

BURKE BURNS & PINELLI, LTD.

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**Comprehensive
Review and
Assessment of
Procurement Policies
and Procedures**

Metropolitan Water Reclamation
District of Greater Chicago

Burke Burns & Pinelli, LTD.

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Scope of Review

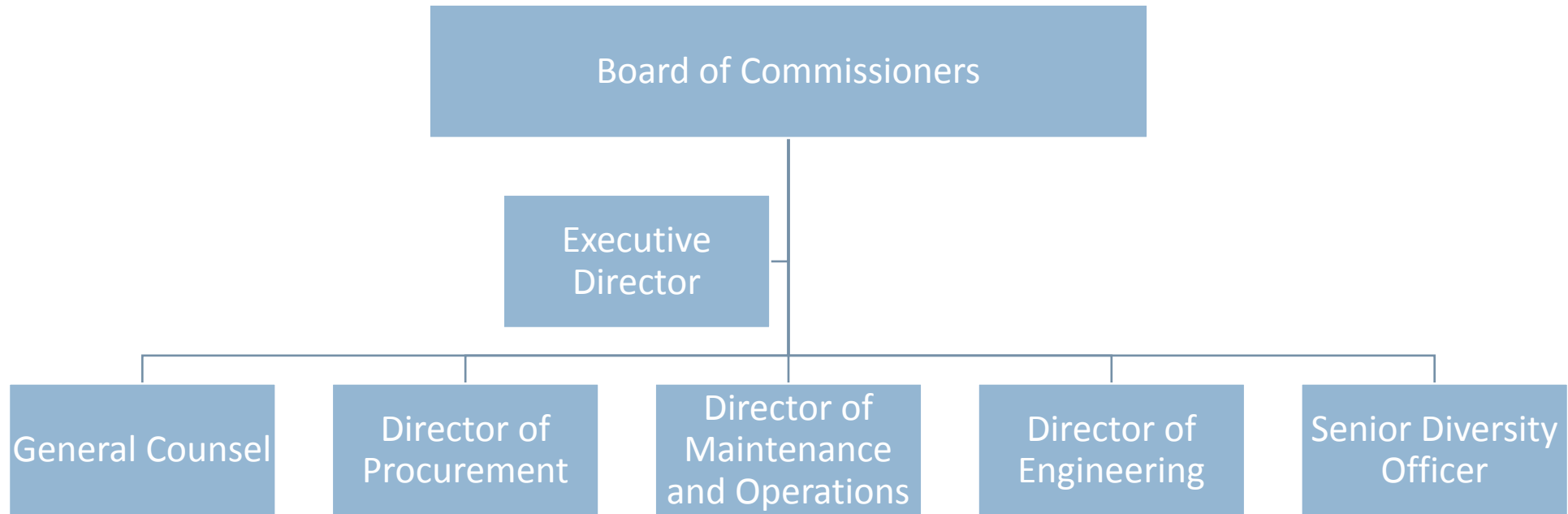
- § BBP was charged with conducting a comprehensive review and assessment of the District's procurement policies and procedures, including:
 - Legal framework for MWRD procurement process and department
 - Existing procurement procedures, practices, documents, reports, etc.
 - Common procurement problems and inefficiencies identified by the Board
 - Online bid platform (Bonfire)
 - Performance metrics

- § BBP issued a report to the Board of Commissioners with recommendations to consider based on best practices in public sector procurement, including:
 - Compliance with Legal and Regulatory Frameworks
 - Transparency and Accountability (to the Board, vendors, and the public)
 - Efficiency, Effectiveness, and Value
 - Strategic Procurement Planning
 - Stakeholder Engagement and Collaboration

Project Background

- BBP reviewed voluminous documentation, including:
 - Metropolitan Water Reclamation District Act and the District's Purchasing Act
 - All affirmative action ordinances and policies
 - Various procurement materials from comparable agencies
 - Numerous contracts, interoffice memoranda, bid solicitations, and transmittal letters
- BBP interviewed a multitude of stakeholders, including:
 - Commissioners
 - Department Directors
 - MWRD In-House Lawyers
 - Vendors (Large, Medium, and Small, multiple disciplines)
 - WBEs, MBEs, VBEs, MWBEs, and MVBES
 - Assist Agencies

Organization Chart - Procurement



Legal and Regulatory Framework

Findings

- § Relatively few bids have been rejected due to simple clerical errors
- § The revised mandatory competitive bid threshold definition remains problematic
- § There is confusion regarding material versus immaterial variances in bid submissions

Recommendations

- § Revise mandatory competitive bid threshold to a set number
- § Consider convening study sessions for the Board and staff regarding procurement
- § Consider convening meetings of the Board's procurement committee outside of regular Board meetings

Walsh/II In One Joint Venture III v. MWRD (2009)

§ What constitutes a material variance?

- The test of whether a variance is material is “whether it give a bidder a substantial advantage or benefit not enjoyed by other bidders.”

§ Does a variance from bid requirements require rejection?

- An immaterial variance does not require rejection
- A material variance does require rejection

§ Was the failure to sign the Utilization Plan a material variance?

- Yes, as it did not bind Walsh to the pre-negotiated rates with MWBEs, they would be able to renegotiate for more favorable terms, therefore giving Walsh a substantial advantage not enjoyed by other bidders

Bid Process

Findings

- § There is a gap in understanding of procurement policies and procedures at the Board/staff level, outside the Department of PMM
- § Bonfire is viewed in a favorable light by most vendors
- § PMM's bid deposit policy is consistent with other similarly situated agencies
- § Pre-Bid Conferences are no longer mandatory
- § The implementation of bid cure periods is not feasible

Recommendations

- § Consider changing bid documents to allow for unit price bidding and elimination of requirement for numeric pricing written in words
- § Consider an exception to the District's MPLA that provides a carveout for work not subject to the Prevailing Wage Act
- § Consider making Pre-Bid Conferences mandatory
- § Consider using contract estimates as an internal measure rather than publishing estimates in bid solicitations
- § The District should continue utilizing Bonfire as it does to provide ongoing reminders to vendors regarding critical documents

Diversity

Findings

- § The District's Good Faith Effort standards are less rigorous than comparable agencies
- § The definition of "Local Business" in Affirmative Action Ordinance/Appendix D needs to be clarified
- § For the sake of efficiency, the Diversity Department should cease reviewing Furnish and Deliver Contracts
- § There is confusion relating to the Districts Affirmative Action policies and ordinance
- § The District's MWVBE Vendor Database includes non-certified/defunct vendors
- § There is confusion regarding the existence of MWBE reciprocity between MWRD, Cook County, and the City of Chicago

Recommendations

- § Amend the District's AA Ordinance to address:
 - Self-performing contractor Letters of Intent
 - Clarification of the District's De Minimis Policy
 - Allowing for the use of second-tier subcontractors/vendors for Contract Goals
 - Clarification on the District's local business requirements
- § Strengthen the District's Good Faith Efforts Standard
- § Amend the MWBE certification standards to allow for reciprocity with Cook County and City of Chicago
- § Update the MWVBE Vendor Database to reflect vendor's current certification status with District

Procurement Policies and Procedures

Findings

- § There is limited information regarding the District's procurement policies and procedures that is readily made available to vendors and the public the Board and staff outside of PMM
- § There is limited documentation of the District's procurement policies and procedures that is made available to the Board and District staff outside of the District's Department of PMM

Recommendations

- § Develop a Board-approved public facing procurement policy containing:
 - Reference to the MWRD Purchasing Act (70 ILCS 2605/11.01 *et seq.*)
 - Clearly set forth definitions (e.g., Competitive Bid Threshold, De Minimis Policy, etc.)
 - Purpose, authority, structure, and roles within PP
 - Ethics – conflicts, process for violations of PP
 - Continuing education for PMM, training efforts
 - Reference to the Affirmative Action Ordinance
- § Develop PMM's Policies and Procedures Document that is currently in use and distribute this document to the Board and other departments
- § Consider the use of more general descriptions of expenditures approved by the Board pertaining to litigation to prevent disclosure of legal strategy

Reporting

Findings

- § Improvements are needed to the current reports provided to the Board by the District's Diversity and PMM Departments specifically in the areas of performance metrics

Recommendations

- § With direction from the Board, develop meaningful performance metrics to be shared by the Diversity and PMM Departments
 - e.g., utilization plan review times, certification review times, time from bid submission to award etc.
- § The Board should specify which procurement, diversity, or other performance metrics it would like to see on a quarterly or annual basis

Next Steps

- § Drafting of District Procurement Policy
- § Drafting of amendments to MWRD Affirmative Action Ordinance/Appendix D
- § Initiate dialogue with City of Chicago and Cook County regarding a reciprocal certification program or agreement
- § Board to issue direction regarding performance metrics reporting from PMM, Diversity
- § Set procurement strategic planning sessions for January/February of each year
- § Draft changes to District bid documents
- § Amend Section 11.3 of the District's Purchasing Act regarding the minimum bid threshold
- § Set implementation schedule for Report recommendations the Board accepts