



**Metropolitan Water
Reclamation District
of Greater Chicago**



Office of the Independent Inspector General

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

**Metropolitan Water Reclamation District of Greater
Chicago
Quarterly Report
2nd Quarter 2022**

July 15, 2022



OFFICE OF THE INDEPENDENT INSPECTOR GENERAL

Patrick M. Blanchard, Inspector General

69 West Washington Street | Suite 1160 | Chicago, IL 60602 | (312) 603-0350

July 15, 2022

Transmittal via electronic mail

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

Re: Independent Inspector General Quarterly Report (2nd Qtr. 2022)

Dear President Steele and Members of the Board of Commissioners:

As you know, on April 18, 2019 the Board of Commissioners of the Metropolitan Water Reclamation District of Greater Chicago (MWRD) adopted Ordinance O19-003 entitled Office of the Independent Inspector General (MWRD OIIG Ordinance) that has been designed to promote integrity and efficiency in government and provide independent oversight of the MWRD. Additionally, an Intergovernmental Agreement between the County of Cook and MWRD became effective by full execution of the parties on May 17, 2019 (Sec. II. Term of Agreement) and was extended by the MWRD on March 3, 2022 thereby authorizing the OIIG to continue operations relating to the MWRD. This quarterly report is written in accordance with Section 2-287 of the MWRD OIIG Ordinance to apprise you of the activities of this office during the time period beginning April 1, 2022 through June 30, 2022.¹

OIIG Case Activity

In connection with the number of complaints received by the OIIG, please be aware we have received a total of 18 new complaints during this reporting period. This number also includes those matters resulting from the exercise of my own initiative (MWRD OIIG Ordinance Section Two (citing Cook County Code, Sec. 2-284(2))). Thirteen OIIG case inquiries have been initiated during this reporting period and a total of 24 OIIG case inquiries remain pending at the present

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

time.² We have referred no matters to management or other enforcement or prosecutorial agencies for further consideration this reporting period. The OIIG currently has no matters open more than 180 days of the issuance of this report.

OIIG Summary Reports³

During the 2nd Quarter of 2022, the OIIG issued one summary report on MWRD matters. The following provides a general description of the matter and states whether OIIG recommendations for remediation or discipline have been adopted. Specific identifying information is being withheld in accordance with the OIIG Ordinance where appropriate.

IIG21-0771. The OIIG received a complaint from an employee at the MWRD stating that an MWRD Assistant Director hired his daughter's fiancé who was later promoted over a tenured female employee to a more senior position and started to report directly to the Assistant Director. The complaint also alleges that the complainant was being denied the ability to work at home during the COVID pandemic and was forced to take unpaid leaves of absence instead. As a result, she claims to have been suspended several times due to being unable to complete work on time. The OIIG investigation consisted of a review of relevant HR documents and interviews of the complainant, a senior HR Analyst, and the Assistant Director.

The MWRD Ethics Ordinance, as amended on January 23, 2020, provides as follows relating to the supervision and employment of relatives:

Article II C.6. Supervision and Employment of Relatives. Commissioners, Officers and Employees shall not directly supervise or evaluate a Relative's job performance. This prohibition shall not apply to supervisory relationships in effect prior to the passage of this amended ethics ordinance. The Executive Director shall not appoint his or her Relative to an exam-exempt or civil service exempt office or position.

The preponderance of the evidence developed during this investigation fails to support the conclusion that a violation of the Ethics Ordinance occurred. The evidence demonstrated that the Assistant Director's son-in-law is directly supervised by a different manager, not the Assistant

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

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

Director. The Assistant Director did not conduct any interviews in relation to the promotion process at issue or that of the tenured female employee.

The preponderance of the evidence developed during this investigation also fails to support a finding that the telecommuting policy was violated. The evidence demonstrated that the complainant was not being denied the ability to work from home or forced to take any unpaid leave of absence. Instead, the evidence demonstrated that the complainant was experiencing several issues relating to following MWRD policies resulting in written warnings, suspensions, and charges filed with the Civil Service Board.

Outstanding OIIG Recommendations

The OIIG has followed up on outstanding recommendations for which no response was received at the time of our last quarterly report. Under the OIIG Ordinance, responses from management are required within 45 days of an OIIG recommendation or after a grant of an additional 30-day extension to respond to recommendations. Below is an update on the outstanding recommendations.

From the 1st Quarter 2022

IIG20-0475-A. This review was initiated to evaluate delays and additional costs in the completion of construction contracts and is a supplement to our prior review of these issues completed last year. *See* IIG20-0475 MWRD Contract Delivery Review, June 30, 2021. After we released the initial report, we received additional complaints with heightened concerns in relation to the construction contract delays identified in the initial review. We subsequently performed investigative and audit procedures to further consider these issues and made the following findings and recommendations:

1. During our prior contract delivery review, OIIG investigators identified lengthy construction delays. Many of the delays were due to change orders for additional work. During this supplemental review, evidence revealed that the original construction schedules are not adjusted to reflect the additional work from change orders. Accordingly, we recommended that the Engineering Department produce reports for the Board and public review that will show delays and additional work attributed to change orders separately and apart from the original construction schedules. The Engineering Department has indicated that it plans to regularly submit a table with this information to the Board.
2. Our previous review revealed the reasons for delays included weather conditions (rain or winter), the COVID Pandemic, structures underwater or underground, and more deterioration than could be identified during the planning stages for the contract. During our supplemental review, the Director of the Engineering Department (“Director”) stated that the Engineering Department will institute a change to include

historical data in its information system that is easily available for engineers. This practice is intended to provide the engineers better access to such information when devising construction schedules with contractors.

3. Our initial review revealed that all the construction contracts in our sample exceeded the projected construction completion dates by at least 100%. However, the Director explained that the MWRD and public are not completely deprived of use during construction. The MWRD and public are able to use completed segments of the construction despite construction delay. We recommended that the MWRD Engineering Department report partial use construction to the Board and public on a regular basis.

These recommendations are currently pending.

IIG21-0183. This matter was initiated based upon information suggesting MWRD Commissioners' Aides do not have written job descriptions and perform substantially different duties from each other. During the review, OIIG investigators conducted interviews of each MWRD Commissioner regarding their staff's job descriptions and conducted an interview of an HR representative. The OIIG also reviewed salary information pertaining to Commissioner Aides.

The evidence revealed that most MWRD Commissioner offices do not have written job descriptions for their Aide positions and that the Aides at times perform substantially different duties from each other. This review also revealed that all other positions within the MWRD utilize job descriptions that provide minimum qualifications while outlining the duties and functions of the position. Moreover, other positions in the MWRD designate salary based on education, experience and skill level in discharging the function of the position. This also is contrary to the Aide positions within the Commissioners' offices.

We found that no justifiable rationale exists to support a distinction between MWRD employees and Commissioner staff members when it relates to the existence of job descriptions and corresponding salary tables for the positions. In the experience of this office, this added HR measure fosters better transparency along with other important governmental objectives. Accordingly, we recommended that Commissioners work with the HR Department to set minimum qualifications and scope of duties for the Aide positions. These qualifications, duties and functions should also correlate with established salary ranges of MWRD positions with similar qualifications and duties.

This recommendation is currently pending.

IIG21-0468. The OIIG received an anonymous complaint alleging Human Resources ("HR") deemed certain candidates who did not have a qualifying bachelor's degree but had a qualifying master's degree as qualified, but disqualified others for both the Administrative Services Officer and Financial Analyst positions.

During its investigation, the OIIG reviewed job descriptions (original and promotional) for the Administrative Services Officer and Financial Analyst positions, candidate lists, exam results, oral board member security statements, and the “not qualified” letter issued to candidates deemed unqualified. Investigators also interviewed a Senior Human Resource Analyst.

The preponderance of the evidence developed during this investigation does not support the conclusion that HR personnel failed to follow policies, rules or procedures in the hiring process. While some errors were made when reviewing candidates for both the Administrative Services Officer and Financial Analyst positions, those errors were successfully discovered and promptly corrected. Although the allegation was not sustained, we noted that material changes and a final determination were made in connection with this hiring sequence which were not memorialized in the hiring file. We believe that HR Analysts should maintain a written record of any changes made to a candidate’s application status as well as the reasons for making any such changes. By establishing this audit trail, HR would be in a better position to respond to challenges or questions raised involving a hiring sequence. Moreover, we also believe that by taking such steps other important governmental interests are served such as transparency in the hiring process.

The MWRD substantially adopted our recommendation.

From the 4th Quarter 2020

IIIG19-0518. The OIIG received information suggesting that contract participation for the Affirmative Action Program⁴ entities may be substantially below the MWRD’s aspirational goals. The OIIG subsequently initiated this review to assess the MWRD’s Affirmative Action Program (“AAP”).

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

The OIIG received Appendices from the Diversity Administrator that describe the contract participation for the AAP.⁵ We selected specific MWRD contracts to sample for compliance with the Appendices. We assessed the AAP actual contract participation according to the stated contract goals and assessed the process for monitoring AAP contract participation.

⁴ The “SBE” reference in this report includes both SBE and VBE. VBE and SBE have different criteria but are combined for SBE participation pursuant to the MWRD’s policies. There is no separate tracking and reporting for VBE and SBE.

⁵ The Appendices are found in each contract.

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

We compared the aspirational goals stated in the contracts to the aspirational goals in the Appendices. The MWRD does not generate reports that compare disbursements made to the prime contractor to payments made to the AAP participants. Therefore, the OIIG received payment information made to the prime contractors provided by the Finance and Procurement Departments. We compared the Finance Department's disbursements to prime contractors to the payments AAP participants reported to the AAP. The AAP are required to report their payments to the AAP.⁶ As discussed below, this methodology presented challenges to compare relevant payment information between the prime contractors to the AAP participants during the same baseline period.

The mission of the AAP includes reviewing contracts, setting aspirational goals, and monitoring contract participation. The AAP operates in accordance with the contract Appendices.⁷

The Appendices establish the "aspirational goals" for AAP participation in contracts that exceed certain prescribed monetary thresholds.⁸ These aspirational goals are as follows:

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

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

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

⁶ The AAP Director provided the OIIG with payment information as of January 2020. The Director of Finance provided us with disbursements made pursuant to the respective contracts through May 2020. Therefore, there could be some timing differences between payments and reporting.

⁷Appendix A covers *MBE, WBE, and SBE* participation in professional services contracts; Appendix C covers *MBE and WBE* participation in construction contracts; Appendix K covers *MBE and WBE* apprenticeships in contracts; and Appendix V covers *VBE and SBE* participation in professional services and construction contracts (collectively "*SBE*").

⁸ The monetary threshold for AAP participation for service contracts and apprenticeships are the total estimated expenditures exceeding \$100,000. The threshold for AAP participation for construction contracts is contracts that are estimated to exceed \$10,000 (applies to Cook County only).

1. The Engineering Department met the AAP's aspirational goals for 4 MBE's and 6 WBE's in the 10 contracts our Office examined for this review. While there will likely be variations on AAP participation based on different contracts and timing, the data nonetheless provides a snapshot at a moment in time. The OIIG recommended that the MWRD Board request quarterly reports from senior management that show the aspirational goals and actual outcomes. This could provide the basis for constructive discussions from the AAP, contract managers or resident engineers, and contractors – including the MBE, WBE, VBE, and SBE participants.
2. When we reviewed the Engineering Department contracts, 9 of 10 contracts had dual representation where the SBE was also the MBE or WBE. For dual representation, the MWRD does not increase the percentage of proceeds that goes to the MBE/WBE and SBE. The MBE/WBE percentage covers the SBE's percentage. In effect, the general contractor is allowed to retain more of the contract proceeds than if he/she included a different SBE to participate in the contract through this loophole. We recommended increased aspirational goals for dual participation scenarios.
3. The Engineering Department uses dual participation that could be undermining the spirit of the SBE classification. SBE's provide opportunities for business owners within a certain entity size despite their race or gender. We recommended that the MWRD reviews this practice to determine the intent supporting small business participation and adjust this practice – if necessary. Accordingly, the MWRD should establish and track separate goals for SBE's.
4. Our review revealed that the AAP does not include Furnish and Deliver contracts because the MWRD deems this practice commercially useful. Furnish and Deliver contracts are issued for goods and commodities. The three furnish and deliver contracts in our review generated \$28,917,207 (54.9%) in contract activity for our M&O sample. The OIIG recommended that the MWRD Board of Commissioners ensures that that the external consultant hired to conduct a Disparity Study assesses this policy and determine whether AAP should also apply to furnish and deliver contracts.
5. Our investigators had to create reconciliations to assess the level of MWBE participation for our review. This methodology presented challenges to compare relevant payment information amongst the MWRD, the prime contractors and the AAP participants during the same baseline period. The AAP is currently working to implement new tracking software set to go online in early 2021. MWRD senior management should ensure the AAP has the resources and assistance to meet this goal through implementation and thereafter.
6. Our review identified an intergovernmental agreement (“IGA”) between the MWRD and a workgroup totaling \$4,718,895. The contract had no aspirational goals because the AAP was not provided the IGA for MBE/WBE/SBE participation. Note that the AAP does not have an opportunity to review Furnish and Deliver contracts. The AAP's inability to

directly participate in the MWRD's overall mission and strategic planning endeavors may put the AAP at a disadvantage. The OIIG recommended that the MWRD determine whether diversity and inclusion could be improved if the AAP is elevated to a department and included as part of the Executive Team.

7. We identified circumstances where contracts with no or low aspirational goals failed to include documentation that explained the reasons for modifying the aspirational goals. In our experience, documentation serves as an important internal control and provides an audit trail. Moreover, the practice would provide sources of information to evaluate the effectiveness and shortcomings of the AAP. The OIIG recommended that the AAP document the reasons for setting tailored goals. We do not believe that this practice would unduly impede upon the Diversity Administrator's professional discretion as suggested.
8. We received statements that MBE/WBE/SBE businesses do not bring concerns to the AAP about the lack of inclusion in their contracts. We recommended the MWRD encourage prime contractors and subcontractors to report issues implicating AAP goals to either AAP or to the Inspector General's Office. This may be achieved by adding a general condition requiring the same.

In its response, the MWRD accepted recommendations 5, 6, and 7. The remaining five recommendations are pending as the MWRD was waiting for the results of the above-referenced Disparity Study to make a decision on those recommendations. A senior MWRD official recently informed the OIIG that the Study Session for the Disparity Study was scheduled with the Board of Commissioners for July 14, 2022. Further, this official stated the MWRD will prepare a draft of its Affirmative Action Ordinance for the Board of Commissioners to approve at a future Board of Commissioners Meeting. The MWRD will then be able to respond to the remaining OIIG recommendations.

Miscellaneous OIIG Activity

In connection with hiring, I am pleased to report that two very experienced individuals have recently joined the OIIG. Investigator Katherine McKay joins the office having served 16 years as a Cook County assistant state's attorney in a wide range of assignments including to 1st chair in the Felony Trial Division and as a trial supervisor. Investigator Elizabeth Brett also joins the OIIG with significant experience having practiced law in the area of commercial litigation for several years before joining the Civilian Office of Police Accountability where she has been a major crimes specialist for five years.

Conclusion

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

Hon. Kari K. Steele and Hon. Members of the Metropolitan
Water Reclamation District of Greater Chicago
Board of Commissioners

July 15, 2022

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Very truly yours,



Patrick M. Blanchard
Independent Inspector General

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