



John A. Carey
Inspector General

OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY



Inspector General
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“Enhancing Public Trust in Government”

Investigative Report

2020-0001

Johnson Controls, Inc. Billing Issues

September 22, 2020



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INVESTIGATIVE REPORT 2020-0001

DATE ISSUED: September 22, 2020



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JOHNSON CONTROLS, INC. FRAUDULENT BILLING

SUMMARY

WHAT WE DID

In August, 2019 the Palm Beach County Office of Inspector General (OIG) received a complaint alleging that Johnson Controls, Inc. (JCI) submitted fraudulent invoices to the Town of Palm Beach (Town) relating to a contract between the parties. According to the complainant, JCI billed the Town for services that it did not perform.

Based on our initial interviews and review of documents, our office initiated an investigation to determine whether JCI billed the Town in accordance with their agreement for the Town's security camera installation and maintenance project, and if not, whether the billing issues were the result of fraudulent conduct.

Allegation (1): Johnson Controls, Inc. fraudulently billed the Town of Palm Beach for work that was not completed on a security camera installation and maintenance project.

Our investigation included review and analysis of records, including invoices, proposal documents, the signed contract, purchase orders, meeting notes, emails, audio of meetings between Town and JCI personnel, Town Council agenda items, and billing analyses prepared by both JCI

and Town personnel. We also interviewed Town and JCI personnel.

WHAT WE FOUND

Allegation (1) is not supported. Although we did not find clear evidence of fraud, it does appear that the parties disagree on their understanding and interpretation of the terms of their agreement relating to performance and billing. To the extent that they are unable to resolve such disputes, they may consider addressing such matters before a court of competent jurisdiction.

Nevertheless, the investigation revealed two additional issues concerning the Town's project management procedures and the Town and JCI's contracting procedures that should be addressed.

RECOMMENDATIONS

We make two recommendations that can assist the Town in strengthening internal controls and enhancing compliance with its contractual requirements with its vendors.



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BACKGROUND

The Town of Palm Beach was incorporated on April 17, 1911 and is governed by a council-manager form of government. The Town Council is the governing body and sets policy. Its five members are elected at-large and serve two-year terms. The Town Council elects one of its members as President and another as President Pro Tem for the ensuing year. An elected mayor acts as the Town's ombudsman, intergovernmental leader, and head of the Town government for all ceremonial purposes. The Mayor executes contracts, deeds and other documents; may veto ordinances and resolutions; and breaks tie votes by the Town Council; but is not a member of the governing body. The Town Manager acts as the chief administrative officer for the town and is appointed annually by the Town Council.

Johnson Controls, Inc. is a corporation registered with the Florida Division of Corporations and has its principal office in Milwaukee, Wisconsin. JCI provides project managers, technicians, and engineering staff in the building technology integration industry.

JCI's Contracts with The Town

In December, 2011, the Town issued RFP No. 2012-02, seeking proposals from qualified vendors to install and maintain a Town-Wide Surveillance and License Plate Recognition (LPR) Camera System. On June 19, 2012, the Town Council passed Resolution 57-2012 authorizing the execution of a contract with JCI for the installation and maintenance of a surveillance and security camera system. In August, 2012, the parties executed the Agreement that provided in Article VI that the term of the Agreement would commence upon commencement date as set forth in the Notice to Proceed and would remain in effect until completion of the project as mutually agreed in a project schedule.

Article VIII of the Agreement stated that the Town would pay JCI up to \$672,308.51 in accordance with the payment schedule. Exhibit D to the Agreement permitted JCI to submit bills for payment based upon progress billing for twenty-one (21) sites, that invoices should identify the nature of the work performed, and that materials could be billed upon ordering of the materials. Section 8.3 of the Agreement stated that the Town could object to an invoice within ten (10) calendar days of receipt, and if no objection was made, payment was due within fifteen (15) days thereafter.

On April 8, 2014, the Council passed Resolution No. 61-2014, designating JCI as the sole provider for the build-out, repair, and maintenance of the security and surveillance system

and establishing a \$75,000 equipment replacement contingency fund for the purpose of continuing the project.

On August 9, 2017, the Council passed Resolution Number 113-2017, authorizing the purchase of a new License Plate Recognition Solution System and the continued recognition of JCI as the sole provider for the continued build-out, maintenance, and repairs of this additional camera and security system. The Council also authorized the issuance of a P.O. to JCI for \$169,951 and established an overall budget of \$175,000 for the purchase.

On June 12, 2018, the Council passed Resolution Number 69-2018, approving two proposals from JCI totaling \$299,868 for replacement of twenty-one (21) cameras and upgrade of the wireless network system. Proposal (Quote FY180067), attached as Exhibit A to Resolution No. 69-2018, was for video surveillance expansion upgrades in six locations for an amount totaling \$195,067. Proposal Quote FY180067 included the itemized cost for materials, an electrical contractor, and telecom/security labor at \$120 per hour for each of the six sites. The second proposal (Quote FY 180052), attached as Exhibit B to Resolution No. 69-2018, was for wireless upgrades for an amount up to \$104,801. The Council approved a budget not to exceed \$310,000 for the combined purchase.

Both Proposal (Quote FY180067) and Proposal (Quote FY180052) contained Terms and Conditions that stated,

2. INVOICING & PAYMENTS. Johnson may invoice Purchaser monthly for all materials delivered to the job site or to an off-site storage facility and **for all work performed on-site and off-site. Ten percent (10%) of the contract price is for engineering, drafting and other mobilization costs incurred prior to installation. This 10% shall be included in Johnson's initial invoice.** Purchaser agrees to pay Johnson the amount invoiced upon receipt of the invoice..... If Johnson's invoice is not paid within 30 days of its issuance, it is delinquent... [Emphasis added]

The projects approved by the Town Council were initially managed on behalf of the Town by a then-Town Police Officer (Former Police Officer).¹ During the course of the projects a Town Public Works Department Manager, Brett Madison, became the Town's project manager. Christopher Salman was the project manager for JCI throughout the period relevant to the investigation, and JCI's billing was handled by JCI employee Kim Williams.

¹ The Town Police Officer separated from employment during the course of the OIG Investigative period.

ALLEGATION AND FINDING**Allegation (1):**

Johnson Controls, Inc. fraudulently billed the Town of Palm Beach for work that was not completed on a security camera installation and maintenance project.

Governing Directives:

Proposal (Quote FY180067), civil and/or criminal fraud laws

Finding: Not supported

Upon completion of our investigation, we cannot state with certainty that any fraudulent billing occurred. Although we did not find clear evidence of fraud, it does appear that the parties disagree on their understanding and interpretation of the terms of their agreement relating to performance and billing. To the extent that they are unable to resolve such disputes, they may consider addressing such matters before a court of competent jurisdiction.

The complainant's allegations related to Proposal Quote FY180067 for the video surveillance expansion project. Our office conducted interviews relating to both JCI's video surveillance expansion project and wireless upgrade project with the Town for FY18 and reviewed documents relating to the Town-Wide Surveillance and License Plate Recognition (LPR) Camera System and the parties' relationship commencing in 2012.

OIG Document Review

We reviewed extensive documentation including all contractual documents, accepted proposals, purchase orders, invoices, and payments relating to JCI's installation, maintenance, and upgrade of the Town's surveillance and license plate camera system; Town resolutions; and multiple memorandum, emails, and financial analyses prepared by both Town personnel and JCI personnel.

Each of JCI's invoices to the Town identified the JCI project manager as Christopher Salman. They also stated, in part, "The Project Manager named above submits this application with knowledge, information, and belief that the work covered by this application for payment has been completed in accordance with the Contract Documents..."

Records provided by the Town Finance Director showed the following invoicing to the Town by JCI for the FY18 video surveillance upgrade project, and the corresponding payments made by the Town:

JCI Invoice Date	Invoice Amount Due	Check Amount
9/14/18	\$45,706.14	\$44,792.02 ²
1/11/19	\$69,021.32	\$69,021.32
2/12/19	\$15,543.47	\$15,543.47
3/11/19	\$20,630.15	\$20,630.15 ³
Total	\$150,901.08	\$149,986.96

OIG Interviews with Town of Palm Beach Staff:

OIG Interview of Town Purchasing Manager Dean Mealy

Mr. Mealy told the OIG that in 2018, the Town contracted with JCI to install camera systems at six intersections. In May, 2019, the Town's Former Police Officer then-project manager for the camera installation project contacted the Purchasing Department regarding performance issues with JCI. The Former Police Officer project manager told Mr. Mealy that the work was supposed to have been completed by May of 2019⁴, and there were still five sites that were not complete.

Mr. Mealy stated that he and Assistant Purchasing Manager Dukagjin Basha checked the records in the Town's financial system and found that there was about \$56,000 spent from the \$78,000 that had been allocated for labor on the contract. With only one site completed out of six, they believed there was "no way this could be factual." Mr. Mealy stated there was a proposal for each site, and that each proposal had a labor cost and a materials cost. Since only one site had been completed, he said, it was not possible to incur labor charges for the sites that had not yet been done.

Just prior to Memorial Day of 2019, Mr. Mealy and Mr. Basha met with personnel from JCI and requested professionally audited invoices for both materials and labor for all the work, but JCI did not produce them. After that meeting, Mealy asked the Public Works Department if there were any maintenance issues, as JCI had told him that JCI's delay could be attributed to getting right of way and power line "locates" for the remaining five sites. In addition, Mr. Mealy informed the Town Finance Department, the police department, and the Town Manager's office that there might be a potential fraud issue because JCI had not provided the audited invoices, nor the name of anyone in JCI's finance department.

Mr. Mealy and Mr. Basha met with Mr. Salman again during the third week of June 2019, along with the Town Finance Director and personnel from the Town Public Works Department. At that meeting, Mr. Mealy said that Mr. Salman stated that the Town had

² The Finance Department records noted that a two percent discount amounting to \$914.12 was applied to the JCI invoice dated 9/14/18, accounting for the difference between the invoiced amount and the amount paid.

³ Town finance records show that in addition to the \$20,630.15 payment of invoice 00042130796 for the video surveillance upgrade project, check number 1152058 also included funds attributable to projects unrelated to this investigation.

⁴ The contract documents provided by the Town do not specify project completion dates.

been overbilled by \$31,000 or \$32,000. Mr. Mealy and Mr. Basha met with JCI again on August 16, 2019, and at that meeting Mr. Salman stated JCI “may not have” overbilled the Town.

Mr. Mealy told the OIG that he believed that an additional problem was that the Town’s initial project manager for this project was a police officer, who may not have understood the benchmarks that needed to be met before approving JCI’s invoices.

OIG Interview of Town Assistant Purchasing Manager Dukagjin Basha

Mr. Basha told the OIG that he reviewed JCI documents, which were provided by Mr. Salman, and the JCI proposals. He then spoke to Mr. Madison, who became the new project manager for the Town, and checked what materials had been delivered. Mr. Basha said JCI claimed they “delivered everything,” but the Town did not receive all of the materials, including cabling and accessories, and a pole for the Worth Avenue location. However, he said JCI billed the Town for all of these materials. After consulting with Mr. Madison, Mr. Basha’s calculations showed that the Town was overbilled for materials.

In consultation with Mr. Madison, Mr. Basha calculated the percentage difference between what was billed and what he believed was delivered regarding labor charges for each site. For example, at the Flagler Bridge Lower site the cameras were installed but not connected. Mr. Basha considered that project to be 90 percent complete. Using this method, he said, the total labor charges that JCI overbilled the Town were \$29,378 which, when added to the amount overbilled for materials totaled \$38,000.

It was the Town’s goal to have JCI do the work that had already been paid for, rather than have a refund issued. However, Mr. Basha stated that JCI made no progress with that work, and Mr. Salman expected the Town to handle the coordination with JCI’s subcontractors. Mr. Basha said that two months later Mr. Madison received an email response from Mr. Salman that completion of the items was “in the works.”

Mr. Basha stated Mr. Salman claimed that he billed the Town for his time and had attributed it to the various sites as a labor cost. Therefore, according to Mr. Basha, Mr. Salman had taken the position that JCI no longer owed the Town anything.

OIG Interview of Town Water Resources Division Manager Brett Madison

Mr. Madison said he became the security camera Project Manager around mid-July 2019. When he was assigned the project, he was not told that there was a concern that the Town had been overbilled; he was told that the Former Police Officer who had been managing the project was no longer going to be doing so. Mr. Madison took JCI’s paid invoices and referenced them against the purchase order to determine what line items had been paid and completed. He determined that the Town had been billed the full amount for labor costs, but only one or two of the six cameras had been installed. Mr. Madison also went to each project site to see what was working or what was not.

Mr. Madison tried to bring everything together in a logical order to complete the project. He said weekly progress meetings were held, and at the end of each meeting the action items were discussed. Mr. Madison then re-visited those items at the next meeting. After about four meetings, he realized no progress was being made toward project completion. He believed only one location was finished. Mr. Madison told Mr. Salman that if JCI was not going to do what it was supposed to, he would stop the project.

Mr. Madison said that when he got involved in the project it took days for him to pull all of the information together and try to figure out where the Town's money was, what had been done, and what had been paid for, because the invoicing was very difficult to understand. He said the Town had been paying the invoices based on "work in place."

Mr. Madison explained that the reason the Town and JCI's billing amounts were different was because Mr. Salman was billing the Town for project management as "work in place."⁵ When Town personnel inquired as to who at JCI made the decision to bill for "work in place," a JCI representative said it was Mr. Salman. Mr. Madison believes the JCI representative was Mr. Salman's supervisor, Christina Ward. According to Mr. Madison, Ms. Ward told Mr. Mealy, Mr. Basha, and Mr. Madison that the Town had paid too much for labor. When they asked her where the Town's money was, she said she didn't know.

OIG Interview of Town Finance Director Jane Le Clainche

Ms. Le Clainche told the OIG that in late summer or fall of 2019 she prepared an analysis of JCI invoices, which resulted in slightly different numbers than Mr. Basha's. Ms. Le Clainche said that might have been due to a credit and a two percent discount JCI gave the Town on one invoice that Mr. Basha did not take into account.

Ms. Le Clainche said that to prepare her analysis she used the data from the Town's invoice system as to what was paid. She said there was also some "retention" on the project, which is a portion of payments--generally ten percent—which is withheld until the completion of the project. Ms. Le Clainche explained that means that while her analysis reflected that approximately \$167,000 should have been paid to JCI to that point, the actual amount of money that the Town paid out after the retention amount was approximately \$149,000. Ms. Le Clainche stated that the difference would have been paid upon completion of the project, had the project been completed. However, Ms. Le Clainche did not have sufficient supporting documentation from JCI to conclusively determine whether the Town was overbilled.

⁵ "Work in Place" is a category utilized by JCI on their invoices which generally refers to physical work completed.

Other Town Personnel

The OIG attempted to interview the Former Police Officer who acted as the Town's project manager prior to Mr. Madison. The Former Police Officer declined to interview with the OIG.

OIG Interviews with Johnson Controls, Inc. Staff:

OIG Interview of JCI Customer Operations Associate Kim Williams

As a Customer Operations Associate, Ms. Williams said she writes subcontracts and is responsible for accounts receivable, accounts payable, and billing. Ms. Williams performed billing processing for Town projects. Ms. Williams said the project manager of each particular project is her boss for that project. On the Town projects in question, the JCI project manager was Mr. Salman.

Once a month, Mr. Salman told Ms. Williams whether and what he wanted to bill. He told her what percentages to bill in the schedule of values on the invoices for line items such as labor. Ms. Williams then put the information into JCI's computer system which took the contract amount, split it by percentage, and generated invoices with dollar amounts. Ms. Williams also said it would be normal to bill project management as "work in place."

Ms. Williams explained that the sales price of projects was put into the computer system, and the system then determined what percentage of each line item was billed, based upon the total contract amount and the estimated completion date of the project. The project was put into the system by the salesperson, who entered the start date and the end date. If the project manager--in this case, Mr. Salman--determined that the project would not be completed by the end date entered, the date could be revised in the system.

Ms. Williams stated Ms. Ward, the JCI Installation Manager, was ultimately in charge of the projects and was the point person dealing with the Town concerning billing disputes. At one point, Ms. Ward told the Town that if they had any questions about the billing they should discuss it with either Mr. Salman or Ms. Williams, which Ms. Williams said was the correct process.

Ms. Williams said JCI's practice was to bill for work completed. JCI sent invoices to the Town on or around the 15th of each month, to cover the period of the entire calendar month. Since the bills were sent before the end of the month, she billed the Town using Mr. Salman's estimate of the work that would be completed by the end of the month. Ms. Williams stated everything that JCI has billed to the Town has been paid.

OIG Interview of JCI Project Manager Christopher Salman

Mr. Salman told the OIG that he first became involved in these Town projects in August of 2018, when he had a kickoff meeting for the camera project with Town personnel. The purpose of the meeting was to go over each project location, what had been proposed,

and how to proceed. Mr. Salman said that JCI was adding cameras in specific locations for a wireless upgrade that was nearing completion.

JCI was halted by the Town from moving forward with the project on several occasions for different reasons, including traffic and holidays. Further, for the pump station site, Mr. Salman said there were about six meetings held, yet a decision as to how to proceed was never reached.

Mr. Salman said that progress billing was used for this project. He calculated the billing by percentage of completion; number of hours put on the job; whether there were meetings at a particular site, which would be considered labor towards that site; whether he was physically at the site; whether JCI's subcontractors were assembling equipment for the site; and whether JCI purchased equipment.

Mr. Salman said that subcontractor work, project management, installation labor, material, and commissioning, which was any time JCI was getting an item up and functioning, and JCI's attendance at meetings were considered progress. The time spent completing any of these activities was charged to the particular site where it occurred. Mr. Salman told the OIG that he was billing based upon the progress of completion of the project overall, not necessarily each particular site. He said to try and break it down per location with progressive billing would have been "very confusing."

Mr. Salman stated that Town personnel were confused when line items on the invoices were different than on the proposal. However, the proposal and invoices were structured differently-- Mr. Salman was working from the proposals, and he said the proposals were, "pretty much" the contract. A Town employee told Mr. Salman that they believed the Town was being overbilled. The proposal included labor hours for subcontractors. Mr. Salman told the OIG he probably should have approached someone from the Town about the amount of labor the project was consuming, but he did not because he wanted to get it done, and he was trying to finish the project at the price that was proposed. Regarding the concern that some of the billing for project management was being billed as labor, Mr. Salman said that "project management is labor," although the Town may have thought differently.

Mr. Salman stated that on August 9, 2019, the Town decided to halt the project. At that time, JCI was getting close to completion, but was still awaiting utility line "locates." Mr. Salman said there also came a point in the project when the Town did not want to work with him any longer because they were frustrated, and as such Ms. Ward began working with them. Ms. Ward was Mr. Salman's boss and, as such, was the person ultimately responsible for the project on the JCI side. She is no longer with JCI. Mr. Salman said he was the person who had the final say on billing.

OIG Conclusion

Our review of the invoices, emails, town resolutions and proposals, contracts, and the financial analyses prepared by the Town and JCI, as well as our interviews of the

personnel involved, showed that each side came to different conclusions as to whether JCI billed the Town properly. The Town's Finance Director believed that billing was consistent with work JCI claimed to have performed, but she needed to see more supporting documentation to determine whether the Town was overbilled. The Purchasing Manager and Assistant Purchasing Manager believed JCI had overbilled the Town, noting discrepancies for both labor and materials. JCI indicated that it billed based on "work in place." That term, however, is not used or defined in the proposal to the Town. To add to the parties' disagreement, the proposal states that billing would be done based upon "work performed," not "work completed." Additionally, although the proposal is itemized by the six sites, JCI's representative said he billed based on the project overall and not based on each individual site because progress billing by site would have been "very confusing." The Town paid the invoices as submitted without objection.

Based upon our review, we cannot reach a conclusion that JCI billed the Town fraudulently. To the extent that the parties' have not resolved their dispute regarding payment and performance, they may seek resolution by a court of competent jurisdiction.

However, our investigation did reveal issues that we believe should be addressed: one concerns the Town's project management procedures, and the other concerns the Town and JCI's contract procedures in general.

When interviewed by the OIG, Town Purchasing Department personnel expressed concerns with the Town's oversight of the project prior to Mr. Madison becoming the project manager. Specifically, they believe it was a problem that the Town's initial project manager may not have possessed the core competencies for project management. They said that Town paid JCI because the Former Police Officer prematurely approved JCI's invoices.

A project manager with a better understanding of procurement processes and vendor performance may have reduced the potential for vendor contractual disputes to arise. As such, we suggest that the Town ensure that its project managers possess the necessary knowledge and qualifications to effectively oversee the projects for which they are responsible. These skills should include the ability to determine what benchmarks trigger payment under Town contracts.

Our interviews with both Town and JCI personnel detail that the Town and JCI personnel had a different understanding of JCI's contractual requirements. We believe that the Town and JCI should attempt to eliminate any possible confusion in their contracts. As such, we recommend that the Town and JCI ensure that their contracts clearly explain billing terms, payment benchmarks, and ensure that all parties involved understand and follow contract terms. **We find that allegation (1) is not supported.**

ACKNOWLEDGEMENT

The Inspector General's Investigations Division would like to thank Johnson Controls, Inc. and Town of Palm Beach staff for their cooperation throughout this investigation.

RECOMMENDED CORRECTIVE ACTIONS

The OIG recommends that:

1. The Town ensure that its project managers possess the necessary knowledge and qualifications to effectively oversee the projects for which they are responsible. These skills should include the ability to determine what benchmarks trigger payment under Town contracts.
2. The Town ensure that its contracts clearly explain billing terms, that all parties managing the contract review and understand the terms, and that they follow those terms when approving invoices for payment.

RESPONSE FROM JOHNSON CONTROLS, INC.

Pursuant to Article XII, Section 2-427 of the Palm Beach County Code, Johnson Controls, Inc. was provided the opportunity to submit a written explanation or rebuttal to the findings as stated in this Investigative Report within ten (10) calendar days. Johnson Controls, Inc. responded to the draft report with a statement that it “would not be including a statement to add to the final report.”

RESPONSE FROM MR. SALMAN

Pursuant to Article XII, Section 2-427 of the Palm Beach County Code, Mr. Salman was provided the opportunity to submit a written explanation or rebuttal to the findings as stated in this Investigative Report within ten (10) calendar days. Mr. Salman did not submit a response.

RESPONSE FROM THE TOWN OF PALM BEACH

Pursuant to Article XII, Section 2-427 of the Palm Beach County Code, the Town was provided the opportunity to submit a written explanation or rebuttal to the findings as stated in this Investigative Report within ten (10) calendar days. The Town’s written response is attached to this report as Attachment A.

**ATTACHMENT A
RESPONSE FROM THE TOWN OF PALM BEACH**



TOWN OF PALM BEACH

Office of the Town Manager

September 16, 2020

Office of the Inspector General
Attention: Stuart A. Robinson
Director of Investigations
Via email – inspector@pbcgov.org

Re: OIG Case Number: 2020-0001

Dear Mr. Robinson,

Please be advised I reviewed the Report for the OIG Investigation 2020-0001 “Johnson Control Billing Issues” in addition to the two recommendations proffered by your office.

The Town of Palm Beach prides itself on outstanding oversight of construction projects, consisting of the Town-wide Undergrounding Project and the new Town Marina to name just two of the many that are awarded with proper oversight.

It was noted for the camera project, that the individual assigned to manage the contract for installation and repairs, did not have the proper credentials as a project manager and was subsequently removed. The Town stands by the statement made by Christopher Salman of JCI that he noted overbilling by JCI.

As to the two recommended corrective actions, please be advised of the following:

1. The Town ensures that its project managers possess the necessary knowledge and qualifications to effectively oversee the projects for which they are responsible. These skills should include the ability to determine what benchmarks trigger payment under Town contracts.

Town Purchasing is engaging Dr. Cliff McCue from FAU to conduct Contract Administration Training for all project managers as well those individuals that may be candidates for project management oversight. This training is being scheduled for zoom training for late October 2020. I have attached the proposed training module to be taught by Dr. McCue. It should be noted that the Town did conduct Contract Administration classes in 2018 to aid individuals assigned to provide oversight and contact administration duties. Town Management strongly agrees that this is an excellent tool. Training can never be underestimated.

2. The Town will ensure its contracts clearly explain billing terms, that all parties managing the contact review and understand the terms, and that they follow those terms when approving invoices

