



OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

MANAGEMENT REVIEW CASE NUMBER: 2012-0012

Sheryl G. Steckler
Inspector General

"Enhancing Public Trust in Government"

EXECUTIVE SUMMARY

On November 15, 2011, the Office of Inspector General (OIG) received a complaint regarding the City of Riviera Beach (the City), which identified the following two issues:

- The City failed to properly bill Kindred Hospital The Palm Beaches (the Hospital) for water services, resulting in a loss of revenue to the City.
- The City hired Consulting Engineer Lal Samadi without a competitive procurement process.

The OIG's review found that between October 2008 and November 2011 the City, through a series of miscommunications, did not bill the Hospital for water services. Based on an average of the two most recent bills (December 2011 and January 2012), the City's lost revenue for the aforementioned 38 months of water service to the Hospital was approximately **\$60,022.52**.

The OIG's review also found that between February 2008 and May 2011,¹ Mr. Samadi was paid a total of **\$576,200.00** by the City for professional engineering services that were not competitively procured in accordance with Florida Statutes, Consultants' Competitive Negotiation Act (CCNA), and City Code.

RECOMMENDED CORRECTIVE ACTIONS

Based on the OIG's review of Issue (1), the following corrective actions are recommended:

1. Recoup payment for unbilled water services to the Hospital.
2. Create inter-departmental procedures specifically addressing the establishment of billing accounts and the responsibilities for each department.

During the course of the OIG review, Interim Finance Director Carol Hoskins advised the OIG that since discovering this issue, she has implemented a program whereby Department heads must sign a form indicating that all

¹ It is noted that between May 13, 2011 and January 6, 2012, Mr. Samadi has performed an additional \$101,750.00 worth of services for the City, which has not yet been paid.

necessary requirements for new businesses have been completed, including billing, to ensure that this does not occur in the future.

Based on the OIG's review of Issue (2), the following corrective action is recommended:

3. Terminate Mr. Samadi's contract and enter into a contractual relationship for such services, if needed, in accordance with § 287.055, Florida Statutes (CCNA) and City Code.

BACKGROUND

Kindred Healthcare, Inc. is a healthcare services company that operates hospitals, nursing centers and a contract rehabilitation services business across the United States. Kindred Healthcare, Inc. currently operates the Hospital, which is located in Riviera Beach, Florida.

On November 15, 2011, the OIG received a complaint alleging that the Hospital had never received a water bill from the City since the Hospital's construction in October 2008. The complaint further alleged that the City hired Consulting Engineer Lal Samadi on a contractual basis without following appropriate procurement policies.

Based on that information, the OIG initiated a Management Review.

ISSUES REVIEWED AND FINDINGS

Issue (1):

The City of Riviera Beach failed to properly bill Kindred Hospital The Palm Beaches for water utilized, resulting in a loss of revenue to the City.

Governing Directives:

Section 2-211, City of Riviera Beach Ordinances

Finding:

The OIG review found that between October 2008 and November 2011 the City, through a series of miscommunications, did not bill the Hospital for water services. Based on an average of the two most recent bills (December 2011 and January 2012), the City's lost revenue for 38 months of water service to the Hospital was approximately **\$60,022.52**.

Testimony of City Utility District Executive Director Lou Aurigemma

Mr. Aurigemma advised that he has been in his position for approximately one year. Mr. Aurigemma stated around October or November 2011, after learning from another City employee² that the Hospital had never been billed for water services, he conducted a physical site inspection of the meter in October or November 2011 and found that although the meter was working, it had been installed improperly and had not been

² Mr. Aurigemma was unable to recall which City employee advised him of the issue pertaining to the Hospital.

purchased from the City.³ According to Mr. Aurigemma, although it was impossible to determine the length of time for which that particular meter registered water usage, the City billed the Hospital approximately \$10,000.00⁴ for that reading. Mr. Aurigemma stated that a new water meter was properly installed (November 2011) and monthly readings have been initiated.

Mr. Aurigemma stated that he was unsure as to what caused the non-billing of the Hospital for water services, but explained that billing is typically linked with the issuance of a Certificate of Occupancy (C.O.) by the City Building Department and coordinated with the City Finance Department. Mr. Aurigemma further stated that prior to the issuance of a C.O., there is an inspection process involving multiple City departments, which includes a plumbing inspection. Mr. Aurigemma stated that a plumbing inspection may not have necessarily involved the inspection of the meter and it was possible that the meter's improper installation was overlooked. Mr. Aurigemma stated that despite the possible installation issues, the meters were electronically read and he believed that the information was transmitted to the Finance Department for billing. Mr. Aurigemma opined that the Finance Department should have noticed meter readings being transmitted for an account that had not been established.

Mr. Aurigemma stated that he spoke with the Hospital Chief Financial Officer (whose name he could not recall), in October or November 2011 and the Hospital agreed to pay for all prior water usage.

Testimony of City Building Official Gil Vetter

Mr. Vetter advised that he served in his current capacity since the construction of the Hospital. Mr. Vetter became aware that the Hospital had not received a water bill since its inception (October 2008) during a discussion with Finance Department Billing Supervisor Patricia Jackson in October or November 2011.

Mr. Vetter described his understanding of the water implementation process as follows:

- An estimate of water usage is provided by the project engineer and calculated in equivalent residential units.
- A form is completed with the estimated water usage and provided to the City Utility Department and the contractor.
- Once the impact fee is paid by the contractor, the Building Department releases the building permit allowing construction to commence.
- Upon completion of construction and all required inspections, the customer pays a deposit and all previous meter charges⁵ to the Utility District.
- Upon receiving a receipt of payment, the Building Department issues a C.O.
- A copy of the C.O. is sent to the County for taxing purposes, another copy is provided to the owner of the property and a copy is kept in the Building

³ Mr. Aurigemma stated that it would not be out of the ordinary for a contractor to purchase a water meter, similar to those used by the City, from another vendor and complete the installation.

⁴ The actual bill for the undetermined length of time was \$9,978.25.

⁵ According to Mr. Vetter, during the construction phase, the contractor may utilize a temporary meter until a permanent meter is installed.

Department file. Besides the Building Department, copies of the C.O. are not provided to any other City departments.

Mr. Vetter stated that beyond the aforementioned process, he was not familiar with the City's billing procedures. Mr. Vetter stated that during the construction phase of a project, various City Departments communicate verbally with each other, but there is no written checklist to ensure that all steps have been completed. Mr. Vetter further advised that the Utility District is responsible for the installation and inspection of water meters; however, to his knowledge, it would not be unusual for a water meter to be installed by an outside contractor. Mr. Vetter stated that he was not aware of who installed the water meter at the Hospital.

Testimony of City Department of Community Development⁶ Director Mary McKinney

Ms. McKinney advised that she has been in her position for 13.5 years. Ms. McKinney advised that she learned of the non-billing for water services at the Hospital from Mr. Vetter (unknown date). Ms. McKinney stated that the approval process for a new building included site plan approval, submission of plans for building permits that are reviewed by all relevant departments, calculation and payment of all fees (site plan, building permit, engineering review and impact fees). Upon the payment of all fees, the Building Department is responsible for notifying the Finance Department-Utility Billing Division, which then establishes a billing account. Ms. McKinney stated that the Building Department does not receive a notification that a billing account has been established.

Ms. McKinney stated she did not know how it would be possible for the Hospital to obtain water service without establishing an account. Ms. McKinney stated that City Billing/Collections Manager Patricia Jackson (Finance Department-Utility Billing Division) was responsible for establishing the Hospital billing account.

Testimony of City Interim Finance Director Carol Hoskins

Ms. Hoskins advised that she has been in her current position since 2010. Ms. Hoskins learned about the non-billing for water services at the Hospital during an August 2011 executive management meeting. While researching the matter, Ms. Jackson indicated to her (Ms. Hoskins) that she had not received a copy of the Hospital's C.O. from the Building Department, which was necessary to establish a billing account. Ms. Hoskins stated that Ms. Jackson further advised that the water meters installed at the Hospital were installed improperly and had not been purchased from the City. Ms. Hoskins stated that she did not know who installed the water meters at the Hospital and that there were no records regarding their installation. Ms. Hoskins opined that either the Building Department or the Utility District should have been responsible for the installation of the meters and ensuring they functioned properly, while the Finance Department-Utility Billing Division should have been responsible for establishing a billing account.

⁶ The Building Department is now known as the Department of Community Development (DCD).

Ms. Hoskins advised that since discovering this issue, she has implemented a program whereby Department heads must sign a form indicating that all necessary requirements for new businesses have been completed, including billing, to ensure that this does not occur in the future.

Testimony of City Billing/Collections Manager Patricia Jackson

Ms. Jackson advised that she has been in her current position for approximately five years. Ms. Jackson first learned of the non-billing for water services at the Hospital in August 2011 after a discussion with the City Manager. Ms. Jackson conducted a review which determined that the water meter installed at the Hospital was not a City water meter and was not purchased from the City. Ms. Jackson stated that she did not know where the meter was purchased and indicated that it was very unusual for a purchase of a meter to be made by someone other than the City.⁷ Ms. Jackson stated that the Utility District is responsible for ensuring that meters are purchased through the City, properly installed and functioning correctly. During a subsequent interview with the OIG, when presented with testimony indicating that a meter could be purchased from a source other than the City, Ms. Jackson stated, "I'm not going to answer that..." Ms. Jackson further stated that her Department does not have the authority to okay the purchase of water meters elsewhere.

During Ms. Jackson's interview with the OIG, she provided the following explanations as to why the Hospital was not billed for water services:

- Because the meter was not purchased from the City, the Finance Department-Utility Billing Division did not receive appropriate notification.
- The Finance Department-Utility Billing Division was never provided with a copy of the C.O. to establish an account.
- The Building Department submitted impact fee forms to the Finance Department-Utility Billing Division, which were provided by the construction company and contained an incorrect address (7161 N. Military Trail) that resulted in an inaccurate billing account being established.

Ms. Jackson subsequently provided a copy of the impact fee forms, which were also necessary to establish the billing account, that contained the incorrect address.

Ms. Jackson stated that she had no record of the Hospital's water usage/billing between October 2008 and November 2011. Ms. Jackson advised that the City is working with the Hospital to determine the Hospital's financial responsibility for any unbilled water services during that time period.

⁷ It is noted that Mr. Vetter (the City Building Official), as well as City Utility District Director Lou Aurigemma, stated that it would not be unusual for a meter to be purchased from someone other than the City. Mr. Aurigemma further advised that there are no restrictions against doing so as there are other retailers that sell the same meters used by the City.

Ms. Jackson is currently attempting to coordinate the City's methodology for syncing business records with utility billing records.

According to the OIG's review of the two water bills⁸ issued to the Hospital, the following pertinent data was established:

Billing Cycle	Billing Date	Gallons Used	Bill Amount
November 29, 2011 - December 28, 2011	December 2011	141,000	\$ 1,584.83
December 29, 2011 - January 28, 2012	January 2012	141,000	\$ 1,574.25
TOTAL⁹			\$ 3,159.08
AVERAGE PER MONTH			\$ 1,579.54

Testimony of Hospital Chief Financial Officer Donald Gemmel

Mr. Gemmel advised that he has been in his current position for approximately six months.¹⁰ Mr. Gemmel stated that he was unable to determine what happened between the Hospital and the City that resulted in the non-billing of water services between October 2008 and November 2011. According to Mr. Gemmel, the Hospital's total utility costs (to include water services) appear on the Hospital's budget as a single line item but regardless, variance reports would have never identified the lack of payment for water services, since the Hospital had never been billed for such.

Mr. Gemmel stated that the Hospital is currently working with the City to rectify any payment for past water services for which the Hospital did not receive a bill.

Testimony of Hospital Chief Executive Officer Timothy Page

Mr. Page advised that he has been in his current position since September 2010.¹¹ Mr. Page stated that he was unable to determine what happened between the Hospital and the City that resulted in the non-billing of water services between October 2008 and November 2011. Mr. Page confirmed Mr. Gemmel's testimony and further explained that the property on which the Hospital is located is part of a "triangle" that includes other properties. According to Mr. Page, all tenants on that property are assessed a monthly association fee, which the Hospital incorrectly believed included monthly water billing.

Mr. Page stated that the Hospital is currently working with the City to rectify any payment for past water services for which the Hospital did not receive a bill.

⁸ It is noted that the City also billed the Hospital \$9,978.25 in November 2011 for water services provided during an undetermined time period.

⁹ Because the initial time period is undetermined, the "Total" and "Average Per Month" amounts are based on December 2011 and January 2012 figures.

¹⁰ Mr. Gemmel stated that prior to being assigned to the Hospital, he had been an employee of Kindred Healthcare, Inc. for a considerable amount of time.

¹¹ Mr. Page stated that prior to being assigned to the Hospital, he had been an employee of Kindred Healthcare, Inc. for a considerable amount of time.

Issue (2):

The City of Riviera Beach hired Consulting Engineer Lal Samadi without a competitive procurement process.

Governing Directives:

Article 3, Section 3-101(1), City of Riviera Beach Ordinance and § 287.055, Florida Statutes

Finding:

The OIG review found that the City failed to follow procurement procedures outlined in Florida Statutes, as well as City Code, when selecting Consulting Engineer Lal Samadi. The City initially stated that Mr. Samadi's selection was exempt from procurement requirements pursuant to Section 3-103(4), Riviera Beach Code of Ordinances (City Code), which allowed the City to procure "other services,¹²" based on recommendations by the City Manager or her designee. City Department of Community Development Director Mary McKinney testified that she recommended Mr. Samadi's selection because of his specialized engineering certifications, specifically Local Agency Program (LAP¹³) certification. The OIG review determined that LAP certification is a term designated specifically for a municipal entity, not an individual. Throughout interviews conducted by the OIG, as well as reviews of documents relating to Mr. Samadi's contract, it was determined that Mr. Samadi has provided and continues to provide engineering services to the City. As an engineer, the City was required to competitively procure Mr. Samadi's services pursuant to § 287.055, Florida Statutes, the Consultants' Competitive Negotiation Act (CCNA), as well as the City's own requirements outlined in Section 3-101(1). The City subsequently advised that Mr. Samadi was primarily providing construction administration/project management services, and only some engineering services, thereby justifying their reasons for not competitively procuring his contract. The OIG maintains the following:

- Throughout Mr. Samadi's contracts, both of which are titled "Engineering Services Agreement," Mr. Samadi is referred to as "Professional Engineer" and "Engineer" when detailing his role and/or services.
- In each purchase order used to pay for Mr. Samadi's services, as well as the accompanying City Council Resolutions approving these payments, Mr. Samadi is referred to as "Professional Engineer" and "Engineer."
- City employees, some of whom are also engineers, testified that Mr. Samadi represents himself as the "engineer" and performs engineering services for the City.
- Mr. Samadi represents himself as the City's Consulting Engineer and that he provides engineering services to the City.

Based on the aforementioned, evidence supports that between February 2008 and May 2011, Mr. Samadi has been providing professional engineering services to the City for

¹² According to the City Code, the only example provided for "other services" is "social services."

¹³ The LAP certification in Florida is administered by the Florida Department of Transportation, which receives Federal funding for certain road construction projects.

which he has been paid a total of **\$576,200.00**.¹⁴ These services were required to be competitively procured in accordance with § 287.055, Florida Statutes (CCNA) and City Code.

Testimony of City Department of Community Development Director Mary McKinney

Ms. McKinney stated that Mr. Samadi retired as the City Building Department Engineer (sometime in 2008), and returned as a contract employee in that same year. Ms. McKinney advised that Mr. Samadi was employed specifically to coordinate a federally funded road project along State Road A1A as a LAP certified engineer. Ms. McKinney stated that Mr. Samadi's LAP certification enabled the City to qualify for Federal stimulus funds for the A1A project. Ms. McKinney explained that the City did not competitively procure Mr. Samadi's employment contract because he had previously been involved in the A1A project prior to his retirement, had LAP certification, and was available to manage the project as a professional engineer. Ms. McKinney stated that Mr. Samadi's contract was subsequently approved by the City Council. Ms. McKinney further advised that she believed when hiring for professional services, the City is not required to competitively procure such services.¹⁵ Ms. McKinney further stated that to her knowledge, besides Mr. Samadi, there were three other engineers in Palm Beach County with LAP certification; however, they were already employed by other municipalities and were unavailable.

Testimony of City Engineering Technician Ricardo Wiswell

Mr. Wiswell stated that he has been employed as an Engineering Technician by the City since 2001. Mr. Wiswell stated that according to his knowledge of LAP requirements, the Florida Department of Transportation (FDOT) requires that agencies utilizing their funds be LAP certified. Mr. Wiswell further advised that the agency (i.e. the City) must show that a "team" of competent professionals, with the requisite extensive FDOT experience and backgrounds, will be managing a project. Mr. Wiswell stated that it is the agency, not the individual that is LAP certified. Mr. Wiswell further advised that he and Mr. Samadi were merely individuals presented to FDOT as part of the City's team of professionals who would be involved in the A1A project.

Testimony of City Utility District Executive Director Lou Aurigemma

Mr. Aurigemma stated that Mr. Samadi was previously employed by the City as the City Engineer and after retiring, the City (through Ms. McKinney's direction) hired Mr. Samadi as a Consulting Engineer. Mr. Aurigemma stated that he was not aware of how Mr. Samadi's employment contract was procured; however, Mr. Aurigemma indicated that under CCNA rules, a city should competitively procure a contracted engineer position unless the candidate was already a city employee. Mr. Aurigemma further stated that Mr. Samadi has made misstatements as to his (Mr. Samadi's) LAP certification, as it is the agency, not an individual that is LAP certified.

¹⁴ It is noted that between May 13, 2011 and January 6, 2012, Mr. Samadi has performed an additional \$101,750.00 worth of services for the City, which has not yet been paid.

¹⁵ Pursuant to Section 3-103(1), City Code, "procurement of professional services...shall be by the use of the competitive sealed proposals method set forth in Section 3-102..." City Code indicates that engineering services are professional services.

Testimony of City Utility Engineer Mario Loaiza

Mr. Loaiza stated that it was his understanding that Mr. Samadi's employment contract was not competitively procured and the manner in which Mr. Samadi was hired as an engineer appeared to be very unusual. Mr. Loaiza explained that professional engineers in the United States are bound by a code of ethics which include protecting the public trust. Mr. Loaiza opined that Mr. Samadi's employment contract as a professional engineer should have been competitively procured in accordance with CCNA requirements. Mr. Loaiza further stated that although there are LAP training classes for individuals, it is the agency, not an individual that is LAP certified.

According to the OIG's review of FDOT LAP certification requirements, the following pertinent information was disclosed:

- Each Local Agency wishing to participate in LAP must complete the **Local Agency Certification Qualification Agreement** and be interviewed by the applicable District LAP Administrator.¹⁶
- A Local Agency is defined as a unit of government that has a responsibility for planning, construction, operation or maintenance of, or jurisdiction over, a transportation facility. The term includes...an incorporated municipality....

Testimony of Consulting Engineer Lal Samadi

Mr. Samadi stated that after retiring as the City Engineer in 2008, he was re-employed on a contractual basis as the Consulting Engineer for the City. According to Mr. Samadi, he was hired to perform general civil engineering services, as well as specific projects designated by the City. Mr. Samadi stated that the City Council was responsible for his hiring as a Consulting Engineer and believed that he was hired because of his general engineering experience, his LAP certification and the fact that his hourly rate was acceptable to the City Council. Mr. Samadi explained that when an agency (i.e. the City) is LAP certified, it also requires a LAP certified engineer supervising the project in order to receive federal funding. Mr. Samadi stated that if the agency does not have a LAP certified engineer, the agency loses its LAP certification.

When asked to clarify his statements that he was LAP certified, Mr. Samadi subsequently indicated that it was not actually a personal "certification," rather that he received training which involved LAP rules and regulations.

Testimony of City Purchasing Director Benjamin Guy

Mr. Guy advised that he has been employed by the City since 1989 and has been the City Purchasing Director since 2002. Mr. Guy initially stated that Mr. Samadi was hired as a Project Manager for the A1A project, not as a Consultant. Mr. Guy further stated Mr. Samadi's hiring was not competitively procured pursuant to Section 3-103(4), City Code, allowing the City to hire Mr. Samadi based only on a recommendation, which they received from City Department of Community Development Director Mary

¹⁶ According to the LAP certification guidelines, the District LAP Administrators are FDOT employees. The City is currently LAP certified.

McKinney and subsequently approved by the City Council. Mr. Guy explained that Mr. Samadi performed engineering duties in addition to his primary responsibility as a Project Manager.

During a subsequent interview with the OIG, Mr. Guy advised that he was very familiar with CCNA requirements and their applicability to municipalities. Mr. Guy described Mr. Samadi's current job responsibilities with the City as construction administration/project management. Mr. Guy reiterated that although a portion of Mr. Samadi's work involves engineering, a majority of Mr. Samadi's time is spent in construction management and administration. Mr. Guy opined that CCNA rules did not apply to Mr. Samadi's hiring because the majority of Mr. Samadi's responsibilities included construction management duties. When presented with Mr. Samadi's "Engineering Services Agreement," as well as testimony from other City employees, including Mr. Samadi, regarding Mr. Samadi's representations as providing engineering services to the City, Mr. Guy was unable to offer any further explanation.

According to the OIG's review of CCNA requirements (§ 287.055, F.S.), the following pertinent information was disclosed:

(2) DEFINITIONS.

(a) "Professional services" means those services within the scope of the practice of...professional engineering...

(b) "Agency" means...a municipality...

(3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES.

(a)1. Each agency shall publicly announce, in a uniform and consistent manner, each occasion when professional services must be purchased for a project the basic construction costs of which is estimated by the agency to exceed the threshold amount provided in s. 287.017 for CATEGORY FIVE or for a planning or study activity when the fee for professional services exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO...

(4) COMPETITIVE SELECTION

(a) For each proposed project, the agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with, and may require public presentations by, no fewer than three firms regarding their qualifications, approach to the project, and ability to furnish the required services.

According to the OIG's review of City Purchase Orders and accompanying Resolutions to pay for Mr. Samadi's services, the following pertinent information was disclosed:

Date	Purchase Order #	Resolution #	Amount	Type of Services
03/04/08	89125	10-08	\$ 61,200.00	Engineering
06/23/08	90399	61-08	\$ 65,000.00	Consulting Engineering
12/08/08	91664	149-08	\$ 66,000.00	Engineering
05/28/09	93023	39-09	\$ 66,000.00	Engineering
11/24/09	94164	141-09	\$ 80,000.00	Engineering
06/04/10	95764	55-10	\$ 58,000.00	Engineering
11/16/10	97004	139-10	\$ 90,000.00	Engineering
05/25/11	98247	55-11	\$ 90,000.00	Engineering
TOTAL			\$ 576,200.00	

ARTICLE XII, SECTION 2-427

Pursuant to Article XII, Section 2-427 of the Palm Beach County Code, the City of Riviera Beach was provided the opportunity to submit a written explanation or rebuttal to the findings as stated in this Management Review within ten (10) calendar days. On March 12, 2012, the City forwarded their written response (*attached in its entirety*), to which the OIG responds to the following quoted sections, in pertinent parts:

Issue (1):

- The City has calculated that \$32,267.89 is owed by Kindred for water and sewer charges not paid between August 2008 and October 2011. The OIG's calculation of \$60,022.52 is incorrect because the OIG's calculation of averaging December 2011 and January 2012, did not take into account precise numbers as indicated in **Exhibit A**, thus resulting in a higher charge for Kindred. The detailed correct charges are included in **Exhibit A**. Staff met with Kindred Hospital and the company has agreed to the methodology used in calculating the approximately \$32,267.89 amount. The City is working with Kindred to work out a payment plan.*

OIG Response: According to City Utility District Executive Director Lou Aurigemma, the City's methodology utilized to determine that only \$32,267.89 was owed to the City was based solely on actual patient days during the periods in question. It did not account for other variables, such as staffing levels, which may have provided for a more accurate figure for the City to recover.

Issue (2):

- *The OIG goes through great pains to discuss the title of Mr. Samadi's agreement without analyzing the actual work being performed by Mr. Samadi...The term "engineer" is used loosely by the City in the agreement...Therefore, in his agreement, the services Mr. Samadi actually performed are not engineering services as contemplated by the Consultant's Competitive Negotiation Act (CCNA) of section 287.055, Florida Statutes or of the City's code. Instead, the agreement is more in line with the non-engineering work previously provided by Mr. Samadi when he worked for the City as an employee.*

OIG Response: In the City's own response, the City points out that Mr. Samadi's agreement provides for specific services to be completed by "the Engineer." Within the six subsections describing Mr. Samadi's services, Mr. Samadi is referred to as the Engineer, with subsection (d) specifically stipulating that "The Engineer will provide engineering support..."

It is of further note that both of Mr. Samadi's agreements are titled "Engineering Services Agreement" and throughout each of the agreements, the City "desires to engage the services of a professional engineer." The "Engineering Services Agreement" clearly delineates that Mr. Samadi and/or his company, Samadi Engineering, Inc., "the Engineer," will provide "the services of a professional engineer" to the City.

Additionally, the City Council approved resolutions providing payment to Mr. Samadi for engineering services and clearly outlines that Mr. Samadi is providing professional engineering services. For example, Resolution No. 55-11 states the following:

***WHEREAS,** it will be cost effective and more efficient for the City to retain the engineering services of Samadi Engineering, Inc. to continue providing engineering services for certain City projects until such services are no longer deemed necessary.*

Despite the City's contention that Mr. Samadi does not provide engineering services pursuant to CCNA, sworn statements from City staff, including Mr. Samadi himself, indicates not only that Mr. Samadi is referred to as an "engineer," but that he is in fact, providing professional engineering services to the City. Furthermore the following documentation reviewed by the OIG clearly delineates that Mr. Samadi is providing "engineering services":

- Mr. Samadi's Engineering Services Agreements
- A total of eight Resolutions to date have been approved by the City Council indicating that Mr. Samadi provided professional engineering services.

- Vendor Payment History showing payments for “Prof.Serv.-Engineering.”

The findings and recommendations for corrective actions of the OIG Management Review remain as stated.

This Management Review has been conducted in accordance with the ASSOCIATION OF INSPECTORS GENERAL Principles & Quality Standards for Investigations.



CITY OF RIVIERA BEACH

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OFFICE OF
CITY MANAGER

Sent via email and US Mail

March 12, 2012

Office of Inspector General for Palm Beach County
Investigations Section
Attn: Donald Balberchak, Director of Investigations
P.O. Box 16568
West Palm Beach, FL 33416

RE: Management Review Number 2012-0012

Dear Mr. Balberchak:

The City of Riviera Beach received a draft of the above referenced Management Review "Issues Reviewed and Findings" from your office on February 16, 2012. A voluntary response was due on or before February 27, 2012. The Office of the Inspector General (OIG) granted extensions until March 12, 2012. The City offers the following responses to the two issues reviewed by the OIG.

I. Issue (1): The City of Riviera Beach failed to properly bill Kindred Hospital [sic] The Palm Beaches for water utilized, resulting in a loss of revenue to the City.

After interviewing several City and Utility District employees, the OIG made a finding that, through a series of miscommunications, the City failed to bill Kindred Hospital for water services between October 2008 and November 2011, thus causing lost revenue of \$60,022.52 based upon an average of billing from December 2011 and January 2012.

Response

The issue of non-payment by Kindred was brought to the City's attention prior to the OIG contacting the City but probably within a few weeks of the Complainant making the complaint to the OIG. When it came to the City's and Utility District's attention, both entities began investigating the matter. They immediately contacted Kindred and began talks with company executives to find out what occurred. The talks continued while the OIG investigation ensued. The City has calculated that \$32,267.89 is owed by Kindred for water and sewer charges not paid between August 2008 and October 2011. The OIG's calculation of \$60,022.52 is incorrect because the OIG's calculation of averaging December 2011 and January 2012, did not take into account precise numbers as indicated in **Exhibit A**, thus resulting in a higher charge for Kindred. The detailed correct charges are included in **Exhibit A**. Staff met with Kindred Hospital and the company has agreed to the methodology used in calculating the approximately \$32,267.89 amount. The City is working with Kindred to work out a payment plan.

While investigating this matter, the issue of miscommunication between the two agencies became clear. As City Manager I have created a committee of city and utility district managers, led by Interim Deputy City Manager Danny Jones, and have given the committee the task of developing appropriate systems which will dictate the procedure for establishing an account when a new building (residential or commercial) is constructed in the city. The document will have a checklist of steps that must be followed by staff and builder alike prior to the City issuing a final certificate of occupancy. The committee will meet periodically and plans to submit a final document for review and approval to me by July 1, 2012. In the meantime, the City and Utility District are currently reviewing utility records to verify that all customers are being properly billed by the City.

Conclusion

The City will be perfecting its systems to ensure that all businesses are properly billed for utility related services.

II. Issue (2): The City of Riviera Beach hired Consulting Engineer Lal Samadi without a competitive procurement process.

After interviewing several City and Utility District employees, the OIG made a finding that the City failed to follow procurement procedures as outlined in section 287.055, Florida Statutes, and section 3-101(1), of the City's Code of Ordinances in retaining Mr. Samadi. The OIG further found that Mr. Samadi provided professional engineering services to the City for which he has been paid \$576,200. The OIG found that the services Mr. Samadi performed were required to be competitively procured in accordance with section 287.055, Florida Statutes.

Response

The OIG goes through great pains to discuss the title of Mr. Samadi's agreement without analyzing the actual work being performed by Mr. Samadi. Mr. Samadi, a 25 year city employee who was in fact, the "City Engineer" prior to retiring and becoming a consultant of the city is referred to as "engineer" throughout the services agreement. The term "engineer" is used loosely by the City in the agreement and that is because of Mr. Samadi's past service as a city employee where Mr. Samadi was given a multitude of tasks to complete, some of which were engineering tasks, some of which were not. Therefore, in his agreement, the services Mr. Samadi actually performed are not engineering services as contemplated by the Consultant's Competitive Negotiation Act (CCNA) of section 287.055, Florida Statutes or of the City's code. Instead, the agreement is more in line with the non-engineering work previously provided by Mr. Samadi when he worked for the City as an employee.

Specifically, Mr. Samadi's agreement provides:

1. The Engineer will provide the following services to the City.
 - (a) The Engineer will provide professional services related to field observation of roadway construction, sidewalks installation and traffic calming projects, prepare

daily reports, review contractor's request for information (RFI), review shop drawings, review request for payments and close the project.

- (b) The Engineer will review development plans submitted by developers for compliance with the City's Land Development Codes, Flood Protection Ordinance, Streets and Sidewalks and National Pollution Discharge Elimination System permits and prepare necessary reports and recommendations.
- (c) The Engineer will attend technical review meetings, represent the City at County and State regular or scheduled meetings as directed by the City.
- (d) The Engineer will provide engineering support to other City departments as directed by the City, review bids submitted by Contractors, value engineer, if necessary, and make recommendations.
- (e) The Engineer shall provide a minimum twenty four (24) hours of service per week.
- (f) The Engineer will report directly to the Director of Community Development, and will not make any representations regarding the above City matters without specific authority from the Director of Community Development.

The work outlined above is not technical engineering work, nor was it intended to be. Under CCNA, Mr. Samadi would have had to provide a professional service to the city for construction projects over \$325,000 or for planning or study activity over \$35,000. See §287.055(3)(a)1 and §287.017, Fla. Stat. (2011). Mr. Samadi did not provide such services to the City. Instead he acted as project manager on several projects which was consistent with his agreement.

The City is well aware of CCNA and its requirements, and the City has fulfilled its obligation in that respect. For example, on the multi-million dollar A1A project which the OIG has cited in its report, Mr. Samadi is not providing professional engineering services as contemplated by CCNA in that he is not acting as the City's Engineer on that project. Instead he is the project manager and it is a fact that one does not have to be an engineer to provide the services Mr. Samadi is providing on this project!

The City has contracted with the firm of Jordan, Jones & Goulding (JJ&G) to serve as the City's Engineer of Record for the City under a continuing services contract as allowed under section 255.055, Florida Statutes. Its services were publicly solicited under Request for Proposal (RFP) #124-06 in 2006. Currently, JJ&G is providing services to the City on the A1A project and was given a work order to provide study, planning and design services. Over a period of four years, the City has paid JJ&G approximately \$2.7 million for various work orders on City projects.

Similarly, the firm of Target Engineering was selected through the CCNA process (RFP 257-10) to perform the engineering inspection services required by FDOT for the A1A project. The City hired Target Engineering because the inspection services could not be performed through the City's continuing services agreement due to the anticipated project cost which exceeded two

million dollars. To date, Target Engineering has been approved for payment of approximately \$1.27 million.

Finally, in 2011, the City entered into a new continuing services agreement with the firm of Corzo, Castella, Corballo, Thompson & Salman (C3TS). C3TS was selected through the CCNA process in 2011, through RFP #276-10, to serve as the City's Engineer of Record to perform the types of engineering services the City anticipated would fall within the auspices of section 287.055. To date the City has paid C3TS \$516,000 for work orders.

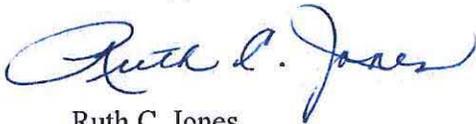
Finally, the payment to Mr. Samadi is consistent with the role of project manager. Mr. Samadi charged the city a rate of \$110 per hour when all other principal engineer's hired under the CCNA process charge an average of \$160-\$180 per hour. (In 2011, Mr. Samadi's rate increased to \$120 an hour.) Mr. Samadi has the same experience and qualifications as a principal engineer. Had the City used Mr. Samadi as an engineer, we would have paid him accordingly.

Conclusion

It is clear that when CCNA is implicated, the City has used its process. Because Mr. Samadi's work does not fall within CCNA, the City disputes the OIG finding on this matter, and respectfully requests a reversal.

The City thanks the OIG for the opportunity to file a response to the report. Should you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,



Ruth C. Jones
City Manager

Enclosure

RCJ:pr

KINDRED HOSPITAL
BILLING
5555 W BLUE HERON BLVD
RIV BCH,FL.

Feb 22, 2012.
KINDRED HOSPITAL

revised 2/28/12 - removed sm charges.

Aug 2008 - Aug 2009

Bill date	wa	sw	sm	total bill
Aug-08	31.58	33.35		64.93
Sep-08	16.51	17.15		33.66
Oct-08	40.62	43.07		83.69
Nov-08	46.65	49.55		96.2
Dec-08	46.65	49.55		96.2
Jan-09	73.78	78.71		152.49
Feb-09	115.97	124.07		240.04
Mar-09	194.34	208.31		402.65
Apr-09	185.3	198.59		383.89
May-09	118.99	127.31		246.3
Jun-09	185.3	198.59		383.89
Jul-09	191.32	205.07		396.39
Aug-09	287.77	308.75		596.52
				<u>596.52</u>
				\$ 3,176.85

Sep 2009 - Oct 2010

Bill date	wa	sw	sm	total bill
Sep-09	759.18	414.03		1,173.21
Oct-09	824.65	447.97		1,272.62
Nov-09	811.56	441.18		1,252.74
Dec-09	818.11	444.57		1,262.68
Jan-10	981.79	529.41		1,511.20
Feb-10	935.96	505.66		1,441.62
Mar-10	896.67	485.3		1,381.97
Apr-10	988.34	532.81		1,521.15
May-10	981.79	529.41		1,511.20
Jun-10	798.46	434.39		1,232.85
Jul-10	844.29	458.15		1,302.44
Aug-10	903.22	488.69		1,391.91
Sep-10	772.27	420.82		1,193.09
Oct-10	1,034.17	556.56		1,590.73
				<u>1,590.73</u>
				\$ 19,039.41

pbj

Exhibit A, p. 1

KINDRED HOSPITAL
BILLING
5555 W BLUE HERON BLVD

Nov 2010 - Oct 2011 RIV BCH, FL.

Bill date	wa	sw	sm	total bill
Nov-10	867.15	493.74		1,360.89
Dec-10	873.82	497.37		1,371.19
Jan-11	1,000.58	566.35		1,566.93
Feb-11	953.88	540.93		1,494.81
Mar-11	1,000.58	566.35		1,566.93
Apr-11	813.78	464.7		1,278.48
May-11	900.51	511.89		1,412.40
				<u>\$ 10,051.63</u>

GRAND TOTAL \$ 32,267.89

	sm 90.23 @ mos.	sm bill	# of mos.	adj
	mos.	90.23	34	\$ 3,067.82
Aug 2008 - Aug 2009	13			
Sep 2009 - Oct 2010	14			
Nov 2010 - Oct 2011	7			
	34			