



December 13, 2022

CONTRACTS COMPLIANCE ANNUAL REVIEW



Project # 22-CR-01

A Report to:

Commissioners:

Chair, Fausto R. Bayonet
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Quick Look



Why the OIG did this audit

In accordance with the Washington Suburban Sanitary Commission (WSSC) Office of the Inspector General's (OIG) Fiscal Year (FY) 2022 Risk-Based Work Plan and the authority granted to it pursuant to the Maryland Annotated Code, Public Utilities Article, § 17-605 (a)(6), the OIG reviewed compliance for a contract related to a WSSC project carrying high financial exposure highlighted through the Commissioners' approved contract change orders.

WSSC's Procurement Department is vested with contracting authority, and the Engineering and Construction Department is responsible for monitoring the contract services and approving invoices for payments.

The OIG performed the work in accordance with Quality Standards for Inspections, Evaluations, and Reviews by the Office of the Inspector General, except for the peer review requirement.

Strategic Alignment

This report addresses WSSC's Priority:
Spend Customer Dollars Wisely

OIG Contact Information

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What the OIG found

The objective of the review is to assess WSSC's compliance with the laws of the State of Maryland, and WSSC's regulations, standards, and guidelines pertaining to contracts and related agreements. The purpose of the review is twofold: 1) to provide information for management's decision-making; and 2) make recommendations to improve WSSC's regulations, programs, policies, or procedures. OIG auditors selected a change order approved during the fiscal year ending June 2021 and related to the Piscataway Bioenergy Project. The auditors then evaluated WSSC's compliance pursuant to Chapter 6.15 of the WSSC Code of Regulations (Code), the executed contract, and other signed agreements.

The review disclosed that the WSSC Procurement Department's administration and the Engineering and Construction Department's contract management processes warrant improvement to comply with the provisions of the agreement and WSSC Code. The OIG noted the following:

- WSSC contracted with a party that was not in good standing with the State of Maryland; and
- The management of the executed contract does not follow the WSSC Code.

The OIG presented the following recommendations intended to improve the WSSC's contract management and administration processes:

- Comply with the good-standing requirements outlined in bid solicitations and follow the WSSC Code when considering whether bidders or offerors qualify to contract with WSSC; and
- Address the discrepancy noted under contract number 1116 and the accompanying change order by following the WSSC Code to manage contracts effectively and consistently.

WSSC management addressed OIG's recommendations and presented operational improvements or provided corrective action plans with anticipated due dates, where applicable.



Interoffice Memorandum

OG - 20211230-021009

TO: CAPRECIA POOLE-WILLIAMS, CHIEF PROCUREMENT OFFICER
PROCUREMENT OFFICE

THRU: JON T. RYMER, INSPECTOR GENERAL  OFFICE OF THE INSPECTOR GENERAL

THRU: MAXENE M. BARDWELL, ASSISTANT INSPECTOR GENERAL FOR AUDIT  OFFICE OF THE INSPECTOR GENERAL

FROM: JANE N. LEWIS, SUPERVISORY AUDITOR  DIGDEM "DEE" TOK, AUDITOR OFFICE OF THE INSPECTOR GENERAL

DATE: DECEMBER 13, 2022 

SUBJECT: OFFICE OF THE INSPECTOR GENERAL
CONTRACTS COMPLIANCE ANNUAL REVIEW

EXECUTIVE SUMMARY

Background

In accordance with the Washington Suburban Sanitary Commission (WSSC) Office of the Inspector General's (OIG) Fiscal Year (FY) 2022 Risk-Based Work Plan and the authority granted to it pursuant to the Maryland Annotated Code, Public Utilities Article, § 17-605 (a)(6), the OIG reviewed compliance for a contract related to a WSSC project carrying high financial exposure highlighted through the Commissioners' approved contract change orders.

The OIG performed the work in accordance with Quality Standards for Inspections, Evaluations, and Reviews by the Office of the Inspector General, except for the peer review requirement. Those quality standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the work objectives. Accordingly, we confirm that the evidence reviewed provides a reasonable basis for the findings and conclusions based on the scope and objectives.

In February 2016, WSSC executed contract number 1116 with HDR Incorporated (HDR, Inc.) in the sum of \$24,946,665 to provide Program Construction Management services pertaining to the implementation of a centralized Anaerobic Digestion and Combined Heat and

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Power facility located at the existing Piscataway Water Resource Recovery Facility in Accokeek, Maryland.¹ The contract amount increased by \$2,047,635 to \$26,994,300 after WSSC issued a change order number CD 1116/5901A15 in 2021.² In its request for approval of this change order to increase the contract amount, WSSC management reasoned that the “Program Management services Scope of Work and associated fees were originally developed, negotiated, and awarded based on an assumed project duration of seven years.”³ Management further reasoned that the awarding of the Design-Build Contract completed the Scope of Work and schedule for the Program Management services to include an additional 20 months.⁴ The additional 20 months added to the project duration led to requiring additional fees for Program Management services to be performed by HDR, Inc., and HDR Engineering Inc.⁵ HDR Engineering Inc., is a principal subsidiary of HDR, Inc.

HDR, Inc., headquartered in Omaha, Nebraska, specializes in providing engineering, architecture, environmental, and construction services globally. According to the Maryland State Department of Assessments and Taxation (SDAT) records, HDR, Inc., was registered as a Maryland corporation in 1997 and had a principal office located in Baltimore, Maryland.⁶ In or around October 1999, HDR, Inc., forfeited its corporate status.⁷

WSSC’s Procurement Department is vested with contracting authority, and the Engineering and Construction Department (ECD) is responsible for monitoring the contract services and approving invoices for payments.

Objective

The objective of the review is to assess WSSC’s compliance with the laws of the State of Maryland, and WSSC regulations, standards, and guidelines pertaining to contracts and related agreements. The purpose of the review is twofold; to provide information for management’s decision-making and to make recommendations to improve WSSC’s regulations, programs, policies, or procedures.

Scope and Methodology

To accomplish the review objective, OIG auditors selected a change order approved during the fiscal year ending June 2021 and related to the Piscataway Bioenergy Project. The auditors then evaluated WSSC’s compliance pursuant to Chapter 6.15 of the WSSC Code of Regulations (Code), the executed contract, and other signed agreements. Additionally, during this review, OIG auditors reviewed solicitation and bidding documents, the contract, invoices, invoice payments, and other supporting documents. OIG auditors also conducted interviews with departmental staff.

¹ See WSSC Contract CD 1116/5901A15, pg. C-1; *see also* WSSC Commission Package to Change Order No. 1 to CD 1116/5901A15 (January 27, 2021) (affirming that the contracting parties were WSSC and HDR, Inc.).

² See WSSC Commission Meeting Minutes, January 27, 2021, https://www.wsscwater.com/sites/default/files/2021-02/Open%20Session%20January%2027%202021%20FINAL_0.pdf, last visited August 8, 2022.

³ See https://www.wsscwater.com/sites/default/files/2021-01/Commission%20Package%20-%20CD5901A15%20updated_0.pdf, last accessed August 8, 2022.

⁴ *See Id.*

⁵ *See Id.*

⁶ See <https://egov.maryland.gov/BusinessExpress/EntitySearch>, last accessed August 8, 2022.

⁷ *See Id.*

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Conclusion

The review disclosed that the WSSC Procurement Department's administration and the Engineering and Construction Department's contract management processes warrant improvement to comply with the provisions of the agreement and WSSC Code. The OIG noted the following:

- WSSC contracted with a party that was not in good standing with the State of Maryland; and
- The management of the executed contract does not follow the WSSC Code.

Addressing these matters and adhering to the WSSC Code is intended to improve the contract management and administration processes.

FINDINGS, MANAGEMENT RESPONSES, AND ACTION PLANS

Finding 1: WSSC Contracted with a Party Not in Good Standing with the State of Maryland **Risk Rating: High**

According to Article 31.1, of the Contract, the consultant [HDR, Inc.] agreed to obtain and maintain, in good standing, all corporate filings, licenses, and approvals, as required by Maryland laws.⁸ The language in the Contract is consistent with the State of Maryland's procurement requirements that a recommended awardee of a contract with the State must be registered and in good standing with the Maryland State Department of Assessments and Taxation (SDAT).⁹ Contrastingly, WSSC does not have a written regulation requiring that a vendor have or maintain its good corporate standing in the State of Maryland, but WSSC has incorporated this requirement in certain contracts.

According to § 6.15.380 (f) of the WSSC Code, the Procurement Officer must be satisfied that the prospective contractor is "responsible" before awarding a contract. Further, in determining whether a bidder or offeror is "non-responsible," the Procurement Officer will consider whether the bidder or offeror has, among others, qualified legally to contract with WSSC.¹⁰

This review disclosed that in 2016, WSSC accepted the bid and executed the management support contract with HDR, Inc., the purported contracting party. However, the company was not in good standing with the State of Maryland. According to the SDAT, HDR, Inc.'s corporate status was forfeited in 1999, thus making it an inactive company in Maryland. Further, this review disclosed no evidence that WSSC deemed HDR, Inc. non-responsible in 2016 following WSSC Code. Instead, the evidence showed that in 2021, the Commission approved the change order for HDR, Inc.

⁸ See Part II, Washington Suburban Sanitary Commission, Procurement Office, General Conditions Architectural & Engineering Services, Solicitation No. RFP 1116, Piscataway Bio-Energy Program Management.

⁹ See State of Maryland Procurement Manual, § 6.2.5, <https://procurement.maryland.gov/wp-content/uploads/sites/12/2019/07/MarylandProcurementManual.pdf>, last visited on July 26, 2022.

¹⁰ See WSSC 6.15.380 (c)(4).

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OIG auditors inquired with WSSC management about the reasons it did not follow WSSC Code in verifying the bidder's Maryland corporate status as required in the solicitation. Management provided no written documentation of issuing a notice of non-responsibility to the bidder or offeror regarding its ability to contract in Maryland. Further, current managers in the WSSC Procurement Department explained that the absence of good standing was irregular; however, they were not a part of the department in 2016.

In 2016 and 2021, WSSC did not exercise its due diligence in determining if a bidder or offeror was legally qualified to contract. As a result, WSSC engaged in a business relationship with an entity that was not in good standing or had forfeited its right to conduct business in Maryland legally.

Recommendation 1: Comply with the Solicitation Terms and WSSC Code

OIG recommends that the WSSC Procurement Department comply with the good-standing requirements outlined in the WSSC solicitation for the design and build contracts. Additionally, consistently follow the WSSC Code § 6.15.380 in determining whether a bidder or offeror has, among other factors, qualified legally to contract with WSSC. Finally, prepare a written determination of non-responsibility in conjunction with the using department [ECD in this review] and include the Procurement Officer's final determination as part of the procurement file.

Management Response and Action Plan (including anticipated due date):

The Procurement Office acknowledges that the absence of good standing was irregular. The following curing and subsequent notification requirements will be adhered to [and] effective December 16, 2022.

- The vendor will have ten business days to register and to cure any requirements preventing a good standing status during the award phase.
- If the vendor does not cure the issue within that allotted time period, the vendor will be considered non-responsive.
- A written determination of non-responsibility will be issued per 6.15.380(g) of the WSSC Code.

Lastly, it should be noted that the current management and staff were not employed by WSSC Water at the time the contract was solicited and awarded in 2016. However, since that time, many of the improvements recommended by the OIG have occurred under current management. The following are examples of such improvements since September 2018: 1) Procurement submits contracts to General Counsel's Office for legal sufficiency reviews prior to contract execution, and 2) the current Chief Procurement Officer has established the office of the Procurement Compliance Manager with the sole purpose of establishing strict adherence to WSSC Code.

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Finding 2: Management of the Contract does not follow the WSSC Code
Risk Rating: Medium

According to § 6.15.240 (a) of the WSSC Code, no contract is transferable or otherwise assignable without the Chief Procurement Officer's (CPO) written consent; provided, however, that a contractor may assign monies receivable under a contract after due notice in writing to WSSC.

Further, § 6.15.240 (b) sets forth the process of replacing or substituting a contracting party through [a] novation. Section 6.15.240 (b) states in relevant part,

Subject to a determination by the Chief Procurement Officer that the novation is in WSSC's best interests, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee agree that: (1) the transferee assumes all of the transferor's obligations; (2) the transferor waives all rights under the contract against WSSC; and (3) the transferee shall, if required by WSSC, furnish a satisfactory performance bond.

During the review, OIG auditors noted that the Commissioners approved the original contract in 2016 and the change order in 2021 with the company HDR, Inc. Contrastingly, WSSC manages the contract under two separate corporate names; HDR, Inc., and HDR Engineering, Inc. Specifically, WSSC remits all payments to HDR Engineering, Inc., although HDR, Inc., issues the invoices. This contract's corresponding Commission meeting minutes exclude any reference to the company HDR Engineering, Inc.

The CPO did not grant written consent to transfer this contract to HDR Engineering, Inc. There is also no documentation or evidence that a novation or a change of name occurred for contract number 1116 and its accompanying change order as required by § 6.15.240 of the WSSC Code. Procurement management did not provide auditors with the justification for using two corporate names in the management of the contract to the OIG auditors.

By using two company names without evidence of the CPO's written consent, a novation agreement, or a name change, WSSC was not following its Code. As a result, the WSSC's financial records showed that since 2016, WSSC had made no payments to HDR Inc., and HDR Inc., provided no services to WSSC, as required by the signed agreement. Additionally, the WSSC's official list of companies doing business with WSSC showed only HDR Engineering Inc., but not HDR Inc., the purported contracting party.

Recommendation 2: Consistently Comply with WSSC Code

The OIG recommends that the WSSC Procurement Department address the discrepancy noted under contract number 1116 and the accompanying change order. We also recommend that the department follow the WSSC Code to manage contracts effectively and consistently.

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Management Response and Action Plan (including anticipated due date):

The Procurement Office acknowledges that all of the proposal documents were submitted by HDR, Inc., the Omaha, Nebraska-based parent company but signed by HDR Engineering, Inc., the wholly-owned subsidiary located in Laurel, Maryland.

The Procurement Office will issue a memo to file [Commissioners] and a contract amendment request to advise of the discrepancy and the relationship between HDR Engineering, Inc. and HDR, Inc. by **December 16, 2022**. Also, the finding references "WSSC remits all payments to HDR Engineering, Inc., although HDR, Inc., issues the invoices." The Procurement Office does not remit payments, nor does Procurement staff receive or process invoices pertaining to WSSC Water contracts. This is a function of the Finance Department [and the contract management end user department].

Payments were made to, and work was performed by HDR Engineering, Inc., as delineated in the Proposal Pricing section. HDR Engineering, Inc. is the correct operating company used in Maryland to provide professional engineering services in the state. HDR Engineering, Inc. has also been in good standing with both the Maryland Secretary of State and the State of Maryland Department of Assessments and Taxation since June 17, 1985. Accordingly, it does appear that there was an incorrect reference regarding the Commission Package and contract document.

Unfortunately, Procurement personnel and Procurement Management who reviewed the aforementioned documents in 2016 are no longer employees. Consequently, we cannot speak to how the oversight occurred. As a current practice, the Procurement Office follows the WSSC Code to solicit and award contracts effectively and consistently by verifying all contracting entities are properly reflected in the contract documents. In fact, the Procurement Office has initiated the use of a checklist, which was created and submitted to the OIG in response to the Procurement Performance Audit in June 2022.

cc: Corporate Secretary, (J. Montes De Oca)
Deputy GM, Administration, (J. Beach)
Deputy GM, Operations (J. Price)
Chief Engineer (M. Harmer)
Division Manager, Procurement Dept. (T. Carney)
Division Manager, Engineering and Construction (T. Grojean)
Chief Strategy & Innovation Officer, (T. Allen)