

METROPOLITAN NASHVILLE AUDIT COMMITTEE MEETING MINUTES

February 12, 2019

On Tuesday, February 12, 2019, at 4:00 p.m., the Metropolitan Nashville Audit Committee met in the Metropolitan Courthouse, 2nd Floor, Committee Room 2. The following people attended the meeting:

Committee Members

Brackney Reed, Chamber of Commerce
Charles Frasier, Tennessee Society of CPAs
Jim Shulman, Vice-Mayor
John Cooper, Council Member
Bob Mendes, Council Member
Talia Lomax-O'dneal, Director of Finance

Others

Mark Swann, Metropolitan Auditor
Theresa Costonis, Department of Law
Scott Potter, Metro Water & Sewer
Monique Odum, Parks & Recreation
John Holmes, Parks & Recreation
Mark Sterveuant, Public Works
Sharon Waltstrom, Public Works
Judge Blackburn, General Sessions Court
Warren Hassel, General Sessions Court
CJ Higgins, Kraft CPA
Scott Nalley, Kraft CPA
Gina Pruitt, Kraft CPA
Nan Wen, Office of Internal Audit
Mary Cole, Office of Internal Audit
Seth Hatfield, Office of Internal Audit
Lauren Riley, Office of Internal Audit
Angie Henderson, Council Member
Scott Davis, Council Member

Quorum present? Yes

CALL MEETING TO ORDER

Mr. Brackney Reed called the meeting to order.

APPROVAL OF MINUTES

A **motion** to approve the December 11, 2018, meeting minutes as presented in the Metropolitan Nashville Audit Committee Workbook for February 12, 2019, was made, seconded, and carried.

Fraud, Waste and Abuse Hotline Activity

Revised Investigation Report for Collier Engineering issued January 24, 2019.

Mark Swann stated that a revised report for the Collier Engineering investigation had been released. Mr. Swann then opened the floor for questions.

Council Member Mendes asserted concerns that, in the context of investigative reports, a standard higher than preponderance of evidence is being applied when basing conclusions on various allegations. Investigative reports explicitly state that the preponderance of evidence standard is what is being used when substantiating or unsubstantiating an allegation. Council Member Mendes believes, based on facts presented in the report, that some allegations should be substantiated but are being reported as unsubstantiated. Examples of this in the revised Collier Engineering report include:

- Allegation A asserting Collier Engineering received preferential treatment in exchange for certain Metropolitan employees being improperly entertained and receiving gifts.
- Allegation B alleging projects being awarded to Collier Engineering that was outside the scope of their contracts with the Metropolitan Nashville Government.
- Allegation C alleging invoices being submitted with little to no supporting documentation and being approved only by an employee who was improperly entertained by Collier Engineering. Council Member Mendes advised recent news stories contradicted this being unsubstantiated.
- Allegation H regarding the timeline to which Collier Engineering made mistakes and billed the Metropolitan Government of Nashville for the rework performed. Council Member Mendes advised the timeline shows that Collier Engineering chose to pay for the rework only after it was discovered during the investigation.

Council Member Mendes asserted that based on the facts presented in the report, these allegations should have been substantiated. Council Member Mendes then stated that the Committee should either vote not to accept the report or make individual motions to substantiate the above allegations.

Mark Swann advised the Office of Internal Audit investigated the allegations and came to the conclusion that the preponderance of evidence was not there. Mr. Swann advised that many professional organizations, such as the Association of Certified Fraud Examiners, promote not drawing conclusions on investigations but only to lay out the facts and let the readers of the report draw their own conclusion. Mr. Swann advised the Office of Internal Audit chooses to offer an opinion. Mr. Swann advised that based on his experience in talking to other groups that investigate, half will express opinions and half will not.

Mr. Swann asserted a review of applicable emails did not reveal any impropriety. Mr. Swann advised there had been a material increase in the capital spending on paving and sidewalks. Collier Engineering was one of the firms that had a contract in this area. Mr. Swann advised that before the inappropriate entertainment took place, the initial contract estimate for \$20 million had already been expended. There was a need to increase monies spent in this area. Mr. Swann advised these were indefinite delivery, indefinite quantity contracts. Mr. Swann advised when he first started; values were not even assigned to these contracts. Amounts spent were controlled by budgetary constraints. In this case, the available budgeted amounts were present.

Mr. Swann then discussed the scope of work related to the contract. Mr. Swann advised that the related services section, as well as the description of services requested in the Request for Quote, led him to believe that the work completed did relate to the contract. Mr. Swann also stated that two different professional Purchasing Agents approved the scope of work in the applicable purchase orders. The Director of Public Works also felt the work conformed to the scope. Mr. Swann advised Collier Engineering also did not create a new billing schedule on the new scope of work. Mr. Swann also advised that it was his understanding respondents proposals, request for quotes are incorporated as part of the body of the contract. Consequently, the intent was for Collier Engineering to be potentially completing sidewalk work or it would not have been mentioned in the request for quote.

Mr. Swann advised the reasons above were the basis for his view of the report.

Council Member Cooper advised that the standard used to determine substantiated or unsubstantiated was too high. The public trust required a lower standard. Moreover, the investigations should have included the billing cycle given the recent news reports. Council Member Cooper advised there were still a large number of questions related to Collier Engineering. Mark Swann advised there were no specific allegations related to billing at the time of the investigation other than there was insufficient documentation. A review of billings revealed a large amount of supporting documentation. A separate consulting engagement by an independent CPA firm stated that controls were in place at Collier Engineering and employees were being billed at the correct rate.

Ms. Talia Lomax-O'dneal discussed the various reviews going on surrounding Collier Engineering and what the next steps should be. Ms. Lomax-O'dneal advised the Mayor's Office has given her department a directive not to pay Collier Engineering for 30 days. All invoices in their queue have been downloaded and are being evaluated. Moreover, additional work may be requested by the Chief Compliance Officer.

Council Member Mendes advised the work of the Committee, and the work of the Chief Compliance Officer should coincide. Council Member Mendes also suggested having a meeting sooner than what would normally be scheduled to meet with the Chief Compliance Officer.

Mr. Fraizer talked about the allegation that was substantiated relating to the appearance of a conflict of interest. Mr. Fraizer advised that in the accounting/auditing world, there is really no distinction between appearance and outright conflict of interest in fact. Mr. Fraizer stated that the allegation being substantiated was significant and a serious matter. Mr. Fraizer suggested that it should be considered in reviewing the report.

A **motion** to not accept the investigative report at this time and to schedule a special meeting with the Chief Compliance Officer regarding the Collier Engineering investigation was made, seconded, and carried.

Metropolitan Nashville Public Schools Procurement Matters Investigation Report issued February 7, 2019.

Mark Swann advised an investigation report related to the Metropolitan Nashville Public Schools related to various procurement issues had been released and opened the floor for any questions.

Council Member Mendes advised given the 69-page length of the report and the fact that the report was issued a couple of business days ago, the report should not be accepted at this time until more time could be given to review it. Council Member Mendes suggested placing the report on the agenda for the next meeting.

Council Member Mendes did comment on allegations F, G and H. Specifically, the facts presented in each allegation support a conclusion of substantiated as opposed to unsubstantiated. Council Member Mendes went through each allegation stating that the facts state each allegation did occur and was only corrected when the wrongdoing was discovered by the audit. Council Member Mendes stated this seems to be a systemic, incorrect application of the preponderance of evidence standard.

A **motion** to not accept the investigative report at this time to give the Committee time to review the report was made, seconded, and carried.

New Business

Discussion on request received from Council Member Vercher for an audit of certain architecture and/or engineering firms which conduct significant levels of business with the Metropolitan Nashville Government.

Note: Mr. Brackney Reed advised he had a conflict of interest with this agenda item. Accordingly, Mr. Reed recused himself from any discussion related to the topic. Mr. Reed turned the meeting over to Vice-Chairman Charles Fraizer.

Mr. Fraizer advised a request had been made by Council Member Vercher to take a look at architecture/engineering firms who do a significant amount of business with the Metropolitan Nashville Government.

Talia Lomax-O'dneal stated that there were other architecture/engineering firms not listed that should be added to the list. Ms. Lomax-O'dneal further advised that a scope of services should be determined. Ms. Lomax-O'dneal also suggested that the audit be completed by an outside entity. Council Member Mendes concurred.

Mr. Fraizer advised the request specifically ask for an audit. Mr. Fraizer advised the definition of an audit can be ambiguous and that this would be more like an Agreed-Upon Procedures. Ms. Talia Lomax-O'dneal concurred.

A **motion** for Ms. Talia Lomax-O'dneal to work with Mr. Swann to review Council Member Vercher's request and generate a potential scope of work before the next audit committee meeting was made, seconded, and carried.

Discussion on the draft Memorandum of Understanding between the Metropolitan Nashville Board of Public Education and the Metropolitan Nashville Audit Committee.

Mr. Mark Swann stated the Metropolitan Nashville Board of Public Education had discussed the possibility of adding two additional internal auditors to the Office of Internal Audit's staff. These auditors would be dedicated exclusively to the Metropolitan Nashville Public Schools and would be managed by the Office of Internal Audit. A memorandum of understanding was being reviewed by the Budget and Finance Committee of the Metropolitan Nashville Board of Public Education.

Mr. Brackney Reed asked when this would start. Mr. Swann advised potentially fiscal year 2020. Mr. Brackney Reed inquired if audits would still need to be approved by the Committee. Mr. Swann advised yes.

Mr. Fraizer clarified the cost would be approximately \$115,000 per auditor and inquired if this would be paid out of the Metropolitan Nashville Public Schools budget. Mr. Swann advised yes. Ms. Talia Lomax-O'dneal and Council Member Mendes inquired if there would be a point person from Metropolitan Nashville Public Schools or an audit committee of the Metropolitan Nashville Board of Public Education. Mr. Swann advised those are details that needed to be worked out.

Council Member Mendes asked if the Office of Internal Audit had adequate supervisory resources to manage two additional auditors and work. Mr. Swann advised potentially, yes.

Council Member Cooper asked what percentage of audit work had been dedicated to Metropolitan Nashville Schools in the past. Mr. Swann advised eight audits had been conducted over a ten year period including a comprehensive audit in 2015. Council Member Cooper inquired if the Office of Internal Audit would still be able to audit Metropolitan Nashville Public Schools in addition to the two additional auditors. Mr. Swann advised yes. Mr. Swann advised if the Committee viewed the risk significant enough. He could assign all ten auditors currently on staff to the Metropolitan Nashville Schools, in theory.

Discussion on the audit of the General Sessions Traffic Court issued January 28, 2019.

CJ Higgins with Kraft CPA summarized the scope, observations, and recommendations of the report.

Council Member Mendes inquired about the cooperation received from the General Sessions Court during the engagement. Mr. Higgins advised they were cooperative. Council Member Mendes acknowledged Judge Blackburn's request for the audit.

Council Member Cooper inquired how the fraud was discovered. Mr. Higgins advised that an employee within the General Session's Court discovered the fraud. Judge Blackburn stated that this employee noted a material decrease in receipts for the Traffic School. This employee then worked on her own time in determining that a potential fraud was committed at which point she contacted management.

Mr. Higgins advised the fraud scheme was a function of the manipulation of fee waivers signed by various Judges. Specifically, false waiver forms were being forged by the person committing the fraud. The audit revealed several control deficiencies that the General Session Court has subsequently addressed.

Council Member Cooper inquired if employees, such as the one who discovered the fraud, were rewarded to encourage such behavior. Judge Blackburn advised she was not aware of any. Judge Blackburn did state that the response from other employees towards the employee who discovered the fraud was astonishingly negative. Council Member Cooper advised that having a reward program should be considered.

Vice-Mayor Shulman asked how long the fraud had taken place. Judge Blackburn advised at least five years. A new computer system was put in place five years ago, and it was not possible to look at records prior to the implementation of the new system.

Discussion on the audit of the Follow-Up for the ITS Radio Communications issued January 24, 2019.

Mr. Swann advised a follow-up report has been issued for the ITS Radio Communications. Mr. Swann advised this is a confidential CJIS report. This report was submitted to Council Member Mendes who has CJIS clearance. Mr. Swann advised eighteen of the twenty recommendations had been implemented. The other two were delayed due to the Federal Government shutdown.

Discussion on the audit of Parks and Recreation Wave Country Operations issued December 28, 2018.

Seth Hatfield summarized the scope, observations, and recommendations of the report.

Discussion on the Follow-Up Audit of the Short Term Rental Permitting Process issued February 1, 2019.

Mr. Swann advised a follow-up report had been issued for the Short Term Rental Property audit. Mr. Swann advised 6 of the 12 audit recommendations had been implemented, 4 were outstanding, and 2 were no longer applicable.

Council Member Mendes inquired if the Codes and Building Safety Office appeared to be making progress. Mr. Bill Walker advised yes. Mr. Walker advised that the primary risk in the process that related to verification of owner-occupied status was still present. Host Compliance focuses on the identification of Short Term Rental locations operating without a permit but the ability to identify operators violating owner-occupied status is challenging. Codes and Building Safety does have some controls to help mitigate the risk and are looking for ways to improve those controls.

Discussion on the Register of Deeds audit issued January 24, 2019.

Nan Wen summarized the scope, objectives, and recommendations for this audit.

Council Member Mendes inquired about recommendations F1 and F2 which were rejected by management. A discussion ensued over "Net of Fees" offices and how they work. Mr. Swann advised the primary objective of the recommendation was for the Register of Deeds to become more transparent by using Metropolitan Nashville Government systems. The Register of Deeds interpretation of the Tennessee Code is that they are required to operate "Net of Fees" while the Office of Internal Audit's interpretation was that it is optional.

Council Member Mendes suggested there be clarity on whether this is something the Register of Deeds chose not to do or is it something they are prohibited from doing.

Action Item: Mr. Swann advised he would follow up with the Department of Law to ascertain if the Register of Deeds is required to operate "Net of Fees" or is it discretionary.

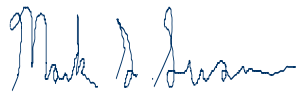
Discussion on the Office of Internal Audit Recommendations 2019 Annual Work Plan.

Council Member Mendes needed to leave the meeting. It was requested to move the approval of the 2019 Annual Work Plan to the next meeting.

The next meeting is to be scheduled for March 12, 2019, at 4:00 p.m.

The public meeting adjourned after approximately 1 hour and 21 minutes.

The minutes for the February 12, 2019, Metropolitan Nashville Audit Committee meeting are respectfully submitted.



Mark Swann
Secretary, Metropolitan Nashville Audit Committee

Approved by the Metropolitan Nashville Audit Committee on March 12, 2019.