




# Memorandum

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To: Mr. George Burgess, County Manager

From:  Christopher Mazzella, Inspector General

Date: September 28, 2006

Subject: OIG Final Audit Report of the Professional Services Agreement Between OWM and EAS Engineering, Inc.; Ref. IG06-08A

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Attached please find the Office of Inspector General's (OIG) Final Audit Report of EAS Engineering, Inc., a participating firm in the Miami-Dade Equitable Distribution Program (EDP). Our audit found that EAS improperly acted as a 100 percent pass-through for LLW Consultants, LLC—a non-EDP firm.

As required by the County Code, a draft version of this report was issued to the two subject firms (EAS and LLW), to the former Office of Water Management Water Resources Manager and to the Office of Capital Improvements (OCI). We have received responses from all four parties, which are included as part of this final report. They can be found as Appendix A-D. We have carefully reviewed all the responses and have prepared summaries and rejoinders to each which begin on page 14 of the report.

Other than adding a conclusion and recommendation to the final report (page 16), no other material changes have been made to the report. As our sole recommendation is for OCI to consider pursuing administrative actions against the subject firms, **we kindly request to be provided with a status report in 60 days, on or about December 1, 2006, as to the action(s) pursued.**

CC: Mr. Roger Carlton, Assistant County Manager  
Mr. Roger T. Hernstadt, Director, Office of Capital Improvements  
Mr. Carlos Espinosa, Acting Director, DERM  
Ms. Marsha E. Jackman, Director, Department of Business Development  
Ms. Cathy Jackson, Director, Audit and Management Services Department  
Mr. Charles Anderson, Commission Auditor

Clerk of the Board (copy filed)

**MIAMI-DADE COUNTY**  
**OFFICE OF THE INSPECTOR GENERAL**



**FINAL AUDIT REPORT**

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**Miami-Dade County Office of Water Management**  
**Equitable Distribution Program**  
*Professional Services Agreement*  
*Between OWM and EAS Engineering, Inc.*

**IG06-08A**

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September 28, 2006

MIAMI-DADE OFFICE OF THE INSPECTOR GENERAL  
Final Audit Report Re: Office of Water Management (OWM)  
*Professional Services Agreement Between OWM and EAS Engineering, Inc.*

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## INTRODUCTION

The Office of the Inspector General (OIG) performed an audit of the professional services agreement (PSA) between the Miami-Dade County Office of Water Management (OWM) and EAS Engineering, Inc. (EAS). The purpose of this OIG audit was to examine how this agreement came about, its scope and the actual services provided, and to determine whether adequate documentation supported the amounts paid under the agreement.

Miami-Dade County (County) procured EAS's services under its Equitable Distribution Program (EDP), which is administered by the County's Office of Capital Improvements (OCI). The County created OWM in June 2001 and later dissolved the office in October 2005, after the head of the Office resigned. OWM's responsibilities have since been transferred to the Department of Environmental Resources Management (DERM). OWM had a contract with EAS but after contract funds were depleted in late 2005, LLW Consultants, LLC (LLW), an undisclosed sub-consultant under the EAS agreement, contacted DERM and expressed an interest in continuing its services. At that time, DERM reviewed the contract circumstances, and after consulting with the County Manager's Office, asked that the OIG conduct an independent review of the situation.

## SUMMARY

The agreement between OWM and EAS was, in fact and effect, a 100 percent pass-through for an unallowable and unauthorized consultant—LLW. Nowhere in the EAS procurement documents was LLW identified as a service provider or sub-consultant, albeit, that LLW was the actual and intended service provider. Additionally, LLW did not have a written sub-consultant agreement with EAS; instead, the agreement that LLW would do 100 percent of the work and receive 100 percent of the money was based merely on verbal assurances. Moreover, LLW had begun providing services to the County even before OWM formally requested EDP services from OCI; and when it did, OWM handpicked EAS from a list of eligible EDP consultants without any competitive selection. OWM did not prepare any records that documented the factors that it considered when making its determination that EAS was the most qualified firm to provide the desired services. EAS acknowledged to OIG auditors that it provided no services under its contract with the County, other than to process LLW's payments. Moreover, evidence suggests that EAS was aware of the fact that LLW would be providing the desired services even before it had signed the first service order, under the EDP PSA.

MI-DADE OFFICE OF THE INSPECTOR GENERAL  
Final Audit Report Re: Office of Water Management (OWM)  
*Professional Services Agreement Between OWM and EAS Engineering, Inc.*

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In addition, EAS attached to its payment applications incomplete Monthly Utilization Reports (MUR), which failed to identify LLW as the sub-consultant provider of services. The MURs showed that EAS did not utilize any sub-consultants. However, in response to the draft report, EAS provided the OIG with an updated Final Utilization Report which unambiguously reveals that LLW received 100 percent of the money under this agreement.<sup>1</sup>

The irregularities reported on in this audit are “process” or procedural issues not performance issues. There is no evidence of any enrichment to any one party or individual for work not performed, that the work performed was substandard or was nonessential, or that the service provider was in any way not competent to do so. Even so, this arrangement was highly irregular and improper.

**TERMS USED IN THIS REPORT**

County	Miami-Dade County
CSOP	Combined Structural & Operating Plan
DBD	Department of Business Development (County)
DERM	Department of Environmental Resources Management (County)
EAS	EAS Engineering, Inc.
EDP	Equitable Distribution Program
LLW	LLW Consultants, LLC
MUR	Monthly Utilization Report
OCI <sup>2</sup>	Office of Capital Improvements (County)
OIG	Office of the Inspector General
OWM	Office of Water Management (County)
PSA	Professional Services Agreement
The Corps	US Army Corps of Engineers

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<sup>1</sup> The amount actually paid to EAS and, thereby, passed to LLW was \$114,730.16, which includes the ¼ of 1% deduction of the IG contract fee.

<sup>2</sup> Formerly known as CICC, or the Office of Capital Improvements Construction Coordination.

## DEPARTMENT/PROGRAM/AGREEMENT OVERVIEW

### *OWM*

The County established OWM in June 2001 to assist with the enhancement of the County's water management system. OWM was a "policy" office that provided centralized coordination and policy support to the County Manager by organizing, monitoring and analyzing the County's position on vital issues, such as flood control, Everglades restoration, water supply and water conservation. OWM also served as the County's liaison to several agencies, including the South Florida Water Management District, the United States Army Corps of Engineers (Corps) and the Florida Department of Environmental Protection. Two individuals staffed OWM—the office head, whose title was Water Resources Manager, and an assistant. The County dissolved OWM in October 2005, when the head of the office resigned. At that time, the County transferred OWM's functions to DERM, including acting as the County's representative on the CSOP Advisory Team.

### *Combined Structural & Operating Plan (CSOP) Advisory Team*

The South Florida Ecosystem Restoration Task Force chartered the CSOP Advisory Team in October 2003 to assist with providing recommendations to the Corps during the development of CSOP.<sup>3</sup> The Advisory Team includes various representatives from federal, state and local governments, tribal nations and non-governmental entities. OWM's Water Resources Manager was the County designated representative. The CSOP Advisory Team objectives include providing consensus recommendations to the Corps and maintaining a balanced forum for various parties to address issues that may arise during the development of CSOP.

### *The CSOP Advisory Team Professional Services Agreement*

When the CSOP Advisory Team was established in October 2003, OWM's Water Resources Manager was appointed as the County's CSOP Advisory Team Representative. Since OWM's staff was limited to the Water Resources Manager and an assistant, he sought outside expertise to support his and the County's participation in CSOP. On January 23, 2004, the Water Resources Manager requested OCI to furnish the names of qualified engineering firms through OCI's EDP pool to provide consulting/advisory services to the County, in support of its role as a member of the

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<sup>3</sup> CSOP is a combination of two restoration projects, the Modified Water Deliveries to the Everglades National Park (Modified Water) Project and the Canal-111 Project.

MI-DADE OFFICE OF THE INSPECTOR GENERAL  
Final Audit Report Re: Office of Water Management (OWM)  
*Professional Services Agreement Between OWM and EAS Engineering, Inc.*

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CSOP Advisory Team.<sup>4</sup> In February 2004, OCI provided the names of three firms, including EAS, to OWM. OWM selected EAS as the consultant to provide desired services to the County.

The scope of the PSA was for the consultant to assist the County by providing monthly consultation on legal and policy matters related to CSOP.<sup>5</sup> The consultant was also supposed to be responsible for developing position papers and briefing documents, as well as reviewing and preparing materials for the Advisory Team meetings. OWM issued the first (of three) service orders under the agreement in April 2004, valued at \$50,000.<sup>6</sup> The service order period of performance was never stated, although there was a statement that "The firm [EAS] guarantees this fee until November 30, 2004." Neither of the two later issued service orders contained specified periods of performance or service end dates.

The agreement with EAS eventually comprised three service orders amounting to \$115,000 issued between April 2004 and September 2005. (See Table No. 1) In October 2005, when the then Water Resources Manager left County employment, OWM's responsibilities were transferred to the County's Department of Environmental Resources Management (DERM).

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<sup>4</sup> EDP is an acronym for the County's *Equitable Distribution Program*. "The EDP objective is to procure and distribute A&E continuing contract work assignments as defined in Florida Statutes, Section 287.055, for County departments and agencies among all pre-qualified and interested firms. The EDP shall be the County's standard method to obtain such services, unless exempted in writing by the County Manager." (Miami-Dade County Administrative Order 3-39, *Standard process for construction of Capital improvements, acquisition of professional services, construction contracting and reporting*.) The EDP provides the County with a pre-qualified pool of architectural and engineering firms for miscellaneous projects that do not exceed \$1 million in construction costs and \$50,000 for study activities. Any qualified firm can participate in the EDP. The EDP is not associated with any minority or small business programs.

<sup>5</sup> LLW, Consultants, LLC is the consulting branch of the law firm Lewis, Longman & Walker, P.A. Attorneys at Law. As providing some form of legal services (memoranda, position papers, etc.), it is altogether questionable whether this type of professional service could have been procured under the framework of the EDP. As this audit did not evaluate the final work products submitted to the County, we do not address whether LLW could have been an EDP participant, but to highlight only that in this case it was not.

<sup>6</sup> OWM issued Service Order 2, totaling \$40,000, in March 2005 and Service Order 3, totaling \$25,000, in September 2005.

MIAMI-DADE OFFICE OF THE INSPECTOR GENERAL  
Final Audit Report Re: Office of Water Management (OWM)  
Professional Services Agreement Between OWM and EAS Engineering, Inc.

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**TABLE NO. 1 Service Order Amounts and Payments**

Service Order No.	Service Order Executed Date	Service Order Period of Performance	Service Order Amount	Service Order Amount Paid <sup>7</sup>
1	April 8, 2004	None Stated	\$50,000	\$50,000
2	March 24, 2005	None Stated	\$40,000	\$40,000
3	September 30, 2005	None Stated	\$25,000	\$25,000
<b>TOTALS</b>			<b>\$115,000</b>	<b>\$115,000</b>

**OIG'S JURISDICTIONAL AUTHORITY**

In accordance with Section 2-1076 of the Code of Miami-Dade County, the Inspector General has the authority to investigate county affairs and the power to review past, present and proposed County and Public Health Trust programs, accounts, records, contracts and transactions. The Inspector General has the power to analyze the need for, and the reasonableness of, proposed change orders. The Inspector General is authorized to conduct any reviews, audits, inspections, investigations or analyses relating to departments, offices, boards, activities, programs and agencies of the County and the Public Health Trust.

The Inspector General, on a random basis, may perform audits, inspections and reviews of all County contracts. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review the operations, activities and performance and procurement process including, but not limited to, project design, establishment of bid specifications, bid submittals, activities of the contractor and its officers, agents and employees, lobbyists, and of County staff and elected officials in order to ensure compliance with contract specifications and detect corruption and fraud. The Inspector General shall have the power to review and investigate any citizen's complaints regarding County or Public Health Trust projects, programs, contracts or transactions. The Inspector General may exercise any of the powers contained in Section 2-1076, upon his or her own initiative.

The Inspector General shall have the power to require reports from the Mayor, County Commissioners, County Manager, County agencies and instrumentalities, County officers and employees and the Public Health Trust and its officers and employees regarding any matter within the jurisdiction of the Inspector General.

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<sup>7</sup> The amount actually paid was less the ¼ of 1% IG contract fee.



## OBJECTIVES, SCOPE AND METHODOLOGY

The purpose of this OIG audit was to examine how this agreement came about, its scope and the actual services provided, and to determine whether adequate documentation supported the amounts paid under the agreement. The audit scope period ranged from January 2004 to October 2005.

OIG audit procedures included reviewing the PSA, OWM's CSOP files, EDP policies and procedures, as well as County procurement procedures and guidelines. We reviewed all payment requests/invoices and supporting documentation submitted by EAS with its invoices. The OIG auditors interviewed several County personnel including employees from DBD, DERM and OCI. We also met with the former Water Resources Manager and with EAS and LLW representatives to gain an understanding of their participation under the agreement, as well as to review their work products and obtain records not included in OWM's files. The OIG auditors also attended a CSOP Advisory Team meeting in April 2006 held at Florida International University.

## FINDINGS

**Finding No. 1      Arrangements coordinated by OWM allowed the circumvention of Miami-Dade County procurement regulations resulting in a 100 percent pass-through where an unnamed, unauthorized sub-consultant provided services, totaling \$115,000.**

OWM coordinated with a sub-consultant and a willing County-approved consultant to circumvent County procurement regulations. The OIG is not objecting to OWM's need for services or the sub-consultant's performance under the signed agreement. The OIG, however, strongly objects to OWM's steering of this work to an unnamed and unauthorized consultant. The OIG also strongly objects to the "named" firm's complicity in participating as a front, which thereby became the vehicle in which to compensate the unnamed firm. Unknown to those responsible for monitoring EDP participation, LLW Consultants (LLW) was the beneficiary of the OWM—EAS agreement.

The head of OWM had handpicked LLW to provide the services. As a result, the County's contract with the named consultant, EAS Engineering, Inc. (EAS), was nothing more than a sham agreement. EAS was to do nothing more than to receive LLW invoices, "repackage" them as EAS invoices, submit them to the County, receive County payments and remit the funds to LLW. That the contract showed EAS as the entity providing the desired services was irrelevant—LLW performed 100 percent of



MI-DADE OFFICE OF THE INSPECTOR GENERAL  
Final Audit Report Re: Office of Water Management (OWM)  
*Professional Services Agreement Between OWM and EAS Engineering, Inc.*

---

the work and received 100 percent of the monies paid under the agreement, totaling \$115,000. In other words, the contract was a 100 percent "pass-through" to an undisclosed sub-consultant in contravention of County procurement regulations.

The County relies upon its departments to conduct their procurements in accordance with County regulations. These regulations are in place to ensure that the County has a written, enforceable agreement whenever it contracts out for services. A written agreement assigns specific responsibilities to the service provider, while holding the named provider specifically accountable for performing the services. When a department violates this tenet, the County loses this one-to-one relationship and, in the event of nonperformance, may have little or no recourse against the actual service provider. Thankfully, in this case, this did not happen, as the County did receive the desired services. However, this does not excuse the fact that the department obtained such performance under irregular circumstances and a sham agreement.

EAS, the named consultant, first signed an *EDP Pool Continuous Professional Services Agreement*, on March 27, 2003. A.O. 3-39 delineates many criteria that prospective EDP firms must meet prior to being accepted into the program. Thus, a signed agreement indicated that the County had pre-qualified EAS to provide services as a legitimate and responsible business entity. On the other hand, LLW was not an approved EDP consultant.

A.O. 3-39 also imposes certain responsibilities on the user department in the form of procedural requirements to follow when seeking/using an EDP consultant. The County necessarily trusts that the department, in particular a department head, will comply with the guidelines and not ignore them. Apart from A.O. 3-39's prescribed departmental responsibilities, it, in addition, states:

The Office of Capital Improvements Construction Coordination (CICC) shall be responsible for ensuring the consistency, transparency, and integrity of these processes" and that "CICC shall monitor consultant, contractor, and departmental performance on contracts and provide the BCC with reports on responsibility and responsiveness.

In the immediate circumstances, the OIG learned, by way of interviewing the aforementioned involved parties, that OWM had contacted LLW about specific work opportunities before it took action seeking to officially contract for the contemplated services. Information gathered during audit fieldwork indicates that OWM and LLW had already agreed to the work scope by late 2003 and LLW had already begun

MI-DADE OFFICE OF THE INSPECTOR GENERAL  
Final Audit Report Re: Office of Water Management (OWM)  
*Professional Services Agreement Between OWM and EAS Engineering, Inc.*

---

working no later than January 2004.<sup>8</sup> It was not until January 23, 2004 that OWM first contacted OCI about obtaining an EDP consultant. On February 13, 2004, OCI provided OWM with the names of three firms meeting the stated criteria. EAS was one of the named firms.

The OIG obtained from EAS files a copy of LLW's work proposal and fee structure that matched, almost word for word, OWM's Service Order No. 1. Attached to LLW's proposal was an EAS fax cover sheet indicating that EAS had faxed the proposal to OWM on April 7, 2004. In both the Service Order and the proposal, the service provider was referred to as the "firm." The next day, April 8, 2004, EAS signed Service Order No. 1, which had attached to it, in essence, LLW's proposal.<sup>9</sup>

Although the parties have related to us differing accounts, we believe it likely that OWM and LLW together reviewed the named firms and realized that there was a mutually known firm on the list—EAS. We understand from our discussions with the parties involved that it was likely that they thought that EAS would be receptive to the idea of functioning as the official conduit for OWM to obtain and pay for the desired services that were to be provided by LLW. The EAS representative told OIG auditors that he knew that his firm would be nothing more than a conduit but that was no reason not to accept the assignment. Thus, the OIG also believes that the sequence of events leading up to the actual contract award was much more than just a case of when actual activities outpace the paperwork.

That a consultant had a perceived willingness to act as a front and pass-through work and monies to an unnamed party was the apparent criteria that served as the prime determinant for OWM to award the contract to EAS. This questionable basis does not meet the standard prescribed in A.O. 3-39 that states, in relevant part:

The user department shall review the qualifications of the next available prime firms and select the most qualified firm. The selection process may include review of submitted qualifications and telephone interviews. The user department must document the factors utilized to determine the most qualified firm.

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<sup>8</sup> LLW invoices do not always show dates of when it provided services. It is possible that LLW began working sometime in December 2003.

<sup>9</sup> In its response to the draft report, EAS, on this specific issue, writes: "It was the County that redrafted the Scope of Work, without LLW letterhead and attached it to the first work order, not EAS or LLW."

MI-DADE OFFICE OF THE INSPECTOR GENERAL  
Final Audit Report Re: Office of Water Management (OWM)  
*Professional Services Agreement Between OWM and EAS Engineering, Inc.*

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There are no records showing any factors that OWM may have considered in making its determination that EAS was the most qualified firm. The A.O. does not specifically mandate that a “competitive” procurement action take place but it clearly asserts that the user department must perform some form of comparative analysis between two or more firms. Regardless of whether the factors to be analyzed are objective, such as price, or subjective, such as business experience, the onus is the department to document its decision-making process and ultimate selection. The department must produce a record that affirmatively documents that the selected firm is the most qualified firm.

It is not appropriate for a department to use the EDP process as a cover for a non-competitive procurement. In particular, a procurement that included an undisclosed 100 percent pass-through to an unnamed and unauthorized sub-consultant is clearly inappropriate. If OWM believed that LLW was the most qualified firm, it could have used other approved procedures to contract with LLW. Otherwise, OWM could have considered the possibility that another firm (that already was an approved EDP consultant) would be able to provide the desired services.

We believe that OWM’s first contact with EAS occurred shortly before EAS signed the *EDP Assignment and Agreement Form* in April 2004. At no time did OWM or EAS formally disclose in the procurement documents that LLW was to provide the desired services. Neither OWM nor EAS disclosed this fact for the likely reason that LLW was not an authorized EDP provider. EDP guidelines state:

If a prime firm is certified in all of the required technical certification categories, it may perform the required services with its own work force otherwise the prime shall select EDP sub-consultants from the top of the rotation. Upon the firm(s) acceptance of the offer of work assignment, the names of the prime firm and sub-consultants shall be forwarded to CICC [OCI]. (Emphasis added)

Both OWM and EAS choose to ignore the requirement that a sub-consultant must also be an authorized EDP provider for an obvious reason—OWM had already handpicked LLW. In addition, Article 8.04(A) of the EAS/EDP contract states that EAS cannot delegate or assign its performance of the agreed-upon work without the County’s written consent, and such consent will not be given to any proposed delegation, which would relieve EAS of its responsibilities under the agreement. Not surprisingly, there is no written agreement between OWM and EAS authorizing such an assignment or delegation, in part or in total, as is the subject case.

MI-DADE OFFICE OF THE INSPECTOR GENERAL  
Final Audit Report Re: Office of Water Management (OWM)  
*Professional Services Agreement Between OWM and EAS Engineering, Inc.*

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The EAS representative told the OIG that it had to play “catch up” between the dates that LLW began working and invoicing for its services and the dates that EAS signed its agreement and began invoicing OWM. EAS’s first invoice was dated April 22, 2004, or two weeks after signing the service order, showing a service period from March 1, 2004 through March 31, 2004. There is no written agreement or otherwise between the parties that would pass for a formal “notice to proceed” prior to the actual service order signing, in early April 2004. EAS’s first invoice amount to the County was for \$5,000, which, at the time, was the agreed-upon monthly payment. Notwithstanding these dates, LLW’s first invoice, totaling \$5,829.25, dated February 11, 2004, to EAS included references and charges to services provided as early as December 2003.<sup>10</sup> By the date of the first EAS invoice to the County, LLW had submitted invoices to EAS totaling over \$10,000.

EAS, shortly after signing the contract, submitted its first invoice to OWM, dated April 22, 2004, “passing through” the LLW charges without disclosing that very relevant fact and making it appear as if EAS had performed the work. This pattern continued throughout the contract’s duration. Of note, EAS records show that it passed through 100 percent of the monies to LLW. (See also EAS’s Final Utilization Report that was submitted as part of its response to the draft report, Appendix A.) In other words, there is no evidence that EAS charged a mark-up or collected an administrative fee for performing its “services.”

### *Summary*

This is an egregious example of a pass-through arrangement, because in this case the arrangement was facilitated with the participation of the department official directly charged with monitoring the agreement. In addition, as we stated earlier, although the County obtained value for monies expended, the OIG does not believe that the end justified the means. We emphasize that there is no evidence of any enrichment to any one party or individual for work not performed, that the work performed was substandard or was nonessential, or that the service provider was in any way not competent to do so.

The OIG believes that this is a “process” or procedural issue and not a performance issue; however, this fact does not diminish the import of the issue. For the County to function as an effective and efficient custodian of public funds, reasonable guidelines and prudent business practices must be followed by all County employees charged with contracting for services and with approving expenditures. The County must ensure that

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<sup>10</sup> LLW representatives told the OIG that the December 2003 charges, totaling less than \$20, were billed in error.

MIAMI-DADE OFFICE OF THE INSPECTOR GENERAL  
**Final Audit Report Re: Office of Water Management (OWM)**  
*Professional Services Agreement Between OWM and EAS Engineering, Inc.*

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its employees, especially its senior-level department officials, will perform capably and in compliance with all guidelines. There can be no compromise on this premise for obvious reasons.

**Finding No. 2      Material misrepresentations were made on the Monthly Utilization Reports (MUR) concerning who actually performed the work.**

EAS submitted twelve MURs (See Table No. 2) attached to its invoices during the agreement's period of performance; however, not one of the MURs identified LLW as EAS' sub-consultant. The president of EAS, by signing the MUR, certified that no sub-consultant performed any services under the agreement. This individual, during an interview with OIG auditors, admitted that he erred in not completing the MUR accurately. The president stated that he was aware of the form's purpose and that he made a mistake in not showing LLW as a sub-consultant.<sup>11</sup>

The former OWM Water Resources Manager approved all EAS invoices, including those with attached MURs. Of the twelve MURs submitted by EAS, the Water Resources Manager signed-off on ten of them, knowing that they were false, or at best, absolutely incomplete; as nowhere on the MURs was it reported that LLW did any work, or in reality, 100 percent of the work.

**TABLE NO. 2    EAS MUR Approvals By OWM**

<b>EAS Invoice Date</b>	<b>EAS Invoices Approved by OWM</b>	<b>MURs Submitted By EAS</b>	<b>MURs Signed By EAS</b>	<b>MURs Signed By OWM</b>
April 22, 2004	Yes	Yes	Yes	Yes
May 5, 2004	Yes	Yes	Yes	Yes
May 24, 2004	Yes	Yes	No	Yes
June 14, 2004	Yes	Yes	Yes	Yes
June 23, 2004	Yes	Yes	Yes	Yes
July 28, 2004	Yes	Yes	Yes	Yes
August 19, 2004	Yes	Yes	Yes	Yes
December 3, 2004	Yes	Yes	Yes	Yes

<sup>11</sup> In his response, the EAS President states: "Your right, LLW should have been listed as a sub-consultant, but we would have expected the County to make the notation. We would have changed it. We simply are not going to change the way we submit forms (MUR or otherwise) if the bills are getting paid. It takes too long now to get paid from the County because of all the petty changes and revisions requested." As previously noted by the OIG, EAS submitted a Final Utilization Report, which unambiguously shows LLW as receiving all the monies under this agreement.

MIAMI-DADE OFFICE OF THE INSPECTOR GENERAL  
**Final Audit Report Re: Office of Water Management (OWM)**  
*Professional Services Agreement Between OWM and EAS Engineering, Inc.*

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<b>EAS Invoice Date</b>	<b>EAS Invoices Approved by OWM</b>	<b>MURs Submitted By EAS</b>	<b>MURs Signed By EAS</b>	<b>MURs Signed By OWM</b>
January 7, 2005	Yes	Yes	Yes	No
February 7, 2005	Yes	Yes	Yes	No
March 24, 2005	Yes	No	No	No
April 6, 2005	Yes	No	No	No
April 21, 2005	Yes	No	No	No
June 7, 2005	Yes	Yes	Yes	Yes
July 8, 2005	Yes	Yes	Yes	Yes
August 2, 2005	Yes	No	No	No
September 22, 2005	Yes	No	No	No
September 29, 2005	Yes	No	No	No
November 10, 2005	Yes	No	No	No
<b>"YES" TOTALS</b>	<b>19</b>	<b>12</b>	<b>11</b>	<b>10</b>

Article 6.01(D) of the EAS/EDP contract requires that EAS submit a MUR detailing certain information, including the names of any sub-consultant providing contract services during the reporting period and monies paid to them. In this case, EAS should have listed LLW. A LLW representative also should have signed the MUR. It is our belief in the fact that LLW was not an approved EDP service provider may have been why EAS chose not to report LLW's participation.

A.O. 3-39 states user departments should "[c]ollect and submit copies of monthly utilization reports for all awarded professional service agreements to DBD. Project invoices may be held if monthly utilization reports are not current." For EDP agreements, A.O. 3-39 adds:

EDP firms issued a service order shall be required to submit utilization reports to the user department on all new and existing County contracts, including new work authorizations issued after the effective date of the EDP continuing contract.

Notwithstanding the A.O. and contract requirements, OCI's EDP procedures fail to require EDP consultants to submit MURs. The OIG also spoke with OCI and Department of Business Development (DBD) officials who both confirmed that they are not requiring the submission of MURs.<sup>12</sup> The OIG emphasizes, however, that these departmental program procedures cannot override A.O. requirements.

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<sup>12</sup> This appears to be a recent change in County position. When DBD first notified EAS that it had been approved for participation in the EDP, via a letter dated June 21, 2002, DBD

MI-DADE OFFICE OF THE INSPECTOR GENERAL  
Final Audit Report Re: Office of Water Management (OWM)  
*Professional Services Agreement Between OWM and EAS Engineering, Inc.*

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Instead, these officials stated that an *EDP Closeout Report* that is jointly prepared by the consultant and the user department after work completion is the required reporting. The EDP requirement, for this report, is that:

The Close Out form is required to be completed when the services are completed and acts as the project Utilization Report (UR) . . . Please note that UR's are not currently required for EDP services . . . At the completion of the PSA, the final UR . . . must be completed and executed by all required parties.

Notwithstanding, the A.O. 3-39 requirements for an *EDP Closeout Report* are stated as:

Simultaneous with the completion of the service order and submittal of final payment request, the user department shall forward to CICC the EDP Closeout Report and the performance evaluation.

County files did not contain *EDP Closeout Reports* for any of the EAS service orders, as required by A.O. 3-39. Furthermore, EAS did list LLW as its sub-consultant on its *Work History Disclosure Supplement Form*, dated May 28, 2004, that it filed with DBD.<sup>13</sup> Firms interested in participating in the EDP must provide to DBD this required form. This EAS reference to LLW is the only instance wherein EAS recognized a relationship to LLW in a formal submission to the County. The 2004 submission, however, does not pass as an adequate disclosure of LLW's participation under the subject agreement.

### *Summary*

Albeit, the two County departments (OCI and DBD) may have their own interpretations (as published in their program procedures guidelines and disclosed to the OIG) of what documentation is required supporting a consultant's payment requests, the A.O. and contract clearly state that it is the EDP consultant's responsibility to submit MURs. The fact that EAS did submit MURs supports the more authoritative requirements contained in the A.O. and contract. Thus, EAS was obligated to prepare them completely and accurately in accordance with the requirements, as stated on the form.

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informed EAS "Please be reminded that as a participant in the Equitable Distribution Program, your firm is required to submit monthly utilization reports on all active County projects." The more recent DBD/OCI positions and procedures conflict with this earlier statement.

<sup>13</sup> This is a DBD-required form that should be completed by County consultants. Thereafter, the County (DBD) tracks the consultant using MURs or the *Closeout Report*.

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The requirements were for EAS to report specified data, including all sub-consultants performing services and amounts paid to the sub-consultants. An important requirement was to have the sub-consultant sign the form. EAS did not meet these requirements despite knowing that by not doing so, it was misrepresenting material information about the firm that was providing and being paid for services under the contract. Furthermore, the Water Resources Manager signed-off on, thereby accepting, the misrepresented MURs when he clearly knew that a sub-consultant, LLW, was in actuality providing the services claimed by EAS—an arrangement that he helped fashion.

### ***SUMMARIES OF RESPONSES AND OIG REJOINDERS***

#### ***OIG Rejoinder to EAS's Response (Appendix A)***

EAS attributes its problems to the fact that “The County is complex entity to conduct business with. Each Department (and sometimes sections within Departments) does things differently. We learned long ago not to argue with the process.”

The OIG acknowledges that there is a degree of accuracy in the comment that County departments handle similar transactions differently. This, however, does not excuse EAS's active participation in this type of procurement—a 100% contract to a sub-consultant—and then not adequately disclosing the sub-consultant's role.

EAS concludes its response by stating, “Fix the process within the County but don't make us look like bad guys for providing excellent service to the County.” The OIG wonders what this “excellent service” was. For this \$115,000 total engagement, EAS did not provide any professional services to the County. Yet, but for this audit, EAS would have been credited—for EDP past performance purposes—with \$115,000 worth of County work. The only service provided here was an administrative service of passing through invoices and payments.

#### ***OIG Rejoinder to LLW's Response (Appendix B)***

LLW submitted a lengthy document, most of which is irrelevant to the audit issues. This is not surprising given what it said in the last sentence of the response's first paragraph: “These [LLW's] comments do not address the County's process and procedures relative to this scope of services.” Thus, LLW comments are, for the most part, clarifications including how it thought the OIG should have described the scope of contract services, what a wonderful job LLW did in providing the services and the OIG's choice of words.

MI-DADE OFFICE OF THE INSPECTOR GENERAL  
Final Audit Report Re: Office of Water Management (OWM)  
*Professional Services Agreement Between OWM and EAS Engineering, Inc.*

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LLW does point out one statement made by the OIG in its report that it believes is misleading (see LLW response section titled **Page 1, Introduction**). The OIG agrees with LLW and has revised the wording. LLW also objects to the term used by the OIG in the title to **Finding No. 1**, which we have since revised. Another OIG statement that we agree with LLW may be misleading (“under a guise of a legitimate need for services”) has also been clarified in this final report.

Notwithstanding our concurrence with LLW as to these specific terms, LLW’s response to the draft report shows it still does not “get it.” As stated several times in our report, the audit’s main issue is a “process” issue not a performance issue. The audit did not address—nor did it attempt to address—LLW’s actual performance and the quality of its work product. The OIG would also like to make clear that it understands that LLW was an outwardly visible member of the County’s team and that it worked openly with other county staff (e.g., DERM and other members of the County Manager’s Office). However, these others had no idea about the true nature of LLW’s official relationship, or more appropriately, lack of official relationship. LLW’s relationship was based on appearances and verbal assurances, not on an agreement with the County. Moreover, OWM’s receipt of a LLW-submitted proposal, does not, in and of itself, establish a formal contractual relationship between the county and LLW or establish LLW as an authorized County consultant.

***OIG Rejoinder to the former Water Resources Manager’s Response (Appendix C)***

The former Water Resources Manager states he was aware of the fact that LLW was to perform the work under the subject contract and, thus, the “County” was aware of the fact. This, however, does not explain why he did not disclose or cause to be disclosed in the county’s official procurement and payment records LLW’s participation as the sole provider of services under the EAS agreement. The former Water Resources Manager attributes some blame to the fact that he “was never trained in the County’s procurement procedures.” A lack of training, however, does not explain why a senior county official conducted this procurement in the manner described. In addition, he signed the *Monthly Utilization Reports* submitted by EAS knowing that they omitted any reference to LLW’s participation.

***OIG Rejoinder to OCI’s Response (Appendix D)***

OCI devoted much of its response to making technical statements about EDP procedures or corrections regarding some of what the OIG stated in its report. One correction, in particular, was that a written sub-consultant agreement is not required. The OIG agrees. Our point was that LLW undertook performing these services without

1 MI-DADE OFFICE OF THE INSPECTOR GENERAL  
Final Audit Report Re: Office of Water Management (OWM)  
*Professional Services Agreement Between OWM and EAS Engineering, Inc.*

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either an agreement with the County or with EAS, but must have felt some assurance that it would be properly compensated for its work.

What is required, however, is that an EDP sub-consultant should have executed an EDP agreement on file with OCI. OCI addressed the fact that OWM had not completed the proper paperwork to obtain authorization to use LLW and this was "unacceptable."

### **CONCLUSION AND RECOMMENDATION**

The OIG concludes that EAS and LLW, in a deal promoted by a county representative, engaged in a fronting arrangement in contravention of County procurement rules and regulations. That they blame the County, in part, for this arrangement, does not justify their actions. They knew that EAS was to be a front for LLW, which is clearly an improper arrangement. The OIG acknowledges that neither EAS nor LLW likely had full knowledge of all that occurred but they both likely knew that a fronting arrangement would not be acceptable to the County.

EAS accepted a contract naming it as the service provider even while knowing that it would be acting as a front for LLW and that it would not be providing any contract services. LLW, without a contract, was the actual service provider doing so based only on verbal assurances that it would be paid for such services via the front, EAS. LLW was paid by EAS the entirety of what the County paid to EAS.

Miami-Dade County has established rules and regulations prescribing certain approved procurement practices that, if complied with, would prevent unapproved practices, e.g., contract steering and fronting arrangements, from occurring. For example, the County requires its consultants to maintain specific records and prepare reports that, if accurate and complete, would force the disclosure of such arrangements and by doing so, discourage consultant participation in such schemes. LLW, and perhaps to a lesser extent EAS, may not be aware of all the administrative details contained in the collective procurement guidance. Nonetheless, they must surely have been aware that County guidelines would prescribe open, transparent procurements, of which fronting arrangements are the antithesis.

The OIG recommends that OCI evaluate the seriousness of these findings and pursue all available administrative actions under A.O 3-42 *Evaluation and Suspension of Contractors and Consultants* and Miami-Dade County Code Section 10-38 *Debarment of contractors from County work*.

# APPENDICES

FILE COPY

## Responses to the Draft Report

- A. Response from EAS Engineering, Inc.,  
(including its 2 page attachment)
- B. Response from LLW Consultants, LLC  
(including its several attachments)
- C. Response from OWM's former Water Resources Manager
- D. Response from OCI

EAS ENGINEERING, INC.

55 ALMERIA AVE. • CORAL GABLES • FLORIDA 33134 • (305) 445-5553 • FAX: (305) 444-2112 • WWW.EAS-ENG.COM

June 29, 2006

Certified Mail  
Return Receipt Requested  
7002 2030 0000 7369 5969

2006 JUL -6 AM 10:27  
FBI - MIAMI  
RECEIVED

Mr. Christopher R. Mazzella, Inspector General  
Office of Inspector General  
19 West Flagler Street  
Suite 220  
Miami, FL 33130

Re: OIG Draft Report – IG06-08A

Mr. Mazzella:

We are in receipt of your above referenced draft report and offer the following comments that we wish to be incorporated into the final report.

First we believe the overall tone of the report is too sinister. Our intention with this assignment, as well as any other assignment for the County, was to be as helpful and cooperative as possible. The County is complex entity to conduct business with. Each Department (and sometimes sections within Departments) does things differently. We learned long ago to not argue with the process. The County is involved in many complex issues for which only very few people and or firms are qualified or capable of providing meaningful assistance. Environmental regulatory issues and environmental policy development is one of those area. Both EAS Engineering, Inc (EAS) and LLW Consultants, LLC. (LLW) are experts in these fields. Both EAS & LLW have assisted the County on many occasions on very complex issues. It is natural the County would want the best.

**LLW as a sub-consultant**

Your report indicates that "... the procurement documents did not identify LLW as an EAS sub-consultant or as the actual service provider". That couldn't be farther from the truth. When we were contacted by the County, the County asked us to use LLW as the sub-consultant! EAS in its first two submittals to the County before a work order was issued provided the qualifications of LLW Consultants, LLC (LLW) as well as a Scope of Work prepared by them on LLW letterhead. We never hid the fact that LLC was going to do the work nor was it hidden from us. It was the County that redrafted the Scope of Work, without LLW letterhead and attached it to the first work order, not EAS or LLW.

Mr. Christopher R. Mazzella  
June 29, 2006  
Page 2

In your Finding No. 1 "Collusion between OWM and *others* (emphasis added) ..." is from our perspective misleading if it implies in any way EAS Engineering, Inc. involvement in the collusion.

**Monthly Utilization Reports (MUR)**

When you figure out what the County wants on these reports please let us know. Every Department asks for different information on invoices, MURs, backup, number of copies, signatures etc. Our approach when providing these MURs is to submit what was last accepted by the County and if the user Department has changes, which they almost always do, to revise the MUR (or any other invoice documentation) to conform with the Department request. As stated above we don't argue with the process. After making those changes, or as in this case after not getting any feedback on the MUR form, we don't change it. Your right, LLW should have been listed as a sub-consultant, but we would have expected the County to make that notation. We would have changed it. We simply are not going to change the way we submit forms (MUR or otherwise) if the bills are getting paid. It takes too long now to get paid from the County because of all the petty changes and revisions requested. To prevent this in the future the County should consider standardizing the invoicing and reporting across all Departments. Attached is our final MUR for this project showing LLW as the sub-consultant and recipient of all of the funding for your records.

In closing EAS Engineering Inc. is a small firm, and we have been proud of the work we have been asked to perform for Miami-Dade County and are equally proud of the level of service we have provided the County on some very complex projects over the last 20 years. We were offended that your report represents our intentions as anything other than continuing that spirit of cooperation of working with the County. Fix the process within the County but don't make us look like bad guys for providing excellent service to the County.

Thanks for consideration. Please contact me if you have any questions.

Sincerely,



Edward A Swakon P.E.  
President  
EAS Engineering, Inc.

enclosure

CC: Steve Walker LLW w/ enclosure  
Roman Gastesi w/ enclosure



# ARCHITECTURE & ENGINEERING UTILIZATION REPORT



MONTHLY REPORT (PARTS 1A & 1B)

FINAL REPORT (PARTS 1A, 2 & 3)

## PARTS 1A & 1B

This part is to be completed by the Prime Consultant and forwarded to the User Department

This report is required by Metropolitan Dade County. Failure to comply may result in MDC commencing proceedings to impose sanctions on the successful bidder, in addition to pursuing any other available legal remedy. Sanctions may include the suspension of any payment or part thereof, termination or cancellation of the contract, and the denial to participate in any further contracts awarded by MDC. Pursuant to Florida Statutes (F.S.) 837.06, whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of their official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in F.S. 755.082, F.S. 755.083 and F.S. 755.084.

REPORTING PERIOD		PROJECT NAME		PROJECT NO.	EDP-CM-WM-CSOP 1		
FROM	2/13/2004	PROJECT LOCATION		NTP DATE			
TO	4/30/2006	USER DEPARTMENT		PHONE		FACSIMILE	
		County Manager		(305)375-1260		(305)372-6111	
USER DEPT. PROJ. MANAGER		Roman Gastesi					
AMOUNT REQUISITIONED THIS PERIOD		\$0.00	AMOUNT REQUISITIONED TO DATE		\$115,000.00	AMOUNT PAID TO DATE	
						\$114,730.16	
AMOUNT SUBS REQUISITIONED THIS PERIOD		\$0.00	AMOUNT SUBS REQUISITIONED TO DATE		\$115,000.00	AMOUNT PAID TO SUBS TO DATE	
						\$114,730.16	
PRIME CONTRACTOR			CONTRACT AWARD		CHANGE ORDER MODIFICATION AMOUNT		ADDITIONAL SERVICES AMOUNT
NAME OF FIRM			DATE	AGREEMENT AMOUNT			
EAS Engineering, Inc.			2/13/2004	\$115,000.00			
ADDRESS			SCHEDULE COMPLETION DATE		PERCENTAGE OF CONTRACT COMPLETED		100.00%
55 Almeria Avenue, Coral Gables, Florida 33134							
TELEPHONE		FACSIMILE	PROJECT MANAGER (PRIME CONTR)		Ed Swakon		
(305)445-5553		(305)444-2112					

## SUBCONSULTANTS

NAME OF SUBCONSULTANT	AGREEMENT AMOUNT	DESCRIPTION OF WORK	GOAL (IF APPLICABLE) %	\$ AMOUNT SUB REQUISITIONED THIS PERIOD	AMOUNT PAID TO SUB TO DATE	ACTUAL STARTING DATE	SCHEDULED COMPLETION DATE
LLW Consultants LLC	\$115,000.00	CSOP	0%	\$115,000.00	\$114,730.16	2/13/2004	4/30/2006

AUTHORIZED SIGNATURE OF PRIME CONTRACTOR

Edward A. Swakon, P.E.

PRINT NAME

President

TITLE

6/7/06

DATE

2003-10.3

## COUNTY USE

This part is to be completed by the User Department and forwarded to DBD upon approval.

AUTHORIZED SIGNATURE OF PROJECT MANAGER

PRINT NAME

TITLE

DATE







# LLW Consultants, LLC

1700 Palm Beach Lakes Boulevard  
Suite 1000  
West Palm Beach, Florida 33401  
561 640 0820 tel  
561 640 8202 fax

July 6, 2006

Christopher Mazzella  
Office of the Inspector General  
19 West Flagler Street, Suite 220  
Miami, FL 33130

*Re: OIG Draft Report – IG06-08A*

Dear Mr. Mazzella:

This letter follows a review of the Draft Office of Inspector General (“OIG”) report regarding the professional services agreement between the Miami-Dade County Office of Water Management and EAS Engineering, Inc (“Report”). We are providing this written response in conjunction with LLW Consultants, LLC’s (“LLW”) role in the above work order. That role is limited to work provided and coordinated with various County staff and Departments pursuant to the scope of services. These comments do not address the County’s process and procedures relative to this scope of services.

In general, there are also some factual discrepancies that we would like clarified in the Report before it is finalized. One of these factual issues is related to the fact that LLW provided services to the County on the Combined Structural and Operational Plan (“CSOP”) and on the Comprehensive Everglades Restoration Plan (“CERP”). The difference between these two scopes was explained at a meeting between the County’s auditors and representatives from LLW on Wednesday April 5, 2006. LLW provided significant files regarding work product on both issues to the auditors. The difference between these scopes and projects is not reflected at all in the Draft Report. The importance of this is to accurately reflect LLW’s scope of services to the County and the extent of the work our firm completed during this time. It is unclear to LLW why the Report only addresses CSOP issues when the scope of work and need for LLW’s services was broader than that. It would appear this discussion should be clarified under the **Objectives, Scope and Methodology** section.

Our specific comments on the report follow.

**Page 1, Introduction.** In the introduction section, the Report states that the Office of Water Management (“OWM”) had a contract with EAS Engineering, Inc. (“EAS”) but after the funds

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FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

Christopher Mazzella  
Office of the Inspector General  
July 6, 2006  
Page 2 of 6

for the contract were depleted LLW, "an unknown sub-consultant to EAS," contacted DERM and expressed an interest in continuing its service.

This statement that LLW was "an unknown sub-consultant to EAS" is inaccurate and misleading. From almost the beginning of its services with the County, LLW worked very closely with three specific Department of Environmental Resource Management ("DERM") staff including, Antonio Cotarelo, Marcia Levinson and Susan Markley. LLW also worked very closely with Donna Fries and Bertha Goldenberg in the Water and Sewer Department ("WASD"). LLW held monthly conference calls with these specific individuals and Roman Gastesi, the Director of OWM, to coordinate on meeting coverage and the County's positions on issues relative to CSOP and CERP.

LLW also provided two briefings to Pedro G. Hernandez (in 2003 and 2005), now Deputy County Manager, and one briefing to Joseph A. Ruiz, Jr. who was an Assistant County Manager in the fall of 2005 when LLW discussed upcoming issues related to LLW's work. A copy of a power point presentation made to Mr. Ruiz in the fall of 2005 is attached to this letter. Most, if not all of the specific staff referenced above, including Ms. Markley from DERM, were present at those briefings with Mr. Hernandez and Mr. Ruiz. On both occasions in briefings with these two County Managers, LLW's continued work with the County was specifically discussed and encouraged.

To characterize LLW as "an unknown sub-consultant to EAS" is inaccurate because of the ongoing coordination between County staff, specifically DERM, County Management and LLW. The only credibility this statement has is if LLW had contacted someone from DERM to continue the work that was not aware of LLW's work or performance for the County. This is not the case, because LLW was only in contact with Antonio Cotarelo to renew the scope of work and LLW had been working directly with him on substantive issues for over 18 months. A copy of correspondence between LLW and Mr. Cotarelo is attached to this letter wherein LLW is providing information on the scope of services to him in anticipation of his discussions regarding LLW's work with Mr. Espinosa and Mr. Renfrow. If there were certain staff within DERM that were unaware of LLW's work, then the statement should be corrected to state who those individuals are because it is quite clear that LLW was not an "unknown sub-consultant to EAS."

LLW was also asked to provide Mr. Antonio Cotarelo with a status of briefing of LLW's work, key accomplishments and upcoming issues for discussions with Carlos Espinosa and John Renfrow. Although this correspondence took place on October 10, 2005, at the end of LLW's service, it shows that LLW was coordinating with DERM staff and was asked to provide a status and update of issues to DERM. There is no way to characterize LLW as an "unknown sub-consultant" when this extensive work had been done directly coordinating with that Department staff.

Additionally, many of LLW's work products were in the form of summary memoranda. A copy of one of those summary memoranda is attached. Please note that these summary memoranda

were specifically directed to DERM and OWM staff, which is noted in the memorandum. Also, the memorandum, as all LLW correspondence and memorandum to the County, is on LLW letterhead. Again, because County staff were thoroughly knowledgeable about LLW's scope and work product, it is inaccurate to say that LLW was an unknown sub-consultant to EAS.

**Page 1, Summary.** This section includes a statement that "LLW had begun providing services to the County even before OWM formally requested EDP services from OCI." The Report goes into slightly more detail on this amount and bill on page 7. In footnote 6, the Report raises the possibility that LLW began working sometime in December 2003, yet there is no factual basis or evidence of that in the Report. In fact, in footnote 7 on page 9 of the Report, the OIG references these "December 2003" charges that purportedly evidence the time LLW was working for EAS before the EDP process had been finalized, but these charges total less than \$20, were ministerial in nature, not billed for services rendered and were explained to the auditors as an error in LLW's billing. Very little of this information is contained in the report and this discrepancy is used as some kind of evidence to show that LLW began working before January 2004. This explanation of the amount is absent from the Report. The Report also fails to note that LLW relayed to the auditors that the firm was verbally authorized to proceed and that is the indication that LLW acted upon in early 2004 to begin working.

**Finding No. 1.** This finding is entitled "Collusion between OWM *and others* circumventing Miami-Dade County procurement regulations allowed an unapproved sub-consultant to provide services totaling \$115,000." The section begins by stating,

OWM, under the guise of a legitimate need for services, coordinated with a sub-consultant and a willing County-approved consultant to circumvent County procurement regulations. OIG is not objecting to OWM's need for services or the sub-consultant's performance under the signed agreement. The OIG, however, strongly objects to the collusion between OWM and others to steer the work towards what was at the time an undisclosed beneficiary-now known as LLW Consultants (LLW).

According to the Merriam Webster dictionary, collusion is a "secret agreement or cooperation especially for an illegal or deceitful purpose". LLW objects to the use of this term to describe its scope of services or work product stemming from it. No agreement or cooperation existed with either EAS or Roman Gastesi for either an illegal or deceitful purpose and to characterize LLW's proposals, work or agreements as anything in that realm is misleading and inflammatory. LLW relied upon the County to select the proper procurement vehicle to complete the required work. There was no intention on the part of LLW to avoid County procurement procedures, nor hide our involvement in the project. This is evidenced by the following:

- LLW submitted copies of its proposals and work product directly to County staff and Management;
- All correspondence and memorandum were openly forwarded to the County on LLW letterhead and not vetted through EAS;

- LLW briefed and coordinated with County Management on issues (as described earlier in this letter);
- LLW briefed and coordinated with a County Commissioner on a continual basis relative to the CSOP and CERP before South Florida Ecosystem Restoration Task Force meetings; and
- LLW coordinated with County staff to develop positions on issues that resulted in extensive written comments on CERP and CSOP. These positions and extensive written comments were signed and submitted as public comments by County Management and a Commissioner. All of these files and work products were provided to the County Auditors in the above referenced meeting on April 5, 2006.

Based on these factors, it defies logic to characterize any part of this work order as covert or a product of collusion between Mr. Gastesi, EAS or LLW. If there was such intent, then surely LLW would have been directed to submit all work products through EAS and not coordinate with the County directly. If there was such an intention, surely LLW would have been directed to not brief County Management on the status of its work and surely LLW would have been directed to not submit its work product to the County on its own letterhead. But that was never the case in any circumstance throughout the duration of this scope of services. LLW never received this direction from either EAS or Mr. Gastesi, which clearly shows there was neither knowledge nor concern of wrongdoing, let alone an intention to effectuate any wrongdoing by LLW, EAS or Mr. Gastesi. This Draft Report must be revised to reflect this reality.

Also, the statements above are internally inconsistent. If OIG is not objecting to OWM's need for services or the sub-consultant's performance under the signed agreement, then why does the Report characterize OWM's use of LLW as a "guise of a legitimate need for services"? Either there was a legitimate need for LLW's services or there was not.<sup>1</sup> Given that OWM was a two-person Department and these policy issues were comprehensive and complex, there was a very legitimate need for LLW's services and the Report even acknowledges the Department's small staff and potential need for help on pages 2-3.

On page 6 of the report, the following statement is included:

A written agreement assigns specific responsibilities to the service provider, while holding the named provider specifically accountable for performing the services. When a department violates this tenet, the County loses this one-to-one relationship and, in the event of nonperformance, may have little or no recourse against the actual service provided. In this case, this did not happen as the County did receive the desired services.

Not only did the County receive the desired services, this one-to-one relationship did not have any sort of "breakdown", as acknowledged in the Report, and it flourished in this arrangement.

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<sup>1</sup> This is further confused by the statement on page 3 recognizing that OWM's staff was limited to Mr. Gastesi and his assistant and he sought outside expertise to support his and the County's participation in the CSOP.

Christopher Mazzella  
Office of the Inspector General  
July 6, 2006  
Page 5 of 6

The Report should reflect the fact that LLW extensively coordinated directly with County staff on a continual basis, again, very specifically with DERM, OWM and WASD staff. The County received the service provided which also contravenes the statements above that OWM's actions were somehow "under the guise of a legitimate need for services". The County received the desired services and it was not under the "guise" of anything.

On the top of page 8, there are statements that a "consultant has a perceived willingness to act as a front and pass through work and monies to an undisclosed party". LLW disputes the use of "undisclosed party" for all of the reasons specifically articulated above. Again, from LLW's scope documents and discussions with County staff and Management, including the Deputy County Manager, there was full and complete disclosure of LLW's work for the County and it was encouraged and appreciated. There was nothing "undisclosed" about LLW's role in the scope of services. For the Report to state anything to the contrary and that LLW was "undisclosed" is inaccurate the Report should be revised to reflect this information.

On page 9, the second paragraph describes the billing periods in early March 2004 and an amount for \$5,000 "which, at the time, was the agreed upon monthly payment". This statement is factually wrong and is probably part of the reason that not describing the work done on CSOP vs. CERP is a critical flaw in the Draft Report. The initially agreed upon fee for services for CSOP was a monthly contract of \$2,700 plus expenses. The Report should accurately reflect that there was never a \$5,000 month fee for CSOP agreed to by LLW and if there was such an agreement the Report should cite to the source of that information.

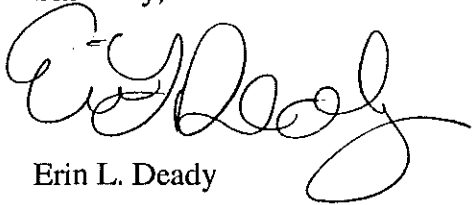
While LLW has no comments relative to the County's contracting procedures and believes that the bulk of the investigation is relative to process, we feel there should be an expanded discussion of the actual work completed and the coordination efforts between LLW and the County staff. It is important to recognize this reality in the Report because when there are allegations such as "collusion" between parties, it would be factually important to completely document the basis for that type of allegation, as well as any factual information to the contrary, which is abundant in this circumstance. LLW was working with the County staff, including DERM staff, on a continual basis and there was nothing secretive or deceptive about it. Properly documenting how the work was done and who was part of that work effort would accurately reflect the fact that LLW was not an unknown commodity to the County.

LLW has completed work for Miami Dade County in the past relative to the Water and Sewer Department's renewal of its consumptive use permit for the Northwest Wellfield. LLW completed work for the County under this scope of services relative to the Combined Structural and Operational Plan as well as the Comprehensive Everglades Restoration Plan, two very politically charged and complex issues directly affecting the County's interests such as flood protection and water supply. LLW has an impeccable reputation and would not want future opportunities to represent the County to be tarnished by an incomplete and inaccurate Report. We feel that the revisions suggested herein are necessary to reflect an accurate accounting of what transpired relative to its scope of services. Please contact me at 561.640.0820 with any

Christopher Mazzella  
Office of the Inspector General  
July 6, 2006  
Page 6 of 6

further questions you might have regarding the facts in this correspondence and please include this response in the Record for this proceeding. Finally, please furnish us a copy of your final Report as soon as it becomes available.

Sincerely,

A handwritten signature in black ink, appearing to read "Erin L. Deady". The signature is fluid and cursive, with a large loop at the end.

Erin L. Deady

Enclosures

cc: Arleen Stanek

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# CSOP and CERP

What have we accomplished to date and what is on the horizon?

# CSOP

- Attended and provided significant memoranda of every CSOP Advisory Team meeting (19 memoranda in total).
- Work with County Staff to develop balanced positions on CSOP through relationships with Agency Leadership (Corps, SFWMD and Department of the Interior) and stakeholders (Agricultural and Environmental Community and other key stakeholders).
- Revise and comment on the Performance Measures through the Project Delivery Team.
- Worked with County Staff to draft multiple comment letters on modeling and flood analysis.
- Provided talking points and briefings to Commissioner Diaz, a member of the South Florida Ecosystem Restoration Task Force.
- Worked with County Staff to draft presentations on the CSOP Status including a 5/2005 Presentation to the South Florida Ecosystem Restoration Task Force on the status of the CSOP Alternatives.

# CSOP continued

- Attended Quarterly Review Board meeting August and September 2005 on Alternatives Status. Worked with the SFWMD to ensure last CSOP Alternative included 950 cfs capacity at the S-356 pump station.
- Attended and provided memoranda at every Southern Regional Project Delivery Team meeting since project meeting structure was implemented where the CSOP or Modified Water Deliveries was briefed. (December 2004).
- Most recently worked with WASD and DERM on position statement on Alternative 5, the last CSOP Alternative to be run in the project development process.

# CSOP Next Steps

- CSOP Advisory Team develops recommendations to the Task Force in a document in the next three meetings (County to comment and provide amendments to document).
- Task Force briefing in November (direction from Task Force on additional modeling and project implementation).
- Tentatively Selected Plan (“TSP”) developed November 2004.
- Corps briefs leadership on TSP December 2005-January 2006.

# CSOP Next Steps

- Draft Environmental Impact Statement April 2004 (County to provide significant comments for NEPA process).
- Final Environmental Impact Statement and Record of Decision approximately 3-6 months later (October 2006).
- Tamiami Trail EIS has recently been released in draft form. Final will be released in next 40 days.

# CERP

- Have coordinated monthly **CERP coordination calls** on CSOP and CERP with WASD and DERM Staff. (Topics covered include meeting coverage, document tracking and policy discussions).
- Reviewed 400 pages of **Guidance Memoranda** for CERP implementation and helped create 36 page comment letter (1/10/05) on Draft GM's and an additional 20 pages of comments on the April 2005 version of Guidance Memoranda. This effort combined input from DERM and WASD. A cover letter summarizing all comments was also drafted. Coverage and memoranda on all briefings for the Guidance Memoranda at the Water Resources Advisory Commission meetings and Issue Group meetings for WRAC.
- January 12, 2005, Letter to Ms. Marti Allbright (Chair of the **Task Force**), regarding Miami-Dade County's Comments on Comprehensive Everglades Restoration Plan ("CERP") documents. (GMs, Pre-CERP Baseline and Master Implementation Sequencing Plan "MISP").
- Reviewed and helped draft comments on the **Master Implementation Sequencing Plan** for CERP (DERM and WASD coordination).
- Reviewed and helped draft comments on the **Pre-CERP Baseline** (DERM and WASD coordination).
- **Status briefings** on the implementation of the Comprehensive Everglades Restoration Plan ("CERP").

# CERP Continued

- Attended and wrote memoranda on various **Working Group** meetings. (Roman Gastesi has a seat).
- Attended and provided briefings on various **Water Resources Advisory Commission** meetings (December 2003-present), Dade has multiple seats on the WRAC.
- Attended and provided briefings on all **Lower East Coast Water Supply Plan Update** meetings (at least 10 memoranda)
- Attended and provided briefings on **Initial Water Reservations** meetings, separate but related effort to Lower East Coast Water Supply Planning initiative. (At least 10 memoranda)
- March 8, 2005, South Florida Water Management District (“SFWMD”) **Governing Board** held a Strategic Planning Workshop on the status of Minimum Flows and Levels (“MFLs”) including the priority water bodies for MFL adoption in the upcoming year; Initial Reservations and the Aquifer Storage and Recovery (“ASR”) Contingency Plan.
- **Southern Regional Project Delivery Team** meetings (all CERP projects impacting Miami Dade County are briefed).



# CERP Next Steps

- The State of Florida is expediting 8 CERP projects (**Acceler8**) through advancing design, construction and funding. Projects that can impact the County's interests include:
  - Everglades Agricultural Area (EAA) Reservoir - Phase 1 with Bolles & Cross Canals Improvements
  - Everglades Agricultural Area (EAA) Stormwater Treatment Areas (STAs) Expansion
  - Water Preserve Areas Includes Site 1, C-9, C-11, WCA-3A/3B
  - Biscayne Bay Coastal Wetlands - Phase 1
  - C-111 Spreader Canal
- These are portions of CERP projects that will still move through a Federal project implementation process. (**Project Implementation Reports**)
- The County will have to review and provide **comments on both the Acceler8 and CERP documents.**

# CERP Next Steps

- Large program documents to implement CERP as a program are almost done: **Guidance Memoranda** remain uncompleted.
- **Reservations of water** will have to be completed on a system-wide and project level. The County has a fundamental interest from the water supply perspective. SFWMD will be developing rules on reservations.
- **Minimum Flow and Level** development for key water bodies. (Biscayne Bay).
- **Lake Okeechobee Regulation Schedule** will be revised over the next year and half through a NEPA process. The County also will have a water supply interest in this issue.

# CERP Next Steps

- The **Lower East Coast Water Supply Plan** update is not completed yet.
- Increased **relationship building** with leadership at agencies and with stakeholders. (DOI, Corps, SFWMD)
- Assuring **CERP projects comply with law** and do not reduce levels of service for flood protection or water supply as of December 2000.
- Assuring **key decision points** are identified and acted upon.
- Continuing **departmental coordination** so the County speaks with a unified strong voice.



# LLW Consultants, LLC

1700 Palm Beach Lakes Boulevard  
Suite 1000  
West Palm Beach, Florida 33401  
561 640 0820 tel  
561 640 8202 fax

October 10, 2005

Antonio Cotarelo, P.E.  
Director of Stormwater Management  
Department of Environmental Resource Management  
33 S. W. 2nd Avenue  
Miami, FL 33130

Dear Tony:

As we discussed last week, we are enclosing the information you requested after your conversation with Carlos Espinosa and John Renfrow. This information includes cost estimates to extend LLW Consultant's representation of Miami-Dade County for the Combined Structural and Operational Plan ("CSOP") and the Comprehensive Everglades Restoration Plan ("CERP"). This requested information also includes the two prior scopes of work which have been updated (attached herein) and an accounting of any unpaid services to date.

This letter provides a summary of accomplishments to date as well as a summary of activities in the future for both of these issues. As you are well aware, LLW Consultants has been representing Miami Dade County on CSOP and CERP issues for the last 18 months. To date, we have achieved several key accomplishments on both matters.

## CSOP

- Miami Dade has a seat on the CSOP Advisory Team, coordinated and established through the South Florida Ecosystem Restoration Task Force. We have attended and provided memoranda on every CSOP Advisory Team meeting.
- We have helped County staff develop policy positions on the CSOP Alternatives that have been advocated at the Task Force, Advisory Team and Project Delivery Team levels.
- We have provided key briefing documents for use by Commissioner Diaz, who holds a seat on the South Florida Ecosystem Restoration Task Force.
- We have worked with County staff to prepare presentations to the South Florida Ecosystem Restoration Task Force and South Florida Water Management District.
- We have worked with leadership from the U. S. Army Corps of Engineers and the Department of the Interior to help create a balanced CSOP Alternative.
- We have provided briefings to County staff for other forums where the CSOP has been discussed such as Corps' Quarterly Review Board meetings and the Southern Regional Project Delivery Team meetings.

## CERP

- We have provided monitoring and tracking for key CERP and Acceler8 projects affecting Miami Dade County.
- We have coordinated over 60 pages of comments on the Draft and Final Guidance Memoranda that provide direction to Corps and South Florida Water Management District staff on CERP implementation.
- We have worked with County staff to monitor the meetings for development of water reservations for the environment.
- We have worked with County staff on the development of the Update to the Lower East Coast Water Supply Plan.
- We have helped County staff review and formulate positions on the Master Implementation Sequencing Plan for CERP projects and the Pre-CERP Baseline which provides protections for flood control and water supply as CERP projects are implemented.
- We have instituted monthly calls for relevant County staff to discuss and coordinate policy issues and meeting coverage.
- We have helped provide status briefings to the Board of County Commissioners on CERP implementation.

LLW Consultants monitors many of these meetings for other clients. Therefore, the coverage of these issues has traditionally been economical. We would like to continue these efforts. The following provides a synopsis of what still needs to be accomplished for CSOP and CERP.

## CSOP

- The Advisory Team needs to develop recommendations on a CSOP Alternative by November to be presented to the South Florida Ecosystem Restoration Task Force. The County will need to provide input into these recommendations and County staff will need to work with Commissioner Diaz to be prepared for the meeting.
- Other stakeholders will need to be surveyed for their positions to assure a balanced approach for the CSOP Alternative.
- The South Florida Water Management District will hold a workshop on the CSOP Alternative November 8<sup>th</sup> in Key Largo. The County will likely be called upon to present their position on the CSOP Alternative. Preparation for that meeting will have to occur.
- The Advisory Team will likely be meeting 3 or more times before completing its work. County staff will need assistance preparing for those meetings.
- The Tentatively Selected Plan ("TSP") will be developed in the November – December 2005 timeframe. The County will have to formulate a balanced position on the TSP.
- A Draft Environmental Impact Statement ("EIS") will be released in April of 2006. The County will have to provide comments on this document.

- The Final EIS will be released 3-6 months after that Draft and the County will have to provide comment on the Final.
- The Final EIS for the Tamiami Trail will be released in the next 40 days and the County should provide comments on any potential flooding issues.

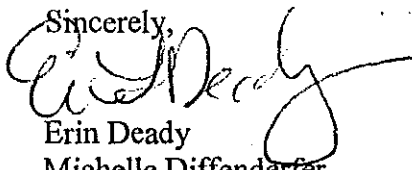
### CERP

- The SFWMD will continue its efforts to develop a water reservations rule. This will likely involve resource management and water supply issues. The County will need to monitor and provide input into this effort.
- County staff will need assistance in monitoring and tracking the release of CERP and Acceler8 documents such as project implementation reports and basis of design reports. These documents will have to be reviewed by both the Water and Sewer Department and DERM for resource, flooding and water supply issues. Coordinated comments will have to be developed and submitted within the comment deadlines.
- County staff will continue to need assistance in the development of the Update of the Lower East Coast Water Supply Plan.
- County staff will need to be engaged in the modification of the Lake Okeechobee Regulation Schedule. There will likely be resource and water supply impacts from this new schedule.
- County staff will need assistance in the development of the Minimum Flow and Level for Biscayne Bay. This will likely be a resource and water supply issue.
- The CERP Guidance Memoranda are not finalized to date. The County has put significant effort into assuring that these Memoranda address water supply, flood control and resource issues in a balanced approach. The County should maintain its leadership role on the Guidance Memoranda.

We feel that we can continue coverage of each of these matters for \$4,000 a month each on a retainer basis. Based on historical invoicing for coverage of these matters, this figure represents no change from the status quo.

You also asked us to provide an accounting on any fees that have not been invoiced. In our estimation, there is approximately \$3,000 in fees for the remainder of September 2005. It is not clear whether there are adequate funds in the EDP account to cover this work. Another \$22,000.00 approximately has been invoiced to Ed Swakon through the EDP account for which we are awaiting payment.

We hope this covers all the information you requested and need. I am available to provide a briefing on the status of CSOP and CERP at any time. We hope to continue our role in helping the County remain in a leadership position on these issues.

Sincerely,  
  
 Erin Deady  
 Michelle Diffenderfer

Enclosures

I:\Client Documents\Miami-Dade County\Cvr Ltr to Cotarleo.doc



# LLW Consultants, LLC

1700 Palm Beach Lakes Boulevard  
Suite 1000  
West Palm Beach, Florida 33401  
561 640 0820 tel  
561 640 8202 fax



Erin L. Deady

LLW Consultants, LLC  
Associate  
(561) 640-0820

## AREAS OF PRACTICE

### Environmental/Land Use/Administrative and Water Policy

- Assists clients in land use and development matters before local, state and federal agencies, including wetland and water supply permitting, zoning and coastal zone issues.
- Represents clients on federal and state rule making and legislative issues, involving wetlands, water quality, and water supply.
- Manages large water resource development project for Native American Tribe involving complex development issues, such as jurisdictional wetlands, endangered species, and surface water management.
- Represents local governments and state agencies on environmental and water supply issues, including implementation of the Comprehensive Everglades Restoration Plan and other environmental restoration projects.

## PRIOR PROFESSIONAL EXPERIENCE

- Prior to joining Lewis Longman & Walker, P.A., Ms. Deady served as Environmental Counsel for Audubon of Florida, an alliance of the National Audubon and Florida Audubon Societies. Ms. Deady provided policy formulation and legal representation on a range of issues including water, land use, and administrative law, land acquisition issues and Everglades restoration policy.
- Prior to Ms. Deady's position as Environmental Counsel, she served as a Policy Analyst for over 3 years at Audubon of Florida. Ms. Deady also has worked on various Comprehensive land use planning issues for the Village of Wellington, the Broward County Department of Planning and Environmental Protection, the South Florida Water Management District and the FAU/FIU Joint Center for Environmental & Urban Problems.

## PROFESSIONAL, CIVIC AND COMMUNITY INVOLVEMENT

- State Co-Chair of the Everglades Coalition, April 2003-October 2003.
- Conference Chair for the 17th Annual Everglades Coalition Conference, January 3-6th, 2002 including several Congressional, state legislative and administrative officials.
- Member, Alternative Water Supply Grant Selection Committee, SFWMD, May-June, 2003.
- Member, Technical Advisory Committee to the Water Advisory Board of Broward County.
- Executive Council for the ELULS of the Florida Bar, 2002-Present.
- Public Interest Committee Chair, ELULS of the Florida Bar, August 2003-2004.
- Public Interest Committee Vice-Chair, ELULS of the Florida Bar, 2001-2003.
- Pal-Mar Water Control District Board of Supervisors, July 2002 with term expiring July 2005.
- Participated in Southern Most AIDS Ride to raise funds for AIDS/HIV Charities, 2004.
- Participated in Relay for Life to raise funds for the American Cancer Society, 2004, 2005.

## EDUCATION

- Nova Southeastern University, Shepard Broad Law Center, J.D., 2000.
- Florida Atlantic University, M.P.A., 1996.
- University of the Virgin Islands, 1995.
- University of Miami, B.A., 1993.



# LLW Consultants, LLC

1700 Palm Beach Lakes Boulevard  
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West Palm Beach, Florida 33401  
561 640 0820 tel  
561 640 8202 fax



Michelle Diffenderfer

LLW Consultants, LLC  
Principal  
(561) 640-0820

## AREAS OF PRACTICE

### Environmental/Local Government/Land Use Law

- Gains permitting and approvals for large development projects involving complex development issues related to jurisdictional wetlands, mitigation, threatened and endangered species, development of regional impacts, and drainage.
- Represents local governments and special districts as general counsel and special counsel related to environmental, land use and special assessment issues, including related litigation.
- Represents clients before local, state and federal government bodies, agencies, and courts in environmental, administrative, zoning and land use issues.
- Represents Seminole Tribe of Florida as special environmental counsel for development on its Tribal Reservations, including procuring the funding and permitting of a large water resource project for the Tribe's largest reservation.
- Represents clients in the development and implementation of the Comprehensive Everglades Restoration Plan, including the development of related water law and policy.
- Gained upland/wetland grandfathering for project in Martin County thereby ensuring the successful permitting of the project.

## PROFESSIONAL, CIVIC AND COMMUNITY INVOLVEMENT

- The Florida Bar Association: Environmental and Land Use Law Section, Executive Council Member.
- American Bar Association, Section of Environment, Energy and Resources; State and Regional Environmental Cooperation Committee, Vice-Chair Programs and Endangered Species Act Committee, Vice-Chair Membership.
- Palm Beach County Bar Association, Member.
- Caribbean Bar Association, Member.
- Leadership Palm Beach County, Class of 2000.
- Executive Women of the Palm Beaches, Member.
- Girls II Women, Inc., Past President, Board Member, (Local non-profit organization dedicated to mentoring students at the Roosevelt Full Service Resource Center).
- Women's Chamber of Commerce, Member.

## EDUCATION

- J.D., *cum laude*, University of Miami, 1994.
- B.A. *with honors*, Brown University, 1990.





# LLW Consultants, LLC

1700 Palm Beach Lakes Boulevard  
Suite 1000  
West Palm Beach, Florida 33401  
561 640 0820 tel  
561 640 8202 fax



Stephen A. Walker

LLW Consultants, LLC  
Principal  
561-640-0820

## AREAS OF PRACTICE

### Water Law/Administrative Law

- Over 30 years experience in environmental and water-related issues in Florida.
- Special environmental counsel to the Seminole Tribe of Florida. Advises and advocates for the Tribe on Everglades issues, water rights, Clean Water Act implementation, and various state and federal regulatory matters.

### Water Users

- Represents water users in consumptive use and environmental permitting, water use litigation, and advocating for proactive water supply development strategies affecting the industry.
- Assisted in drafting and advocating sound water and wastewater reuse legislation and rule making on behalf of utility clients and development clients.
- Federal and State Environmental Permitting major land developers in obtaining permits through the Water Management District, Corporation of Engineers.

## PRIOR PROFESSIONAL EXPERIENCE

- General Counsel, South Florida Water Management District, 1985-1991.
- General Counsel, Southwest Florida Water Management District, 1983-1985.
- As General Counsel for South Florida Water Management District (SFWMD), negotiated an historic Water Rights Compact between the Seminole Tribe and SFWMD. Negotiated Everglades Settlement Agreement with Federal government. Developed the legal framework for most SFWMD regulatory programs, including consumptive use, water shortage, wetlands and surface water management.
- As General Counsel for the Southwest Florida Water Management District, was involved in the development and adoption of the Surface Water Management Permitting Program and the Water Shortage Plan.

## PROFESSIONAL, CIVIC AND COMMUNITY INVOLVEMENT

- The Florida Bar Association: Executive Council, Former Member; Environmental and Land Use Law Section, Member.
- Palm Beach County Bar Association, Member.
- American Bar Association, Member.
- Corkscrew Regional Watershed Council, Trustee.
- Chairman, Lighthouse District, Gulfstream Council, Boy Scouts of America
- Jupiter High School, School Advisory Committee, Member.

## EDUCATION

- J.D., *with honors*, University of Florida, College of Law, 1974.
- B.A., *with honors*, Pennsylvania State University, 1969.

**ATTACHMENT 1**

<b>Cost/Expense</b>	<b>Typical Charges</b>
Computer Research	Actual usage + proportionate share of base subscription.
Court Reporters	Direct invoice from vendor to client or paid from retainer.
Delivery Charges	Actual amount invoiced to firm. Mode of delivery based on need and economy.
Messenger Service	Actual amount invoiced to the firm.
Overnight Express	Actual amount invoiced to the firm.
Telefacsimile	Outgoing: Actual telephone charge + \$1.25/page. Incoming: No charge
Photocopying	Inside copies: \$0.20/page Outside services: Actual amount invoiced to firm.
Secretarial Overtime	No charge
Telephone Charges	Actual long distance and cellular charges + proportionate share of base subscriptions.
Temporary Help	Actual amount invoiced to the firm.
Travel-Local/Surface	Reasonable mileage or actual rental charges.
Travel-Out-of-Town	Intrastate: Actual common carrier charges for coach. Interstate: Actual common carrier charges for business class. Meals/Accommodations: Lowest corporate seasonal rate available, reasonable business related meal expenses.
Word Processing	No charge
Other Expenses	Actual cost invoiced to the firm. In selected cases, these items may be directly invoiced from vendor to client.



## **QUALIFICATIONS FOR LLW CONSULTANTS, LLC FOR COMBINED STRUCTURAL AND OPERATING PLAN ADVISORY TEAM**

### **I. Summary of Firm's Background**

LLW Consultants, LLC with offices in Jacksonville, Tallahassee and West Palm Beach represents numerous counties, cities, and special districts throughout Florida before all three branches of state government: judicial, legislative and executive.

LLW Consultants, LLC, individually and as a group, enjoy a statewide reputation in the fields of environmental and land use, water and wastewater issues, governmental and special district representation, general administrative and legislative matters, and public finance. This reputation has been established on the foundation of the shareholders' extensive experience in these specialty areas.

The consultants at LLW Consultants, LLC have worked with governmental entities at all levels for more than 20 years. Clients include water and wastewater utilities, state agencies, and over 50 municipalities, special taxing districts, counties and airport and port authorities. Based on their extensive representation of state, regional and local governmental entities, Firm consultants have an in-depth understanding of governmental powers and authorities. In addition, Firm consultants have worked for either the Florida Department of Environmental Regulation, precursor agency of the Department of Environmental Protection, or for water management districts prior to their consultancy. Two of the Firm's shareholders are former General Counsels to three of the state's largest water management districts: South Florida, St. John's River, and Southwest Florida.

The Company's consultants are experienced in representing governmental utilities in their environmental matters, providing innovative and creative solutions for both short-term and long-term results. In addition, the Company's West Palm Beach office is conveniently located near the offices of the U.S. Army Corps of Engineers and the South Florida Water Management District.

### **II. Firm's Understanding of Services to be Performed**

The United States Army Corps of Engineers (Corps), Jacksonville District, is proceeding to develop a Combined Structural and Operating Plan (CSOP), with an Environmental Impact Statement (EIS), for the Modified Water Deliveries to Everglades

National Park (Mod Water and the Canal-111 (C-111) Projects with the assistance of the South Florida Water Management District (SFWMD), Everglades National Park (ENP) and the United States Fish and Wildlife Service (FWS). Currently, the two projects are partially completed and are operated in accordance with the Interim Operating Plan (IOP) that was approved in July, 2002. The Mod Water and C-111 Projects have been designed and approved to protect Everglades National Park and Florida Bay and provide residents and businesses with essential flood protection. The MWD and C-111 projects enhance the natural system, especially in Everglades National Park, the Water Conservation Areas, and Florida Bay by increasing flows through the water supply conveyance system toward historical levels. The projects also help the urban and agricultural areas in two ways: 1) they permit the lowering of water levels prior to a hurricane and provide significantly greater conveyance during a hurricane, thus decreasing the probability of flooding; and 2) they provide a structural interface between the natural and developed systems, thus permitting water levels to be managed separately for the benefit of both.

After Hurricane Irene in October 1999 and the No-Name storm of October 2000, the Miami-Dade County Commission created the Miami-Dade County Flood Management Task Force. The purpose of the Task Force was to study, investigate and analyze the current and projected flood management system, with emphasis on the performance of the system during hurricanes and other storm events, and to minimize the kind of property damage and disruptions caused by these storm events. The Flood Management Task Force came up with 22 recommendations, including "actively participate in ongoing processes to define structural and operational changes that will alleviate some flooding issues, as well as protect water supply and the natural environment" via engaging during the formulation of the Mod Water and C-111 Projects structural and operating schemes.

In general the Corps is using the CSOP study to develop the final operating plan for the two projects and, if necessary, to recommend structural modifications to the authorized Mod Water and C-111 projects. Representatives from federal, state and local governmental agencies and tribal nations, as well as a number of nongovernmental entities, have expressed interest in participating in the CSOP process. Currently, the agencies developing the CSOP EIS are convening an Advisory Team to begin a facilitated collaborative stakeholder process. The goal of this process is to provide a balanced forum for the various interested parties to address issues that will arise during the development of the CSOP EIS. The CSOP Advisory Team will ultimately assist the South Florida Ecosystem Restoration Task Force by providing recommendations to the Corps during key phases in the CSOP EIS development process. The Firm's understanding is that Miami-Dade County, in its role as a member of the Advisory Team, requires monthly consultation on legal and policy matters related to the Combined Structural and Operating Plan (CSOP). Specifically, Miami-Dade County will need to develop positions on the recommendations to the Corps that balance the project purposes with the work of the Miami-Dade County Flood Management Task Force. Finally, Miami-Dade County wishes to assume a leadership role in fostering consensus on the recommendations among the various stakeholders.

To date, five alternatives have been developed that analyze various structural and operational features against performance expectations developed by the CSOP Advisory Team. A Tentatively Selected Plan ("TSI") will be developed in November of 2005. A draft Environmental Impact Statement ("EIS") is expected in April 2006. The County has committed significant staff and consultant resources to date to the Advisory Team and Project Delivery Team ("PDT") processes. This has resulted in sensitivity modeling and adequate pump

operations to provide mitigation for seepage due to project implementation. The County must continue to have strong voice to ensure balanced project implementation.

### **III. Scope of Work**

We see the key issues for the upcoming year including the following:

- The Advisory Team needs to develop recommendations on a CSOP Alternative by November, 2005 to be presented to the South Florida Ecosystem Restoration Task Force. The County will need to provide input into these recommendations and County staff will need to work with Commissioner Diaz to be prepared for the meeting.
- Other stakeholders will need to be surveyed for their positions to assure a balanced approach for the CSOP Alternative.
- The South Florida Water Management District will hold a workshop on the CSOP Alternative November 8<sup>th</sup> in Key Largo. The County will likely be called upon to present their position on the CSOP Alternative. Preparation for that meeting will have to occur.
- The Advisory Team will likely be meeting 3 or more times before completing its work. County staff will need assistance preparing for those meetings.
- The Tentatively Selected Plan ("TSP") will be developed in the November – December 2005 timeframe. The County will have to formulate a balanced position on the TSP.
- A Draft Environmental Impact Statement ("EIS") will be released in April of 2006. The County will have to provide comments on this NEPA document.
- The Final EIS will be released 3-6 months after that Draft and the County will have to provide comment on the Final.
- The Final EIS for the Tamiami Trail will be released in the next 40 days and the County should provide comments on any potential flooding related issues.

### **IV. LLW Consultants to Provide Services**

All the Company's consultants who will provide services to the Team are located at the West Palm Beach office, at 1700 Palm Beach Lakes Boulevard, Suite 1000, unless it would be in the County's best interest for one of the Company's other consultants in Tallahassee, Jacksonville or Bradenton to provide a particular service. Resumes for each of the following consultants are attached as Appendix B.

#### **Stephen A. Walker**

Mr. Walker, a Principal of LLW Consultants, LLC, has almost 28 years experience in environmental and water use issues on both the state and federal levels. As a lawyer and an engineer, he has extensive experience in environmental permitting, policy, regulation and enforcement when he served as General Counsel with both the South Florida Water Management District and the Southwest Florida Water Management District. Mr. Walker was part of the Governor's working group in drafting House Bill 715, providing the policy framework for water supply planning and policy development at the state level. He also has been extensively involved in the formulation and development of many of the Department of Environmental Protection water related regulatory programs, and assisted in drafting and advocating water and wastewater reuse legislation on behalf of utility clients.

Mr. Walker currently represents water utilities and development interests in consumptive use and environmental permitting, water use litigation, and advocating for proactive water supply development strategies affecting the industry.

Mr. Walker will rely on the following Firm consultants to provide services to Miami-Dade County as a participant on the Combined Structural and Operating Plan Advisory Team (the "Team").

### **Michelle Diffenderfer**

Ms. Diffenderfer, a Principal of LLW Consultants, LLC, has worked with local governments and special districts on their policy, environmental, land use, water, utility and special assessment issues. Ms. Diffenderfer also follows and reports on agency rulemaking, state and federal legislation concerning the development and implementation of federal and state water and wetland policy and regulation. Currently, rulemaking being monitored includes Reservations of Water, Alternative Water Supply and Regional Water Availability rules. Ms. Diffenderfer followed the South Florida Water Management District's development and revision of Consumptive Use Rules.

### **Erin Deady**

Ms. Deady, an associate in LLW Consultants, LLC, has over eight years experience working on environmental policy issues in South Florida and Miami-Dade County. She has extensive experience working with various stakeholders to resolve conflicts pertaining to water resource projects and land use issues. Specifically, she has worked on such projects as implementation of the Modified Water Deliveries project, C-111 project, the corresponding water management operations of these projects and other various permitting and land use issues.

A significant part of her background has been spent working on various aspects of the Modified Water Deliveries project components including the 8.5 Square Mile Area (SMA) alternative, the S-356 pump station and increasing flows under the Tamiami Trail. Of particular importance, has been Ms. Deady's involvement in working towards the development of an alternative for the 8.5 SMA portion of the project through the National Environmental Policy Act (NEPA) process. She has built strong relationships with staff and decision-makers at the County, State and Federal levels through her work on this issue. She has thorough knowledge of the project authorizations, policy matters and purposes for the Modified Water Deliveries and C-111 projects. Ms. Deady has also worked at the State and Federal levels on land acquisition and appropriations for the implementation of the two projects.

## **V. Company's Ability to Provide Consulting Services**

The entire Company consists of over 30 consultants and sufficient support staff to ensure that all work product is performed efficiently and on a timely basis.

The Company intends to take a team approach to this representation. Stephen Walker and Michelle Diffenderfer as Principals will be ultimately responsible for the successful handling of this matter. It is anticipated that Ms. Deady will continue to be Miami-Dade's primary contact and would attend Advisory Team meetings. Depending on the agenda other consultants in the Company may be called upon to participate in the Advisory Team meetings. Every effort will

be made to utilize the appropriate skill level within the Company's offices to minimize fees and costs accordingly.

The Company also has state-of-the-art Windows NT and WAN technology within all its offices. The Company's e-mail and computer system is capable of shipping entire files, memos and documents electronically to our clients to save time and costs. The Company also has desktop computer-assisted research capabilities through WestLaw, on-line direct access to the databases of various institutions, several CD-ROM tools, and the Internet. A full-time in-house network administrator ensures that the computer systems are running consistently and efficiently so we may utilize our technology to minimize legal fees.

## **VI. Conflict of Interest**

The Company does not believe that the scope of consulting representation presents any conflict of interest given the scope of work. Should a potential for a conflict exist, the Company will immediately take appropriate action through disclosure, waiver and consent, or, if necessary, by refraining from representation in a particular matter.

## **VII. References**

References for the Company can be furnished upon request.

## **VIII. Fees**

### **Billing Method and Fee Structure**

In lieu of an hourly fee basis, and in the interest of budgetary predictability, the Company is offering Miami-Dade County a monthly retainer fee of \$4,000. The preparation, attendance, monitoring, travel, coordination, and monthly reports on the meetings attended for Miami-Dade County in Section II will be captured under the monthly retainer. We have provided you with the best estimate for our time to cover these meetings. However, for activities outside the monthly retainer or as directed by the Department of Environmental Resource Management, a special governmental hourly rate of \$195.00 will be applied. Billing cycles are monthly. A list of the Company's charges for overhead items is attached.

## **IX. Number of Years Proposal Guaranteed**


The Firm will guarantee the proposed retainer for a period of one (1) year from the date contract agreement is reached.

**X. Insurance**

The Firm maintains insurance coverage as follows:

Type of Insurance	Carrier	Amount of Coverage
Professional Liability	National Casualty	\$2,000,000 each claim/annual aggregate
Workers' Compensation	The Travelers Group	\$100,00 each disease/accident \$500,000 limit for disease
Business Auto Policy	Travelers Property Casualty	\$2,000,000 for hired and non-owned
Comprehensive General Liability	Travelers Property Casualty	\$2,000,000 each occurrence

**LLW Consultants, LLC**

By:   
Authorized Signature

Michelle Diffenderfer  
Print Name

Principal  
Title

October 10, 2005  
Date





# LLW Consultants, LLC

**PROPOSAL  
FOR LLW CONSULTANTS, LLC  
FOR MIAMI-DADE COUNTY  
CERP CONSULTATION**

## **I. Summary of Company's Background**

LLW Consultants, LLC ("the Company") is a consulting company that does work throughout the state of Florida and the company's consultants represent clients such as counties, cities, and special districts before all three branches of state government: judicial, legislative and executive.

The Company consultants, both individually and as a group, enjoy a statewide reputation in the fields of environmental and land use law and regulations, water and wastewater issues, governmental and special district representation, general administrative and legislative matters, and public finance. The consultants at the Company have worked with governmental entities at all levels for more than 20 years and, therefore, have an in-depth understanding of governmental powers and authorities. In addition, many Company consultants have worked for either the Florida Department of Environmental Regulation, precursor agency of the Department of Environmental Protection, or for water management districts prior to their consultancy. Three of the Company's consultants are former General Counsels to three of the state's largest water management districts: South Florida, St. John's River, and Southwest Florida.

The Company's consultants are experienced in representing governmental utilities in their environmental matters, providing innovative and creative solutions for both short-term and long-term results.

## **II. Summary of CERP Meetings at General, Program, and Project Level**

The South Florida Water Management District ("SFWMD") and the United States Army Corps of Engineers ("Corps") are the state and federal co-sponsors in the implementation of the Comprehensive Everglades Restoration Plan ("CERP"). This is an ambitious program that will restore the remnant Everglades ecosystem while providing for the other water-related needs of the region, including water supply and flood control.

CERP is comprised of a suite of projects which will be implemented in stages over the next 50 years and these projects will be fundamental to restore the ecosystem while providing water and flood control for the citizens of Miami-Dade County. Critical to the success of the CERP program, is local government's ability to provide input at key decision points in the implementation of policy and projects.

Several key departments at Miami-Dade County currently provide input into these two levels of project implementation, including the Department of Environmental Resources Management, the Water and Sewer Department, the Office of Water Management, the County Manager's office, the Mayor's office and the Board of County Commissioners. Due to resource constraints, the need has arisen to consistently and cohesively cover the formulation of policy and develop positions for Miami-Dade County in the implementation of CERP. When the County requires the development of a position to advocate in these various forums and initiatives, LLW Consultants, LLC can provide assistance for the various County departments so that it can effectively provide well-reasoned input into the CERP policy and project development process. This approach is important while the foundation is being developed for CERP implementation.

Since the promulgation of federal guidelines, or Programmatic Regulations, that guide the implementation of the CERP program, several key documents are expected to be finalized in the near term that will provide a foundation for the implementation of CERP. Some of these milestones include the completion of Guidance Memoranda 5 and 6 which will create a consistent policy for how CERP projects will address how water will be set aside or "reserved" for the environment, as well as how sources of water may be switched, i.e., source switching from the natural system to reservoirs. Both Guidance Memoranda were distributed for public review in the beginning of December 2004. The Corps and the SFWMD have yet to finalize these documents.

At the November 2004 SFWMD Governing Board meeting, the Board authorized rule development to establish initial reservations of water for the Everglades system pursuant to current state law. This Rule is still being developed as of October 2005. The importance of adopting these initial reservations is two-fold. First, adoption of initial reservations for the Everglades system is a SFWMD regulatory component that prevents existing water needed for the protection of fish and wildlife from being allocated in consumptive use permits. Second, the base level of protection for natural system water supplies provided by the initial reservation will be complemented by future CERP projects and associated project water reservations which will make additional water available to restore the Everglades. The development of initial reservations will also be linked to an anticipated change in the state water reservations law, Section 373.223(4), F.S., and the development of the Lower East Coast Regional Water Supply Plan. It is likely that the development of these initial reservations could take one year to complete. The future availability of water will be impacted by reserving quantities of water from consumptive use permitting. Therefore, water supply and environmental resource planning in Miami-Dade County will be directly affected by the establishment of the initial reservations.

These two initiatives, the development of Guidance Memoranda 5 and 6 and the initial reservations, are integrally linked together and form the building blocks or fundamental policies that must be developed early in the CERP implementation process to provide a foundation for the development of specific projects in the future. It is critical for Miami-Dade County to provide input into the development of these key components now so that future projects will incorporate balanced policies that reflect the unique needs and multiple missions of local government.

The purpose of the services to be provided by LLW Consultants is to monitor, analyze, coordinate and provide feedback into these various levels so that Miami-Dade County has a strong voice in the implementation of CERP. The positions of Miami-Dade County must reflect a balanced approach to CERP implementation that safeguards the County's most important interests, those shared by its residents.

### **General CERP Meetings**

- a. **South Florida Water Management District Governing Board (SFWMD)** – tasked with providing direction and recommendations concerning regional water supply issues, flood control and resources issues. This agency is the state co-sponsor in the implementation of CERP.
- b. **South Florida Ecosystem Restoration Task Force** – Federal Task Force whose purpose is to assist in addressing issues concerning south Florida's ecosystem, restoration, water resources, and other important issues.
- c. **South Florida Ecosystem Restoration Task Force Working Group** – Group that was mandated under the Task Force charter to perform the major workload assigned by the Task Force.
- d. **Water Resources Advisory Commission (“WRAC”)** – serves as an advisory body to the Governing Board of the South Florida Water Management District and as a forum for improving public participation and decision-making in water resource issues affecting south Florida.
- e. **Relevant WRAC Issue teams**
  - i. Initial Reservations of Water – the purpose of this Issue Team under the WRAC is to provide a public forum to discuss the issues associated with developing rules establishing reservations of water according to Sections 373.0361(2) (h) and 373.223(4), Florida Statutes.
  - ii. Lower East Coast – the purpose of this Issue Team under the WRAC is to provide a public forum for the Update of the Lower East Coast Regional Water Supply Plan.
  - iii. Program Requirements – the purpose of this Issue Team under the WRAC is to provide a public forum to discuss the progress and policies of the development of Guidance Memoranda, the Pre-CERP Baseline, the Master Implementation Sequencing Plan (“MISP”), Interim Goals and Targets and the Initial CERP Update.

- iv. Lake Okeechobee – the purpose of this Issue Team is to focus on the management of Lake Okeechobee. Involvement in this group provides a voice for the county regarding water supply issues
- v. Various Sub-Issue Groups – from time to time, the WRAC Issue groups will establish a sub-issue group with the goal of focusing on issue in more detail so as not to slow down the progress of the issue group.

## **CERP Implementation Action**

- a. **Guidance Memoranda** – the CERP Programmatic Regulations require the development of six (6) Guidance Memoranda that will detail many of the issues that were not incorporated into the Programmatic Regulations to any significant detail. There is one technical team overseeing development of all six memoranda with four (4) technical subteams to draft certain memorandum. Relative to Guidance Memoranda 5 and 6, the following teams are important.

The current status of these memoranda's is that they are still under development. A key concern of the County was the application of the policies in the Guidance Memoranda as they relate to actual CERP projects. A final version of these Guidance Memoranda is expected later in the fall of 2005, after the Corps and SFWMD have further considered stakeholder comments, including the County's.

- b. Non CERP Projects Affecting Miami-Dade (projects have been covered to date under a separate contract)
  - 1. Modified Water Deliveries Including:
    - a. Tamiami Trail – raise and bridge portions of the Tamiami Trail to help restore sheetflows and reduce unnatural discontinuities in the Everglades Landscape
    - b. S-356 – purpose of this pump (in conjunction with L-31 Seepage Management) is to improve water deliveries to Northeast Shark River Slough and restore wetland hydropatterns in Everglades National Park by reducing levee and groundwater seepage and increasing sheetflow
  - 2. Combined Structural and Operational Plan (“CSOP”)
    - a. The purpose of this project is to combine the operations of the C-111 and Modified Water Deliveries projects. The focus is to provide conveyance of water, through adequate infrastructure, to Everglades National Park without flooding people or agriculture lands. The 8.5 square mile area feature of the project will mitigate for

increased water elevations. Buffer and detention areas will capture increased flows and allow for a more natural distribution of water to Florida Bay. An Environmental Impact Statement is expected in April 2006.

## Project Level Meetings

- a. CERP Projects affecting Miami-Dade<sup>1</sup>
- i. Biscayne Bay Coastal Wetlands – The purpose of this project is to re-hydrate wetlands and reduce point source discharge to Biscayne Bay.
  - ii. Central Lake Belt (CLB) Storage Area – The purpose of the project is to store excess water from Water Conservation Areas 2 and 3 and provide environmental water supply deliveries
  - iii. Lake Belt In-ground Reservoir Technology Pilot - The pilot project is required to determine construction technologies, storage efficiencies, impacts on local hydrology, and water quality effects
  - iv. Flow to Eastern Water Conservation Area – The purpose of this project is to attenuate high stages in Water Conservation Areas 2 and 3 and transport this excess water to Central Lake Belt Storage Area
  - v. North Lake Belt Storage Area - This project includes canals, pumps, water control structures, and an in-ground storage reservoir with a total capacity of approximately 90,000 acre-feet located in Miami-Dade County
  - vi. South Miami-Dade Reuse - This feature includes a plant expansion to produce superior, advanced treatment of wastewater from the existing South District Wastewater Treatment Plant located north of the C-1 Canal in Miami-Dade County.
  - vii. Water Conservation Area 3A/3B Flows to CLB - The purpose of this project is to divert excess water above the target depths from Water Conservation Area 3A/3B to the Central Lake Belt Storage Area or Shark River Slough
  - viii. Waste Water Reuse Technology Pilot - This pilot project will address water quality issues associated with discharging reclaimed water into natural areas such as the West Palm Beach Water Catchment Area, Biscayne National Park, and the Bird Drive Basin
  - ix. West Miami-Dade Reuse - This feature includes a wastewater treatment plant expansion to produce superior, advanced treatment of wastewater from a future West Miami-Dade Wastewater

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<sup>1</sup> Due to the recent restructuring of the Project Delivery Teams (“PDTs”), most of these projects can be monitored at the Southern Regional Project Delivery Team meeting anticipated to meet on a monthly basis. Various sub-teams may develop out of the Southern Regional Project Delivery Team and these will be covered on an as needed basis as directed by the Office of Water Management.

Treatment Plant to be located in the Bird Drive Basin in Miami-Dade County

- x. Bird Drive Recharge Area - The purpose of the separable element is to recharge groundwater and reduce seepage from the Everglades National Park buffer area by increasing water table elevations east of Krome Avenue
- xi. L-31N Seepage Management Pilot - The purpose of this project is to determine the appropriate technology needed to control seepage from the Everglades National Park and provide the appropriate amount of wet season groundwater flow that will minimize potential impacts to the Miami-Dade County
- xii. Lake Okeechobee Watershed - The purpose of this project is to determine watershed restoration and storage opportunities within the greater Lake Okeechobee watershed area. This will improve lake level management and water quality.

### **III. Scope of Work**

The Company will be providing specific services that will assist Miami-Dade County in being informed on SFWMD Governing Board, U.S. Army Corps of Engineers and other pertinent governmental actions and activities on all the programs, projects, and initiatives noted in Section II. Particular attention will focus on issues affecting and shaping CERP implementation including governmental discussions and decisions which have the potential to adversely impact the water resources or natural resources of Miami-Dade County.

The Company will take a leadership role in coordinating and facilitating discussions between the County and the agencies charged with implementing CERP policy and projects at various levels. This facilitation and coordination role will also occur in an effort to develop and coalesce the County's policy positions, as well as advocate the County's interest in any SFWMD planning or regulatory projects, programs and initiatives on the various issues in South Florida amongst the various County divisions and departments.

The Company will also assist the County in developing partnerships and exchanging information with the stakeholders that exhibit an interest in South Florida issues, such as the development, environmental and agricultural communities.

The Company's primary responsibility will be to monitor and provide summaries of the issues that affect Miami-Dade County at the General, Program and Project levels for CERP implementation. The Company will provide summary memoranda of this meeting coverage with recommendations on key decision points for the County to provide positions on the development of CERP implementation policy. Finally, on an "as needed" basis, and as directed by the Office of Water Management, the Company will develop position papers and briefing documents to be used internally within the County

and externally in communications with agencies and decision-makers. We see the key issues for the upcoming year including the following:

- The SFWMD will continue its efforts to develop a water reservations rule. This will likely involve resource management and water supply issues. The County will need to monitor and provide input into this effort.
- County staff will need assistance in monitoring and tracking the release of CERP and Acceler8 documents such as project implementation reports and basis of design reports. These documents will have to be reviewed by both the Water and Sewer Department and DERM for resource, flooding and water supply issues. Coordinated comments will have to be developed and submitted within the comment deadlines.
- County staff will continue to need assistance in the development of the Update of the Lower East Coast Water Supply Plan.
- County staff will need to be engaged in the development of the Lake Okeechobee Regulation Schedule. There will likely be resource and water supply impacts from this new schedule.
- County staff will need assistance in the development of the Minimum Flow and Level for Biscayne Bay. This will likely be a resource and water supply issue.
- The CERP Guidance Memoranda are not finalized to date. The County has put significant effort into assuring that these Memoranda address water supply, flood control and resource issues in a balanced approach. The County should maintain its leadership role on the Guidance Memoranda.

#### **IV. Company Consultants to Provide Services**

All the Company's consultants who will provide services to the Team are located at LLW Consultants, LLC, 1700 Palm Beach Lakes Boulevard, Suite 1000, West Palm Beach, Florida, unless it would be in the County's best interest for other consultants to provide a particular service. Resumes for the consultants identified in the following section are attached herein.

#### **V. Company's Ability to Provide Consulting Services**

The entire Company consists of over 30 consultants and sufficient support staff to ensure that all work is performed efficiently and on a timely basis.

The Company intends to take a team approach to this representation. Stephen Walker and Michelle Diffenderfer are responsible for the successful handling of this matter. It is anticipated that Erin Deady will be Miami-Dade's primary contact, the Project Manager, and will attend most of the policy meetings described in Section II. Depending on the agenda, other consultants in the Company may be called upon to participate. Every effort will be made to utilize the appropriate skill level within the Company ranks to minimize fees and costs accordingly. Monitoring activities will be

handled by junior staff, while facilitation and advocacy activities will be handled by senior staff.

The Company office also has state-of-the-art Windows NT and WAN technology. Its e-mail and computer system is capable of shipping entire files, memos and documents electronically to our clients to save time and costs. The Company has desktop computer-assisted research capabilities through WestLaw, on-line direct access to the databases of various institutions, several CD-ROM tools, and the Internet. A full-time in-house network administrator ensures that the computer systems are running consistently and efficiently.

## **VI. Conflict of Interest**

Consultants in the Company have been representing other clients in a legal capacity on these specific issues in a continual and ongoing basis. These other clients include: The Seminole Tribe of Florida, the Lake Worth Drainage District and the Florida Department of Transportation. Consultants in the Company also represent Lee County through LLW Consultants, LLC. Common to Miami-Dade County, all of these clients are specifically interested in the linkages between water supply (in particular Lake Okeechobee supply issues), flood control and environmental restoration for their particular region as it relates to Everglades planning. The Company believes that there is no conflict of interest in continuing to represent these clients as well as Miami-Dade County on CERP and, in particular, water reservations issues.

The Seminole Tribe of Florida's interests in Everglades restoration are unique in that they are one of only two Native American Tribes whose interests are directly impacted by the restoration. Like any governmental entity, the Tribe has flood control, water supply and environmental interests that must be carefully balanced when taking positions on a project of this magnitude. Specifically, their geographic interest includes reservation lands in Hollywood, Big Cypress, Brighton, Ft. Pierce and Tampa.

The interests of the Lake Worth Drainage District are related to water supply and flood control for over 1 million residents in southern Palm Beach County. These interests must also be carefully balanced in the context of Everglades restoration. Their water supply interests are linked to the health and availability of water from Lake Okeechobee.

The interests of the Florida Department of Transportation relate specifically to how environmental restoration projects impact facilities such as the Tamiami Trail. These potential impacts on facilities include the relationship between water levels and environmental restoration targets. Specifically, the environmental projects include the Modified Water Deliveries project, the Combined Structural and Operational Plan and the Decentralization project.

Finally, the Company represents Lee County's interests relative to the health of Lake Okeechobee and the Caloosahatchee River and estuary. This interest is directly linked to the development of Guidance Memoranda 5 and 6 and initial reservations. Like Miami-Dade



Type of Insurance	Carrier	Amount of Coverage
Professional Liability	National Casualty	\$2,000,000 each claim/annual aggregate
Workers' Compensation	The Travelers Group	\$100,00 each disease/accident \$500,000 limit for disease
Business Auto Policy	Travelers Property Casualty	\$2,000,000 for hired and non-owned
Comprehensive General Liability	Travelers Property Casualty	\$2,000,000 each occurrence

**LLW Consultants, LLC**

By: *Michelle Diffenderfer*  
Michelle Diffenderfer

*Michelle Diffenderfer*  
[Print Name]

*10/10/05*  
[Title]

Date: *Principal*

To: Roman Gastesi and Tony Cotarelo

From: Kristin Bennett and Erin Deady

Date: August 3, 2004

Re: Combined Structural Operational Plan ("CSOP") Advisory Team Meeting July 29, 2004 (meeting #9)

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This memorandum summarizes the ninth meeting of the Combined Structural and Operation Plan ("CSOP") Advisory Team held July 29, 2004 in Homestead, Florida. We did not attend the July 30<sup>th</sup> half-day meeting but the agenda included a presentation on the Army Corps of Engineer's ("Corps") process on Alternative Development, a lengthy presentation on Planning Conditions Model Output and unanimous adoption of the Performance Expectation Statements. The two presentations have not been included in this memorandum because of their length, but we will provide them via email for your convenience. The only version of the Performance Expectation Statements is in strike/underline copy and we have included it at the end of this memo for your convenience.

Carol Rist opened the meeting stressing the importance for the Advisory Team to come to an agreement in order to have a positive impact on the Everglades restoration. Ms. Rist reviewed the meeting guidelines and requested that if there was disagreement on any of the guidelines, that comments be submitted for discussion at the August meeting.

## **Performance Expectations Status**

### **Introduction**

Ms. Rist next discussed the proposed Introduction to the CSOP Team Statements, Expectations for Success, Assumptions and CSOP Performance Expectations. The discussion on the Introduction centered on the following sentences (found in the second to last paragraph of the proposed Introduction):

*These statements do not suggest there is consensus among the members as to whether or not the Corps will be able to meet these expectations. Instead, this list of statements represents the Team's collective hopes as to what the CSOP needs to achieve to be successful, and will serve as a gauge for the team to measure any gaps between these expectations and CSOP proposals developed by the Corps.*

This tool is designed to allow the Team to work with the Task Force and the Corps to review, debate and revise how to meet these expectations in the CSOP.

James Humble raised the issue that if an expectation cannot be realized, than it is not an expectation. Ms. Rist explained that the sentence had to be read in context with the remainder of the paragraph. She explained further that the statements would allow the Team to identify any gaps in the project and to ask the Corps how those gaps will be addressed.

Richard Grosso agreed with Mr. Humble and Mr. MacVicar's statements. Mr. Grosso stated he did not want the language that we agreed to use create any false expectations for what this project can do. He believes the language needs to reflect what we believe can happen, not what we "hope" can happen. Mr. Grosso stated also that he is concerned that if there is agreement on one performance expectation, such as that there would be improved flood control, that there may be conflict with one of the restoration goals. Madeline Fortin stated that there is not a conflict; there is an expectation that flood protection will be increased without a negative impact on the environment.

Tom MacVicar stated his concern that some of the things the team is proposing as expectations have been built into the design of the project. By relegating the design to expectations, there is a risk the Corps will change the design because it is unable to meet the expectations.

Bob Johnson stated that his concern is how the term "successful" will be defined. This is of particular concern is the Corps defines "success" by what is authorized for the project and what are "additional objectives." Since there is not agreement on what is authorized for the project, it is nearly impossible for the Advisory Team to define what is a success.

Tom MacVicar stated that he would prefer that a stronger word than "hope" be used in the statement. There was agreement to edit the word to read "expectations."

In response to Mr. Humble's statement that he has heard funding will either be cut or not increased for CSOP, Ms. Rist offered to get a report on the funding. Rock Salt responded that he is not aware of any cuts in funding at this time.

### **MacVicar Proposed Assumption and environmental stakeholder proposal**

The Advisory Team next discussed the proposed assumption offered by Tom MacVicar. Ms. Rist stated that she would entertain offering the amendment only if it would lead to consensus. The proposed assumption was offered as follows:

MWD [Modified Water Delivery] features that result in higher seepage to the to the L-30 and L-31N canals will not be implemented until facilities are in place to allow G-211 and S-338 to act as drainage divides regardless of whether these facilities are constructed as part of the MWD Plan or under some other authority.

In support of the proposed statement Mr. MacVicar stated the process was started with the concept that seepage would be controlled. The proposed statement merely reflects reality: do not increase seepage until the increased seepage can be handled. S-356 is not designed to handle current seepage. A facility to handle the additional seepage to the east is necessary.

Bob Johnson responded that the issue is the use of S-338 as a divide. Mr. Johnson claimed this is the first time S-338 has been brought up as a drainage divide. Mr. MacVicar responded that Miami-Dade County has raised the issue repeatedly at project Delivery Team (PDT) meetings. Mr. Humble supported this statement and emphasized that the issue is to deal with additional seepage.

Concern was raised that this statement was too specific, that it would be better to address the issue in broader concepts. Mr. MacVicar responded that the proposed statement does not tell how to deal with the additional seepage; it just states that the additional seepage must be addressed.

Kim Taplin, Corps, stated that the Corps is committed to developing an operational plan per the authorization Congress provided. The "Bookend" Alternative runs will give additional information needed to evaluate the amount of maximum seepage. Mr. MacVicar stressed that this statement reinforced his concerns; Fourteen years of data exist that supports the fact that S-356 is undersized 20% of the time and under MDW it is going to be necessary for S-356 to handle even more seepage.

Jerry Lorenz expressed the concern that this statement has the potential to block MDW altogether. Rock Salt agreed more water cannot be moved east until the current seepage is addressed but he cannot support a statement that constrains the operation of MDW. Several Advisory Team members echoed this sentiment. John Adornato stated that he could not agree to the concept if what was being proposed was that flood risks must be reduced in order for MDW to work. A general question raised was whether or not the mitigation for MDW was to address increased flood risk to address pre-existing flood risk. Mr. MacVicar emphasized that increased seepage needs to be addressed before MDW is implemented. Kim Taplin emphasized that the Corps is committed, in a parallel process, to address the issue of the increased seepage.

Several amendments to the statement Tom MacVicar initially proposed were offered. The area of contention focused on the question of "increased seepage," "existing seepage" and "higher flood risk." Ultimately, the following language was offered and accepted unanimously by the voting members as an amendment:

The CSOP will reduce the existing seepage problem as much as possible with MWD and C-111 structures and/or operations.

### **Adornato et al Proposal for Expectation Statements #3, 7 and 12**

John Adornato spoke on behalf of the environmental stakeholders in support of the position that Performance Expectation statements 3, 7 and 12 be removed from the main body of the Advisory Team Report and be included in the appendix to the report. Mr. Adornato emphasized that the environmental community, on several occasions, had expressed reservations about participating in a consensus process because of the uneven representation of the group. It was pointed out that each stakeholder group had three representatives and that the interests of the group were not necessarily mutually exclusive. For instance, the residents raised the issue that while they were concerned about flooding, they also were concerned about the environment. It also was pointed out that while the environmental stakeholders may have expressed reservations about the process, they have been sitting at the table participating in the process and that it was disingenuous to try to change the agreed upon guidelines at this late date in the process.

The discussion focused on the definition of “consensus”, changing rules at this stage of the work, that the principles governing the Advisory Team did not address the issue of a full stakeholder group’s expectations not being met, fairness and a report being drafted in a format that does not characterize the expectations as consensus since an entire group of stakeholders were not able to express their position.

Mr. Adornato’s request to move performance expectations 3, 7 and 12 to the index was denied. The Chair did agree to reformat the document to reflect items that had unanimous support distinguished from consensus support. The “minority position” would be reflected in the body of the report. The reformatted document was brought back to the Advisory Team for approval on Friday July 30<sup>th</sup>. The vote on the reformatted document was unanimous. As soon as we receive a final version of that approved document, we will forward via email.

### **Planning Conditions Presented**

Kim Tiplin briefly discussed the Federal Action for CSOP. Please see the email attachment of the presentation handouts for specifics.

### **Presentation on Alternatives Development-Bookend Alternatives**

Paul Linton presented extensive modeling information on WCA 3A and 3B modeling. Please see the email attachment of the presentation handouts for specifics.

## **Appendix #3 Final Statements Document**

Combined Structural and Operational Plan Advisory Team  
DRAFT TEAM STATEMENTS  
EXPECTATIONS FOR SUCCESS, ASSUMPTIONS AND CSOP PERFORMANCE  
EXPECTATIONS  
July, 2004

### **INTRODUCTION**

The Advisory Team, chaired by Carol Rist is composed of stakeholder voting members representing residential, agricultural, recreational and environmental interests, as well as local, state and federal governmental non-voting representatives. The Team was formed, charged and convened by the South Florida Ecosystem Restoration Task Force in December, 2003, to seek consensus among the stakeholder Team members on provide advice to the Task Force for its consideration in providing guidance and advice to the Army Corps of Engineers on the development of the CSOP. Pursuant to its charge, the Advisory Team has met 9 times since December, 2003, to receive briefings on the CSOP and to build consensus on develop initial advisory statements to the Task Force including: Advisory Team expectations for success, Team assumptions, and the Team’s CSOP performance expectations. These statements items, which are set forth below, cover key aspects and areas of the project including: the Water Conservation Areas, the 8.5 Square Mile Area, the detention and buffer areas in the southern part of the system, Taylor Slough, Shark River Slough and Florida Bay.

The Combined Structural and Operational Plan (CSOP) Advisory Team met on April 26-27 to review and consider the adoption of member and chair amendments to the "Amendatory Text" of statements the Team had developed at its previous six meetings and adopted at its April 5-6, 2004 meeting. The Team met on June 17, 2004 and July 29-30, 2004 to build consensus through consideration of Chair amendments to the text. The statements in each section are organized in categories including: 28 statements with unanimous support; 2 statements with nearly unanimous support; and 4 statements with at least 2/3 support. Each of the four statements, includes a statement by voting stakeholder members on the nature of their concerns that led them to vote against adopting the statement. relation to the level of voting member support. Noted for each statement is the level of support as indicated by the voting members of the Team at its April, and June and July, 2004 meetings. The appendix features statements submitted by voting stakeholder members on the nature of their concerns for statements they voted against. The Team, consistent with the consensus decision rules it adopted at its April 5-6, 2004, decided, after review and suggestions for strengthening support, whether to adopt each of the 62 proposed voting and non-voting member amendments to the draft statements and the 11 chair amendments offered to build consensus. Pursuant to the consensus adopted decision rules, in order to become part of the text, each amendment needed to receive support from at least 2/3's of the voting members present. Of the 62 member amendments and 11 chair amendments: 16 were adopted unanimously; 6 were adopted receiving between 2/3 and unanimous support; 36 were withdrawn; and 5 failed to receive the 2/3 support needed for incorporation into the text.

Going forward, we anticipate using this list of statements as a tool to help the Team assess, evaluate and seek consensus on future advice to be given to the Task Force regarding potential changes or refinements to the CSOP as the Corps proceeds in its Plan development process. These statements do not suggest there is consensus among the members as to whether or not the Corps will be able to meet these expectations. Instead, this list of statements represents the Team's collective hopes expectations as to what the CSOP needs to achieve to be successful, and that will serve as a gauge for the team to measure any gaps between these expectations and CSOP proposals developed by the Corps. This tool is designed to allow the Team to work with the Task Force and the Corps to review, debate and revise how to meet these expectations in the CSOP.

We look forward to any guidance from the Task Force as our Team continues its efforts pursuant to our charge.

## OVERALL CSOP ADVISORY TEAM EXPECTATIONS FOR SUCCESS

### Statements with Unanimous Support

(A) The CSOP will respond to the final consensus recommendations of the CSOP Advisory Team, 4/26/04 Vote on Amendment #2 MacVicar: 11-0

(B) The CSOP Advisory Team, consistent with its adopted consensus guidelines, will seek consensus decisions on their package of advisory recommendations to the Task Force and preserve the opportunity for minority views to be expressed and recorded in the appendix of the final document. 4/26/04 Vote on Amendment #3 Harrison: 13-0

(C) The CSOP, as designed and implemented, will advance Everglades Restoration and be consistent with the broader goals of CERF. 4/26/04 Vote on Amendment #4 Rice/Lorton: 13-0

## CSOP TEAM ASSUMPTIONS

### Statements with Unanimous Support

- All stakeholders will be treated fairly. 4/26/04 Vote on Amendment #6 Fortin: 13-0
- The Army Corps of Engineers will provide, clarify and quantify all data necessary for the CSOP Advisory Team to make informed decisions. 4/26/04 Vote on Amendment #9 Adornato: 12-0
- All natural areas within the project's area of influence are important. 4/26/04 Vote on Amendment #13 Walsh: 12-0

G. The CSOP will reduce the existing seepage problem as much as possible with MWD and C111 structures and/or operations. 7/29/04 Vote on Chair's Amendment: 11-0

G H Additional features for improved flood protection shall not harm the Park and shall be consistent with restoration of natural water flows. 4/26/04 Vote on Amendment #32 Guerra: 13-0

H I. The CSOP will provide access to levee and canal ways for appropriate recreational uses consistent with the congressionally authorized purposes of these projects and the recreational policy of the SFWMD 4/26/04 Vote on Amendment#34 Harrison: 13-0

## WCA 3A & 3B PERFORMANCE EXPECTATIONS

### Statements with Unanimous Support

(1) 1. Move towards rainfall driven natural flows and levels and move toward natural connectivity of WCA 3A 3B and NE Shark River Slough while reducing unnatural frequencies and duration of extreme high and low events. No Amendments

(2) 4. Consistent with restoration goals, maintain and improve public access to and connectivity within WCA 3A and WCA 3B for current recreational and other activities which are vital to the traditional Everglades "sportsperson" culture. Emphasis should be placed on modifications to the L-67 canals. 4/26/04 Vote on Chair's Amendment #1: 13-0

(3) 5. If and when CSOP induces additional flows into and through WCA 3A, WCA 3B, and Everglades National Park to improve water deliveries and provide ecological benefits, ensure that these inflows meet all applicable water quality standards. 4/26/04 Vote on Amendment#23 Rice/Lorion: 14-0

(4) 2. Move toward restoration of all natural habitats within WCA 3A and WCA 3B to include tree islands and ridge and slough, and strive to restore historical hydrologic/ecological connection throughout the South Florida ecosystem. 4/26/04 Vote on Amendment#15 Adornato: 13-1 No: Humble

(5) 6. Protect Tribal natural and trust resources vital to their traditional culture and way of life by restoring more natural water levels in WCA 3A 4/26/04 Vote on Amendment#25 Rice/Lorion: 13-1 No: Walters

### Statements with at Least 2/3 Majority Support

(6) 3. Reduce flooding impacts on nearby agricultural and urban area. Project induced flood impacts to be avoided include seepage out of WCA 3B and diversion of flow to the S. Dade conveyance system. 4/26/04 Vote on Amendment#17 Reok: 10-4 Yes: Alleman, Espino



### Minority statement on concerns with Expectation #3

Performance Expectation #3 refers to "flooding impacts" without indicating the cause of such impacts. Pursuant to their legal authorizations, the MWD Project and the 1996-authorized modifications to the C-111 project must mitigate flooding impacts caused by implementation of the projects themselves. The projects are not, however, required to mitigate for the impacts of any and all "seepage out of WCA 3B [or] diversion of flows to the South Dade Conveyance System," including impacts caused by other operations of the C&SF Project. To mitigate for these unrelated impacts, the agencies must ensure that the mitigation will not compromise the authorized restoration purposes of the projects or, alternatively, seek other means of accomplishing the mitigation. In this specific context, we do support the expectation that the CSOP reduce interbasin transfers at S-331, as this should benefit the Park, other natural areas, and agricultural lands downstream of this structure, while not negatively impacting any part of the Park or other natural areas upstream.

## 8.5 SQUARE MILE AREA PERFORMANCE EXPECTATIONS

### Statements with Unanimous Support

(1) 8. Consistent with the benefits of both Mod Waters and C-111 projects, the operations of S 357 and its STA will minimize seepage into L-31 N. 4/26/04 Vote on Amendment#30 Harrison: 14-0

(2) 9. The CSOP will be developed so that there will be no reduction in flood protection due to project implementation east of the 8.5 SMA (between G-211 and S-331). 4/26/04 Vote on Chair#2: 13-0

(3) 10. (Moved to Assumption H) 4/26/04 Vote on Amendment#34 Harrison: 13-0

(4) 11. The Corps and/or SFWMD will comply with all applicable water quality standards for the water bodies receiving outflows from the 8.5 SMA. 4/26/04 Vote on Amendment#35 Adornato: 11-0

### Statements with at Least 2/3 Majority Support

(5) 7. The Plan will provide flood protection for the residents of the 8.5 Square Mile Area and hydrological benefits for Everglades National Park, as authorized by Congress. 6/17/04 Chair's Amendment 9-4 Yes: Alleman, Espino, Fisikelli, Fortin, Humble, MacVicar, Pena, Powell, Rist No: Cynthia Guerra, John Adornato, Jerry Lorenz (Alternate for Tad Burke) and Richard Grosso (Alternate for Debra Harrison in the Appendix The Chair's 6/17/04 amendment was preceded by a Chair's amendment #9 on 4/27/04 (13-0) and that was preceded by two amendments that failed to secure sufficient support to Performance Expectation Statement #7. 4/26/04 Vote on Amendment # 26 Guerra (7 yes/ 7 no) 4/26/04 Vote on Amendment #27 Sculley (7 yes/ 7 no)

### Minority statement on concerns with Expectation #7.

This Performance Expectation fails to clearly state the relevant legal authorizations. Specifically, the expectation should state that the Congressional authorization of Alternative 6D contained in the 2003 omnibus appropriations bill constitutes the Advisory Team's expectation



concerning the 8.5 Square Mile Area component of the MWD Project. While all parties around the table agreed to this in principle, we could not agree to clarify the expectation statement accordingly. Without such a clarification, it is our opinion that Performance Expectation # 7 may create false perceptions about the ultimate performance of this element of the restoration project.

## DETENTION AND BUFFER AREAS IN SOUTHERN PART OF SYSTEM PERFORMANCE EXPECTATIONS

### Statements with Unanimous Support

(1) 13. Performance of the buffer and detention areas is dependent on reduction of inter-basin transfers of seepage water from the Everglades, including S-331. Seepage from ENP should be returned to ENP, in the same general area from which it came.  
4/27/04 Vote on Amendment #41 MacVicar: 12-0

### Statements with at Least 2/3 Majority Support

(2.) 12. These project elements were designed to restore historic hydrologic conditions in the Taylor Slough and Rocky Glades while providing flood protection. It is our expectation that objectives of better flood protection for the area east of the L-31N Canal and more natural hydrology along Eastern boundary of ENP will be met in accordance with the project design.  
4/27/04 Vote on Chair's Amendment #8: 8-4 Yes: Alleman, Espino, Fisikelli, Fortin, Humble, MacVicar, Pena, Rist No: John Adomato, Cynthia Guerra, Jerry Lorenz (Alternate for Tad Burke) Debra Harrison).

### Minority statement on concerns with Expectation #12

Similar to Performance Expectation #3, Performance Expectation #12 implies inappropriately that improved flood protection is equivalent to restoration as a legally-authorized design purpose for these projects. The overall legally-authorized purpose of the modifications to the C-111 project that the CSOP is to implement is the "restoration of the ecosystem in Taylor Slough and the eastern panhandle of ENP that were affected by construction of the flood control project in the C-111 Basin. The study also focuses on preserving the current level of flood protection for the agricultural activities in the C-111 basin." Therefore, any reference to providing flood protection should be directly linked to maintaining the existing levels of flood protection, not an unquantifiable and vague statement like "better flood protection." The expectation should also be linked to the project documents, with a statement of aspiration that further storm water management improvements could be attained if consistent with the authorized objectives.

## TAYLOR SLOUGH PERFORMANCE EXPECTATIONS

### Statements with Unanimous Support

(1)14. The CSOP should restore historic hydrologic conditions in the Taylor Slough and Rocky Glades basins within ENP, and will be evaluated using a combination of hydrological and ecological measures. The Corps and/or SFWMD will comply with all applicable water quality standards. 4/27/04 Vote on Amendment #45, Guerra: 11-0

## SHARK RIVER SLOUGH PERFORMANCE EXPECTATIONS

### Statements with Unanimous Support

Preamble Language

D. The Modified Waters Project cannot be considered complete until the hydrological connection is restored.

E. The hydrological and ecological benefits of CSOP will be achieved without compromising public health and safety and/or flood control.

4/27/04 Vote on Chair's Amendment #3& #4: 13-0

## Performance Expectations

### Statements with Unanimous Support

1. 15. The CSOP will restore more natural hydrologic conditions in Shark River Slough and its downstream estuaries and will be evaluated using a combination of hydrological and ecological performance measures. The Corps and/or SFWMD will comply with all applicable water quality standards. 4/27/04 Vote on Amendment #46 Burke/Lorenz: 11-0

2. 16. CSOP should consider whether water quality features are needed at the 356 pump station for Shark River Slough. 4/27/04 Amendments #47 and 49 withdrawn

3. 17A. The facilities of the Airboat Association of Florida will be provided appropriate flood mitigation. 4/27/04 Chair's Amendment # 5: 13-0

### Statements with at Least 2/3 Majority Support

(4) 17. Tamiami Trail improvements must be completed, including the 3000 foot bridge and elevation of the remaining eastern segment of the road, before allowing significantly more water into Northeast Shark River Slough. This project component must be expedited and the remainder of the project components must be sequenced subject to this constraint. CSOP will analyze whether and how much water can be restored to Shark River Slough prior to full completion of the project without compromising flood protection. 4/27/04 Vote on Chair's Amendment #6: 9-4  
Yes: Adornato, Burke/Lorenz, Espino, Fisikelli, Guerra, Harrison, Pena, Walters, Rist. No: Alleman, Fortin, Humble, MacVicar

## FLORIDA BAY PERFORMANCE EXPECTATIONS

### Statements with Unanimous Support

(1) 18. The plan should restore historic hydrologic conditions in the eastern panhandle basin of Everglades National Park by redirecting flows from C-111 basin to Taylor Slough. This will move towards appropriate salinity levels in Central and Northeast Florida Bay, while restoring historic hydrologic conditions in Taylor Slough and complying with applicable water quality standards. 4/27/04 Vote on Amendment # 57(Burke/Lorenz): 13-0

(2) 19. The effects on Water Quality from changing flows to FL Bay, including potential nitrogen effects will be monitored. If a problem is detected, appropriate action will be taken. 4/27/04 Vote on Amendment # 60 (Burke/Lorenz): 13-0

(3) 20. The CSOP will eliminate damaging freshwater flows to Manatee Bay/Barnes Sound by reducing the need for discharges from S-197. 4/27/04 Vote on Amendment # 62(Burke/Lorenz): 12-0

(4) 21. The C-111 N spreader canal will be constructed, as per the C-111 1994 GRR, as soon as possible. 4/27/04 Vote on Chair's Amendment # 3: 12-0

Mr. Christopher R. Mazzella  
Office of the Inspector General  
19 West Flagler Street, Suite 220  
Miami, FL 33130

July 14, 2006

RE: OIG Draft Report – IG06-08A

Mr. Mazzella

This letter is in response to your office's request for comments regarding the above referenced report. Thank you for the opportunity to weigh in regarding the proposed findings. It is clear from the responses received from LLW Consultants and EAS Engineering that:

1. EAS submitted in writing twice to the County – prior to the issuance of the first work order, the qualifications of LLW Consultants and a Scope of Work proposed by them, in their letterhead. It is clear that written documents were provided to the County prior to the approval of the work order identifying LLW Consultants as a subconsultant.
2. In the final Monthly Utilization Report (MUR) submitted by EAS, LLW is shown as the subconsultant and recipient of all the funding. This was not "uncovered" by the County, it was voluntarily submitted by the contract provider.
3. LLW Consultants should not be characterized in the report as an "undisclosed subconsultant". It worked very clearly with DERM, WASD, the County Manager's Office and OWM staff at all times regarding the project in question and properly identified itself as the service provider to each of these departments. Additionally, LLW work product in the form of summary memoranda was directed to County staff on LLW letterhead.
4. The intent of all parties was to have transparency regarding the scope of work, and performance of the tasks themselves. As such, LLW was directed by me to brief County management directly and to submit its work product to the County directly. LLW's role was always disclosed to the various County agencies involved.

The scope of work was performed in a satisfactory manner, the subcontractor's identity, as stated above, was always disclosed, all monies were paid and accounted for, and as your report clearly states "the County received the desired services".

We learned a hard lesson after Hurricane Irene in 1999 and the No Name Storm of October 2000. In response, the Board of County Commissioners created the Miami-Dade County Flood Management Task Force to analyze the flood management system, recommend opportunities for improvement, and seek ways to protect residents from future flood impacts. The Task Force published two reports, with a total of 22 recommendations. The overarching theme of the recommendations was that Miami-Dade County staff "should actively participate in ongoing processes to define structural and operational changes that will both alleviate flooding issues, as well as protect water supply and the environment.



July 14, 2006

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- Safe Neighborhood Parks
- Seaport
- Solid Waste Management
- Strategic Business Management
- Team Metro
- Transit
- Task Force on Urban Economic Revitalization
- Vizcaya Museum And Gardens
- Water & Sewer

Mr. Christopher Mazzella, Inspector General  
Miami-Dade Office of the Inspector General  
19 West Flagler Street  
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Re: OIG Draft Report – IG06-08A

Dear Mr. Mazzella:

Thank you for the opportunity to review the Office of Inspector General's (OIG) draft audit report regarding the Miami-Dade County's Equitable Distribution Program (EDP) work authorization agreement between the Miami-Dade County Office of Water Management (OWM) and EAS Engineering, Inc., dated June 22, 2006.

The Office of Capital Improvements (OCI) offers the following clarifications for your consideration:

EDP Contracts and Work Authorizations

The draft OIG report refers to a Professional Services Agreement between OWM and EAS. To clarify, EDP participants execute a Professional Services Agreement (PSA) with the County to provide professional services on an as needed basis. Departments issue work authorizations/service orders to EDP firms to provide specific services under the umbrella contract terms and conditions of the EDP PSA.

EDP Selection Process

The draft OIG report infers that the EDP selection process is non-competitive. In accordance to Florida Statute, 287.055, EDP is exempt from the competitive selection process. All firms meeting the minimum eligibility requirements are accepted into the program and issued a continuous PSA between Miami-Dade County and the firm. By administrative policy, when a department submits an EDP request, OCI reviews the request and then generates from the EDP database the next three available prime firms with the required technical certifications for the required tasks. It is the responsibility of the user departments (not OCI) to select the most qualified prime firm from the provided list for the specific task and notify OCI of their selection. Furthermore, the user department may request additional firms if the initial and subsequent available firms can not provide the services. It was through this process that OWM selected EAS to provide contract services.

Utilization Reporting

The EDP Close Out form and the Utilization Form are synonymous. During the EDP program development and implementation, DBD created the EDP Close Out specifically to act as the EDP projects utilization report. Departments now submit the Close Out form to OCI and then OCI forwards to DBD to process.

Sub consultant agreements

The draft OIG report indicates that a written sub consultant agreement is required. The EDP PSA indicates that there must be an agreement but does not require a written agreement, While the County encourages prime firms to have a written sub consulting agreement to clarify responsibilities, the County does not dictate the form of a third party agreement.

Christopher Mazzella  
Page 2  
July 14, 2006

Department Responsibilities

The County's administrative orders (AO) are created, approved and posted on the County's website to ensure consistent application of the County's policy and procedures by the various departments. It is the responsibility of each department and their staff to familiarize themselves with the legislation applicable to their operations. If a user Department needs further clarifications, they should contact the designated administrative department, in this case OCI. In addition, OCI has conducted numerous EDP workshops for EDP participants and departments. As part of a firm's EDP application, they are required to execute an affidavit certifying that they understand the program's policies and contract requirements. OCI periodically reviews the AO 3-39 and clarifies ambiguous language and conducts workshops to review amendments.

OCI was not aware of any improprieties that took place at OWM regarding the work authorization between OWM and EAS Engineering, Inc, including the inappropriate use of LLW. A user department can document the need for limited additional services for a specialty consultant if the services cannot be provided by any of the EDP participants. OWM did not submit to OCI the necessary assignment form including the MUR regarding this assignment. The unauthorized sub consulting of LLW by EAS was unacceptable.

Based on the IG's final report, OCI will review EAS's adherence to the program and take appropriate action as warranted. This determination will be independent of any other actions deemed necessary by the County.

Should you need further clarification on these issues, or have any questions, please do not hesitate to contact Ms. Elizabeth Zabowski, EDP Program Coordinator at (305) 375-2824.

Sincerely,



Roger Hernstadt  
Director

C: Susanne Torriente, Assistant County Manager  
Carlos Espinosa, Acting Director – DERM  
Marsha Jackman, Director - DBD