



**OFFICE OF INSPECTOR GENERAL  
PALM BEACH COUNTY**

**CONTRACT OVERSIGHT NOTIFICATION  
(2012-N-0004)**

**ISSUE DATE: JUNE 11, 2012**

Sheryl G. Steckler  
Inspector General

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*"Enhancing Public Trust in Government"*

**Letter Agreement with Gates Management Group, LLC**

**ISSUES**

Effective January 1, 2012 the Health Care District of Palm Beach County (District), an independent special district operating under authority of Chapter 2003-326, Laws of Florida and the Palm Beach County Charter, entered into an Interlocal Agreement (ILA) with the Office of Inspector General, Palm Beach County (OIG). The ILA provides authority to the OIG for execution of all functions and powers as contained in the Office of Inspector General, Palm Beach County, Florida Ordinance (Article XII, Palm Beach County Code of Ordinances) as to the Health Care District.

Pursuant to its authority, the OIG reviewed a Letter Agreement (Agreement) between the District and Gates Management Group, LLC (GMG) revealing three areas of concern:

1. A negotiated Agreement for program management and facilities development services with a District employee, who was also the managing member of GMG, in lieu of a competitive procurement process;
2. The payment for services performed after expiration of the Agreement; and,
3. The payment for administrative support services when such services do not appear to have been within the Agreement's scope of service.

With regard to concern number 1, the Agreement, dated November 3, 2009, specifies the District's intent to engage the services of GMG to provide "certain program management and facilities development advisory services" in addition to "other general consulting responsibilities as directed by the District Chief Executive Officer (CEO) or his designee." Exhibit A to the Agreement further describes the services as: (1) to provide "professional **program management** (*emphasis added*) and facilities development services to close out the Lakeside Medical Center (LMC) project including but not limited to: directing and managing the close out process for LMC, confer with management and provide technical advice concerning LMC and preparation and attendance at District Board, Finance Committee and Construction Oversight Committee meeting" and, (2) to provide "professional **program management** (*emphasis added*) and facilities development services for future projects including but

not limited to: directing and managing a multi-disciplinary team in the development of plans, goals, objectives, policies and procedures for the construction of those facilities, confer with District management to provide technical advice and preparation and attendance at District Board, Finance Committee and Construction Oversight Committee meetings.” On November 4, 2009, the managing member of GMG, who was a District employee since August of 2006, agreed to the terms and conditions of the Agreement which has an effective date of November 9, 2009 “until or about” November 9, 2010. The managing member of GMG subsequently terminated his employment with the District effective November 6, 2009.

District Purchasing Policy (*ver. 20090101*) Section 3.0, outlines the District’s policy on competitive bidding and allowable exemptions. The policy lists 16 supplies/services that “may be exempt from the competitive bidding process due to the nature of the expense as a professional service, utility or sole source vendor.”

The Agreement clearly identifies the services being performed by GMG as professional program management and facilities development for the LMC and/or future projects. As such, program management and facilities development services do not appear to fall within one of the 16 exempt supplies/services outlined in the District Purchasing Policy.

The District Purchasing Policy in effect at the time of the Agreement (*ver. 20090101*) contemplates utilizing a competitive bidding process after estimating the total dollar amount of purchases for a specific good or service for each fiscal year. For example, estimated purchases between \$2,000 and \$5,000 require a minimum of two verbal quotes; estimated purchases between \$5,001 and \$10,000 require a minimum of two written quotes; estimated purchases between \$10,001 and \$50,000 require a minimum of three written quotes; and finally, estimated purchases in excess of \$50,000 require a formal bid process. For fiscal years 2009/2010 and 2010/2011 the District compensated GMG for services rendered in the amount of \$54,215 and \$53,328, respectively. Therefore, according to the District Purchasing Policy it appears the Agreement should have been procured through a formal bid process.

The second area of concern is the fact that the District paid GMG approximately \$30,000 for services performed during the six-month period after the November 9, 2010 expiration of the Agreement. By its express terms, the Agreement was to be “effective beginning November 9, 2009 and ... in effect until or about November 9, 2010.” The Agreement also specified that any modification or expansion of its scope must be in writing. The OIG is unaware of any written extension of the Agreement to encompass these charges. Nonetheless, the additional charges were apparently never questioned by the District and all invoices were promptly paid.

According to the District’s Account Payable Weekly Check Run procedure (Account Payable Procedure), requests for payments to vendors come in two different forms: (1) an invoice, or (2) a check request. Invoices are for goods and services that were “previously requested through a properly authorized purchase order” by way of the District’s purchase order process. A “check request” is utilized for the payment of

services, subscriptions and one-time vendors when a “purchase order” has been deemed unnecessary. According to the Account Payable Procedure, the following steps are to be completed before a check request is posted into the District’s system for payment:

1. Verify the check request contains the proper authorization(s) including the Chief Financial Officer approval.
2. Verify the correct department number(s) and expenditure account number(s) are used.
3. If not correct, route the check request back to the requestor for action.
4. Place check request with supporting documentation in a batch. Process with the weekly check run.

The Account Payable Procedure does not appear to contemplate situations where the “check request” process is utilized for payment of reoccurring goods and services from vendor pursuant to a contract and therefore the need to verify an expiration date.

Moreover, according to the District’s Purchasing Procedure, (*ver. 200902*) a purchase order is the standard instrument used to procure goods and services and is created by the Purchasing Department. The Purchasing Procedure classifies certain transactions as those that do not necessitate the use of a “purchase order” and provides the following examples: travel expenses, dues and membership fees. Similar to the examples provided in the Account Payable Procedure for payment through the “check request” process, examples in the Purchasing Policy do not appear to be for goods and services obtained by a contract requiring verification of an expiration date. Although the program management and facilities development services provided by GMG do not appear to be similar in nature to the items specified in the Account Payable Procedure or the Purchasing Procedure, payments were processed as a “check request.”

The third area of concern is that certain services were billed and paid for which do not appear to have been within the scope of services specified in the Agreement, which provided:

**“Services.** In close coordination with Health Care District designated personnel, the services required of the Consultant to be performed during this program management and facilities development engagement are:

1. Under the direction of the District’s CEO or his designee, to provide **professional program management and facilities development services** to close out the Lakeside Medical Center (LMC) project including but not limited to: directing and managing the close out process for LMC, confer with management and provide technical advice concerning LMC and preparation

and attendance at District Board, Finance Committee and Construction Oversight Committee meetings. For professional services listed in this Exhibit A(1) the District will pay and Consultant shall accept a fee of **One Hundred Eighty Dollars (\$180.00) per hour**. The maximum amount the District will pay for services set forth in Exhibit A(1) shall not exceed \$36,000.

2. Under the direction of the District's CEO, or his designee, to provide **professional program management and facilities development services** for future projects including but not limited to: directing and managing a multi-disciplinary team in the development of plans, goals, objectives, policies and procedures for the construction of those facilities, confer with District management to provide technical advice and preparation and attendance at District Board, Finance Committee and Construction Oversight Committee meetings. For professional services listed in this Exhibit A(2) the District will pay and Consultant shall accept a fee of **One Hundred Ninety Dollars (\$190.00) per hour.**”

In addition to the services specific in the agreement, the District paid approximately \$1,000 for “administrative support” billed at rates of either \$45.00 or \$50.00 per hour. The Agreement made no provision for such charges.

## RECOMMENDATION

1. The District should adhere to established Purchasing Policies when procuring goods and services, especially when estimated contract amounts would require a formal bid process.
2. Recognizing that approximately \$30,000 was paid to GMG after expiration of the Agreement, the District should amend its Contract Policy and/or procedures to ensure adequate steps and controls are in place regarding amending, monitoring and closing out contracts.
3. Review purchasing policies and procedures to ensure adequate controls are provided for wherein the risk of making payments (such as the \$1,000 for administrative support) without adequate authorization and approval is minimized to the greatest extent possible in a cost effective manner.

## RESPONSE FROM MANAGEMENT

On May 29, 2012, Ronald J. Wiewora, MD, Chief Executive Officer, Health Care District of Palm Beach County, provided the attached response to this Notification wherein the District does not agree with the OIG's recommendations. Specifically, in response to the OIG's recommendations the District states:

1. The budget for the Palm Springs project was approved by the Health Care District Board at the 5/12/10 meeting. This created a budget for Owner's Representative fees. The purchasing policy would not require any further approval after budget approval by the Board.
2. Since the language in the Letter of Agreement said, "shall continue in effect until or about November 9, 2010", the District did not consider November 9, 2010 as the termination date of the agreement.
3. The following clause allowed for billing at the rate of \$190.00 per hour for administrative duties. *"The services shall be provided by Michael J. Gates and/or his designee under his direction."* The District was billed at a much lower rate as agreed to verbally by Mark Knight, then Chief Financial Officer of the Health Care District and Michael J. Gates.

### OIG COMMENTS

The OIG does not agree with the District's assertions. The District's response for failing to competitively bid the Agreement appears to be based upon the verbiage contained in its Purchasing Policy (ver. 20090101), section 3.0 – Policy on Bidding. Specifically it states, *"Those items exempt from the bidding process above will be approved in advance by the District Board through the budgeting process and then during the year by the Chief Executive Officer (i.e., they will not go back to the Board after approval in the budget)."* However, the Purchasing Policy does not include consulting fees for program management and facility development services as items exempt from the competitive bid process.

The District maintains that payments for services provided up to 180 days beyond the "soft" termination date of the 365-day Agreement are authorized. However, if November 9, 2010 was not considered as the expiration date then it is unclear why the Agreement included same, or why the agreement did not specify that termination would coincide with completion of one or more projects.

Finally, the Agreement, which specifies billable rates of \$180.00 and \$190.00 per hour for program management and facilities development services, respectively, does not provide for additional remuneration for administrative services of GMG.

*The Office of Inspector General's Contract Oversight Unit is established to review an organization's procurement and contracting activity. When necessary, reports will be issued to: 1) identify areas and/or instances where activity conflicts with an organization's established policies and procedures, and; 2) recommend improvements that will result in more effective and consistent contracting practices.*





May 29, 2012

Sheryl G. Steckler, Inspector General  
Office of the Inspector General  
Palm Beach County  
P.O. Box 16568  
West Palm Beach, FL 33416

Dear Ms. Steckler,

On behalf of the Health Care District of Palm Beach County, I am providing the following Management Responses to the Contract Oversight Notification on the Letter of Agreement with Gates Management Group, LLC:

1. RECOMMENDATION:

The District should adhere to established Purchasing Policies when procuring goods and services, especially when estimated contract amounts would require a formal bid process.

MANAGEMENT RESPONSE:

The budget for the Palm Springs project was approved by the Health Care District Board at the 5/12/10 meeting. This created a budget for Owner's Representative fees. The purchasing policy would not require any further approval after budget approval by the Board.

2. RECOMMENDATION;

Recognizing that approximately \$30,000 was paid to GMG after expiration of the Agreement, the District should amend its Contract Policy and/or procedures to ensure adequate steps and controls are in place regarding amending, monitoring and closing out contracts.

MANAGEMENT RESPONSE;

Since the language in the Letter of Agreement said "shall continue in effect until or about November 9, 2010", the District did not consider November 9, 2010 as the termination date of the agreement.

3. RECOMMENDATION;

Reviewing purchasing policies and procedures to ensure adequate controls are provided for wherein the risk of making payments (such as the \$1,000 for administrative support) without adequate authorization and approval is minimized to the greatest extent possible in a cost effective manner.



**MANAGEMENT RESPONSE:**

The following clause allowed for billing at the rate of \$190.00 per hour for administrative duties.

*"The services shall be provided by Michael J. Gates and/or his designee under his direction."*

The District was billed at a much lower rate as agreed to verbally by Mark Knight, then Chief Financial Officer of the Health Care District and Michael J. Gates.

Sincerely,

A handwritten signature in purple ink that reads "R. J. Wiewora MD".

Ronald J. Wiewora, MD, MPH, FACP, FACPM  
Chief Executive Officer