



Office of Inspector General
Final Memorandum Report

Assistance Agreement X993795-01
Awarded by EPA to the
Lake Wallenpaupack
Watershed Management District

Report No. 2002-M-00007

January 18, 2002

**Inspector General Division
Conducting the Review:**

**Mid-Atlantic Division
Philadelphia, PA**

Region Covered:

Region 3

Contributors:

**Richard Howard
Matthew Simber
Michael Wall**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL
MID-ATLANTIC DIVISION
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029
(215) 814-5800

January 18, 2002

SUBJECT: Final Memorandum Report:
Assistance Agreement X993795-01 Awarded by EPA to the
Lake Wallenpaupack Watershed Management District
Report No. 2002-M-00007

FROM: Carl Jannetti
Divisional Inspector General for Audit

A handwritten signature in black ink, appearing to read "Carl Jannetti", is positioned above the typed name in the "FROM:" field.

TO: James W. Newsom
Assistant Regional Administrator for Policy and Management

Purpose

As you requested, we are providing you with a report on our findings concerning subject assistance agreement X993795-01. We have discussed these findings with Lake Wallenpaupack Watershed Management District personnel, but did not provide them a written copy or discuss our review results with their engineer.

This memorandum report contains findings that describe problems the Office of Inspector General (OIG) has identified and corrective actions the OIG recommends. This memorandum report represents the opinion of the OIG, and the findings contained in this report do not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Scope and Methodology

During our nationwide audit of procurement procedures used by recipients of U.S. Environmental Protection Agency (EPA) assistance agreements, which is still ongoing, we informed EPA personnel of our concerns regarding the subject agreement. Assistance agreement X993795-01 was 1 of 70 selected for review as part of our stratified random sample of agreements. This report only represents our findings regarding the Lake Wallenpaupack Watershed Management District assistance agreement.

We performed this audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. We reviewed Federal procurement standards provided in Title 40 of the Code of Federal Regulations (CFR), Part 31. We reviewed files of the EPA and the District, and held discussions with EPA and District representatives. This review does not represent a financial audit of the District.

Results

The Lake Wallenpaupack Watershed Management District did not follow Federal procurement procedures when using EPA funds to hire an engineering firm. The District, based in Paupack, Pennsylvania, received \$2.2 million in assistance agreement funds from EPA Region 3 to perform various watershed management tasks. The \$2.2 million included funds to hire an engineering firm. However, we found that the District did not follow federal procurement procedures regarding conflicts of interest and competition when it awarded a \$547,000 contract to the engineering firm of F.X. Browne, Inc. The District awarded a second contract to F.X. Browne for \$360,000 (for a total of \$907,000) also without following federal procurement procedures.

Conflicts of Interest Existed

Due to the events that preceded award of the engineering contract, F.X. Browne should have been precluded from obtaining the contract due to conflicts of interest. The District's application, work plan, budget, and work schedules all displayed that F.X. Browne, and not the District, prepared those documents. Furthermore, the District's Administrator and several members of the District's Board of Directors told us that F.X. Browne:

- Solicited grant funds on behalf of the District;
- Proposed grant projects to the Board of Directors;
- Advised the District to use the "request for qualifications" procurement method for the engineering contract;
- Wrote the request for qualifications advertised in newspapers (for the contract then awarded to F.X. Browne); and
- Wrote both contracts F.X. Browne entered into with the District.

The above clearly represent a conflict of interest, according to 40 CFR § 31.36(b)(3), which states in part that:

No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract

supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such as conflict would arise when the employee, officer or agent . . . has a financial or other interest in the firm selected for award.

By preparing the original application, work plan, budgets, and work schedules for the EPA assistance agreement awarded to the District, F.X. Browne, as an agent of the District, had advance knowledge about the agreement, intended contracts, their amounts, and proposed work schedules and forecasts for subsequent years. The District's actions in giving F.X. Browne the "inside track" compromised the integrity of the contract award and violated EPA regulations.

Correspondence between the EPA grants specialist and project officer, written before the agreement award, expressed concern that F.X. Browne may have written the contract specifications and would be ineligible for the award of the contract. In a July 1998 letter, the project officer advised the District of these concerns. In response the Board of Directors assured EPA that: (1) the District complied with 40 CFR §31.36; (2) F.X. Browne did not write the contract specifications; and (3) F.X. Browne was not on a retainer. However, the first two statements contradict what District personnel told us. Furthermore, while F.X. Browne may or may not have been on retainer, F.X. Browne had acted as an agent for the District, had performed work for the District since 1980, and had been paid by the District for other work.

Inadequate Competition

The District also did not sufficiently seek competition in accordance 40 CFR § 31.36(c)(1), which states in part that:

All procurement transactions will be conducted in a manner providing full and open competition.

The Board of Directors selected F.X. Browne as its consultant on April 13, 1998, the same day submissions of qualifications were due. Considering two submissions were made, we question how a decision could be made so quickly. Also, there was no documentation on the selection process. We asked the District to explain its selection process, and to provide written evidence of its evaluations of the two proposals received. In response, the District's personnel told us that a technical evaluation was not performed; rather, that F.X. Browne was selected by the Board of Directors because they "trusted him" and had been working with the firm since 1980. This was contrary to 40 CFR § 31.36(d)(3)(iii), which requires grantees to have a method for evaluating technical proposals and maintain records evidencing the rationale used to select a contractor.

There was no documentation to indicate the District performed a cost analysis, even though conducting and documenting such an analysis is required by 40 CFR § 31.36(f). As a result, there was no documentation to indicate whether F.X. Browne's proposed contract price was fair and reasonable. Furthermore, an analysis of F.X. Browne's costs should have been performed by the District, followed by a separate negotiation of F.X. Browne's profit, but none of this was done. As a result, the District and EPA have no assurance that they paid a fair and reasonable amount for the services provided by F.X. Browne. Although the District's meeting minutes indicated they received qualifications from two firms, the District could not provide the qualifications documentation submitted by the second firm, let alone documentation indicating that a cost analysis was performed.

We also found the District's advertisements for qualifications to be questionable. According to 40 CFR § 31.36(d)(3)(i), grantees must document and advertise all evaluation criteria and their relative importance. Although the District placed advertisements seeking a consultant in three different newspapers – on April 3, 4, and 9 of 1998 – submissions were required by April 13, 1998, which we did not consider sufficient time. Furthermore, the advertisements informed potential bidders that they must have experience in areas such as water quality studies, stormwater management, public education, and seminars, but did not specify the relative importance of each type of experience evaluation factor, as required by 40 CFR § 31.36(d)(3)(i).

In addition to the initial contract for \$547,000, the District awarded F.X. Browne a second contract, for \$360,000, without any competition. District personnel told us that F.X. Browne wrote the contract and the District signed it, stating they believed it was simply an extension of the original \$547,000 contract. However, the work consisted of new projects that should have been competitively bid.

Other Issues

The District incorrectly used the request for qualifications procurement method for some of the services provided by F.X. Browne, since some of the services were not engineering tasks. These non-engineering tasks were valued at \$140,000 and included presenting seminars, preparing mailing lists, developing brochures, and hosting a golf day and lake awareness day. The 40 CFR § 31.36(d)(3)(v) allows the award of contracts based on qualifications only when engineering services are to be performed. Specifically this reference states in part:

Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected. . . . The method, where

price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

The intent of this regulation was that the non-engineering services should have been procured competitively, since any number of firms could have performed these services. These services were generally administrative, non-technical tasks, and the level of expertise needed to complete these tasks normally would be less expensive than engineering services.

In addition to using the incorrect procurement method, the District paid its engineer almost \$71,000 for the design of “Best Management Practices” without agreeing to the price. This \$71,000 was in *addition* to the \$907,000 already awarded. District personnel told us they did not know that fees for Best Management Practices design were not included in the contract. Furthermore, the District could not provide any basis for the amounts billed.

District Needs to Better Monitor Assistance Agreement

Because the Lake Wallenpaupack Watershed Management District relinquished its management responsibilities to F.X. Browne, it is not a responsible assistance agreement recipient as defined by EPA regulations. Specifically, 40 CFR § 31.40(a) establishes that recipients are responsible for managing the day-to-day operations of assistance agreement-supported activities. Recipients must monitor agreement activities to assure compliance with applicable Federal requirements and that performance goals are being achieved.

Recommendations

We recommend the Region 3 Administrator:

1. Determine if the prices paid by the Lake Wallenpaupack Watershed Management District were reasonable. To accomplish this, Region 3 should require the District to obtain the information required by 40 CFR Part 31. Since it is probably not possible to demonstrate adequate price competition, the procurement of F.X. Browne should be considered under the requirements of 40 CFR § 31.36 (d)(4). If a reasonableness determination cannot be made by cost analysis, then the Region should recover costs of \$978,000 paid to F.X. Browne under assistance agreement X993795-01.

2. Discontinue further payments to the Lake Wallenpaupack Watershed Management District until the concerns raised by this report are resolved.

Region 3 Response and OIG Evaluation

We have summarized the Region's overall comments below, followed by our evaluation of the response. The Region's entire response is included as Attachment 1 to the report.

Region 3 Response

The Region agreed with Recommendation 1 and met with representatives from the Lake Wallenpaupack Watershed Management District on October 24, 2001 to discuss our findings. At this meeting, District representatives agreed to provide the Region cost comparison information to show that costs were customary and reasonable, and did so on November 7, 2001. However, the Region was unable to make a determination based on the information submitted, and requested the District to submit additional information by December 31, 2001. The Region will review this information before making a final recommendation to the EPA Award Official concerning the District's assistance agreement.

Regarding Recommendation 2, the Region stated that the District voluntarily agreed to stop incurring any additional costs on the contracts with F.X. Browne, Inc.

OIG Evaluation

We agree with the actions taken so far by the Region. However, we ask that the Region meet with us to discuss any proposed actions before making a final recommendation to the EPA Award Official.

Action Required

In accordance with EPA Order 2750, you are required to provide a final determination on the findings contained in this memorandum report within 120 days of the report date. Also, please provide an electronic copy of your response to howard.richard@epa.gov. This will assist us in deciding whether to close the report. We would appreciate the opportunity to discuss the Region's position before the determination is issued to the Lake Wallenpaupack Watershed Management District. Please provide us with a copy of the final determination when it is issued.

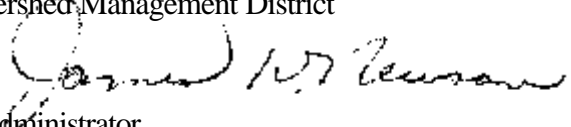
We have no objection to the further release of this report to the public. If you or your staff have any questions regarding this report, please contact me or Richard Howard at (215) 814-5800.

Attachment 1
Region 3 Response to Memo Report

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

November 16, 2001

SUBJECT: Response to draft Memorandum Report Assignment
Number 2000-0013394 for Assistance Agreement
X993795-01 Awarded by EPA to the Lake
Wallenpaupack Watershed Management District

FROM: James W. Newsom 
Assistant Regional Administrator
for Policy and Management (3PM00)

TO: Carl A. Jannetti
Divisional Inspector General for Audit (3AI00)

In reference to the draft memorandum report for Lake Wallenpaupack Watershed Management District (LWWMD) Assistance Agreement Number X993795-01, dated September 27, 2001, EPA Region III is providing the following response to the findings, issues and recommendations.

On October 4, 2001, we mailed a certified letter to Ms. Karen Mandeville, District Administrator, LWWMD, outlining the concerns raised in the draft memorandum report for Lake Wallenpaupack Watershed Management District (LWWMD) Assistance Agreement Number X993795-01, dated September 27, 2001. Specifically, we stated, "The EPA Inspector General's Office conducted a recent review of your procurement practices and has indicated that EPA grant regulations were not followed in LWWMD's award of two large contracts to FX Browne, Inc. According to those regulations, published in 40 Code of Federal Regulations Section 31.36(b) through (i), LWWMD must fulfill certain requirements when soliciting and awarding contracts which are covered with grant funding. These requirements include the following: conducting procurement actions in a manner providing full and open competition; drafting and following written selection procedures for procurement transactions; and performing a cost or price analysis in connection with every procurement action. We are also concerned that the LWWMD has utilized grant funds to pay for services provided by FX Browne, Inc. that are not covered by the contract agreement between LWWMD and FX Browne, Inc. Such action amounts to a new procure--nent. It is important that you contact EPA Project Officer Fred Suffian within 10 working days of the receipt of this letter to set up a meeting with the Region and any other appropriate members of LWWMD's board to discuss this matter,"

We recommended that LWWMD immediately refrain from any future contracting actions and from incurring any additional costs under the grant until all parties have met and resolved the foregoing issues.

On October 10, 2001, R. Anthony Waldron, Attorney for LWWMD responded to our letter; agreed to a meeting and to refrain from any future contracting actions, and from incurring any additional costs under the grant. In addition, LWWMD requested a copy of the draft memorandum report. The report was faxed to LWWMD on October 16, 2001, and a meeting was scheduled for October 24, 2001.

The LWWMD attended the meeting in Philadelphia on October 24, 2001 with three Board members and their attorney Tony Waldron. The Board members in attendance were Mr. Ted Kostige, Chairman; Mr. Bill Bergstresser, Director; and Ms. Karen Mandeville, District Administrator. Those representing EPA included Frank Snock, Wendy Bartel, Denise Harris, Mary Zelinski, Jon Capacasa, Patricia Iraci and Fred Suffian.

Following are specific issues/findings discussed and actions being taken by LWWMD:

Finding: Conflict of Interest Existed After a thorough discussion of the issue, LWWMD agreed to provide a written explanation. LWWMD feels that the appearance of a conflict of interest may have existed but that any information generated by FX Browne, Inc. for LWWMD was available for all interested parties during the bidding process. Ted Kostige, Chairman of LWWMD, assured EPA that the Board of Directors provides clear oversight to all activities of FX Browne, Inc. relating to the grant actions.

Actions being taken:

LWWMD will provide a written description of the roles and responsibilities of the board and of FX Browne, Inc. that led up to the selection of FX Browne, Inc. as the project consultant. LWWMD will respond to the statements that F.X, Browne, Inc. solicited grant funds on behalf of the grantee; proposed grant projects to the board of directors; advised LWWMD to use the "request for qualifications" procurement method for the engineering contract; wrote the request for qualifications; and wrote both contracts FX Browne, Inc. entered into with LWWMD.

Finding: Inadequate Competition During the discussion on this issue, LWWMD stated that a subgroup of the Board reviewed the qualifications statement from the two firms that were received as a result of the newspaper solicitation. LWWMD stated that the subgroup recommended the approval of FX Browne, Inc. and that this decision was made and documented at the Board meeting of April 13, 1998. LWWMD stated that they were unaware that the competitive bidding process was required to secure engineering services and therefore did not have a formal process in place to follow for the selection. They stated that they have a rigorous process in place for the bidding of construction services.

Although LWWMD did not perform a cost analysis they believe that the rates charged by F. X. Browne, Inc. are fair and reasonable. Lastly, LWWMD stated that the first contract could have been amended to include the additional work approved in the amended grant, because of the linkages between the tasks, but for financial tracking purposes they chose to create a second contract.

Actions being taken:

LWWMD will provide documentation of the review and selection process for the primary project consultant to EPA.

LWWMD will provide a copy of their competitive bidding process for construction services to EPA, and has agreed to develop a parallel process for the procurement of professional services for the future.

LWWMD will provide a cost analysis that the fees charged for all engineering services justifying that they were customary and reasonable.

Finding: Incorrectly used the request for qualifications procurement method for some of the services provided by FX Browne, Inc.

LWWMD agreed that some of these services could have been provided by a non-engineering company but they felt that the costs charged for those services were customary and reasonable and the projects and programs were better integrated.

Actions being taken:

LWWMD will provide a cost analysis that the fees charged for all non-engineering services justifying that they were customary and reasonable.

Finding: LWWMD paid for engineering services specifically excluded from the contract and could not provide a basis for the amounts billed.

LWWMD was not aware that this service was excluded from the contract and that a separate procurement procedure was necessary for this aspect.

Finding: LWWMD needs to better monitor grant

LWWMD did not agree with the assertion that they relinquished their management responsibilities to FX Browne, Inc. The Board members stated that they spend considerable personal time overseeing the project work and contracts of the District.

Action being taken:

LWWMD will provide a written description of the roles and responsibilities of the Board and of FX Browne, Inc. that will show that they have not relinquished their management responsibility.

Recommendation:

1. EPA Region III agrees with this recommendation.

LWWMD agreed to provide comparison cost information in order to determine that costs were customary and reasonable. EPA Region III will review the information once received from LWWMD and make a final determination on our option at that time.

2. As stated above LWWMD has voluntarily agreed to stop incurring any additional costs on the contracts with FX Browne, Inc. LWWMD may continue to make payments to construction contracts which were not in the scope of this report.

On November 7, 2001, LWWMD responded to the issues which we discussed during the October 24, 2001 meeting. A substantial package of documentation on these issues is under review by the Region. Once we have completed our review, we will determine what further action is warranted to address the findings and recommendations of this audit.

Distribution

Office of Inspector General

Inspector General (2410)

Region 3

Director, Water Protection Division (3WP00)

Grants and Audit Management Branch (3PM70)