general fund for use in support of endeavors other than those incident to the operation of the utility. SEE: *Hartwig Realty Company vs. City of Cleveland*, 128 Ohio St. 583, 192, N.E. 880 (1934); *City of Cincinnati vs. Roettinger*, 105 Ohio St. 145 (1922); and *Franklin vs. Harrison*, 112 Ohio App. 423 (1959). It is the determination of the Auditor of State that the expenditure by the District to Ribway of \$91,706 was not an appropriate expenditure of sewer use funds for a proper public purpose of the District.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code Section 117.28, a finding for recovery for public money illegally expended is issued against Ribway Engineering Group Inc. in the amount of \$92,546 in favor of the District.

On September 11, 2018, the District received and deposited a check from Ribway in the amount of \$840 for this finding for recovery. As of the date of this report, Ribway has an unpaid balance of \$91,706 related to this finding for recovery.

Under Ohio law, any public official who either authorizes an illegal expenditure of public funds or supervises the accounts of a public office from which an illegal expenditure is discovered, is strictly liable for the amount of the expenditure. *Seward v. National Surety Corp.*, 120 Ohio St. 47 (1929); 1980 Op. Att'y Gen. No. 80-074; Ohio Rev. Code § 9.39; *State ex rel. Village of Linndale v. Masten*, 18 Ohio St.3d 228 (1985). Public officials controlling public funds or property are liable for the loss incurred should such funds or property be fraudulently obtained by another, converted, misappropriated, lost or stolen.

The District's Executive Director, James Parrott, authorized the task order which led to activities performed and related payments that were improper. Mr. Parrott is held jointly and severally liable, in the amount of \$91,706 in favor of the District.

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FINDINGS FOR RECOVERY (FFR)

FFR-004: Hours Invoiced for Task Order #029900046

On May 1, 2011, the District executed a Master Service Agreement (MSA) with Focus Solutions in which Focus Solutions was to provide "As-Needed" professional services under the service category of departmental support. Article 1.2 of the MSA provides, in part, that "actual services assigned under this agreement shall be identified in a written task order, specific for each assignment agreed to and signed by both parties." Article 3.6 documented that the District shall make payment in accordance with the task order and upon submission of an invoice. The invoice was to have attached to it supporting documentation, such as time sheets, satisfactory to the District to support the invoice. Upon the request of the District, Focus Solutions was obligated to provide a certified payroll report, or similar documentation, approved by the District, as supporting documentation to invoices.

On November 22, 2011, the District executed task order #029900046 with Focus Solutions, Inc. for the primary purpose of providing the District with program implementation and support services related to Project Rebuild.

Focus Solutions submitted a timesheet for their President, Zola Stewart, and a timesheet titled "Support Staff" with invoices for services provided related to TO #029900046. As part of a review of these invoices we identified 23 instances on the timesheet in which Ms. Stewart reported 24 or more hours being worked in one day. The total amount paid for these 23 instances totaled \$74,373.

Since these timesheets reported they were for Ms. Stewart and it is impossible to work more than 24 hours in one day and highly unlikely for one person to work 24 hours in one day we determined the hours reported by Focus Solutions for Ms. Stewart were incorrect. On that basis, Ms. Anderson should have requested additional supporting documentation from Focus Solutions to verify the hours reported were accurate and for actual work performed. Since we were unable to determine the actual hours worked by Ms. Stewart for these days, the entire amount invoiced for this work is being included as a finding for recovery.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code § 117.28, a Finding for Recovery for public monies illegally expended is issued against Focus Solutions in the amount of \$74,373 in favor of the District.

Under Ohio law, any public official who either authorizes an illegal expenditure of public funds or supervises the accounts of a public office from which an illegal expenditure is discovered, is strictly liable for the amount of the expenditure. *Seward v. National Surety Corp.*, 120 Ohio St. 47 (1929); 1980 Op. Att'y Gen. No. 80-074; Ohio Rev. Code § 9.39; *State, ex. rel. Village of Linndale v. Masten*, 18 Ohio St.3d 228 (1985). Public officials controlling public funds or property are liable for the loss incurred should such funds or property be fraudulently obtained by another, converted, misappropriated, lost or stolen.

Ms. Anderson approved the invoices related to the improper payments and is jointly and severally liable in the amount of \$74,373 and in favor of the District.

FFR-005: Focus Solutions – Task Order #029900046

State ex rel. McClure v. Hagerman, 155 Ohio St. 320 (1951), provides that expenditures made by a governmental unit are to serve a public purpose. Typically the determination of what constitutes a "proper public purpose" rests with the judgment of the governmental entity, unless such determination is arbitrary or unreasonable. Even if a purchase is reasonable, **Ohio Attorney General Opinion 82-006** indicates that it must be memorialized by a duly enacted ordinance or resolution and may have a prospective effect only. **Auditor of State Bulletin 2003-005** Expenditure of Public Funds/Proper Public Purpose states that the Auditor of State's Office will question expenditures only in cases in which the legislative determination of a public purpose is manifestly arbitrary and incorrect.

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On May 1, 2011, the District executed Master Service Agreement (MSA) #15x11095 with Focus Solutions to provide "As-Needed" professional services under the service category of departmental support. Article 1.2 states, in part, "actual services assigned under this agreement shall be identified in a written task order, specific for each assignment agreed to and signed by both parties."

On November 22, 2011, the District's Executive Director, James Parrott, executed task order (TO) #029900046 with Focus Solutions, Inc. for the primary purpose of providing the District with program implementation and support services related to Project Rebuild.

The initial TO documented six tasks to be performed by Focus Solutions. The TO was amended four times to include three additional tasks. The nine tasks to be performed by Focus Solutions were as follows:

- 1) Develop model for self-sustaining job creation initiatives;
- 2) Assist with SBE capacity building;
- 3) Provide support to the Project Rebuild 501(c)(3) advisory board;
- 4) Research and grant writing;
- 5) Funding strategies;
- 6) Outreach, marketing, and event coordination;
- 7) Stakeholder engagement;
- 8) Consulting services to the Executive Director related to local hire requirements; and
- 9) Continuation of services as needed by the Executive Director related to local hire requirements.

Focus Solutions invoiced the District for 803.5 hours totaling \$86,013 for services provided for task #1. We determined expenses made by the District for items related to task #1 were not considered a proper public purpose because they were not related to the operations of the District. However, 107 of these hours totaling \$13,375 were reported in the previous Finding for Recovery against Focus Solutions (FFR-004) and will not be included in the amount for purposes of this Finding for Recovery.

Focus Solutions invoiced the District for 160 hours totaling \$20,000 for services provided for task #3. We determined expenses made by the District for items related to task #3 were not considered a proper public purpose because they were not related to the operations of the District, but rather were related to the operations of the Project Rebuild Workforce Collaboration Foundation and to support the goals and mission of the private Foundation. However, 134 of these hours totaling \$16,750 were reported in the previous Finding for Recovery against Focus Solutions (FFR-004) and will not be included in the amount for purposes of this Finding for Recovery.

Focus Solutions submitted to the District four invoices dated July 15th, July 23rd, August 5th, and August 19th of 2014 totaling \$13,000 for services provided related to task #9 during the period of June 30, 2014 through August 15, 2014. All four invoices provided the same description of services and stated "Task #9 – Continuation of services as needed by the Executive Director on the "Local Hire Requirements" Communication – Coordination – Consulting Fees". The services provided during this period were related to the local hire requirements and should not have been allowed since a Federal court order had enjoined the District from using the local hire requirements (CMC 318).⁷ While the invoices documented the services were for TO #029900046, they were actually paid under TO #0410000603.

In accordance with the forgoing facts and pursuant to Ohio Rev. Code Section 117.28, a finding for recovery for public money illegally expended is issued against Focus Solutions in the amount of \$88,888 in favor of the District.

⁷This references the Magistrate's Opinion as appropriate guidance for the review of contracts entered into by the District. By this reference, the AOS offers no opinion as to the breadth of the limitations imposed by the Court.

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Under Ohio law, any public official who either authorizes an illegal expenditure of public funds or supervises the accounts of a public office from which an illegal expenditure is discovered, is strictly liable for the amount of the expenditure. *Seward v. National Surety Corp.*, 120 Ohio St. 47 (1929); 1980 Op. Att'y Gen. No. 80-074; Ohio Rev. Code § 9.39; *State ex. rel. Village of Linndale v. Masten*, 18 Ohio St.3d 228 (1985). Public officials controlling public funds or property are liable for the loss incurred should such funds or property be fraudulently obtained by another, converted, misappropriated, lost or stolen.

The District's Executive Director, Mr. Parrott approved the task order and the District's Superintendent of Wastewater Administration, Margie Anderson approved invoices related to the improper payments and they are jointly and severally liable in the amount of \$75,888 and \$13,000, respectively, and in favor of the District.

FFR-006: RA Consultants

Master Service Agreement (MSA) #95x10635

On September 1, 2009, the District and RA Consultants executed MSA #95x10635. Article 3.2 of the MSA, states, in part, that "payment for consultant's services shall be in accordance with the Task Order as either a lump sum payment or based upon actual salaries paid using agreed upon rates, attached as Exhibit B, multiplied by a factor detailed in the category description(s) contained in Exhibit A." Exhibit B represents RA Consultant's fee schedule broken down on the basis of labor classification.

Task Order #0810000273

On March 2, 2010, the District and RA Consultants executed TO #0810000273 pursuant to MSA #95x10635. RA Consultants submitted an invoice that included two and one half hours totaling \$234 for work performed by Beth Sutherland on a project that was for the Cincinnati Water Works and not the District and should not have been paid by the District.

TO #0810000273 – Modification #2

For the period of February 1, 2012 through June 30, 2012, RA Consultants billed the District for 52.5 hours of service performed by Kristen Eatmon, an employee of RA Consultants. The invoices reported Ms. Eatmon's hourly rate as \$44.57 per hour and included a 2.1 multiplier for an overall rate of \$93.60. Ms. Eatmon was not reported as one of the employees assigned to work under the TO.

Ms. Eatmon's actual hourly rate paid by RA Consultants for the period of February 1, 2012 through June 30, 2012 was \$41.60 per hour. Therefore, we determined the allowable rate to be charged by RA Consultants for Ms. Eatmon related to this TO was \$87.36 per hour ($\41.60×2.1) resulting in RA Consultant's over billing the District for Ms. Eatmon's services by \$6.24 per hour. This calculated to a total overbilled amount of \$327 ($\6.24×52.5 hours).

TO #2280900108

On July 25, 2012, the District and RA Consultants executed TO #2280900108 pursuant to MSA #95x10635. Section II. of the TO states, in part, "the labor rates that were in effect for individuals and/or job classifications at the execution of this task order shall remain in effect for the term of this task order."

For the period of August 1, 2012 through June 30, 2013, RA Consultants billed the District for 1,581.5 hours of service performed by Kimberly Gray. The invoices reported Ms. Gray's hourly rate as \$30 per hour and included a 2.97 multiplier for an overall rate of \$89.10. Ms. Gray's actual hourly rate paid by RA Consultants at the time of the execution of this task order was \$25 per hour.

Based on the information above, the allowable rate to be charged by RA Consultants for Ms. Gray was \$74.25 ($\25×2.97). Thus, RA Consultants overbilled the District for Ms. Gray's services by \$14.85 per hour for the period of August 1, 2012 through June 30, 2013. As a result, RA Consultants overbilled the District a total of \$23,485 ($\$14.85 \times 1,581.5$ hours) as it related to Ms. Gray.

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MSA #45x11895

On January 8, 2015, the District and RA Consultants executed MSA 45x11895. Article 3.5 of the MSA provides that “compensation for work based upon a not-to-exceed amount shall be based on the agreed upon rates of labor as defined in an executed work order.”

Work Order (WO) #044000022

On July 31, 2015, the District and RA Consultants executed WO #044000022 pursuant to MSA #45x11895 and the agreed upon labor rate was \$73.09 per hour.

On the basis of the invoices submitted by RA Consultants for WO #044000022, the District was billed for the services performed by Ms. Gray at a rate of \$80.46 per hour. RA Consultants billed the District a total of 829.5 hours for Ms. Gray totaling \$66,741.

RA Consultants billed the District a total of 829.5 hours for Ms. Gray, therefore, the total amount billed should have been \$60,628 resulting in RA Consultants’ over billing the District by \$6,113.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code § 117.28, a Finding for Recovery for public monies illegally expended is hereby issued against RA Consultants in the amount of \$30,159 in favor of the District.

FFR-007: Ellington Management Services

On January 8, 2015, the District and Ellington Management Services (EMS), owned by Eugene Ellington, executed a MSA (#45x11858) to provide staff supplementation services related to vendor workforce development, SBE, and apprenticeship compliance services. Per article 2.2, all of the work provided by EMS was to commence with the execution of a work order (WO) by the Director of the District and all work was to be completed in accordance with the work order.

On June 11, 2015, EMS executed a WO with the District to provide “highly qualified assistance and resources to support and facilitate program policy review and to enhance economic inclusion effort in order to sustain the SBE program.” Per the WO, one of the four tasks to be provided was to assist the District “with review of its current SBE rules and guidelines to ensure that it fulfilled the intent to increase business opportunities and to fulfill the commitment of the betterment of the economy.” EMS was to “submit revisions, modifications, and/or cancellations of the rules and guideline” to the District’s Executive Director. The revisions were “to be consistent with the City of Cincinnati and the Hamilton County Commissioner’s policy direction.”

On December 15, 2015, EMS submitted a draft policy titled “Metropolitan Sewer District of Greater Cincinnati Minority and Women Business Enterprise Program Rules and Guidelines”. The policy submitted by Mr. Ellington had no significant changes and did not enhance the District’s current SBE rules and guidelines. EMS submitted two invoices totaling \$12,000 for the work completed which was paid by the District.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code § 117.28, a Finding for Recovery for public monies illegally expended is hereby issued against Ellington Management Services in the amount of \$12,000 in favor of the District’s operating fund.

MANAGEMENT RECOMMENDATIONS

MR-001: MSA Competitive Award Process

During the period of 2009 through 2011, the District executed MSA’s in accordance with the City’s Administration Regulation No. 23 which stated contracts for professional services or nonstandard services should be awarded through an open and fair competitive process which ensures that quality services will be timely provided at a fair market price, while assuring that other goals of the City are met.

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The District had specific solicitation and selection procedures associated with its MSA's which were completed on a qualification basis. This was designed to ensure the District would receive applications from firms that were qualified to perform the work.

On December 18, 2009 the District executed an amendment to a MSA with Environmental Technologies & Communications (ETC) to add an additional scope of services for Pipeline Assessment Certification Process (PACP) support. ETC was the only firm awarded this scope of service through a MSA by the District. The District did not go through a competitive solicitation process for this scope of service. We also noted the District executed two TO's with Stantec Consulting to provide PACP technical support to the District; however, Stantec did not have a MSA for PACP support. Stantec only had a MSA for green infrastructure, departmental support, and staff supplementation services.

Additionally, on February 11, 2010 the District executed an amendment to a MSA with ETC to add an additional scope of services for Program Management Support for Document Control and Invoice QA/QC reviews. ETC was the only firm awarded these scopes of service through an MSA by the District. Again, the District did not go through a competitive solicitation process for this scope of services. Although the District had established procedures related to solicitation and selection for its MSA's, the procedures were not consistently applied in these instances.

Also, the District did not have a process in place to ensure subsequent task orders awarded to firms with MSA's went through an open and fair competitive process or considered the cost of the services to be performed. During review of TO's, we noted a majority of the firms selected for work were preferred by the person requesting the TO and no additional selection process was utilized by the District.

Not going through a competitive solicitation process could result in firms unfairly receiving contracts and not allowing other firms who are capable of performing the services to be given an opportunity to receive a contract. In addition, not having a competitive process that considers the cost of services could result in the District paying significantly more for the services performed. Contracts for professional services should be obtained through an open and fair competitive process.

The District has updated their procedures regarding the awarding of MSA's. We recommend the District continue to pursue improvements to their procedures and periodically evaluate the effectiveness of all changes to their procedures.

MR-002: Record Retention

Ohio Revised Code, § 149.351 (A), states that all records are the property of the public office concerned and shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules adopted by the records commissions provided for under sections 149.38 to 149.42 of the Revised Code. Those records shall be delivered by outgoing officials and employees to their successors and shall not be otherwise removed, destroyed, mutilated, or transferred unlawfully.

In addition, the District follows the City of Cincinnati's Public Records Policy. The **City of Cincinnati Public Records Policy Section 1.1** states "It is the policy of this public office that, as required by Ohio law, records will be organized and maintained so that they are readily available for inspection and copying. Record retention schedules are updated regularly and posted prominently at www.cincinnati-oh.gov." The City of Cincinnati - Department of Finance Records Retention Schedules: Schedule Number 08-07 Contracts and Agreements defines the retention period as seven years after completion.

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We noted the following in regards to some of the records we requested the District to produce related to its MSA's:

- Some selection committee recommendation letters were unable to be located;
- Some selection committee recommendation letters were provided in an electronic format but the signed letters were not maintained;
- Some selection committee evaluation forms were not maintained.

These MSA supporting documents were related to RFQ's issued for MSA's during 2009 through 2011.

Failure to adhere to Ohio law and policies implemented by the City could lead to the District being subject to litigation for failing to fulfill public record requests. We recommend that the District maintain their records in accordance with Ohio law and the policies of the City.

MR-003: MSA's Awarded Without an RFQ

The District issued RFQ's to establish MSA's with a short list of consultants to provide services related to staff supplementation and departmental support services. The consultants selected for these two distinct service categories were supposed to be based on qualifications submitted in accordance with the provisions of the RFQ. These RFQ's allowed the District to select consultants through a competitive process to be awarded a MSA based on their qualifications.

Jacobs Engineering Group (Jacobs) submitted qualifications for both staff supplementation and departmental support services but was not recommended by the District's selection committees to receive a MSA for these two categories of work. In addition, the Executive Director did not request the firm to be added at the time of the selection process.

In 2009, Jacobs was awarded a MSA related to three other service categories which included Communication and Community Engagement, Facility Design, and Collection System Design. In 2011, the District decided to amend Jacobs' MSA to include staff supplementation and departmental support services. The District amended the MSA to include these two service categories because they were awarding TO's to Jacobs through the Communication and Community Engagement service category, however, they believed the work would be more appropriately categorized under staff supplementation and departmental support services.

If the work Jacobs was being requested to complete was for staff supplementation or departmental support services, they should not have been eligible to receive a task order. As a result of the District's RFQ process, 13 firms were awarded a MSA for staff supplementation and 14 firms were awarded a MSA for departmental support services. If the District determined none of these firms could have performed the work that was provided by Jacobs, the District should have went through another competitive process to ensure all MSA's were properly awarded based on the contractor qualifications.

MR-004: Multipliers for Staff Supplementation Contracts

The MSA's executed by the District for professional services allowed firms to apply a multiplier to the unburdened, or raw, labor rate of the firms' employees to cover the cost of direct labor, overhead, and profit. The multiplier rates established by the District were assigned by the MSA service category and ranged from 2.1 to 2.97. Only one MSA service category had a varied multiplier, which was based on the duration of the project. The multiplier for staff supplementation TO's was supposed to be 2.6 if a project duration was less than 12 months and reduced to 2.1 for projects that exceeded 12 months. During our review of staff supplementation TO's we determined the District did not consistently apply multipliers to these contracts based on the duration of the projects. The inconsistencies we identified during our review of these contracts included:

- Some initial TO's documented a 2.6 multiplier for projects exceeding 12 months and some documented a 2.1 multiplier.

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- Some TO's were amended to extend the project beyond 12 months and the multiplier was reduced from 2.6 to 2.1 but in other instances the multiplier remained at 2.6 for the entire TO.
- Some firms performed the same services but had multiple TO's that documented projects being less than 12 months and allowed them to apply a 2.6 multiplier.

The use of a variable multiplier led to the District inconsistently applying the multiplier rate to TO's for staff supplementation contracts and resulted in additional cost to the District. In addition, some firms unfairly received a higher multiplier than other firms due to the inconsistencies of applying the variable rate. We recommend the District consider eliminating the use of variable multipliers for staff supplementation services and apply a fixed rate to reduce the risk of creating inconsistencies among executed TO's.

MR-005: Task Orders

Task orders prepared by the District should report all of the necessary information so they can be properly interpreted by the parties subject to the agreement.

During review of TO's executed by the District we identified a lack of information being reported, inconsistencies with how they were prepared and discrepancies with the related documents (ex. MSA's, TO request forms, and TO amendments). Although the District had established procedures related to the creation of task orders, there was a lack of procedures in place to reduce the ambiguity in the contract terms.

A lack of information and consistency with the information documented in the task orders and the related documents leads to confusion for the District and consultants resulting in increased risk that one or both parties could misinterpret the terms of the contract. Additionally, the ambiguous contract terms could lead to consultants being given too much discretion and the District too little oversight over the contracts.

MR-006: Performance Evaluations

Performance evaluations of consultants can provide a number of benefits to the District. The District had a Consultant Performance Evaluation guide attached to some of its TO's. The guide instructed for interim and final performance evaluations to be prepared. Interim evaluations of consultants allow the District a clear opportunity to provide the consultant with timely feedback on performance during the project to address any potential shortcomings. This can be a valuable tool in motivating consultants to improve performance and correct deficiencies to avoid a poor final rating. Final evaluations, along with the interim write-ups, provide the District with historical perspective on the consultants' performance. It also provides a basis for the District to consider in awarding future contracts.

We identified 289 TO's that reported a performance evaluation would be completed by the District related to the project. For these TO's, a Consultant Performance Evaluation guide was attached as an exhibit to the TO. The form established a rating system as follows:

- 1) Unacceptable
- 2) Below Satisfactory
- 3) Satisfactory
- 4) Above Satisfactory
- 5) Outstanding

The guide reported, at the District's discretion, any consultant receiving a final rating of below satisfactory or unsatisfactory may be debarred from District work. The guide also reported the final consultants' performance evaluations would be retained for a period of ten years after the final rating.

We reviewed the District's records and requested the performance evaluation reports for the 289 TO's, however, we only received 43 evaluations which included interim and final. In addition, we were unable to determine how the District determined which TO's were selected to have a performance evaluation completed. Although the District had established procedures related to performance evaluations, the policies regarding the application were not clear leading to inconsistencies in their use.

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The use of performance evaluations can be a valuable tool in assessing the performance of consultants' work and determining if they should be awarded future projects based on their performance. We recommend the District consider using performance evaluations on future consultant projects and establish clear criteria on which projects should have performance evaluations.

MR-007: Use of Consultants

While the use of consultants provided a means for the District to address the additional workload and deadlines created by the Consent Decree, careful consideration should be given to the roles in which the consultants are being asked to fill. Utilizing consultants in certain management roles within the District's operations can create, at a minimum, an appearance of impropriety and, in relation to some activities, conflicts of interest.

The District hired numerous consultants to perform staff supplementation and departmental support services which led consultants to performing work that should have been performed by employees of the District. During review of task orders and invoices we identified the following issues:

- A consultant working for CH2M Hill approved an invoice on behalf of the District submitted by CH2M Hill for ROW services;
- Two consultants working for Jacobs each prepared a TO request form and requested Jacobs to perform the work on the TO. One of these request forms was also approved by a consultant working for Jacobs.

A consultant working for Jacobs approved a TO request form in which Jacobs was requested to perform the work reported on the TO.

Allowing a consultant to request work to be performed, approve work to be performed, and to approve work completed by the firm they are employed by is inappropriate, creating conflicts of interest, and giving the appearance of impropriety. The District should not allow consultants to work in a supervisory role where they would be given responsibilities that include requesting work be performed, approving work to be performed, or approving work performed by the firm where they are employed.

In addition, we reported an instance in Objective 2 of this report where the District executed a TO with RA Consultants to provide planning services related to CSO's within the Westwood Northern Bundle project. Subsequently, the District issued an RFQ for professional design services related to the project and RA Consultants submitted qualifications and were one of the three firms selected by the District to submit a proposal. Eventually, RA Consultants was selected to be awarded the project through a PSA and the employee who assisted the District with the planning services was assigned to the project by RA Consultants.

Allowing a firm to work with the District to plan a project and then allowing the same firm the ability to be awarded services for the same project could create conflicts of interest and give the appearance of impropriety. To avoid any appearance of impropriety the District should not allow a consultant to participate in both the planning phase and any subsequent services related to the plan.

MR-008: Consultant Working in Outside Department

Strong controls need to be in place to carefully track and monitor all of the work performed by consultants for the District, particularly when the consultant is working in an outside department. It is important to have a control structure in place to ensure all work being performed by the consultant and paid for by the District is for the benefit of the District.

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The District executed a TO with Ribway to hire an Urban Planner to work in the City of Cincinnati's Planning Department. The Urban Planner was hired to perform services related to the District's integrated watershed planning initiative. Per the District, this initiative was to develop strategies or programs to reduce Combined Sewer Overflows or incentivize onsite storm water management practices. These strategies and efforts included considering non-traditional and decentralized green infrastructure options and working through the Communities of the Future Advisory Committee. In addition, the Urban Planner was to assist in the development of Plan Cincinnati which was the first new zoning and land use plan in approximately 30 years which also was connected to the District's watershed planning initiative.

During the period of September 2010 through June 2015, Ribway had two Urban Planners that worked in the Planning Department and all of the work performed was paid for by the District. The Urban Planners completed monthly activity reports and the activities they performed were reported under two categories which included Communities of Future Planning and Plan Cincinnati.

During our review of monthly activity reports prepared by the Urban Planners that were submitted with monthly invoices from Ribway we identified numerous activities reported under the Plan Cincinnati category that were related to general activities of the Planning Department and therefore were for the direct benefit of the Planning Department and were not related to the District.

While the District had access to the monthly activity reports that were submitted with the invoices no one at the District raised any concerns regarding some of the activities reported by the Urban Planner under the Plan Cincinnati category. These activities led to us proposing a finding for recovery against the Planning Department.

We recommend if the District provides shared services with other departments within the City of Cincinnati that they have proper controls in place to ensure that the appropriate department is paying for the services provided.

MR-009: Services Performed Prior to Execution of TO's

TO's prepared and executed by the District included language indicating services performed under the TO were to commence upon the execution of a TO by the District's Executive Director.

During review of TO's, we identified nine instances where firms performed services prior to the execution of the TO. In these nine instances we identified 5,029 hours of services performed totaling \$460,642 prior to the TO being executed. For one of these TO's, the services were performed eleven months prior to the TO being executed. Although the District had language included in the contract documents related to the commencement of work, there was a lack of procedures in place to ensure adherence to the contract term.

The District should not allow firms to perform any services prior to the execution of a TO because this could lead to services being performed by the firm that are not within the scope of services agreed upon by both parties. Additionally, services performed prior to the execution of the TO could lead to additional cost not anticipated by the District. We recommend the District ensure TO's have been fully executed with a firm prior to any services being performed.

MR-010: Invoice Approvals

The District should be verifying the rates and multipliers invoiced by firms related to services performed for a TO agree with what was established in the TO along with verifying the services were performed prior to issuing payment for the services.

During review of TO expenses we identified several instances where the labor rate and/or multiplier invoiced by the firm did not agree to the labor rate and/or multiplier documented in the TO which led to the District overpaying the firm for the services performed and resulted in findings for recovery.

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For these expenses, we noted a District employee approved an electronic receiving ticket that documented "I hereby certify that the goods and/or services described and enumerated on this receiving ticket, have been received or performed, and that the quantities and qualities thereof have been verified. Therefore payment is authorized to be made." The District told us the employees who approved these invoices were not expected to verify the rates being charged, as it was their understanding the rates were set by the District's Executive Director and the firm.

We recommend the District establish a process to have someone verify the labor rates and multipliers invoiced by firms agree to the rates and multiplier established in the TO's prior to issuing payment for the services performed to ensure the proper rates are being charged and paid by the District.

MR-011: Conflict of Interest

Ohio Rev. Code Section 2921.42(A)(1), states that no public official shall knowingly authorize or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest.

District Engineer Ali Bahar requested services to be provided by the engineering firm Brown & Caldwell. Mr. Bahar's son was an employee of Brown & Caldwell. Per review of the associated task orders Ali Bahar was assigned as Task Leader on two task orders, Principal Engineer on one task order, and Project Manager on two task orders. Per review of invoices of these five task orders there were 34 invoices reporting hours worked by his son for which the invoices were reviewed and approved by Ali Bahar. These invoices reported his son worked 702.5 hours and Brown & Caldwell was paid \$63,601 related to his services.

We recommend the District consult with their legal counsel to review the requirements of **Ohio Rev. Code § 2921.42** to ensure all public officials are transacting District business in accordance with Ohio Ethics laws.

This matter will be referred to the Ohio Ethics Commission.

The District has updated their policies to address conflicts of interest. We recommend the District continue to pursue improvements to their policies and periodically evaluate the effectiveness of all such changes.

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Objective No. 2 – Examine Professional Service Agreements (PSA) to determine if the District was in compliance with procurement procedures and examine expenses related to certain PSA's to determine if they were properly supported, for operations of the District, and within the scope of the PSA's.

PROCEDURES

In order to test Objective 2, we performed the following procedures:

We identified all PSA's entered into by the District during the period of January 1, 2009 to December 31, 2015.

We obtained and reviewed all of the PSA's identified during the period including documentation supporting how the firms were selected by the District.

We examined all expenses related to certain PSA's and determined if they were properly supported, for the operations of the District, and within the scope of the PSA.

RESULTS

We reviewed all of the PSA's executed during the period. We noted 73 PSA's with activity were executed by the District. The District expensed \$62,311,556 during the period related to these agreements.

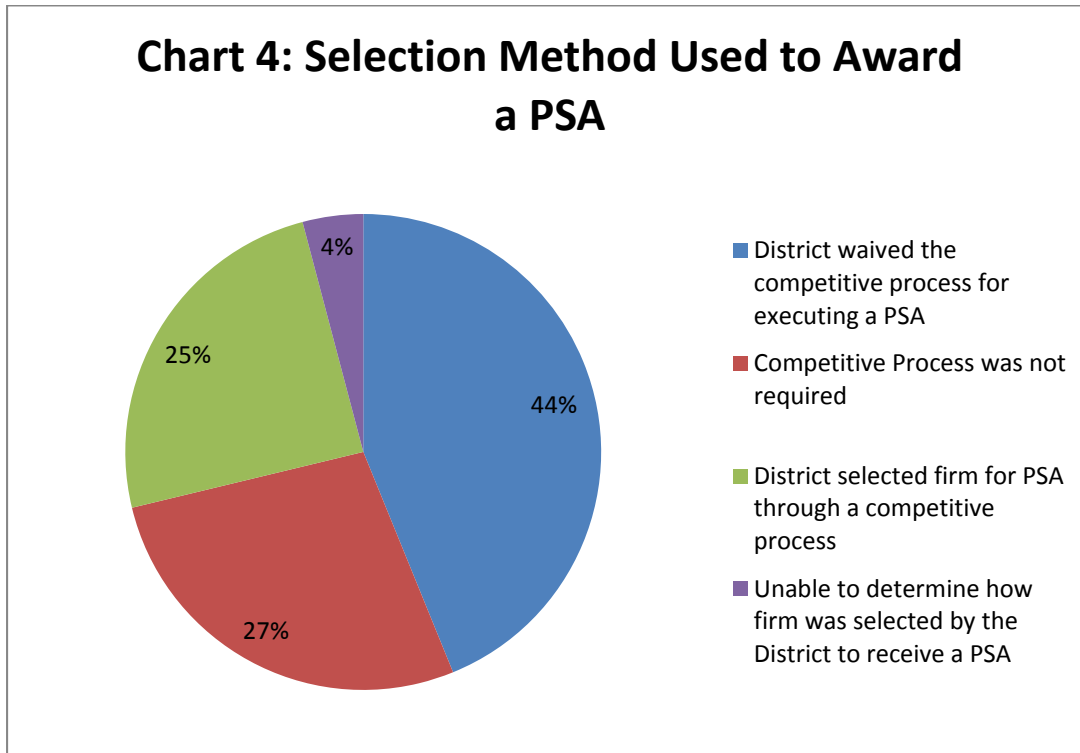
In regards to PSA's, the District followed procurement procedures documented in the City's Administration Regulations No. 23 and No. 62 which were previously discussed in Objective 1 of this report.

We reviewed each PSA executed during the period and identified how the firms were selected. The results of this review noted:

- 32 of the PSA's executed were for services that were non-competitive in nature so the District requested the City Manager to approve waiving the professional services procurement process required in Administrative Regulation No. 23. The District was unable to provide the waiver of competition for nine PSA's that were issued a direct award.
- 18 of the PSA's executed went through a competitive process in which a selection committee reviewed the RFQ's and/or RFP's and recommended a firm that was then approved by the District's Executive Director or the City Manager. The District was unable to provide documentation from the selection committee for two of the PSA's executed.
- 12 of the PSA's executed were for legal services therefore were not required to go through a competitive process as permitted by Administrative Regulation No. 23.
- Five of the PSA's executed were for services less than \$50,000 so no competition was required per state law. However, the District did issue a Notice of Qualifications related to the services to be performed for these PSA's and selected the firms while also considering the District's Small Business Enterprise Program Rules and Guidelines.
- Three PSA's did not document how the vendor was selected to perform the services and no other documentation was provided by the District.
- Two PSA's were executed with no competition because it was determined the firm was the only one who could provide the service.
- One PSA was executed with another government agency so no competition was required.

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Chart 4 shows the percentage breakdown of the methods used by the District to award PSA's.



After conducting interviews with employees of the District, analyzing PSA data and reviewing the PSA's we determined to review expenses of ten PSA's executed with five firms.

Bricker & Eckler

During the period of January 1, 2009 through December 31, 2015, the District had three active PSA's with the law firm Bricker & Eckler.

PSA 85x10306

PSA 85x10306 was executed by the District with Bricker & Eckler and agreed to commence on January 15, 2008. The original agreement reported six specific tasks in the scope of services that were related to bid and contract documents. The agreement also reported the services would be coordinated with the City Solicitor. The maximum obligation for the District under the original agreement was \$25,000. The District executed eight amendments to PSA 85x10306 all of which only revised the maximum obligation of the agreement. The eighth amendment to the agreement established a maximum obligation of \$1,104,700.

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Table 5 documents the summary of legal services that were provided related to seven subject matters as invoiced by Bricker & Eckler for PSA 85x10306.

Table 5: Legal services provided by Bricker & Eckler related to PSA 85x10306			
	Matter	Period of Services Provided Related to the Matter	Total Amount Invoiced
1	Construction Counsel	January 2008 – March 2014	\$700,892
2	Bid Dispute	September and October 2009	20,000
3	SBE	August 2011 – June 2013	184,602 ⁸
4	In-House Legal Services	November 2012 – April 2014	184,112
5	Mercury Spill	October 2013 - March 2014	7,332
6	Incinerator	March 2014 - April 2014	3,879
7	Flow Meter	April 2014	3,193
			\$1,104,010

On February 27, 2013, the agreement was amended to increase the maximum obligation to \$950,000. As of August 31, 2013, Bricker & Eckler had performed services related to the agreement totaling \$949,904. Bricker & Eckler continued to perform services related to the agreement from September 2013 through April 2014, however, the agreement was not amended to increase the maximum obligation until May 2014. Bricker & Eckler submitted 30 invoices related to this PSA totaling \$245,628 for services performed during the period of September 2013 through April 2014. The District paid 12 of the invoices totaling \$91,522 under PSA 35x11625 which was unrelated to the work performed. The remaining \$154,106 was paid by the District under PSA 85x10306 after the District executed the 8th amendment increasing the maximum obligation by \$154,700 to a total of \$1,104,700.

SBE Matter related to PSA 85x10306

On July 1, 2016, Bricker & Eckler issued a memorandum (the ‘memorandum’) to the City of Cincinnati Rules and Audit Committee at their request. The memorandum was a summary of Bricker & Eckler’s involvement with the District’s Small Business Enterprise (SBE) program, which was one of the subjects they provided services for under PSA 85x10306, and their involvement with a sub-consultant, Urban Strategies & Solutions, owned by Sam Malone. Bricker & Eckler reported they were hired by the City in 2008 to provide construction counsel services for the infrastructure improvement projects being performed at the District. As a part of these projects, the District developed a SBE program for the construction and service contracts. Bricker & Eckler reported in mid-2011, James Parrott, the District’s Executive Director at the time, contacted them and requested they participate in an audit of the District’s SBE program. Additionally, as part of the request, Mr. Parrott informed Bricker & Eckler he wanted them to engage with Urban Strategies & Solutions to assist with the audit. Based on review of invoices submitted by Bricker & Eckler, we identified they first billed the District for services related to the SBE program beginning in August 2011.

On October 28, 2011, Bricker & Eckler issued an engagement letter to the District which was agreed to and signed by Mr. Parrott on November 1, 2011. The engagement letter included the following significant items:

- Bricker & Eckler was asked to serve as counsel to the District to assist with advising them on the administration of and monitoring compliance with the District’s SBE program.
- The District requested Bricker & Eckler to engage Urban Strategies & Solutions as a consultant and the District acknowledged Urban Strategies & Solutions was selected by the District.

⁸ The amount paid to Bricker & Eckler included work performed by a sub-consultant Urban Strategies & Solutions. The amount invoiced related to Urban Strategies & Solutions totaled \$102,000.

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- The District would be a third-party beneficiary to Bricker & Eckler's contract with Urban Strategies & Solutions, enabling the District to enforce all terms of the consulting agreement between Bricker & Eckler and Urban Strategies & Solutions.
- Urban Strategies & Solutions would not be paid by Bricker & Eckler for services rendered until Bricker & Eckler was paid by the District.
- The engagement was limited to the matter of the District's SBE program, however, to the extent Bricker & Eckler agreed to provide additional services and a new engagement letter was not executed, the terms of the engagement letter would apply to the additional services.

On April 17, 2012, Bricker & Eckler executed a consulting agreement with Urban Strategies & Solutions. The consulting agreement included the following significant items:

- Urban Strategies & Solutions was hired to assist with advising the District on the administration of and monitoring compliance with the District's SBE Program.
- Urban Strategies & Solutions was to provide services upon the reasonable request of Bricker & Eckler.
- Bricker & Eckler would not pay Urban Strategies & Solutions for services rendered under the agreement until Bricker & Eckler was paid by the District.

In the memorandum, it reported the consulting agreement was not signed until April 2012 because Mr. Malone refused to sign it unless there was a provision for him to be paid within 15 days of submitting an invoice. The contract was eventually agreed to without this provision.

In the memorandum, Bricker & Eckler reported from November 2011 through September 2012 there was substantive work being performed that involved their attorneys conducting interviews with District personnel regarding the SBE program, including procurement personnel and project managers. Bricker & Eckler noted these interviews were conducted with the participation of Mr. Malone. Bricker & Eckler reported recommendations were made to the District regarding the SBE program and Mr. Malone produced a report to the District dated April 20, 2012.

We reviewed invoices submitted by Bricker & Eckler related to the SBE work under PSA 85x10306 for the period of August 2011 through October 2012 and noted the following:

- During the period of August 2011 through October 2011, Bricker & Eckler submitted invoices totaling \$11,008 for services they provided. These services were provided prior to them executing an engagement letter with the District.
- During the period of November 2011 through October 2012, Bricker & Eckler submitted invoices totaling \$108,592. These invoices included services provided by Bricker & Eckler totaling \$71,592 and services provided by Urban Strategies & Solutions totaling \$37,000.

In the memorandum, Bricker & Eckler reported in late 2012, they were informed Urban Strategies & Solutions would be performing additional work for the District. Bricker & Eckler reported they were not involved in the discussions between the District and Urban Strategies & Solutions regarding the work to be performed and were not an active participant in this second scope of work. We discussed this additional work with Bricker & Eckler's attorney Mark Evans. Mr. Evans told us in December 2012 he was contacted by Mr. Malone who requested Mr. Evans to draft a letter reporting Mr. Malone's consulting agreement had been temporarily suspended, however; Mr. Evans told us the agreement had not been suspended because there was no more scheduled work at the time. Mr. Evans told us he spoke with Mr. Parrott and was told of a second scope of work being discussed with Mr. Malone. Mr. Evans told us Mr. Parrott asked Mr. Evans to prepare the letter requested by Mr. Malone. Mr. Evans told us he prepared the letter for Mr. Malone. Bricker & Eckler provided us with a copy of the letter.

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The letter was dated December 19, 2012 and addressed "To Whom it May Concern". The letter stated "I am outside counsel to the Metropolitan Sewer District of Greater Cincinnati ("MSDGC"). MSDGC has informed me that a scope of services is being developed, but has not been finalized for Urban Strategies to provide monitoring and tracking of certain aspects of contractor's work as it relates to compliance with ordinances approved by the City of Cincinnati City Council⁹. The current budget for this work is estimated to be \$60,000." The engagement letter between Bricker & Eckler and the District was never amended nor was the consulting agreement between Bricker & Eckler and Urban Strategies & Solutions ever amended to include services performed related to compliance with ordinances approved by the City.

We reviewed invoices submitted by Bricker & Eckler related to the SBE matter under PSA 85x10306 for the period of January 2013 through June 2013. We noted Bricker & Eckler submitted invoices totaling \$65,000 for services provided by Urban Strategies & Solutions. The invoices submitted by Urban Strategies & Solutions reported the work performed was for tracking, monitoring, research, and consulting for responsible bidder and local hire. Bricker & Eckler did not submit any invoices to the District for services provided by them related to the SBE matter during this period.

PSA 35x11625

PSA 35x11625 was executed by the District and Bricker & Eckler on October 21, 2013 with a maximum obligation of \$250,000. Per the agreement, the scope of services reported Bricker & Eckler agreed to perform and carry out in a manner satisfactory to the City Solicitor the services described in a letter of engagement. The letter of engagement attached to the agreement was the same letter of engagement executed by Bricker & Eckler and the District's Executive Director on November 1, 2011 and used for the services performed and paid under PSA 85x10306. PSA 35x11625 did not reference to a consulting agreement between Bricker & Eckler and Urban Strategies & Solutions and there was no consulting agreement attached to the letter of engagement or PSA 35x11625.

We reviewed invoices submitted by Bricker & Eckler related to PSA 35x11625 for the period of July 2013 through March 2014 and determined the following:

- For this period, Bricker & Eckler submitted eight invoices totaling \$107,000 for services performed by Urban Strategies & Solutions. The invoices submitted by Urban Strategies & Solutions reported the work performed was for tracking, monitoring, research, and consulting for responsible bidder and local hire.
- Bricker & Eckler submitted an invoice totaling \$182 for services performed in March 2014. The invoice reported they reviewed billing information for Urban Strategies & Solutions and sent correspondence to Mr. Parrott regarding the review.

On June 26, 2013, the City Council passed an ordinance suspending the implementation and operation of CMC 318 until August 1, 2013. The ordinance indicated there were concerns over the effectiveness of CMC 318, and there was dialogue occurring between the City and Hamilton County officials regarding the most effective and beneficial way to proceed. On that basis, the ordinance contained language indicating it was appropriate to suspend operation of CMC 318 to allow for further discussions between the City and the County on the matter. For the month of July 2013, Urban Strategies & Solutions submitted an invoice totaling \$11,000 for performing work reported as "Tracking, Monitoring, Research, Consulting, Responsible, & Local Hire Consulting".

⁹ On May 25, 2012, the City passed an ordinance enacting Cincinnati Municipal Code (CMC) 318 related to "Local Hire Requirements". CMC section 318.11 included requirements for monitoring and reporting.

On June 26, 2012, the City passed an ordinance enacting CMC 320 related to "Compliance Guidelines for Construction Contracts issued by the Department of Sewers". This code was known as the "Responsible Bidder" policy. CMC section 320.9 included requirements for monitoring and reporting.

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On February 20, 2014, Mr. Evans sent an email to Mr. Malone stating, in part, "...please be advised that MSD has requested that Urban Strategies suspend all work that Urban Strategies is performing for MSD until further notice. Please do not perform any [work] for MSD without prior written authorization".

On June 26, 2014, a United States District Court Magistrate Judge ordered that the City was enjoined from using CMC 318, CMC 320, and CMC 321 in the procurement of contracts for Consent Decree sewer projects and was ordered to follow the County's rules, regulations, and resolutions and Ohio state law in procuring Consent Decree sewer projects both within and outside of the City boundaries. The judgment was related to Case No. 1:02-cv-107, United States of America versus Board of Hamilton County Commissioners.¹⁰

Mr. Evans told us beginning in August 2014 he started receiving invoices from Urban Strategies & Solutions again but had not provided written authorization for them to continue performing work. We reviewed invoices submitted by Bricker & Eckler for the period of July 2014 through May 2015 and determined the following:

- Bricker & Eckler submitted nine invoices totaling \$122,000 for services performed by Urban Strategies & Solutions. The invoices reported the work performed was tracking, monitoring, research, and consulting for responsible bidder and local hire. Two of the nine invoices, totaling \$17,000, were paid by the District under PSA 55x0038, another unrelated agreement between the District and Bricker & Eckler. Seven of the nine invoices, totaling \$105,000, were paid by the District under PSA 35x11625.
- Bricker & Eckler did not submit any invoices for work performed by them related to PSA 35x11625 for the period of July 2014 through May 2015.

As of February 2015, the District paid invoices totaling \$249,230¹¹ for services performed as of January 31, 2015 under PSA 35x11625 leaving only \$770 remaining per the maximum obligation established in the agreement. However, Urban Strategies & Solutions submitted three invoices totaling \$55,000 for the period of February 2015 through May 2015.

Per the memorandum, Bricker & Eckler reported in the spring of 2015 it determined its relationship with Urban Strategies & Solutions was no longer necessary and on May 27, 2015 they issued a termination letter to Mr. Malone.

On June 11, 2015, the District executed an amendment to PSA 35x11625 with Bricker & Eckler to increase the maximum obligation by \$55,000 to a total of \$305,000. The amendment was to cover the cost for the invoices submitted by Urban Strategies & Solutions for the period of February 2015 through May 2015.

PSA 55x0038

PSA 55x0038 was executed by the District with Bricker & Eckler and agreed to commence on June 1, 2014. Per the agreement, compensation was not to exceed \$300,000. The funds for this agreement were certified on August 25, 2014. The original agreement reported six specific tasks in the scope of services and also reported their services would be coordinated with the City Solicitor. The scope of services reported in this agreement was almost identical to that reported in PSA 85x10306. The agreement was amended twice as of December 31, 2015 and the amendments only revised the maximum obligation of the agreement. The second amendment to the agreement established a maximum obligation of \$850,000.

¹⁰This references the Magistrate's Opinion as appropriate guidance for the review of contracts entered into by the District. By this reference, the AOS offers no opinion as to the breadth of the limitations imposed by the Court.

¹¹ The District paid \$91,522 related to PSA 85x10306 under PSA 35x11625. Therefore, only \$157,708 of the \$249,230 was actually related to PSA 35x11625

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Table 6 documents the summary of legal services that were provided related to 12 subject matters as invoiced by Bricker & Eckler for PSA 55x0038.

Table 6: Legal services provided by Bricker & Eckler related to PSA 55x0038			
	Matter	Period of Services Provided Related to Matter	Amount Invoiced
1	Electric Procurement	January 2014	\$125
2	Construction Counsel	May 2014 - October 2015	222,196
3	In-House Legal Services	May 2014 - October 2015	160,125
4	Flow Meter	May 2014 - May 2015	111,506
5	Mercury Spill	May 2014 - June 2014	3,801
6	Audit Letter	June 2014 and July 2015	729
7	SBE	August 2014 - September 2014	17,000 ¹²
8	Incinerator	September 2014 - June 2015	31,409
9	Lick Run Valley Conveyance System	October 2014 - October 2015	42,664
10	Lick Run Valley Conveyance System - In-House Legal Services	October 2014 - March 2015	34,600
11	Triton Services	April 2015 - October 2015	27,414
12	Triton Services - In-House	April 2015 - October 2015	3,125
			\$654,694

Bricker & Eckler submitted five invoices totaling \$23,520 for services performed during the period of January 2014 and May 2014 which preceded the commencement date reported in the agreement. Also, we identified 12 invoices totaling \$69,121 that were paid twice by the District. All of the \$69,121 was refunded through credits applied to subsequent invoices and reimbursement checks.

Crabbe, Brown and James

During the period of January 1, 2009 through December 31, 2015, the City executed one PSA with the law firm Crabbe, Brown, and James. PSA 95x10507 was agreed to commence on February 5, 2009. The City desired to retain Crabbe, Brown, and James to assist with the final development and implementation of the District's SBE program. Per the agreement, the scope of services indicated the specific services would be coordinated with the City Solicitor and the firm would assist the City and the District in matters involving the final development and implementation of the District's SBE program, as requested by the City Solicitor. The maximum obligation for the City under the original agreement was \$25,000.

As of December 31, 2009, Crabbe, Brown, and James, with the assistance of a consultant from the Institute of Entrepreneurial Training, had performed services related to the agreement totaling \$79,068, therefore, exceeding the maximum obligation by \$54,068. On January 25, 2010, the City and Crabbe, Brown, and James executed an amendment to the original agreement. The amendment reported the District selected a consultant to prepare the District's SBE policy guidelines and Crabbe, Brown, and James would coordinate and oversee the consultant's work and implementing the SBE policy. The amendment increased the maximum obligation by \$110,190 which included \$60,190 for the consultant and \$50,000, for Crabbe, Brown, and James. The maximum obligation for the agreement after the first amendment totaled \$135,190.

¹² These expenses were related to two invoices submitted by Urban Strategies & Solutions and should have been paid under PSA 35x11625; however, the District paid them under PSA 55x0038.

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As of June 30, 2010, Crabbe, Brown, and James and the consultant had performed services related to the agreement totaling \$182,788, therefore, exceeding the maximum obligation by \$47,598. On July 21, 2010, the City and Crabbe, Brown, and James executed the second amendment to the agreement and increased the maximum obligation to \$250,000. The maximum obligation was the only item amended in the agreement.

As of April 30, 2011, Crabbe, Brown, and James and the consultant had performed services related to the agreement totaling \$262,340, therefore, exceeding the maximum obligation by \$12,340. On May 3, 2011, the City and Crabbe, Brown, and James executed the third amendment to the agreement and increased the maximum obligation to \$420,000. The maximum obligation was the only item amended in the agreement. On January 31, 2013, the City and Crabbe, Brown, and James executed the fourth and final amendment to the agreement and increased the maximum obligation to \$450,000.

On February 8, 2012, Articles of Incorporation were filed with the Ohio Secretary of State for the Project Rebuild Workforce Collaboration Foundation, Inc. The Articles of Incorporation were submitted by Crabbe, Brown, and James and the District's Executive Director, James Parrott, signed as an authorized representative and the statutory agent.

The Articles of Incorporation state, in part, "the purposes for which the Corporation is formed are exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986.... In furtherance of those purposes the foundation was to:

- (a) Develop and provide a program through which high school and/or college students in and around Cincinnati, Ohio will receive mentoring, job training and/or employment opportunities in the wastewater industry;
- (b) Provide sustainable solutions to benefit and/or revitalize communities by encouraging interest in public sector jobs, particularly in the field of watershed management, and providing employment opportunities"

The District expended a total of \$444,579 for services provided under PSA 95x10507. During our review of the billing statements submitted for these services we identified the following:

- Crabbe, Brown, and James submitted 18 billing statements which included 88 billing items totaling 93.9 hours and a cost of \$18,777 for services related to the non-profit foundation titled Project Rebuild Workforce Collaborative, Inc.
- Crabbe, Brown, and James billed 158 hours totaling \$32,786 for services during the period of July 2010 through January 2011 related to assisting the District with research and a request for proposals related to a software system for the SBE program.
- The District paid six invoices totaling \$67,927 submitted by Crabbe, Brown, and James twice. All of the monies were refunded by Crabbe, Brown, and James through credits applied to subsequent invoices and a reimbursement check.

Early Morning Software

During the period of January 1, 2009 through December 31, 2015, the District executed two PSA's with Early Morning Software.

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PSA 15x11055

PSA 15x11055 was executed by the District with Early Morning Software on March 1, 2011 to perform such services as required to complete the implementation of the diversity supplier software system and other services necessary to perform and complete the tasks associated with managing and administering the District's SBE program rules and guidelines. Per the City's Administration Regulation No. 23, professional services were to be awarded through an open and fair competitive process ensuring quality services were timely provided at a fair market price, while assuring that other goals of the City were met. PSA 15x11055 reported the services were professional and non-competitive in nature and the District requested the City to waive the RFP process and Administrative Regulation No. 23 in order to issue a direct award to Early Morning Software. The waiver request from the District reported Early Morning Software's PRISM Compliance Management system was identified by the District and the City's Chief Information Office as the best solution. The waiver was approved by both the City's Purchasing Agent and Assistant City Manager on February 3, 2011. However, while reviewing invoices submitted by Crabbe, Brown, and James, we identified billings related to research and assistance with a RFP for a software system for the SBE program. The billing notes reported on the invoices indicated the District and Crabbe, Brown, and James researched at least four firms and received proposals from three firms which included Early Morning Software.

The original agreement was for Early Morning Software to perform 12 tasks in six phases. The agreement was for an amount not to exceed \$215,740 and was to terminate on December 31, 2012. On October 11, 2011, the agreement was amended to include eight additional tasks, increased the amount to \$271,620. On October 21, 2013, the agreement was again amended to include five additional tasks and increased the amount to \$533,620, and extended the termination date to December 31, 2014. The budget in the original agreement was reported by task, however, the budgets in the amendments were in total only.

We reviewed all of the invoices submitted by Early Morning Software and paid by the District under PSA 15x11055 totaling \$455,296 for the period of April 2011 through December 2014. During our review we identified the following:

- No receipts or other supporting documentation were submitted for travel expenses reported on an invoice totaling \$4,106.
- We identified a lodging expense totaling \$139 that was submitted twice and paid twice by the District resulting in an overpayment of \$139.
- We identified a travel expense for airfare claimed on an invoice totaling \$606; however, the receipt for the airfare was only \$397 resulting in an overpayment of \$209.
- The District expended \$163,125 related to the annual subscription costs of the PRISM system for the period of April 2011 through March 2015.

PSA 15x11055 was terminated on December 31, 2014. We obtained some draft letters prepared by the District in December 2014 and March 2015 regarding issuing a direct award to Early Morning Software for a PSA. The draft letters reported they expected Early Morning Software to continue performing services related to the SBE program and the PRISM system.

On April 28, 2015, the District's Executive Director, James Parrott requested the City to waive the procurement requirements reported in the City's Administration Regulation No.23 and issue a direct award to Early Morning Software for a PSA. The request for a waiver reported the District expected to use Early Morning Software to assist them with the integration/transfer of data from Early Morning Software's proprietary program, PRISM, to B2GNOW¹³ on an as-needed basis. Both the City's Finance Manager/Purchasing Agent and City Manager approved the request for waiver and to issue a direct award to Early Morning Software for a PSA.

¹³ B2GNOW was the diversity management software used by the City's Department of Economic Inclusion.

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PSA 55x12069

PSA 55x12069 was executed on May 26, 2015 between the City and Early Morning Software to complete the integration and transfer of data from Early Morning Software's proprietary program, PRISM, to B2GNOW. The agreement was for a maximum amount of \$120,000 and the budget included the completion of tasks that began under the previous PSA 15x11055. The agreement reported the termination date to be December 31, 2015. On August 24, 2015, the agreement was amended to increase the maximum amount to \$164,000 and for the agreement to terminate on April 30, 2016.

We reviewed all eight invoices submitted by Early Morning Software and paid by the District under PSA 55x12069 totaling \$121,937. During our review of the invoices we identified the following:

- Four of the eight invoices were dated by Early Morning Software in February 2015 and the invoices were approved by the District's Project Manager in February and March 2015 per the electronic receiving ticket report. The electronic receiving ticket report referenced the services were related to PSA 15x11055. These services were performed prior to the direct award being approved by the City Manager and prior to the execution of the PSA. The total cost of these invoices was \$69,357. This amount included travel expenses totaling \$278 with no receipts or other supporting documentation.
- One invoice was for three hours of service performed by a Program Manager in December 2014 and January 2015 and for 168 hours of service performed by a Compliance Officer in January 2015. These services were performed prior to the direct award being approved by the City Manager and prior to the execution of the PSA. The total cost of this invoice was \$15,531.
- One invoice was for travel expenses totaling \$830 incurred in March 2015, however, there were no receipts or other documentation submitted with the invoice. Also, none of the eight invoices submitted by Early Morning Software reported any of their staff working in March 2015.
- One invoice was for 20 hours of consulting services at a rate of \$195 totaling \$3,900 for the period of May 2015 through July 2015.
- One invoice, totaling \$32,319, was for the integration of data from PRISM to B2GNOW, which was one of the tasks described in the scope of services.

Based on our review of the invoices paid by the District for PSA 55x12069 we determined six of the eight invoices totaling \$85,718 were for services related to PSA 15x11055.

Make it Plain Consulting

PSA 05x10790 was executed by the City with Make It Plain Consulting on June 2, 2010 for services to provide life skills training to high school students attending the summer Student Intern Academy program. PSA 05x10790 reported the services were professional and non-competitive in nature. On May 19, 2010, James Parrott requested the City Manager to waive the requirements of Administrative Regulation No. 23 for these services and to issue a direct award to Make It Plain Consulting. The direct award request was approved by both the Finance Manager/City Purchasing Agent and a City Manager designee on May 24, 2010. The request issued by Mr. Parrott reported the services the District wanted to have provided, a brief profile of Make It Plain Consulting and their CEO, and reported time was of the essence because the program was scheduled to begin on June 14, 2010, however, it did not report a reason as to why no other firm would be suitable or acceptable to provide the services. We inquired with the District to determine if any other documentation was submitted with the waiver request but they were not aware of any.

The original agreement was for an amount not to exceed \$25,000 and was to terminate on December 31, 2010. The original agreement was amended six times increasing the amount not to exceed to \$419,150. The amendments were to provide the same type of services to the Student Intern Academy Program during 2011, 2012, 2013, and 2014. While amendments one through five increased the overall amount of the agreement, the fees and pricing schedule (Exhibit A) of the agreement were not amended.

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RA Consultants

On April 28, 2009, the City executed a task order (#088012201) with RA Consultants under MSA 75x10004. The scope of work for this task order was to provide the District with professional engineering and planning services related to eight projects. Three of the projects were for Combined Sewer Overflow (CSO) 194, CSO 195, and CSO 525 within the Westwood Northern Bundle. Per the task order, it reported Casey Walter would be the employee from RA Consultants working on the projects. We obtained a copy of notes from a planning meeting in May 2009 related to the Westwood Northern Bundle project and confirmed Casey Walter was working on the project.

On October 27, 2009, the District issued a RFQ for professional design services related to the Westwood Northern Bundle Wet Weather Improvement Program. Ten firms responded to the RFQ and their qualifications were reviewed by a selection committee. The selection committee recommended three firms to be selected for further consideration. One of these three firms was RA Consultants. On December 22, 2009, the District issued a RFP to the three firms selected for further consideration. Per review of the selection committee's overall proposal scoring, they rated RA Consultants the highest. The proposal scoring also reported RA Consultants had the highest estimated fee and reported their project manager as 'Walter'. Two members of the selection committee were also reported on the May 2009 planning meeting notes. One of these two selection committee members rated RA Consultants the highest and the other rated them second. The selection committee's recommendation was reviewed and approved by the District's Executive Director.

On April 1, 2010, the City executed PSA 05x10748 with RA Consultants to serve as the planning consultant for the performance of professional engineering services associated with the group of projects identified as the Westwood Northern Bundle. The maximum amount reported for the original agreement was \$1,197,330. The agreement was amended four times increasing the maximum amount of the agreement to \$1,468,430.

FINDINGS FOR RECOVERY

FFR-008: Urban Strategies and Solutions

On November 1, 2011, the District and the law firm of Bricker & Eckler executed an engagement letter to have Bricker & Eckler assist with advising the District on the administration and monitoring of compliance with the District's Small Business Enterprise (SBE) Program.

On April 17, 2012, Bricker & Eckler and Urban Strategies & Solutions executed a consulting agreement. The agreement stated that Urban Strategies & Solutions was engaged to assist with advising the District on the administration and monitoring of compliance with the District's SBE Program. The agreement also noted Urban Strategies & Solutions was to provide services upon the reasonable request of Bricker & Eckler.

The Council of the City of Cincinnati passed ordinances in 2012 enacting CMC 318 related to "Local Hire Requirements", CMC 320 related to "Responsible Bidder" policy, and modifying CMC 321, related to procurement and disposal of supplies, services and construction, also known as "Local Preference".

In December 2012, the District developed the second scope of work to be performed by Urban Strategies & Solutions. At that time, however, the District did not have an agreement with Urban Strategies & Solutions, and Bricker & Eckler had no involvement with the second scope of work besides submitting invoices received from Urban Strategies & Solutions to the District for payment and issuing those payments to Urban Strategies & Solutions.

For the period of January 2013 through February 2014, Urban Strategies & Solutions submitted 14 invoices totaling \$172,000 which were paid by the District to Bricker & Eckler as required per the letter of engagement. Subsequently, Bricker & Eckler paid Urban Strategies & Solutions for the invoices submitted for the period. All of the invoices submitted with the exception of January 2013 reported the work performed was for tracking, monitoring, research, consulting, responsible bidder, & local hire consulting.

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On June 26, 2014, a United States District Court Magistrate Judge ordered that the City was enjoined from using CMC 318, CMC 320, and CMC 321 in the procurement of contracts for Consent Decree sewer projects and was ordered to follow the County's rules, regulations, and resolutions and Ohio state law in procuring Consent Decree sewer projects both within and outside of the City boundaries. The judgment was related to Case No. 1:02-cv-107, United States of America versus Board of Hamilton County Commissioners.¹⁴

For the period of July 2014 through May 2015, Urban Strategies & Solutions submitted 11 invoices totaling \$122,000 which were paid by the District to Bricker & Eckler as required per the letter of engagement. Subsequently, Bricker & Eckler paid Urban Strategies & Solutions for the invoices submitted for the period. All of the invoices submitted reported the work performed was for tracking, monitoring, research, consulting, responsible bidder, & local hire consulting.”

For the period of January 2013 through May 2015, Urban Strategies & Solutions invoiced Bricker & Eckler \$294,000 for services related to work performed for local hire and responsible bidder ordinances which were paid by the District to Bricker & Eckler as required per the letter of engagement. Subsequently, Bricker & Eckler paid Urban Strategies & Solutions for the invoices submitted for the period. No documentation exists to support the work performed or the resulting payments.

In addition to the complete lack of documentation to support the work performed and resulting payments, the order of the Magistrate Judge noted above directed, in part, that the City was not to use CMC 318, CMC 320, and CMC 321 in the procurement of contracts. The District should not have authorized or permitted Urban Strategies & Solutions to continue to perform services as to tracking, monitoring, research, or consultation related to local hire or responsible bidder policies after June 26, 2014. Further, no authorization whatsoever was provided by Bricker & Eckler to Urban Strategies & Solutions to reinitiate or to continue with the work which Urban Strategies was purported to have been performing prior to the notice sent on February 20, 2014 advising Urban Strategies & Solutions to suspend all work until further notice.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code § 117.28, a Finding for Recovery for public monies illegally expended is issued against Urban Strategies & Solutions in the amount of \$294,000, and in favor of the District.

Under Ohio law, any public official who either authorizes an illegal expenditure of public funds or supervises the accounts of a public office from which an illegal expenditure is discovered, is strictly liable for the amount of the expenditure. *Seward v. National Surety Corp.*, 120 Ohio St. 47 (1929); 1980 Op. Att’y Gen. No. 80-074; Ohio Rev. Code § 9.39; *State ex. rel. Village of Linndale v. Masten*, 18 Ohio St.3d 228 (1985). Public officials controlling public funds or property are liable for the loss incurred should such funds or property be fraudulently obtained by another, converted, misappropriated, lost or stolen.

The District's Executive Director, James Parrott, was responsible for monitoring and controlling the second scope of work. Mr. Parrott is held jointly and severally liable, in the amount of \$294,000 respectively in favor of the District.

FFR-009: Early Morning Software Expenses

On March 1, 2011, the District and Early Morning Software executed an agreement for professional services (PSA 15x11055). Section 3.B. of the agreement states, in part, “the consultant shall submit no more often than monthly, an invoice setting forth the services provided and the allowable expenses incurred with suitable documentation as condition precedent to receiving payment for services rendered.”

During review of the invoices submitted by Early Morning Software related to PSA 15x11055 we identified no supporting documentation provided for travel expenses totaling \$4,315 and a duplicate lodging expense totaling \$139 that was paid twice by the District.

¹⁴This references the Magistrate's Opinion as appropriate guidance for the review of contracts entered into by the District. By this reference, the AOS offers no opinion as to the breadth of the limitations imposed by the Court.

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On May 26, 2015, the District and Early Morning Software executed an agreement for professional services (PSA 55x12069). Article 5.B. in part states “the [District] shall make payment not more frequently than monthly and upon submission of an approved requisition for payment (the “Invoice”). Invoices shall include a breakdown by Task listed in Exhibit A and include... attachments presenting data such as time sheets satisfactory to the City to document entitlement to payment.”

During review of the invoices submitted by Early Morning Software related to PSA 55x12069 we identified two invoices reporting travel expenses totaling \$1,108; however, no receipts or other supporting documentation were submitted with the invoices.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code § 117.28, a Finding for Recovery for public monies illegally expended is issued against Early Morning Software in the amount of \$5,562 and in favor of the District.

Under Ohio law, any public official who either authorizes an illegal expenditure of public funds or supervises the accounts of a public office from which an illegal expenditure is discovered, is strictly liable for the amount of the expenditure. *Seward v. National Surety Corp.*, 120 Ohio St. 47 (1929); 1980 Op. Att’y Gen. No. 80-074; Ohio Rev. Code § 9.39; *State ex. rel. Village of Linndale v. Masten*, 18 Ohio St.3d 228 (1985). Public officials controlling public funds or property are liable for the loss incurred should such funds or property be fraudulently obtained by another, converted, misappropriated, lost or stolen.

The District’s Superintendent of Wastewater Administration, Margie Anderson approved some of the invoices related to the improper payments and is jointly and severally liable in the amount of \$626 in favor of the District.

FINDING FOR RECOVERY REPAID UNDER AUDIT

FFRRUA-010: Crabbe, Brown, & James

***State ex rel. McClure v. Hagerman*, 155 Ohio St. 320 (1951)**, provides that expenditures made by a governmental unit are to serve a public purpose. Typically the determination of what constitutes a “proper public purpose” rests with the judgment of the governmental entity, unless such determination is arbitrary or unreasonable. Even if a purchase is reasonable, **Ohio Attorney General Opinion 82-006** indicates that it must be memorialized by a duly enacted ordinance or resolution and may have a prospective effect only. **Auditor of State Bulletin 2003-005** Expenditure of Public Funds/Proper Public Purpose states that the Auditor of State’s Office will only question expenditures where the legislative determination of a public purpose is manifestly arbitrary and incorrect.

On February 5, 2009, the City of Cincinnati (the City) executed a Professional Service Agreement (PSA) with the law firm of Crabbe, Brown, and James to perform services coordinated with the City Solicitor and to assist the City and the District in matters involving the final development and implementation of the District’s Small Business Enterprise program.

During our review of billing statements submitted by Crabbe, Brown, and James and paid for by the District in relation to the PSA we identified 18 statements which included services rendered for the Project Rebuild Workforce Collaboration Foundation, Inc. Based on our review of these 18 billing statements we identified 88 billing items totaling \$18,777 for the period of November 3, 2011 through May 30, 2013 that reported services rendered related to the foundation.

We determined expenses made by the District for items related to the Project Rebuild Workforce Collaboration Foundation, Inc. are not considered to be for a proper public purpose because they were not related to the operations of the District, but instead are related to and advance the operations of the non-profit foundation and support the goals and mission of that organization.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code Section 117.28, a finding for recovery for public monies illegally expended is hereby issued against Crabbe, Brown, and James in the amount of \$18,777 in favor of the District.

Supplement to the Special Audit Report

On August 22, 2018, the District received and deposited a check from Crabbe, Brown, and James in the amount of \$18,777 resulting in the full repayment of this finding for recovery.

MANAGEMENT RECOMMENDATIONS

MR-012: Records Retention

Ohio Revised Code, § 149.351 (A), states that all records are the property of the public office concerned and shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules adopted by the records commissions provided for under sections 149.38 to 149.42 of the Revised Code. Those records shall be delivered by outgoing officials and employees to their successors and shall not be otherwise removed, destroyed, mutilated, or transferred unlawfully.

In addition, the District follows the City of Cincinnati's Public Records Policy. The **City of Cincinnati Public Records Policy Section 1.1** states "It is the policy of this public office that, as required by Ohio law, records will be organized and maintained so that they are readily available for inspection and copying. Record retention schedules are updated regularly and posted prominently at www.cincinnati-oh.gov." The City of Cincinnati - Department of Finance Records Retention Schedules: Schedule Number 08-07 Contracts and Agreements defines the retention period as seven years after completion.

We noted the following in regards to some of the records we requested the District to produce related to its PSA's:

- The District was unable to provide the waiver of competition for nine PSA's that were issued a direct award;
- The District was unable to provide documentation from the selection committee for two PSA's;
- Three PSA's did not document how the vendor was selected to perform services and no other documentation was provided by the District;

Failure to adhere to Ohio law and policies implemented by the City could lead to the District being subject to litigation for failing to fulfill public record requests. We recommend that the District maintain their records in accordance with Ohio law and the policies of the City.

MR-013: Use of Sub-consultants

On April 21, 2008, the City and the law firm of Bricker & Eckler executed an agreement for professional services (PSA 85x10306).

Section 1 of the agreement stated in part that the firm's services would be coordinated with the City Solicitor and the firm would also perform related services requested by the City Solicitor or the designated representative of the City Solicitor.

Section 4 of the agreement stated none of the work or services covered by this agreement should be subcontracted without the prior written approval of the City. Any work or services subcontracted should be specified by written contract and should be made expressly subject to each provision of this agreement.

On November 1, 2011, the District's Executive Director, James Parrott and Bricker & Eckler executed an engagement letter. The engagement letter indicated Bricker & Eckler was asked to serve as counsel to the District to assist with advising on the administration of and monitoring compliance with the District's SBE program. The engagement letter also stated the District requested Bricker & Eckler to engage with Urban Strategies & Solutions as a consultant. On April 17, 2012, Bricker & Eckler and Urban Strategies & Solutions executed a consulting agreement to assist with advising on the administration of and monitoring compliance with the District's SBE program.

Supplement to the Special Audit Report

We inquired with the City Solicitor's office to determine if they coordinated the services performed by Bricker & Eckler related to the SBE program and we were told the SBE matter was monitored and controlled by the Director's Office of the District. The original agreement between Bricker & Eckler and the District was amended eight times; however, none of the amendments reported Bricker & Eckler was subcontracting any of the work or services covered under the agreement.

The District could have solicited bids through the competitive process or the District could have requested a direct award be awarded to Urban Strategies & Solutions for the consulting services. However, the District neglected to utilize the process implemented for awarding professional service agreements and instead requested Bricker & Eckler to subcontract with Urban Strategies & Solutions. In addition, there was no agreement executed between the District and Bricker & Eckler to subcontract any of the services under Bricker & Eckler's agreement with the District.

We recommend the District utilize the processes implemented to award contracts for professional services. We also recommend the District abstain from requesting professional services be subcontracted to specific firms under other pre-existing professional service agreements. In addition, if a firm has a professional service agreement with the District and services under the agreement are to be subcontracted this should be documented in the agreement.

MR-014: Compensation Related to Professional Service Agreements

During the audit period, the City executed agreements for professional services with Bricker & Eckler (PSA 85x10306) and Crabbe, Brown, and James (PSA 95x10507) on April 21, 2008, and February 5, 2009 respectively.

Section 2.1 of the agreements stated in part that the City acknowledged: (1) that the number of hours of service required to be performed by the law firm was not readily determinable in advance; and (2) accordingly, the law firm was not required to, and would not perform services that would cause their reasonable claims for compensation under the agreement to exceed the maximum compensation. Additional services that would cause the law firms billings to exceed the maximum compensation would not be performed unless a written amendment increasing the maximum compensation was first executed by both parties.

On February 27, 2013, Bricker & Eckler's agreement was amended for the seventh time to increase the maximum obligation to \$950,000. As of August 31, 2013, Bricker & Eckler had performed services related to the agreement totaling \$949,904. Bricker & Eckler continued to perform services related to the agreement from September 2013 through April 2014, however, the agreement was not amended to increase the maximum obligation until May 2014. Bricker & Eckler submitted 30 invoices totaling \$245,628 for the matters related to PSA 85x10306 for services performed during the period of September 2013 through April 2014. The District paid 12 of the invoices totaling \$91,522 under PSA 35x11625 which was not related to PSA 85x10306. The remaining \$154,106 was paid by the District under PSA 85x10306 after the District executed the 8th amendment increasing the maximum obligation by \$154,700 to a total of \$1,104,700.

The maximum obligation for Crabbe, Brown, and James original agreement was \$25,000. As of December 31, 2009, Crabbe, Brown, and James had performed services totaling \$79,068 exceeding the maximum obligation by \$54,068. On January 25, 2010, the City and Crabbe, Brown, and James executed an amendment increasing the maximum obligation to \$135,190. As of June 30, 2010, Crabbe, Brown, and James had performed services totaling \$182,788 exceeding the maximum obligation by \$47,598. On July 21, 2010, the City and Crabbe, Brown, and James executed an amendment increasing the maximum obligation to \$250,000. As of April 30, 2011, Crabbe, Brown, and James had performed services totaling \$262,340 exceeding the maximum obligation by \$12,340. On May 3, 2011, the City and Crabbe, Brown, and James executed an amendment to increase the maximum obligation to \$420,000.

Continuing to perform services after the maximum compensation has been reached and prior to the City certifying the funds are available could result in the District owing monies to a firm that are not available.

Supplement to the Special Audit Report

In addition, the District executed PSA #55x12069 with Early Morning Software on May 26, 2015. We identified six invoices totaling \$85,718 for services performed during December 2014 through March 2015 prior to the execution of the PSA.

The District should not allow firms to perform any services prior to the execution of a PSA because this could lead to services being performed by the firm that are not within the scope of services agreed upon by both parties. Additionally, services performed prior to the execution of the PSA could lead to additional cost not anticipated by the District.

We recommend the District notify firms to stop performing services as soon as they are aware the services to be performed will exceed the maximum obligation and either amend the agreement to increase the maximum obligation or terminate the agreement. Also, we recommend the District ensure PSA's have been fully executed with a firm prior to any services being performed.

Supplement to the Special Audit Report

Objective No. 3 – Examine inter-departmental (ID) bills to determine if the District obtained proper supporting documentation and to determine if the expenses were related to the operations of the District.

PROCEDURES

In order to test Objective 3, we performed the following procedures:

We identified all ID bill expenses recorded by the District in the Cincinnati Financial System (CFS) for the period of January 1, 2011 through December 31, 2015.

We identified the ID bills recorded in CFS by object code for each fiscal year in the period and judgmentally selected ID billings to review in further detail.

For each ID bill reviewed, we determined if there was proper supporting documentation and if the expenses were related to the operations of the District.

RESULTS

Fiscal Year 2011

We reviewed 97 ID bills totaling \$15,475,053 and identified the following issue:

- The District reimbursed the City's Planning & Buildings Department of the City of Cincinnati (Planning & Buildings) for services provided by a part-time scanner per a Memorandum of Understanding (MOU) executed in 2009.

On July 26, 2011, the District recorded an ID bill (#11030) prepared by Planning & Buildings to expense the work provided by two part time scanners for 12 pay periods from January 7, 2011 to March 25, 2011. The ID bill totaled \$4,270 which accounted for the gross pay of the two scanners. The ID bill included \$429 for services provided during the pay period ended March 25, 2011.

On August 1, 2011, the District recorded an ID bill (#11060) prepared by Planning & Buildings to expense the work provided by two part time scanners for 13 pay periods from March 25, 2011 to June 24, 2011. The ID bill totaled \$5,248 which accounted for the gross pay of the two scanners. The ID bill included \$429 for services provided during the pay period ended March 25, 2011.

Both ID bills reported work performed by the part time scanners for the pay period ended March 25, 2011 resulting in the District being overcharged and overpaying by \$429.

Fiscal Year 2012

We reviewed 257 ID bills totaling \$15,941,460 and identified the following issues:

- The District reimbursed the City's Enterprise Technology Solutions Department (ETSD) \$70,574 for the salary of a Senior Computer Programmer Analyst that ETSD hired in 2011. The ID bill reported there was an agreement between the department directors and the District was to pay the salary of this employee for two years. The District told us this was a verbal agreement and there was no other documentation related to the agreement.
- The District reimbursed the City \$3,015 for services performed by a staffing agency, Lee Personnel, Inc. The District told us they requested a Plant Operators study and the City's Human Resources Department contracted with the firm to complete the study. There was no agreement or other documentation related to the work to be performed.

Supplement to the Special Audit Report

- The District and Greater Cincinnati Water Works (GCWW) shared services of a Transition Manager during the formation of the Joint Utility Organization. The costs of the Transition Manager were determined to be allocated 50% to both GCWW and the District.

In March 2012, the District recorded an ID bill to reimburse GCWW for the services of the Transition Manager for two pay periods in January and February 2012. The costs of the services owed by the District were calculated by taking the total gross pay for the two pay period times the fringe benefit rate times 50%. The ID bill prepared by GCWW used a fringe benefit rate of 60.91% but a rate of 41.21% should have been used resulting in the District being overcharged and overpaying \$711.

Fiscal Year 2013

We reviewed 205 ID bills totaling \$10,555,267 and identified the following issues:

- The District reimbursed Planning & Buildings for services provided by a Plumbing Inspector and a Clerk Typist per a MOU executed in 2009.

On July 25, 2013, the District recorded an ID bill (#14013P) prepared by Planning & Buildings to expense the work provided by the Clerk Typist for six pay periods from April 13, 2013 to June 22, 2013. The ID bill totaled \$14,934 which accounted for gross pay (\$8,752) and fringe benefits (\$6,182). The fringe benefit amount calculated by Planning & Buildings for five of the six pay periods was incorrect. Planning & Buildings used a fringe benefit rate of 70.65% in its calculation. The appropriate fringe benefit rate in effect for pay periods ended April 13, 2013 through June 8, 2013 was 66.11%. Effective the pay period ended June 22, 2013 the fringe benefit rate was increased to 70.65%. This resulted in the District being overcharged and overpaying by \$331.

On July 25, 2013, the District recorded an ID bill (#14014P) prepared by Planning & Buildings to expense the work provided by the Plumbing Inspector for six pay periods from April 13, 2013 to June 22, 2013. The ID bill totaled \$21,496 which accounted for gross pay (\$12,267), fringe benefits (\$8,667), and mileage (\$562). The fringe benefit amount calculated by Planning & Buildings for five of the six pay periods was incorrect. Planning & Buildings used a fringe benefit rate of 70.65% in its calculation. The appropriate fringe benefit rate in effect for pay periods ended April 13, 2013 through June 8, 2013 was 66.11%. Effective the pay period ended June 22, 2013 the fringe benefit rate was increased to 70.65%. This resulted in the District being overcharged and overpaying by \$464.

Fiscal Year 2014

We reviewed 240 ID bills totaling \$14,208,494 and identified the following issues:

- On May 20, 2014, the District recorded an ID bill (#4157) prepared by GCWW to expense work performed by GCWW employees for District related services during the period of July 2013 through December 2013. The ID bill totaled \$198,938 which accounted for gross pay (\$123,566), fringe benefits (\$75,016), and materials (\$356). The fringe benefit amount calculated by GCWW was incorrect. GCWW used a fringe benefit rate of 60.71%, however, the effective rate during this period was 51.26%. The fringe benefit amount charged to the District should have only been \$63,340 resulting in the District being overcharged and overpaying by \$11,676.
- On June 13, 2014, the District recorded an ID bill (#4304) in CFS totaling \$126,447 prepared by GCWW to record the District's portion (50%) of shared services related to engineering consulting services performed by CH2M Hill.

Supplement to the Special Audit Report

Attached to the ID bill were 20 CH2M Hill invoices totaling \$252,894. Upon review of the invoices we determined nine of the invoices totaling \$112,936 were submitted twice, resulting in the District being overcharged by \$56,468. In addition, two invoices totaling \$27,020 submitted for reimbursement had previously been submitted on another ID bill (#4191) and were reimbursed by the District, resulting in the District being overcharged and overpaying by \$13,510.

- The District reimbursed the City's Planning Department for services provided by a Plumbing Inspector and a Clerk Typist per a MOU executed in 2009.

On November 24, 2014, the District recorded an ID bill (#15017P) prepared by Planning & Buildings to expense the work provided by the Clerk Typist for seven pay periods from April 12, 2014 to July 5, 2014. The ID bill totaled \$17,424 which accounted for gross pay (\$10,210) and fringe benefits (\$7,214). The fringe benefit amount calculated by Planning & Buildings for two of the seven pay periods was incorrect. Planning & Buildings used a fringe benefit rate of 70.65% in its calculation however, effective the pay period ended June 21, 2014 the rate was reduced to 67.21%. This resulted in the District being overcharged and overpaying by \$100.

On November 24, 2014, the District recorded an ID bill (#15018P) prepared by Planning & Buildings to expense the work provided by the Plumbing Inspector for seven pay periods from April 12, 2014 to July 5, 2014. The ID bill totaled \$25,313 which accounted for gross pay (\$14,312), fringe benefits (\$10,111), and mileage (\$890). The fringe benefit amount calculated by Planning & Buildings for two of the seven pay periods was incorrect. Planning & Buildings used a fringe benefit rate of 70.65% in its calculation however, effective the pay period ended June 21, 2014 the rate was reduced to 67.21%. This resulted in the District being overcharged and overpaying by \$141.

Fiscal Year 2015

We reviewed 201 ID bills totaling \$4,557,249 and identified the following issues:

- The District reimbursed the City's Finance Department \$113,957 for procurement services provided by seven employees for the last four pay periods in 2015 per a Service Level Agreement. The City calculated the costs for one employee incorrectly as the employee only worked the last two pay periods in 2015; however, the City calculated the cost of services for four pay periods, resulting in the District being overcharged and overpaying by \$6,389. In addition, we determined the City used incorrect salary rates for the other six employees resulting in the District being overcharged and overpaying by \$451.

FINDINGS FOR RECOVERY REPAID UNDER AUDIT

FFRUA-011 Employee Benefit Costs for Shared Services with Greater Cincinnati Water Works (GCWW)

In 2011, the City of Cincinnati created a joint utility organization (JUO) consisting of GCWW, the District, and the City's Stormwater Management Unit (SMU). In May 2015, the City of Cincinnati began the process to decouple the District from GCWW.

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On November 30, 2011, the City's Director of Finance issued Bulletin No. 5-2011 to establish employee benefit rates to be applied to interdepartmental (ID) billings for services based upon straight time wages paid for actual hours of service. The employee benefit rates to be used for full time non-uniformed employees effective for the pay period ended December 14, 2011 were as follows:

Account Credited	Type of Benefits	Employee Benefit Rate
7548	Retirement, Medicare, Medical, Dental, Vision, and Life Insurance	39.18%
8617	Unemployment Compensation, Workers' Compensation, PEAP	2.03
7197	Leave Usage, Injury with Pay, Overtime Premium, Longevity, Lump Sum Payment, Uniform Allowance, Tuition Reimbursement, Donated Time, Deferred Compensation Match, Health Lifestyle Incentive	19.70
Total Employee Benefit Rate		60.91%

On March 29, 2012, the District recorded an ID bill (#2063) in the Cincinnati Financial System (CFS) prepared by GCWW totaling \$5,808 to record the District's portion of services provided by the Transition Manager related to the JUO for the pay periods ended February 4, 2012 and February 18, 2012. The cost for the services was calculated by taking the Transition Manager's gross pay and adding the employee benefit costs for the two pay periods. The Transition Manager's gross pay for the two pay periods totaled \$7,219. GCWW calculated the employee benefit costs using a rate of 60.91% totaling \$4,397. Therefore, the costs related to the Transition Manager totaled \$11,616. Per the ID bill, it documented the District's portion of services was 50%, resulting in \$5,808 in total costs for the District.

During review of subsequent ID bills prepared by GCWW in 2012 to record the District's portion of services provided by the Transition Manager we noted the employee benefit costs were calculated using a rate of 41.21%. This rate only accounted for the employee benefit cost rates documented for accounts #7548 and #8617 in Bulletin No. 5-2011. Due to the creation of the JUO it was determined the home department (in this case GCWW) would incur the costs for the benefits related to account #7197 because the employee was not working on the other department's work full time. Based on the information provided to us by the District we determined the costs related to the District for the Transition Manager's services for ID bill #2063 should have only been \$5,097 ($\$7,219 * 1.4121 * 50\%$), resulting in the District overpaying GCWW by \$711.

On June 19, 2013, the City's Director of Finance issued Bulletin No. 4-2013 to establish employee benefit rates to be applied to ID billings for services based upon straight time wages paid for actual hours of service. The employee benefit rates to be used for full time non-uniformed employees effective for the pay period ended June 22, 2013 were as follows:

Account Credited	Type of Benefits	Employee Benefit Rate
7548	Retirement, Medicare, Medical, Dental, Vision, and Life Insurance	46.76%
8617	Unemployment Compensation, Workers' Compensation, PEAP, OP&F Accrued Liability	4.50
7197	Leave Usage, Injury with Pay, Overtime Premium, Longevity, Lump Sum Payment, Uniform Allowance, Tuition Reimbursement, Donated Time, Deferred Compensation Match	19.39
Total Employee Benefit Rate		70.65%

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On May 20, 2014, the District recorded an ID bill (#4157) prepared by GCWW totaling \$198,938 to record the District's portion of services provided by various GCWW employees during the period of July 2013 through December 2013. The cost for the services was calculated by taking the GCWW employees gross pay for hours worked on District related items and adding the employee benefit costs to the gross pay. The gross pay for the GCWW employees totaled \$123,566. GCWW calculated the employee benefit costs using a rate of 60.71% totaling \$75,016. Therefore, the costs related to the GCWW employees totaled \$198,582. The ID bill also included cost of materials totaling \$356.

Based on the information presented above, we determined GCWW should have calculated the employee benefit costs by using a rate of 51.26%. Due to the creation of the JUO the District and GCWW did not include the employee benefit rate reported for account #7197 as previously mentioned. The rate used by GCWW, however, was the full time rate reported in Bulletin No. 4-2013 for uniformed fire employees.

Therefore, the employee benefit costs for the GCWW employees should have only been \$63,339 resulting in the District overpaying by \$11,677.

In accordance with the foregoing facts, and pursuant to Ohio Revised Code Section 117.28, a Finding for Recovery for public monies illegally expended is hereby issued against the City of Cincinnati, in favor of the District, in the amount of \$12,388.

When informed of these facts, the City prepared an ID bill (#17003) totaling \$12,388 to reimburse the District which was recorded in CFS on April 26, 2017 resulting in the full repayment of this finding for recovery.

FFRRUA-012: Employee Benefit Costs for Services Provided by the City of Cincinnati for the District

On September 2, 2009, the District and the Planning and Buildings department of the City of Cincinnati (Planning & Buildings) executed a memorandum of understanding (MOU) pursuant to which Planning & Buildings was to provide plumbing plan examination and inspection services for the District, and to record the appropriate documentation. The services provided by Planning & Buildings consisted of providing a plumbing inspector, clerk typist, and a part-time scanner. Per section 3B of the MOU, invoices were to be submitted to the District on a quarterly basis.

On July 26, 2011, the District recorded an ID bill (#11030) in CFS prepared by Planning & Buildings to expense the work provided by two part time scanners for 12 pay periods from January 7, 2011 to March 25, 2011. The ID bill totaled \$4,270 which accounted for the gross pay of the two scanners. The ID bill included \$429 for services provided during the pay period ended March 25, 2011.

On August 1, 2011, the District recorded an ID bill (#11060) in CFS prepared by Planning & Buildings to expense the work provided by two part time scanners for 13 pay periods from March 25, 2011 to June 24, 2011. The ID bill totaled \$5,248 which accounted for the gross pay of the two scanners. The ID bill included \$429 for services provided during the pay period ended March 25, 2011.

Both ID bills (#11030 and #11060) reported work performed by the part time scanners for the pay period ended March 25, 2011. This resulted in the District paying for the same services twice, therefore overpaying by \$429.

On July 23, 2012, the City's Director of Finance issued Bulletin No. 2-2012 regarding employee benefit rates based on direct wages. Pursuant to this Bulletin the documented rates were to be applied to interdepartmental billings for services based upon straight time wages paid for actual hours of service. Per Bulletin No. 2-2012, the employee benefit rate to be used for a full time non-uniformed employee was 66.11% effective for the pay period ended August 4, 2012.

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On June 19, 2013, the City's Director of Finance issued Bulletin No. 4-2013 regarding employee benefit rates based on direct wages. This Bulletin provided that the documented rates were to be applied to interdepartmental billings for services based upon straight time wages paid for actual hours of service. Per Bulletin No. 4-2013, the employee benefit rate to be used for a full time non-uniformed employee was 70.65% effective for the pay period ended June 22, 2013.

On July 25, 2013, the District recorded two ID bills (#14013P and #14014P) in CFS prepared by Planning & Buildings to expense the work provided by the Clerk Typist and Plumbing Inspector for six pay periods from April 13, 2013 to June 22, 2013. ID bill #14013P totaled \$14,934 which accounted for gross pay (\$8,752) and fringe benefits (\$6,182). ID bill #14014P totaled \$21,496 which accounted for gross pay (\$12,267), fringe benefits (\$8,667), and mileage (\$562). The fringe benefit amount calculated by Planning & Buildings for five of the six pay periods was incorrect for those two employees. Planning & Buildings used a fringe benefit rate of 70.65% in its calculation but the appropriate fringe benefit rate in effect for pay periods ended April 13, 2013 through June 8, 2013 was 66.11%. Effective the pay period ended June 22, 2013 the fringe benefit rate was increased to 70.65%. This resulted in the District being overcharged and overpaying \$331 related to ID bill #14013P and \$464 related to ID bill #14014P.

On June 17, 2014, the City's Director of Finance issued Bulletin No. 1-2014 regarding employee benefit rates based on direct wages. This Bulletin provided that the documented rates were to be applied to interdepartmental billings for services based upon straight time wages paid for actual hours of service. Per Bulletin No. 1-2014, the employee benefit rate to be used for a full time non-uniformed employee was 67.21% effective for the pay period ended June 21, 2014.

On November 24, 2014, the District recorded two ID bills (#15017P and #15018P) in CFS prepared by Planning & Buildings to expense the work provided by the Clerk Typist and Plumbing Inspector for seven pay periods from April 12, 2014 to July 5, 2014. ID bill #15017P totaled \$17,424 which accounted for gross pay (\$10,210) and fringe benefits (\$7,214). ID bill #15018P totaled \$25,313 which accounted for gross pay (\$14,312), fringe benefits (\$10,111), and mileage (\$890). The fringe benefit amount calculated by Planning & Buildings for two of the seven pay periods was incorrect. Planning & Buildings used a fringe benefit rate of 70.65% in its calculation. Effective the pay period ended June 21, 2014, however, the rate was reduced to 67.21%. This resulted in the District being overcharged and overpaying \$100 related to ID bill #15017P and \$141 related to ID bill #15018P.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code § 117.28, a Finding for Recovery for public monies illegally expended is hereby issued against the City of Cincinnati's Planning & Buildings department in the amount of \$1,465 in favor of the District.

When informed of these facts, the City of Cincinnati's Planning & Buildings department prepared an ID bill (#18022) totaling \$1,465 to reimburse the District which was recorded in CFS on August 30, 2018 resulting in the full repayment of this finding for recovery.

FFRUA-013: Invoices Paid Twice

On June 13, 2014, the District recorded an ID bill (#4304) in CFS totaling \$126,447 prepared by GCWW to record the District's portion (50%) of shared services related to engineering consulting services performed by CH2M Hill.

Attached to the ID bill were 20 CH2M Hill invoices totaling \$252,894. Upon review of the invoices we determined nine of the invoices totaling \$112,936 were submitted and paid twice, resulting in the District overpaying GCWW by \$56,468. In addition, two invoices totaling \$27,020 submitted for reimbursement had previously been submitted on another ID bill (#4191) and were reimbursed twice by the District, resulting in the District overpaying GCWW by \$13,510.

In accordance with the foregoing facts, and pursuant to Ohio Revised Code Section 117.28, a Finding for Recovery for public monies illegally expended is hereby issued against the City of Cincinnati, in favor of the District in the amount of \$69,978.

Supplement to the Special Audit Report

When informed of these facts, the City of Cincinnati prepared an ID bill (#17002A) totaling \$69,978 to reimburse the District which was recorded in CFS on March 28, 2017 resulting in the full repayment of this finding for recovery.

FFRUA-014: Service Level Agreement – Procurement Services

On October 28, 2015, the City of Cincinnati's Finance Department, Purchasing Division, and the District executed a service level agreement (SLA) for procurement services. The SLA reported the staff and positions that carried out the District's procurement functions would be transferred to the City of Cincinnati's Purchasing Division, effective pay period 23 (October 25, 2015). After the transfer of the District's procurement staff to the City of Cincinnati's Purchasing Division, the District would reimburse the City of Cincinnati (the City) for 100% of the personnel expenses of one administrative tech, five senior administrative specialists, and 50% of the personnel expenses of one supervising buyer.

The District reimbursed the City \$113,957 for procurement services provided by seven employees for the last four pay periods in 2015 per the SLA. The City calculated the costs for one employee incorrectly as the employee only worked the last two pay periods in 2015; however, the City calculated the cost of services for four pay periods resulting in the District overpaying by \$6,389. In addition, we determined the City used incorrect salary rates for the other six employees resulting in the District overpaying by \$451.

In accordance with the foregoing facts, and pursuant to Ohio Revised Code Section 117.28, a Finding for Recovery for public monies illegally expended is hereby issued against the City of Cincinnati, in favor of the District in the amount of \$6,840.

When informed of these facts, the District prepared two ID bills (#16045 and #17004) totaling \$6,365 and \$475 to correct the overpayment which were recorded by the District in CFS on November 18, 2016 and March 20, 2017, respectively resulting in the full repayment of this finding for recovery.

MANAGEMENT COMMENTS

MR-015: Memorandum of Understandings (MOU)

The District should have written MOU agreements executed for all services provided by and for the City. These agreements should, at a minimum, outline the services to be provided by or for the City, the costs or how the costs are to be calculated and charged, as well as any other stipulations in which the City and the District agree. These agreements should be approved by both the City and the District.

In 2012, the City and the District did not have a written MOU in place for the following services that were provided:

- Human resources services that were contracted out by the City to a third party vendor in the amount of \$3,015;
- Information technology services for a Senior Computer Programmer Analyst that were to be provided by the City's Enterprise Technology Solutions Department in the amount of \$70,574.

While the District entered into MOU's with the City in which a written agreement was executed in various instances, the District's procedures to ensure a written agreement was completed prior to all such services being undertaken were not consistently applied, leading to these exceptions.

Failure to have a MOU in place for such services could lead to the District being charged for services not agreed to or being charged incorrect amounts.

We recommend the District and the City execute a MOU for any services to be provided between the two entities.

Supplement to the Special Audit Report

Objective No. 4 – Examine payroll transactions recorded by the District to determine if they were related to the operations of the District and were properly recorded.

PROCEDURES

In order to test Objective 4, we performed the following procedures:

We obtained payroll registers from the District for the period of January 1, 2011 through December 31, 2015.

We obtained an employee listing from the District for the period of January 1, 2011 through December 31, 2015 and identified employees who retired or terminated their employment. We identified the employees' last day of work and last payment received from the District.

We identified all payroll transactions recorded in the Cincinnati Financial System (CFS) for the period of January 1, 2011 through December 31, 2015.

We obtained a list of employees from the Cincinnati Human Resource Information System (CHRIS) who transferred into the District from other City of Cincinnati (City) departments and a list of employees who transferred out of the District into other City departments.

We compared employees reported on the transfer list to the payroll registers and verified the employees were reported and paid by the proper department after the effective date of their transfer.

We compared payroll transactions reported in the payroll registers to the payroll transactions recorded in CFS by department/unit code for randomly selected pay periods for the period of January 1, 2011 through December 31, 2015.

We scanned the payroll registers to determine if there were any employees reported on the payroll registers that should not have been paid with District funds.

RESULTS

We identified 107 employees that retired from the District for the period and confirmed their last date of work and last date of pay were appropriate. We identified 331 employees, which included co-op students and interns, who terminated their employment from the District in the period, and confirmed their last date of work and last day of pay were appropriate.

Table 7 documents employee transfers in and out of the District for the period of January 1, 2011 through December 31, 2015 to and from other City departments.

Table 7: Employee Transfers In and Out of MSD During Audit Period		
Year	# of City Employees Transferring into District from Other City Departments	# of District Employees Transferring Out to Other City Departments
2011	13	0
2012	6	8
2013	6	4
2014	8	2
2015	12	10
Total	45	24

Supplement to the Special Audit Report

All employees that transferred into and out of the District for the period were paid by the appropriate department.

During our comparison of payroll transactions recorded in CFS to the payroll registers we did not identify any discrepancies for the pay periods reviewed.

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Objective No. 5 – Examine selected non-payroll expenses to determine if the expenses had proper supporting documentation and were for operations of the District.

PROCEDURES

In order to test Objective 5, we performed the following procedures:

We obtained expense reports from the Cincinnati Financial Systems (CFS) for the District's operating and capital projects funds for the period of January 1, 2013 through December 31, 2015.

We identified all expenses paid by the District to Hamilton County for program monitoring services for the period of January 1, 2013 through December 31, 2015.

We obtained all supporting documentation from the District for program monitoring services expenses paid by the District to Hamilton County for the period of January 1, 2013 through December 31, 2015.

We identified all procurement card (p-card) expenses paid by the District for the period of January 1, 2013 through December 31, 2015.

RESULTS

Due to the magnitude of the capital costs associated with the Consent Decree, projected to be in excess of \$3.1 billion in total, and the potential effect on rate payers, the County developed a monitoring system, in part, to ensure that requirements set forth are met. The first step in this process was the creation of a full-time position of Compliance Coordinator in 2006 to monitor consent decree progress. In addition, the County required the District to contract, as its agent, with CDM Smith (CDM) for 2007 through 2010 for program management supervision as well as other consulting services.

Starting in July 2010, the management of the programs and processes developed under the agreement with CDM were brought in-house, and the County executed a contract with Plante Moran on July 14, 2010 for professional program monitoring services. Per the agreement, the term "Program" was defined as the capital and operational activities of the District, related to, a part of, and to become part of the District's work needed to ensure that Hamilton County is in full compliance with the Consent Decree and all statutes, laws, regulations, consent orders, unilateral orders, permits, contracts, and other obligations regarding the District. On June 26, 2013, the County executed another contract with Plante Moran for the same services.

In 2013, the County also formally established an internal Utility Oversight function, which consisted of two County employees, the Utility Oversight Director and the Compliance Coordinator, who worked in conjunction with Plante Moran to monitor the District's operations. This monitoring function expanded to cover more than just program management and included purview over the District's annual budgeting process, staffing levels, and the change order process.

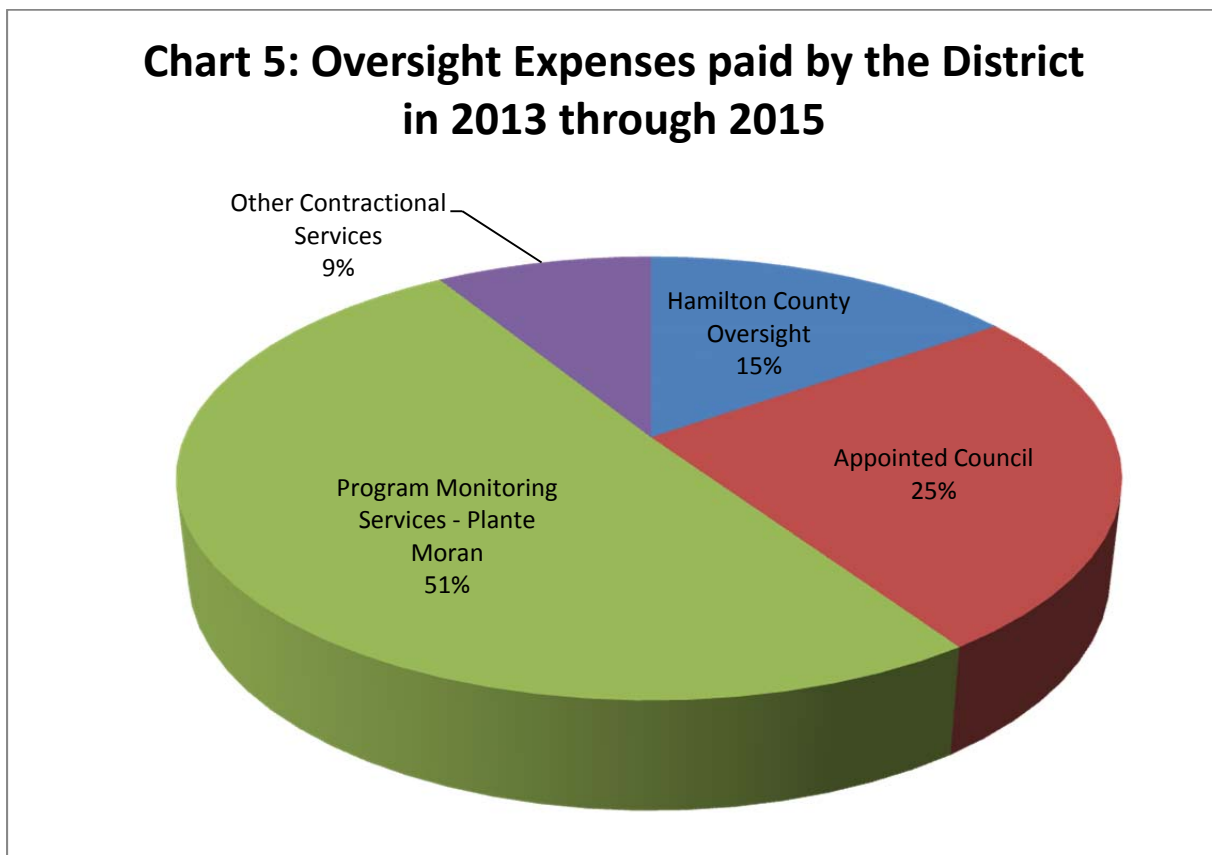
For the period of January 1, 2013 through December 31, 2015, the District was invoiced by Hamilton County on a quarterly basis to pay for services related to the oversight of the District's operations. For the period, the District paid \$7,607,831 for these services.

Table 8 reports a breakdown of the total expenses paid by the District for oversight services provided by Hamilton County and their consultants for the period.

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District Oversight	2013	2014	2015	Total
Plante Moran	\$1,450,552	\$1,361,940	\$1,042,051	\$3,854,543
Hamilton County Appointed Council	597,048	851,982	473,872	1,922,902
Hamilton County Oversight – Oversight Team, Administration, and Indirect Cost	235,338	578,412	348,412	1,162,162
Other Contractual Services	301,726	186,279	180,219	668,224
Total Expenses	\$2,584,664	\$2,978,613	\$2,044,554	\$7,607,831

Chart 5 shows the percentage of expenses by service category paid by the District for oversight services provided by Hamilton County and their consultants for the period.



We requested supporting documentation from the District for all expenses paid to Hamilton County for oversight services for the period. During our review of the documentation provided by the District we determined there was not sufficient documentation for all of the expenses with the exception of the second quarter of 2014. Per discussion with both the District's Chief Financial Officer and Executive Director we were told they had requested additional supporting documentation from Hamilton County but were not provided with all of the documentation. Therefore, we requested Hamilton County to provide us with all supporting documentation related to the oversight services provided and paid for the period.

During our review of the expenses paid by the District for oversight services provided by Hamilton County and their consultants we identified the following issues:

Supplement to the Special Audit Report

- Plante Moran used a consultant, WBE Metro Associates, to perform some of the program monitoring services. WBE Metro Associates submitted an invoice to Plante Moran for services performed in July 2013 totaling \$5,796. Plante Moran invoiced Hamilton County twice for the services performed and both invoices were paid by Hamilton County. Hamilton County then invoiced the District for the services they overpaid Plante Moran and resulted in the District overpaying Hamilton County by \$5,796.
- Plante Moran used a consultant, Hatch Mott MacDonald, to perform some of the program monitoring services. Hatch Mott MacDonald submitted two invoices to Plante Moran for labor and travel expenses related to services performed in October 2013. Hatch Mott MacDonald's invoices included three meal receipts that included alcohol purchases totaling \$35. Plante Moran invoiced Hamilton County including the alcohol purchases which in turn, the County paid. Hamilton County then invoiced the District for the same and the District also reimbursed the \$35 in alcohol, which is not a proper public purpose.
- Plante Moran invoiced Hamilton County twice for a car rental for one of its staff members during the period of September 26, 2013 through October 2, 2014 and both invoices were paid by Hamilton County. Hamilton County then invoiced the District for the car rental twice, which resulted in the District overpaying Hamilton County by \$231.
- Per Plante Moran's agreement with Hamilton County, Plante Moran was allowed to be reimbursed for meals and incidental travel expenses on a per-diem rate of \$35 per day for each day a staff member was in travel status. Plante Moran submitted 30 invoices to Hamilton County related to program monitoring services performed for the period of January 1, 2013 through June 30, 2015. Plante Moran reported a travel per-diem for one of its staff members in 22 of the 30 invoices. The per diem expenses on these invoices totaled \$11,060 however, Plante Moran did not document which days the staff member was in travel status. Hamilton County paid all 30 invoices submitted by Plante Moran and invoiced the District to be reimbursed for the services.

We reviewed the travel (lodging, car rental, gas) receipts submitted by Plante Moran for the staff member and determined he was in travel status for 230 days during the period of January 1, 2013 to June 30, 2015. Based on the days we identified the staff member being in travel status, the per diem amount for the period should have been \$8,050. As a result, the District overpaid Hamilton County by \$3,010.

Based on the issues identified above, the District overpaid Hamilton County by \$9,072 for services that were either paid twice, unallowable, or for expenses that did not have proper supporting documentation.

P-Card Travel Expenses

For the period of January 1, 2013 through December 31, 2015, the District paid \$966,132 related to p-card transactions which included \$491,656 in travel expenses. We scanned the p-card activity for any unusual transactions and reviewed travel related transactions for the period.

During our review of travel related p-card transactions we identified the following:

- The District paid \$561 for James Parrott, Executive Director, to stay at the Hilton Netherland Plaza in downtown Cincinnati for three nights. The lodging was related to the National Association of Clean Water Agencies 2013 summer conference.
- We identified 105 transactions to purchase lodging for District employees while attending conferences or trainings. We identified 61 transactions where the lodging rate obtained by the District for the employee exceeded the government rate reported by the United States General Services Administration. For the 61 transactions, the District paid \$32,405 for lodging excluding taxes. If the District would have obtained the government rate for these 61 transactions the lodging cost would have been \$19,438 and would have resulted in a reduced cost of \$12,967.

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- We identified 31 conferences where District employees lodged at the hotel where the conference was located or a preferred site identified by the conference. During review of the lodging expenses related to these conferences, we identified 16 instances where District employees obtained different rates while staying at the same location. Some of these instances included the following:

The District paid for two employees to stay in Miami, FL while attending the National Association of Clean Water Agencies (NACWA) Winter Conference in February 2013. Both employees stayed at the hotel where the conference was located, however, one employee got a room with a rate of \$399 per night and the other employee got a room rate of \$229 per night.

The District paid for two employees to stay in Duck Key, FL while attending the National Association of Sewer Service Contractors Annual Convention in February 2013. Both employees stayed at the hotel where the conference was located, however, one employee got a room with a rate of \$296 per night and the other employee got a room rate of \$219 per night.

The District paid for five employees to stay in Glendale, AZ while attending the American Water Works Association (AWWA) Utility Management Conference in March 2013. Four employees stayed at the hotel where the conference was located, however, one employee got a room with a rate of \$319 per night, another employee got a room rate of \$299 per night, and the other two employees got a room rate of \$199 per night. One employee stayed at a different hotel and got a rate of \$169 which was higher than the GSA rate of \$128 per night.

The District paid for two employees to stay in Denver, CO while attending the AWWA Annual Conference in June 2013. Both employees stayed at the hotel where the conference was located however, one employee got a room with a rate of \$534 per night and the other employee got a room rate of \$229 per night.

The District paid for six employees to stay in Louisville, KY while attending the 5 Cities Plus Conference in November 2013. All six employees stayed at the hotel where the conference was located however, one employee got a room with a rate of \$229 per night and the other five employees got a room rate of \$100 per night.

The District paid for three employees to stay in San Antonio, TX while attending the National Forum of Black Public Administrators in April 2014. All three employees stayed at the hotel where the conference was located however, two employees got a room with a rate of \$199 per night and the other employee got a room rate of \$110 per night.

The District paid for 15 employees to stay in New Orleans, LA while attending the Water Environment Federation's Technical Exhibition Conference in September 2014. The 15 employees stayed at 11 different hotels and the daily rates ranged from \$108 to \$319 per night. The government lodging rate per GSA was \$108 in September 2014 and only one of the 14 employees got lodging at the GSA rate. The total cost without taxes for the lodging paid by the District was \$13,430. If all the employees would have lodged at the government rate the total costs without taxes would have only been \$6,156.

The District paid for four employees to stay in San Antonio, TX while attending the Design-Build Institute of America Conference in March 2015. All four employees stayed at the hotel where the conference was located however, one employee got a room rate of \$199 per night, one employee got a room for two nights at a rate of \$199 per night and a room for two nights at a rate of \$115 per night, and the other two employees got a room rate of \$115 per night.

The District paid for two employees to stay in Providence, RI while attending the NACWA Utility Leadership Conference in July 2015. Both employees stayed at the hotel where the conference was located however, one employee got a deluxe room with a rate of \$229 per night and the other employee got a room rate of \$179 per night.

Supplement to the Special Audit Report

FINDING FOR RECOVERY REPAID UNDER AUDIT

FFRRUA-015: Hamilton County Program Monitoring Services

State ex rel. McClure v. Hagerman, 155 Ohio St. 320 (1951), provides that expenditures made by a governmental unit are to serve a public purpose. Typically the determination of what constitutes a “proper public purpose” rests with the judgment of the governmental entity, unless such determination is arbitrary or unreasonable. Even if a purchase is reasonable, **Ohio Attorney General Opinion 82-006** indicates that it must be memorialized by a duly enacted ordinance or resolution and may have a prospective effect only.

Auditor of State Bulletin 2003-005 Expenditure of Public Funds/Proper Public Purpose states that the Auditor of State’s Office will question expenditures only in cases in which the legislative determination of a public purpose is manifestly arbitrary and incorrect. The Bulletin further states that the Auditor of State’s Office does not view the expenditure of public funds for alcoholic beverages as a proper public purpose and will issue findings for recovery for such expenditures as manifestly arbitrary and incorrect.

On July 14, 2010, Hamilton County (the County) and Plante Moran executed an agreement for professional program monitoring services.

The agreement between the County and Plante Moran, in part, documents that the County is a party to an agreement dated April 10, 1968, with the City of Cincinnati (the City) pursuant to which the County is to exercise authority and control as the owner of the District, and the City is to provide certain management and operations services on its behalf. On June 9, 2004, the County entered into two Consent Decrees (collectively, “Consent Decree”) in a matter pending in the United States District Court for the Southern District of Ohio, Western Division, being Case No. C-1-02-107, captioned: United States of America, the State of Ohio, and Ohio River Valley Water Sanitation Commission vs. The Board of County Commissioners of Hamilton County, Ohio and the City of Cincinnati, Ohio.

Per the agreement between the County and Plante Moran, the term “Program” was defined as the capital and operational activities of the District, related to, a part of, and to become part of the District’s work needed to ensure that Hamilton County is in full compliance with the Consent Decree and all statutes, laws, regulations, consent orders, unilateral orders, permits, contracts, and other obligations regarding the District. The agreement documents that the County required assistance in assessing and evaluating the “Program” and its implementation by the District with the goal of ensuring that the District’s program management is continuously improving the execution of the “Program”. Plante Moran was to review and evaluate the “Program” and to provide reporting and recommendations to ensure that “Program” budgets, benchmarks, and risks were properly accounted for, evaluated, and addressed by the County.

On June 26, 2013, the County and Plante Moran executed a new agreement for such professional program monitoring services.

Both agreements between the County and Plante Moran documented that Plante Moran would be reimbursed for meals and incidental travel expenses on a per-diem rate of \$35 per day per employee for each day that a staff member was in travel status.

For the period of January 1, 2013 through December 31, 2015, Plante Moran invoiced the County monthly for the professional program monitoring services and the invoices were paid by the County. Subsequently, the County invoiced the District quarterly to be reimbursed for the professional program monitoring services provided by Plante Moran and their consultants which were paid by the District.

During our review of the invoices submitted by the County and paid by the District we identified the following issues:

- The County submitted an invoice from one of Plante Moran’s consultants twice which was paid twice by the District resulting in the District overpaying the County by \$5,796.

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- The County submitted two invoices from one of Plante Moran's consultants that included alcohol totaling \$35 and the invoices were paid by the District resulting in the District paying for illegal expenses.
- The County submitted a car rental invoice for one of Plante Moran's employees twice that was paid by the District twice resulting in the District's overpaying the County by \$231.
- The County submitted monthly invoices for Plante Moran that did not include proper supporting documentation related to an employee's travel per diem resulting in the District overpaying the County by \$3,010.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code § 117.28, a Finding for Recovery for public monies illegally expended is hereby issued against Hamilton County in the amount of \$9,072 in favor of the District.

On September 10, 2018, the District received and deposited a check from Hamilton County in the amount of \$9,027 resulting in the full repayment of this finding for recovery.

MANAGEMENT COMMENTS

MR-016: Hamilton County Oversight and Program Monitoring Expenses

The County should provide the District with all supporting documentation related to their oversight services including the program monitoring services provided by Plante Moran and any other consultants.

For the period, we requested the District to provide us with all supporting documentation related to the Hamilton County oversight expenses they paid. The District did not have supporting documentation for all of the oversight expenses invoiced by the County. The District told us they had requested additional support from the County but were not provided with the documentation.

The County provided us with the supporting documentation related to the invoices for the period. During our review we identified the County paid one of their consultants for duplicate invoices, illegal expenses, and unsupported travel totaling \$9,072. These expenses were then submitted to and paid by the District resulting in a finding for recovery against Hamilton County.

We recommend the County provide all supporting documentation related to their oversight and program monitoring services to the District before requesting reimbursement. We further recommend the District obtain and review all supporting documentation prior to making payment to ensure the expenses are legal and properly supported.

MR-017: Travel

The District follows the City's employee travel policies. The City of Cincinnati Non-Local Travel Policy states in part the following:

- An employee should incur the lowest reasonable travel expenses
- Permitted travel expenses include transportation, lodging, meals, incidentals, registration fees, and miscellaneous expenses.
 - Transportation by air is based on actual cost not to exceed the coach/tourist fare.
 - If a flight is cancelled by the employee for reasons other than illness, the employee will pay the cancellation fees and return the airfare to the City. Verification of the illness is required by means of a doctor's statement.
 - Lodging is allowable based on single occupancy accommodations in the medium price range for the locale.
 - The government rate for lodging should be requested by the employee.

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- Lodging is an allowable expense when the employee is attending a conference or training, which lasts longer than one day or requires a travel time not conducive to traveling to and from the destination in the same day

We noted the following deviations from the policy when reviewing travel expenses:

- The District incurred 61 lodging expenses totaling \$32,405 in which the government rate for lodging wasn't utilized. If the government rate for lodging was available and utilized for these expenses, the cost of the lodging fees would have been \$19,438 which would have been a potential savings of \$12,967 for the District.
- District employees attended 31 conferences and stayed at hotels where the conference was held or at a preferred hotel identified by the conference. However, there were 16 instances in which District employees obtained different room rates while staying at the same hotel on the same dates.

In addition, the City of Cincinnati's Local Travel Policy does not address lodging reimbursement for conferences within the city limits. We noted the following:

- In 2013, \$561 in lodging expenses were incurred to attend a conference located in the City of Cincinnati;

Although the District had established procedures related to travel expenses, the procedures were not consistently applied in these instances.

Failure of the District to follow the guidelines of the City of Cincinnati's Non-Local Travel Policy could lead to the District incurring higher fees that could have been avoided and/or could lead to District employees having to repay the District for fees that were not in compliance with the policy. Failure of the District to use sound fiscal judgment for local lodging expenses could lead to the District incurring unnecessary local travel expenses.

We recommend the District review all travel expenses for compliance with the City of Cincinnati's Non-Local Travel Policy to ensure the District is only paying for the lowest reasonable travel expenses according to the policy. Furthermore, for any expenses that deviate from the policy, the District should require the District employee to provide documentation supporting the necessity of the deviation. The District should then review the documentation to determine if the District should be responsible for the travel expenses. We recommend the District use sound fiscal judgment when approving local travel expenses.

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Dave Yost • Auditor of State

METROPOLITAN SEWER DISTRICT OF GREATER CINCINNATI

HAMILTON COUNTY

CLERK'S CERTIFICATION

This is a true and correct copy of the report which is required to be filed in the Office of the Auditor of State pursuant to Section 117.26, Revised Code, and which is filed in Columbus, Ohio.

Susan Babbitt

CLERK OF THE BUREAU

**CERTIFIED
SEPTEMBER 14, 2018**