

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO:

Finance and Citywide Projects Committee

FROM:

Jimmy Morales, City Manager

DATE:

July 25, 2013

SUBJECT: REFERRAL TO THE FINANCE AND CITYWIDE PROJECTS COMMITTEE (BUDGET MEETINGS) TO DISCUSS HIRING AN INSPECTOR TO INVESTIGATE CLAIMS OF FRAUDULENT ACTIVITIY AND PERFORM OTHER INVESTIGATIVE SERVICES.

At the May 8, 2013, City Commissioners' meeting, Commissioner Michael Gongora referred the subject matter to the Finance and Citywide Projects Committee (FCWPC).

BACKGROUND

On April 11, 2012, five Code Compliance and two Fire Department employees were arrested by the Federal Bureau of Investigations (FBI) on charges that included conspiracy to commit extortion. Shortly after news of the arrests, the City reached out to Miami-Dade County Inspector General, Christopher R. Mazzella, regarding the possibility of the MDCOIG providing the City with its services to investigate and review allegations of waste, fraud, abuse, employee misconduct and mismanagement.

On June 6, 2012, the subject issue was referred by the City Commission to the Neighborhood and Community Affairs Committee for further discussion and the item was placed on the meeting agenda for October 15, 2012, where discussion was deferred. On December 12, 2012, the Commission approved the action plan to address potential corruption and misconduct which, among other things, included contracting with the MDCOIG for the oversight and investigatory services the office provides.

The MDCOIG was created in 1998 by the Miami-Dade County Commission, through County Ordinances, and has the authority to "review past, present and proposed County and Public Health Trust programs, accounts, records, contracts, and transactions." (Attachment 1) The MDCOIG investigates allegations of fraud, waste, abuse and misconduct amongst public officials and County employees, as well as contractors and vendors doing business with the County. The Mayor and the former City Manager met with Mr. Mazzella and his staff on April 18, 2012, to discuss the possibility of a formal relationship between his office and the City. The Inspector General was receptive to such an engagement and that meeting was the origin of a conceptual intergovernmental agreement between the two parties.

To carry out its mission, the MDCOIG is empowered to require, and issue subpoenas if necessary, the production of documents and records in the possession and control of the County. The MDCOIG can also call for reports from any County official, County agency or instrumentalities regarding any matter within its jurisdiction; to report on and recommend to County government on whether a particular program, contract or transaction is financially sound, reasonable, necessary or operationally deficient; to conduct random audits; and to provide general oversight of department programs and large-scale construction projects.

The proposed agreement between the City and Miami-Dade County, on behalf of the MDCOIG, would have authorized the MDCOIG to provide similar services to the City. Staff members from the MDCOIG, City Administration and City Attorney's Office worked to craft an agreement setting forth the powers and duties of the Inspector General in the City of Miami Beach.

The following generally describe the role of the Inspector General and the scope of services that the agreement contemplated:

- The organization and administration of the MDCOIG would have been sufficiently independent
 to assure that no interference or influence external to the MDCOIG adversely affected the
 objectivity of the Inspector General. The Inspector General considered this an integral
 component of any relationship with his office.
- The MDCOIG would have exercised any of the responsibilities, functions and authorities contained in the agreement upon his or her own initiative.
- The Mayor and Commission, City Manager, City Attorney, City's Internal Auditor and Miami Beach Police would have cooperated with the MDCOIG to achieve the goals of preventing and detecting fraud, waste, financial mismanagement, employee misconduct or other abuses, and promoting accountability, integrity, economy, and efficiency in government.

Under the terms of the agreement, the MDCOIG would have been authorized by the City to:

- Serve as the Inspector General for the City during the term of the agreement.
- Randomly, or in response to complaints, conduct reviews, audits, inspections, investigations or analyses relating to departments; offices; committees; activities; accounts; records; procurement processes (e.g. how bid specifications were established; how the bid process was managed; the activities of the prospective bidder, its officers, agents and employees; lobbyists; City staff; and elected officials); contracts; transactions; past/present/future programs and agencies of the City; employee compliance with established policies and/or standard operating procedures (including the operation of departments or divisions of the City with regulatory oversight of local/state/federal codes such as, but not limited to, fire, parking, planning and zoning, building, property maintenance, noise, etc.); and allegations of employee misconduct.
- Require reports and the production of records from the Mayor, Commission, City Manager, City officers, employees (except any files or reports relating to litigation that are subject to attorney-client or other similar privilege) and entities under contract with the City.
- Staff and support a "hotline," that would be operational throughout the duration of the
 agreement, to accept calls from individuals reporting alleged fraud, waste, financial
 mismanagement, employee misconduct or other abuses and for such hotline to be advertised by
 the City.

The MDCOIG was intended, whenever possible, not to duplicate the work of the City's Internal Auditor, Miami Beach Police Department Internal Affairs Division, Miami Beach Human Resources Department, City Commission, City Manager and City Attorney, the State Attorney's Office or Miami-Dade County Commission on Ethics. The Inspector General, However, advised the City Attorney of his unavailability to provide this support. (Attachment 2)

Analysis

Although the MDCOIG is not available to enter into an agreement with the City, the Administration thinks it is imperative that the City continue to pursue every effort to prevent and detect fraud, waste, financial mismanagement, employee misconduct or other abuses. Employees, residents and business owners alike need a venue through which to report conduct that is not consistent with the integrity the City expects of public servants and, when doing so, those reporting such activities must feel confident that their calls and concerns will be properly investigated. Equally, it is to the City's benefit to have a process through which to investigate reported fraud or employee misconduct, such as concerns with the City's procurement and regulatory functions, primarily as it relates to matters that do not rise to the level compelling the FBI's involvement.

On December 12, 2012, then Interim City Manager, Kathie Brooks, recommended pursuing a contract with a dedicated hotline reporting service, capable of providing a 24-hour toll-free telephonic personal answering service and reporting and tracking compliance concerns to enhance the Administration's ability to identify possible unethical, illegal or questionable behavior. The hotline would have provided an efficient and independent means of reporting and identifying concerns regarding potential misconduct and the services would have been procured through a Request for Proposal (RFP). The features of the proposed hotline would have included:

- 24/7/365 Call Center;
- Unique toll-free number with customized greeting:
- No call gueues ever used. Every Call answered by live operators;
- Online case management for reporting, tracking and analysis; and
- Immediate notification 24 hours-a-day for severe/sensitive situations;
- Online web-reporting for employees.

The hotline would have provided for the establishment of a reporting mechanism that afforded employees, residents and business owners with a means by which to voice their concerns on compliance and other regulatory issues without fear of retribution.

She further recommended hiring an Anti-Corruption/Chief Compliance Officer who would have been responsible for the ethics hotline, and follow up on investigations brought about from hotline reports or other sources. These types of investigations are currently handled by the City's Human Resources Department, but they take resources from other functional responsibilities and depending upon the nature of the complaint frequently require assistance from law enforcement. The compliance officer would have also been responsible for contract compliance oversight.

Additionally, during Fiscal Year 2012/2013, the Police Department had the opportunity to assign two overage sergeant positions to the Internal Affairs Office of the Miami Beach Police Department. They were assigned to assist with investigations outside of the department including assisting the City Manager investigate allegations of employee misconduct. The value of the support provided by these temporary additional resources is such that the Administration is recommending in the Fiscal Year 2013/2014 budget that they be added permanently, subject to funding availability.

Inspector General

Should the Mayor and City Commission direct staff to pursue establishing an inspector general position and role that mirrors the set up in the County, the incumbent's potential duties, could include, but would not necessarily be limited to the following:

- Establish and maintain a hotline and an online web-reporting mechanism for the public and employees use;
- Initiate reviews of operations to identify specific areas where potential fraudulent activities may occur and establish proactive monitoring practices to avoid abuses;
- Direct and coordinate all investigations concerning alleged criminal conduct, official corruption, contract fraud, organized crime activities, capital construction and white collar crime:
- Direct and review audits/investigations intended to determine whether activities and programs, in place or under implementation;
- Review facts to substantiate conclusions in an investigation;
- Supervise the preparation and presentation of search warrants, affidavits and other legal documents necessary in the course of a criminal investigation;
- Develop and maintain relationships with federal, state and local law enforcement agencies and serve as a liaison with federal, state and local prosecutors on all matters relating to criminal investigations;
- Provide appropriate and necessary information relating to criminal acts to appropriate law enforcement officials; coordinate resulting investigations;
- Maintain the integrity of the Inspector General as a credible oversight agent by ensuring all activities meet the highest professional standards;
- Assist, as appropriate, in the prosecution of all cases resulting from investigation by the Inspector General;
- Work closely with the Internal Auditor, as required, to maximize protection of funds, program and property;
- Maintain files of all investigatory reports, work papers and other supportive material in accordance with record retention requirements; and
- Review the reliability and validity of information provided by City government performance measures and standards.

Based on a review of other inspector general job descriptions, appropriate minimum requirements for the job would be:

- Juris Doctor degree or Master's degree in Criminal Justice from an accredited college or university; and
- No fewer than seven (7) years of full-time responsible work in federal, state, or local law enforcement officer/official or as a Federal or State court judge, or as a federal, state, or local government attorney with expertise in investigating fraud, mismanagement, corruption,

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and white collar crime; at least four (4) years must have been in an administrative or managerial capacity; and

- Experience managing and completing complex investigations involving allegations of fraud, theft, deception and conspiracy; and
- Demonstrated ability to work with local, state and federal law enforcement agencies and the judiciary.

To establish an inspector general role that mirrors the MDCOIG, the Mayor and the City Commission would have to approve an ordinance similar to what is reflected in Attachment 1.

The funding for the position would need to be considered during the development of the FY 2013/2014 budget.

Conclusion

This information is presented to the Committee for further consideration and direction.

Attachments

ARTICLE LXXVIII. - COMMISSION ON ETHICS AND PUBLIC TRUST

ARTICLE LXXVIII. - COMMISSION ON ETHICS AND PUBLIC TRUST

Sec. 2-1066. - Creation of Commission.

Sec. 2-1067. - Legislative intent and purpose.

Sec. 2-1068. - Jurisdiction.

Sec. 2-1069. - Membership, qualifications, terms, vacancies.

Sec. 2-1070. - Applicability of Conflict of Interest and Code of Ethics Ordinance.

Sec. 2-1071. - Organization of the Ethics Commission.

Sec. 2-1072. - Powers and duties of the Ethics Commission.

Sec. 2-1073. - Financial support for the Ethics Commission.

<u>Sec. 2-1074. - Procedure on complaint of violationor request for advisory opinion within Ethics Commission's jurisdiction.</u>

Sec. 2-1075. - Appeals.

Sec. 2-1076. - Office of the Inspector General.

Secs. 2-1077-2-1085. - Reserved.

Sec. 2-1076. - Office of the Inspector General.

- (a) Created and established. There is hereby created and established the Office of Miami-Dade County Inspector General. The Inspector General shall head the Office. The organization and administration of the Office of the Inspector General shall be sufficiently independent to assure that no interference or influence external to the Office adversely affects the independence and objectivity of the Inspector General.
- (b) Minimum Qualifications, Appointment and Term of Office.
 - (1) Minimum qualifications. The Inspector General shall be a person who:
 - (a) Has at least ten (10) years of experience in any one, or combination of, the following fields:
 - (i) as a Federal, State or local Law Enforcement Officer;
 - (ii) as a Federal or State court judge;
 - (iii) as a Federal, State or local government attorney;
 - (iv) progressive supervisory experience in an investigative public agency similar to an inspector general's office;
 - (b) Has managed and completed complex investigations involving allegations of fraud, theft, deception and conspiracy;
 - (c) Has demonstrated the ability to work with local, state and federal law enforcement agencies and the judiciary; and
 - (d) Has a four-year degree from an accredited institution of higher learning.
 - (2) Appointment. The Inspector General shall be appointed by the Ad Hoc Inspector General Selection Committee ("Selection Committee"), except that before any appointment shall

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become effective, the appointment must be approved by a majority of the whole number of members of the Board of County Commissioners at the next regularly scheduled County Commission meeting after the appointment. In the event that the appointment is disapproved by the County Commission, the appointment shall become null and void, and the Selection Committee shall make a new appointment, which shall likewise be submitted for approval by the County Commission. The Selection Committee shall be composed of five members selected as follows:

- (a) The State Attorney of the Eleventh Judicial Circuit for Miami-Dade County;
- (b) The Public Defender of the Eleventh Judicial Circuit for Miami-Dade County;
- (c) The Chairperson of the Miami-Dade Commission on Ethics and Public Trust;
- (d) The President of the Miami-Dade Police Chief's Association; and
- (e) The Special Agent in charge of the Miami Field Office of the Florida Department of Law Enforcement.

The members of the Selection Committee shall elect a chairperson who shall serve as chairperson until the Inspector General is appointed. The Selection Committee shall select the Inspector General from a list of qualified candidates submitted by the Miami-Dade County Employee Relations Department.

(3) Term. The Inspector General shall be appointed for a term of four (4) years. In case of a vacancy in the position of Inspector General, the Chairperson of the Board of County Commissioners may appoint the deputy inspector general, assistant inspector general, or other Inspector General's office management personnel as interim Inspector General until such time as a successor Inspector General is appointed in the same manner as described in subsection (b)(2) above. The Commission may by majority vote of members present disapprove of the interim appointment made by the Chairperson at the next regularly scheduled County Commission meeting after the appointment. In the event such appointment shall be disapproved by the County Commission, the appointment shall become null and void and, prior to the next regularly scheduled Commission meeting, the Chairperson shall make a new appointment which shall likewise be subject to disapproval as provided in this subsection (3). Any successor appointment made by the Selection Committee as provided in subsection (b)(2) shall be for the full four-year term.

Upon expiration of the term, the Board of County Commissioners may by majority vote of members present reappoint the Inspector General to another term. In lieu of reappointment, the Board of County Commissioners may reconvene the Selection Committee to appoint the new Inspector General in the same manner as described in subsection (b)(2). The incumbent Inspector General may submit his or her name as a candidate to be considered for selection and appointment.

- (4) Staffing of Selection Committee The Miami-Dade County Employee Relations Department shall provide staffing to the Selection Committee and as necessary will advertise the acceptance of resumes for the position of Inspector General and shall provide the Selection Committee with a list of qualified candidates. The County Employee Relations Department shall also be responsible for ensuring that background checks are conducted on the slate of candidates selected for interview by the Selection Committee. The County Employee Relations Department may refer the background checks to another agency or department. The results of the background checks shall be provided to the Selection Committee prior to the interview of candidates.
- (c) Contract. The Director of the Employee Relations Department shall, in consultation with the County Attorney, negotiate a contract of employment with the Inspector General, except that before any

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contract shall become effective, the contract must be approved by a majority of Commissioners present at a regularly scheduled Commission meeting.

- (d) Functions, authority and powers.
 - (1) The Office shall have the authority to make investigations of county affairs and the power to review past, present and proposed County and Public Health Trust programs, accounts, records, contracts and transactions.
 - (2) The Office shall have the power to require reports from the Mayor, County Commissioners, 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.
 - (3) The Office shall have the power to subpoena witnesses, administer oaths and require the production of records. In the case of a refusal to obey a subpoena issued to any person, the Inspector General may make application to any circuit court of this State which shall have jurisdiction to order the witness to appear before the Inspector General and to produce evidence if so ordered, or to give testimony touching on the matter in question. Prior to issuing a subpoena, the Inspector General shall notify the State Attorney and the U.S. Attorney for the Southern District of Florida. The Inspector General shall not interfere with any ongoing criminal investigation of the State Attorney or the U.S. Attorney for the Southern District of Florida where the State Attorney or the U.S. Attorney for the Southern District of Florida has explicitly notified the Inspector General in writing that the Inspector General's investigation is interfering with an ongoing criminal investigation;
 - (4) The Office shall have the power to report and/or recommend to the Board of County Commissioners whether a particular project, program, contract or transaction is or was necessary and, if deemed necessary, whether the method used for implementing the project or program is or was efficient both financially and operationally. Any review of a proposed project or program shall be performed in such a manner as to assist the Board of County Commissioners in determining whether the project or program is the most feasible solution to a particular need or problem. Monitoring of an existing project or program may include reporting whether the project is on time, within budget and in conformity with plans, specifications and applicable law;
 - (5) The Office shall have the power to analyze the need for, and the reasonableness of, proposed change orders. The Inspector General shall also be 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;
 - (6) The Inspector General may, on a random basis, perform audits, inspections and reviews of all County contracts. The cost of random audits, inspections and reviews shall, except as provided in (a)—(o) in this subsection (6) be incorporated into the contract price of all contracts and shall be one quarter (¼) of one (1) percent of the contract price (hereinafter "IG contract fee"). The IG contract fee shall not apply to the following contracts:
 - (a) IPSIG contracts;
 - (b) Contracts for legal services;
 - (c) Contracts for financial advisory services;
 - (d) Auditing contracts;
 - (e) Facility rentals and lease agreements;
 - (f) Concessions and other rental agreements;

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- (g) Insurance contracts;
- (h) Revenue-generating contracts;
- (i) Contracts where an IPSIG is assigned at the time the contract is approved by the Commission;
- (j) Professional service agreements under one thousand dollars (\$1,000.00);
- (k) Management agreements;
- (I) Small purchase orders as defined in Administrative Order 3-2;
- (m) Federal, state and local government-funded grants:
- (n) Interlocal agreements; and
- (o) Grant Agreements granting not-for-profit organizations Building Better Communities General Obligation Bond Program funds.

Notwithstanding the foregoing, the Commission may by resolution specifically authorize the inclusion of the IG contract fee in any contract. Nothing contained in this Subsection (c)(6) shall in any way limit the powers of the Inspector General provided for in this Section to perform audits, inspections, reviews and investigations on all county contracts including, but not limited to, those contracts specifically exempted from the IG contract fee.

- (7) Where the Inspector General detects corruption or fraud, he or she shall notify the appropriate law enforcement agencies. Subsequent to notifying the appropriate law enforcement agency, the Inspector General may assist the law enforcement agency in concluding the investigation. When the Inspector General detects a violation of one (1) of the ordinances within the jurisdiction of the Ethics Commission, he or she may file a complaint with the Ethics Commission or refer the matter to the Advocate:
- (8) 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, its officers, agents and employees, lobbyists, County staff and elected officials in order to ensure compliance with contract specifications and detect corruption and fraud.
- (9) 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.
- (10) The Inspector General may exercise any of the powers contained in <u>Section 2-1076</u> upon his or her own initiative.
- (11) The Inspector General shall be notified in writing prior to any meeting of a selection or negotiation committee where any matter relating to the procurement of goods or services by the County is to be discussed. The notice required by this subsection (11) shall be given to the Inspector General as soon as possible after a meeting has been scheduled, but in no event later than twenty-four (24) hours prior to the scheduled meeting. The Inspector General may, at his or her discretion, attend all duly noticed County meetings relating to the procurement of goods or services as provided herein, and, in addition to the exercise of all powers conferred by Section 2-1076, may pose questions and raise concerns consistent with the functions, authority and powers of the Inspector General. An audio tape recorder shall be utilized to record all selection and negotiation committee meetings.
- (12) The Inspector General shall have the authority to retain and coordinate the services of Independent Private Sector Inspectors General (IPSIG) or other professional services, as

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required, when in the Inspector General's discretion he or she concludes that such services are needed to perform the duties and functions enumerated in subsection (d) herein.

- (e) Physical facilities and staff.
 - 1. The County shall provide the Office of the Inspector General with appropriately located office space and sufficient physical facilities together with necessary office supplies, equipment and furnishings to enable the Office to perform its functions.
 - 2. The Inspector General shall have, subject to budgetary allocation by the Board of County Commissioners, the power to appoint, employ, and remove such assistants, employees and personnel and establish personnel procedures as deemed necessary for the efficient and effective administration of the activities of the Office.
- (f) Procedure for finalization of reports and recommendations which make findings as to the person or entity being reviewed or inspected. Notwithstanding any other provision of this Code, whenever the Inspector General concludes a report or recommendation which contains findings as to the person or entity being reported on or who is the subject of the recommendation, the Inspector General shall provide the affected person or entity a copy of the report or recommendation and such person or entity shall have 10 working days to submit a written explanation or rebuttal of the findings before the report or recommendation is finalized, and such timely submitted written explanation or rebuttal shall be attached to the finalized report or recommendation. The requirements of this subsection (f) shall not apply when the Inspector General, in conjunction with the State Attorney, determines that supplying the affected person or entity with such report will jeopardize a pending criminal investigation.
- (g) Reporting. The Inspector General shall annually prepare and submit to the Mayor and Board of County Commissioners a written report concerning the work and activities of the Office including, but not limited to, statistical information regarding the disposition of closed investigations, audits and other reviews.
- (h) Removal. The Inspector General may be removed from office upon the affirmative vote of two-thirds (2/3) of the whole number of members of the Board of County Commissioners.
- (i) Abolition of the Office. The Office of Inspector General shall only be abolished upon the affirmative vote of two-thirds (2/3) of the whole number of members of the Board of County Commissioners.
- (j) Retention of current Inspector General. Notwithstanding any provision to the contrary, the incumbent Inspector General, Christopher R. Mazzella, shall serve a four-year term of office commencing on December 20, 2005, as provided in the Memorandum of Understanding approved by Resolution No. R-1394-05, and shall not be subject to the appointment process provided for in <u>Section 2-1076(b)(2)</u>.

(Ord. No. 97-215, § 1, 12-16-97; Ord. No. 99-63, § 1, 6-8-99; Ord. No. 99-149, § 1, 10-19-99; Ord. No. 00-105, § 1, 7-25-00; Ord. No. 01-114, § 1, 7-10-01; Ord. No. 05-51, § 1, 3-1-05; Ord. No. 06-88, § 2, 6-6-06; Ord. No. 07-165, § 1, 11-6-07)

Secs. 2-1077—2-1085. - Reserved.





Miami-Dade County OFFICE OF THE INSPECTOR GENERAL Christopher R. Mazzella, Inspector General A State of Florida Commission on Law Enforcement Accredited Agency



February 20, 2013

Mr. Aleksandr Boksner Senior Assistant City Attorney Office of the City Attorney City of Miami Beach 1700 Convention Center Drive, 4th Floor Miami Beach, Florida 33139

Via Fax (305) 673-7002 and U.S. Mail

Re: Proposed Interlocal Agreement

Dear Mr. Boksner:

The Miami-Dade County Office of the Inspector General (OIG) is in receipt of your letter dated February 13, 2013, wherein you inform the OIG of the Miami Beach City Commission's action on December 12, 2012 approving a resolution authorizing City of Miami Beach representatives to negotiate an Interlocal Agreement (ILA) with the OlG to provide inspector general services to the City of Miami Beach. Pursuant to our phone conversation yesterday, please accept this letter as my written confirmation that, unfortunately, the OIG is unable to provide such services to the City of Miami Beach due to our current and foreseeable workload commitments.

We appreciate the City Commission's trust and confidence in the OIG to serve as the City of Miami Beach's Inspector General; regrettably I must decline the request.

Yours truly

Christopher R. Mazzella. Inapector General

Miami-Dade County

CM/Im

ce: The Honorable Rebeca Sosa, Chairperson, Miami-Dade Board of County Commissioners