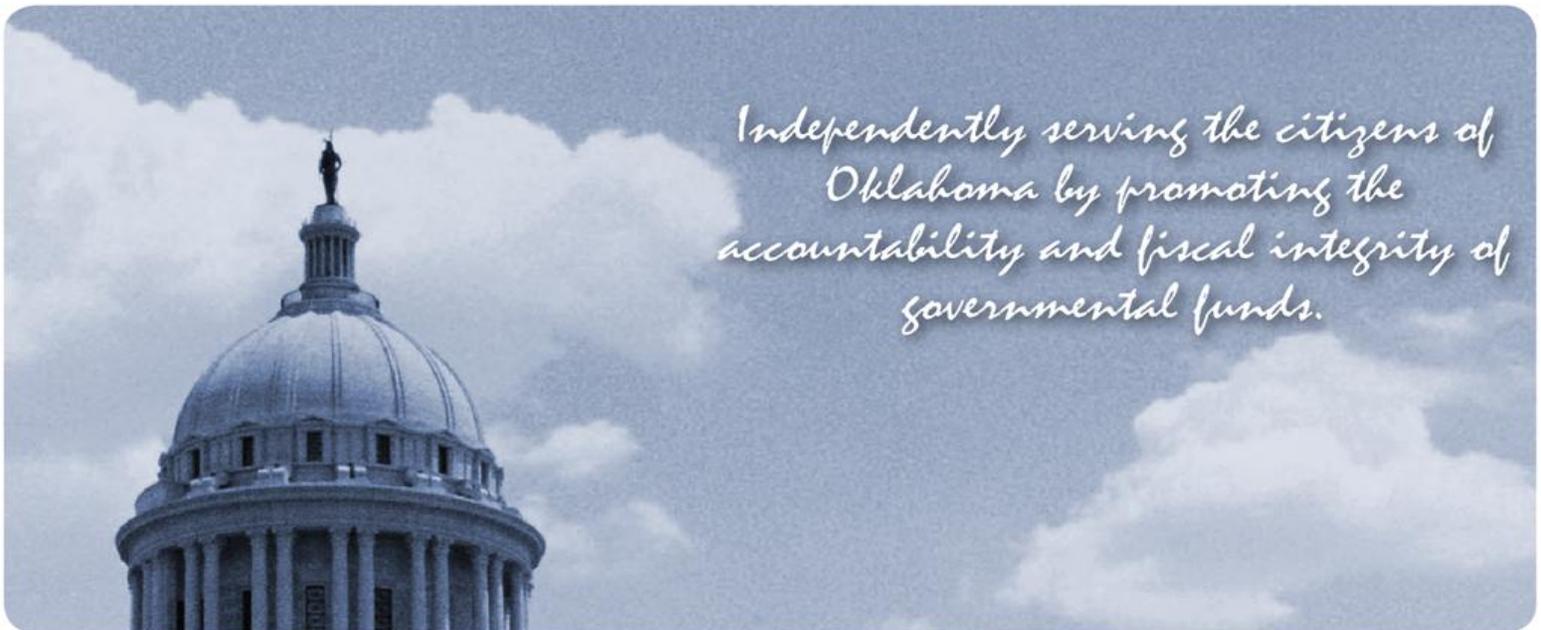


INVESTIGATIVE AUDIT

CITY OF WOODWARD

WOODWARD MUNICIPAL AUTHORITY

July 3, 2014



*Independently serving the citizens of
Oklahoma by promoting the
accountability and fiscal integrity of
governmental funds.*



Oklahoma State
Auditor & Inspector
Gary A. Jones, CPA, CFE

City of Woodward
Woodward Municipal Authority
Investigative Audit Report
July 3, 2014



Oklahoma State Auditor & Inspector

2300 N. Lincoln Blvd. • State Capitol, Room 100 • Oklahoma City, OK 73105 • Phone: 405.521.3495 • Fax: 405.521.3426

July 3, 2014

Office of the District Attorney, District #26
1600 Main, Suite 5
Woodward, Oklahoma 73801

District Attorney Hollis Thorp:

Pursuant to your request and in accordance with the requirements of **74 O.S. § 212(H)**, we performed an investigative audit of the City of Woodward and the Woodward Municipal Authority. Transmitted herewith is our report on that investigation.

The objectives of our engagement primarily included, but were not limited to, the areas noted in your request. Our results and recommendations related to these objectives are presented in the accompanying report.

Because investigative procedures do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on the account balances or financial statements of the City of Woodward or the Woodward Municipal Authority.

The goal of the State Auditor and Inspector is to promote accountability and fiscal integrity in state and local government, while maintaining our independence as we provide this service to the taxpayers of Oklahoma.

This document is a public document pursuant to the Oklahoma Open Records Act, in accordance with **51 O.S. 2011, § 24A.12**.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gary A. Jones".

GARY A. JONES, CPA, CFE
OKLAHOMA STATE AUDITOR & INSPECTOR

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Introduction

In 1921 the voters of the City of Woodward approved a charter for the City of Woodward (City). Under the authority of the charter, the City is governed by a five member City Commission. One commissioner is elected as an at-large member; the other four commissioners are elected from each of four wards.

As of March 2014, the City Commission consisted of:

- Gary Goetzinger, Mayor
- Steve Bogdahn, Commissioner
- Roscoe Hill, Commissioner
- Michelle Williamson, Commissioner
- John Meinders, Commissioner

The Woodward Municipal Authority (WMA) is a public trust created on May 13, 1968 for the benefit of the City. The WMA was established to finance, construct and operate public works. The WMA trust indenture provided for other purposes, including construct, reconstruct, extend, lease, purchase, install, equip, maintain, repair, enlarge, remodel and operate buildings or other facilities for use by governments, including the municipal government and other subdivisions as well as for the use of corporations, individuals, partnerships and associations for industrial development.

The Trustees of the WMA consist of the same individuals who serve as the Mayor and members of the City Commission.

OBJECTIVE I Determine the amount of City of Woodward direct payments and subsidies to the Woodward Industrial Foundation, a private nonprofit foundation.

Summary

- **Between July 1, 2011 and March 31, 2014, the City paid the Foundation \$1,056,000 in direct payments.**
- **Between July 1, 2011 and March 31, 2014, the Woodward Municipal Authority paid the Foundation \$163,152.**
- **The Foundation served as a proxy for the City to pay \$96,000 annually to a Washington D.C. based lobbying firm.**
- **The City received financial reports from the Foundation and approved the use of the USE tax and rental income proceeds.**
- **The Foundation did not receive additional in-kind subsidies.**
- **Contract changes made in January 2013 and FY14, identified the Foundation as an independent contractor and removed some of the City's oversight functions.**

Background

On February 14, 1986, a Certificate of Incorporation was filed with the Oklahoma Secretary of State for the Woodward Industrial Development Corporation as a nonprofit corporation with the purpose listed as follows:

To promote the industrial growth of Woodward County by actively seeking businesses to locate their facilities in Woodward County to provide gainful employment for the citizens of Woodward County; To assist in such relocation by offering information, technical assistance, and support, either financial or otherwise.

On August 28, 1998, an Amended Certificate of Incorporation was filed, renaming the Woodward Industrial Development Corporation to the Woodward Industrial Foundation (Foundation, or WIF).

The City contracted with the Foundation, at least since 1986, as evidenced by a 1986 Agreement in which the City sought professional assistance related to the implementation of an economic development program.

The 1986 Agreement specified that Foundation services would be “geared to achievement” of the following objectives:

1. Public awareness and education as to the values of local economic development;
2. Encouragement of commercial and industrial development and expansion as a method of broadening the existing tax base and providing local opportunities;
3. Encouragement of investment in commercial and industrial development and expansion, for the same public benefits.

A contract, effective from July 1, 2011 through June 30, 2012, included similar objectives with the addition of language related to providing employment and investment opportunities.¹

The Foundation is audited annually by an independent auditing firm. The Foundation provided the last three completed independent audit reports for the fiscal years ending 2011, 2012, and 2013.² Each report included the following statement:

The main source of income is provided by the City of Woodward, this represents an economic concentration. Thus, if support from the City was to decline the impact on the Foundation would be significant.

Results

Between July 1, 2011 and March 31, 2014, the City paid the Foundation \$1,056,000 in direct payments.

For the period July 1, 2011 through March 31, 2014, the City and the Foundation executed four contracts for professional services.³ A review of these contracts showed that the contracts prior to January 22, 2013, contained a defined *compensation* amount as well as an undefined *funding* amount.

Two of the four contracts included language referencing the undefined amount of funds to be paid to the Foundation over the contract period:

¹ Auditors were requested to review records from July 1, 2011 forward.

² The Foundation’s fiscal year is from April 1 through March 31.

³ An amended contract was executed on January 22, 2013.

6. Funding.

- A. Subject to paragraph 4 above, City shall pay over to WIF such additional monthly sums as it may then lawfully appropriate to be held for the benefit of the City and WMA and utilized by WIF for the purposes of its performance of this Contract.

The contract for the period July 1, 2011 through June 30, 2012, included defined compensation payments to the Foundation in the amount of \$19,000 per month or \$228,000 annually, in addition to the undefined amount. Actual payments for the defined and undefined amounts totaled \$32,000 per month or \$384,000 annually during the contract period.

The contract for the period July 1, 2012 through June 30, 2013, contained the same language and provisions regarding defined compensation and undefined funding. Actual payments totaled the same as the previous year.

The difference between the \$19,000 contracted amounts and the \$32,000 actual payment amounts, consisted of the *undefined* funding addressed in the contracts. According to City officials, the undefined amount was discretionary and, although not contractually defined, was part of the City's budgetary process.

On January 22, 2013, the contract was amended. The amended contract, as well as the subsequent annual contract for the period July 1, 2013 through June 30, 2014, no longer contained the undefined funding clause. However, the amended contract and the subsequent annual contract for FY14 included the \$32,000 monthly payments as defined compensation. Thus, actual payments from the City to the Foundation remained \$32,000 per month during FY14.

Total payments from the City to the Foundation during the periods reviewed were:

Time Period	Payment Amount
July 1, 2011 through June 30, 2012	\$384,000
July 1, 2012 through June 30, 2013	\$384,000
July 1, 2013 through March 31, 2014	\$288,000
Total	\$1,056,000

Results

Between July 1, 2011 and March 31, 2014, the Woodward Municipal Authority paid the Foundation \$163,152.

Contracts between the City and the Foundation contained provisions related to the Woodward Municipal Authority (WMA). The FY12 and FY13 contracts included the following language:

Subject to paragraph 4 above, City appropriates to WIF [Foundation] the lease payments to be received on properties managed by WIF situation in the Industrial Park and to utilize said funds for the purposes of this Contract; and, in addition thereto, to utilize said funds for maintenance and improvements of said properties and other industrial properties and purposes of City and WMA.

Lease payments from the WMA to the Foundation totaled \$103,722 during FY12 and \$59,430 in FY13, for a cumulative total from July 1, 2011 through March 31, 2014, of \$163,152.

The January 22, 2013, contract amendment eliminated the provisions for the lease payments, and the subsequent annual contract for FY14 did not provide for the Foundation to receive the lease income. The last lease payment was made to the Foundation on January 17, 2013.

Total payments from the City *and* the WMA to the Foundation during the period from July 1, 2011 to March 31, 2014 were:⁴

Payor	Payment Amount
City of Woodward	\$1,056,000
Woodward Municipal Authority	\$163,152
Total	\$1,219,152

Results

The Foundation served as a proxy for the City to pay \$96,000 annually to a Washington D.C. based lobbying firm.

An independent audit of the Foundation listed an annual income *and* expense of \$96,000, related to either “VSA dc.com” or “consultant.”

According to records provided by the Foundation, the \$32,000 monthly payments from the City to the Foundation fell under one of three categories: “Contract Payments”, Recruitment/Mktg Fund, and “Capitol Decisions.” Monthly payments for each category were listed as \$11,000, \$13,000, and \$8,000, respectively.

⁴ Excludes a \$300 payment for advertising expenses.

Foundation officials stated that the Foundation served as a pass-through for the City to pay the lobbying firm Van Scoyoc Associates, also known as Capitol Decisions.^{5, 6} This arrangement was made by verbal agreement in 2001. Current City officials were aware that the legislative representation funds flowed through the Foundation.

Results

The City received financial reports from the Foundation and approved the expenditures of the USE tax and rental income proceeds.

During a review of the relationship between the City and the Foundation, we determined that the Foundation was receiving and expending funds on behalf of the City. These funds included the previously noted lease payment funding and USE tax funds.

Contracts between the City and the Foundation for FY12 and FY13 contained the following provision:⁷

3. *Reports and Accounting.* WIF [Foundation] shall prepare and transmit to City monthly reports. Said reports shall detail the activities of WIF in its performance of this contract. WIF shall include in said reports a full and complete accounting of all funds received and expended pursuant to this contract.

Although our principal objective was to determine the *amount* of funding the City provided to the Foundation, this objective also necessitated an analysis of whether the City provided oversight of these funds. Therefore, we evaluated the oversight process only to determine if it appeared that the Foundation followed the provisions of the pre-2013 contracts.⁸

Financial reports provided by the Foundation to the City appeared to show that the Foundation provided the City with detailed reports concerning the expenditure of funds.

According to City officials, the Foundation must seek the approval of the City Manager prior to expending the funds. Documentation provided by the City appeared to support this requirement, showing instances of the Foundation requesting and obtaining permission to expend the USE tax and/or lease payment funds.

⁵ www.vsadc.com.

⁶ www.capitoldecisions.com.

⁷ FY12-13 contract refers to the initial contract, not the amended contract effective January 2013.

⁸ The scope of this audit objective precluded a more detailed review of Foundation expenditures and accountability for the USE tax and lease payment proceeds.

Results

The Foundation did not receive additional in-kind subsidies.

Our objective included identifying any additional in-kind compensation that the Foundation may have received as subsidies such as free utilities, free rental space, employee benefits, etc.

The Foundation office is located in the same building as the Woodward Chamber of Commerce. The building is not owned by the City and utilities for the building are billed to the Chamber of Commerce.

During interviews, City and Foundation officials stated that the City does not pay any portion of the salaries or benefits for the two foundation employees.

Results

Contract changes made in January 2013 and FY14 identified the Foundation as an independent contractor and removed some of the City's oversight functions.

The FY11, FY12, and FY13 contracts between the Foundation and the City specified the contracted duties as follows:

1. Contracted Duties. For the consideration hereinafter set out, WIF agrees to provide professional assistance to the City and WMA in the implementation and continuation of an economic and industrial development program;

The January 23, 2013 amended contract and subsequent FY14 contract modified this clause to read as:

1. Contracted Duties. For the consideration hereinafter set out, WIF agrees to provide professional services to the City and WMA in the implementation and continuation of an economic, industrial and community development program;

Contracts prior to January 2013, included an undefined funding amount to be held by the Foundation and used for "the benefit of the City and WMA and utilized by WIF for the purposes of contract performance of this contract."

The January 2013, amended contract and subsequent FY14 contract, removed the funding clause and substituted an independent contractor clause stating:

6. Independent Contractor. WIF shall be an independent contractor with respect to all services to be provided under this Agreement and neither WIF nor any of its representatives shall

be deemed for any purpose to be the agent, employee, servant, or representative of the City or WMA. This Contract shall not be deemed to create an employment, agency, partnership, joint venture, or other joint relationship between the Parties. Neither the City nor WMA shall have, directly nor indirectly, any authority, direction or control over WIF, or any of its members, employees, officers or directors and WIF shall be and remain under the complete control and direction of its employees, officers and directors. Specifically, neither the City nor WMA shall have the right, power or authority to oversee, control or manage the business affairs, operation, management or organizational structure of WIF. For clarity, nothing contained herein shall be deemed to give WIF the authority, express or implied, to bind the City or WMA or to exercise any decision making authority for or on behalf of the City or WMA and nothing herein shall be deemed to suggest or imply that WIF has been entrusted with the expenditure of public funds or the administration of public property.

We also noted a change in the section of the contracts related to reports and accounting. The FY11, FY12, and FY13 contracts included the following provision:

3. Reports and Accounting. WIF shall prepare and transmit to City monthly reports. Said reports shall detail the activities of WIF in its performance of this contract. WIF shall include in said reports a full and complete accounting of all funds received and expended pursuant to this contract.

The amended contract dated January 22, 2013 altered this section to read as:

3. Reports and Accounting. WIF shall prepare and transmit to City monthly progress reports.

The FY 14 contract altered this section to read as:

3. Reports and Accounting. WIF shall prepare and transmit to City monthly reports. Said reports shall detail the activities of WIF in its performance of this contract.

Based on the language in the current contract, the Foundation was no longer required to provide the “full and complete accounting” of the funds received and expended.

OBJECTIVE II Review possible violations of the Open Meeting Act and Open Records Act by the Woodward Industrial Foundation in not allowing public access to meeting and records, although substantially publicly funded.

Summary

- **The District Attorney determined that any violations of the Open Meeting Act, prior to August 28, 2012, were not willful violations.**
- **The Foundation complied with the two written requests made under the Oklahoma Open Records Act.**
- **The Foundation received a *questionable* third-party request made under the Open Records Act, but did not appear to be out of compliance with the Act.**

Background

According to Woodward District Court records, Woodward resident Melissa Kaye Pittman was denied access to an August 8, 2012 meeting that was held by the Woodward Industrial Foundation. Ms. Pittman contacted the Woodward County District Attorney's Office because she believed that the Foundation violated the Oklahoma Open Meeting Act by refusing her admittance.

District Attorney Investigator Steve Tanio conducted an investigation with regard to the possible violation of the Oklahoma Open Meeting Act. Following the investigation, District Attorney Hollis Thorp concluded that the Foundation was a public body as defined by the Open Meeting Act.

On August 28, 2012, the District Attorney's Office hand delivered letters to the Chairman and the President of the Foundation providing notification that the Foundation was also subject to the Open Records Act.

On September 10, 2012, the Foundation filed a Petition with the Woodward County District Court seeking a ruling that the Foundation was not subject to the Open Records Act.

On January 24, 2013, the District Court ruled that the Court would not interfere with the determination made by the District Attorney and dismissed the case, allowing the District Attorney's decision to stand.

Results

The District Attorney determined that any violations of the Open Meeting Act prior to August 28, 2012, were not willful violations.

The August 28, 2012, letter from the District Attorney to the Foundation included, in relevant part:

After careful review, it is my conclusion that the Woodward Industrial Foundation is a “public body” as that term is defined in § 304 of the Oklahoma Open Meeting Act and is therefore subject to the requirements of that Act. It is also my conclusion that any violation of those requirements by the officers, board members, employees, or agents of the Foundation prior to the delivery of this letter were not “willful” and therefore not subject to the criminal penalties provided for in **25 O.S. § 314**.

As the District Attorney determined that any violation prior to the letter was not willful, we did not further investigate the August 8, 2012, complaint.

With the exception of these results, we identified no additional complaints concerning the Open Meetings Act or the Open Records Act filed with the District Attorney’s office, the Woodward Police Department, or the local newspaper.

Results

The Foundation complied with the two written requests made under the Oklahoma Open Records Act.

Subsequent to the August 28, 2012, letter from the District Attorney, the Foundation filed a two page document with the Woodward County Clerk outlining the procedures for obtaining records from the Foundation. This document includes, in part:

In order to protect the integrity and organization of the public body, any person requesting copies or reproductions of records of the public body shall do so in person, and shall fill out a request for information form to be provided by said public body...

We asked the Foundation to provide all written records requests made after August 28, 2012, and were supplied with two requests from local residents, both dated September 7, 2012. Both residents stated that they received the requested records and were satisfied with the responsiveness of the Foundation.

Results

The Foundation received a *questionable* third-party request made under the Open Records Act, but did not appear to be out of compliance with the Act.

During an interview with Ms. Pittman, she provided a written document purporting to be records that were requested from the Foundation by Dr. Greg Farrar. Ms. Pittman said that the Foundation did not comply, to her knowledge, with Dr. Farrar's request.

On April 16, 2014, we contacted Dr. Farrar who stated that at the request of another citizen, Doug Eagon, he called the Foundation and asked to be added to the list of people approved to receive records. According to Dr. Farrar, he spoke with a woman on the phone who he assumed was the secretary for the Foundation. This employee explained that there was no such form to complete. Dr. Farrar made no subsequent requests.

As Ms. Pittman provided a written document detailing specific records that Dr. Farrar requested, we asked Dr. Farrar if he made a request in writing, and he replied that he had not.

Dr. Farrar stated that he reported the incident to the District Attorney's Office. We obtained a copy of a report from District Attorney Investigator Steve Tanio, dated August 9, 2013, in which the following points were noted:

- Doug Eagon requested Dr. Farrar obtain an "Information Request Form" from the Foundation.
- Dr. Farrar went to the Foundation office and asked for the form and was told no such form existed.
- Sometime around July 26, 2013, Doug Eagon requested that Dr. Farrar obtain copies of all contracts the Foundation had on-hand.
- As a result of Doug Eagon's request, Dr. Farrar called the Foundation and asked for all contracts on-hand and was told that information would not be provided.

Dr. Farrar was told to document any future requests for specific information from the Foundation and, if the request was refused, to report the denial and the District Attorney's Office would investigate.

Investigator Tanio's report noted that Dr. Farrar had no further communications with the Foundation and that obtaining the reports was not a "big deal to him." The report further stated that the only reason Dr. Farrar reported to the District Attorney's Office was that Mr. Eagon informed him that the District Attorney's Office was inquiring about the request.

Dr. Farrar also stated that he made no further requests of the Foundation and that he really was not that interested in obtaining the records, as he was doing so only at the urging of Mr. Eagon. Because Dr. Farrar reported the facts and circumstances to the District Attorney's Office, we did not pursue this matter.

OBJECTIVE III Review alleged misrepresentations in the City of Woodward application to the Oklahoma Department of Commerce for a recent CDBG grant.

Summary

- **Board minutes and grant documents suggested that the Siemens building was a city owned property.**
- **The Siemens building was owned by the Woodward Industrial Foundation, a private not-for-profit corporation.**
- **The Department of Commerce was aware that the property was owned by the Foundation at the time of the grant application.**

Background

The Community Development Block Grant (CDBG) program, funded by the federal government and managed by the Oklahoma Department of Commerce, enables rural Oklahoma communities to finance a variety of public infrastructure and economic improvements and helps promote job growth as a result of these improvements.

The City planned to use CDBG grant funds, in addition to other sources, to rehabilitate a building that later would be occupied by Siemens Energy, Inc. (the Siemens building). Rehabilitation of the building cost a total of \$3,323,585. The building project was funded by the following sources:

- \$2,000,000 in CDBG grants from the Department of Commerce;
- \$609,275 from the Woodward Industrial Foundation; and
- \$714,310 from Siemens Energy, Inc.

The impetus for our review stemmed from an allegation that the City represented the Siemens building as belonging to the City when, in fact, the building was owned by the Woodward Industrial Foundation.



The Siemens Building

Results

Board minutes and grant documents suggested that the Siemens building was a city owned property.

On June 20, 2011, City Commissioners voted in favor of accepting two \$1,000,000 Community Development Block Grants from the Department of Commerce to rehabilitate the Siemens building. Minutes from this meeting reflected the following discussion for the approval of one of the grants:

Item seven of the agenda was to consider and take action with respect to approval or disapproval of Community Development Block Grant – Economic Development Infrastructure Financing (CDBG-EDIF) Contract Award. Mr. Lavern Phillips addressed the Commission explaining that the grant in the amount of \$1,000,000.00 is from available HUD funds, and will be used to rehabilitate the *City-owned* building that will be used by Siemens Energy, Inc... (Emphasis added)

We also noted various documents pertaining to the two CDBG grants which indicated that the building being rehabilitated was either city or publicly owned.

Results

The Siemens building was owned by the Woodward Industrial Foundation, a private not-for-profit corporation.

The Siemens building is located at 1123 Airpark Road in Woodward. Land records reflected that the property was owned by the Woodward Industrial Foundation.

A Warranty Deed filed with the County Clerk on March 30, 1998, showed that the Foundation purchased the property from the City of Woodward. Therefore, at the time in which the City sought to obtain the CDBG grants, the Foundation owned the property.

Secretary of State filings showed the Foundation as a registered not-for-profit corporation. We should note, however, that the District Attorney concluded that the Foundation is a “public body,” with respect to the application of the Oklahoma Open Meeting Act.

Results

The Department of Commerce was aware that the property was owned by the Foundation at the time of the grant application.

According to City officials, there was some confusion over the ownership of the Siemens building. One official stated that he mistakenly said that the City owned the land when, in fact, the Foundation owned the land.

After learning of the mistake, City officials notified the Department of Commerce of the ownership issue. The City, in turn, received a written response from the Department of Commerce indicating that the agency was aware of the Foundation's ownership during the grant application/award process and that this fact did not affect the City's eligibility with regard to award of the grants.

Conclusion

Based on the reviewed meeting minutes and records, the City at first appeared to be under the impression that the building to be renovated by the CDBG grant was owned by the City. Once it was determined that the building was not owned by the City but rather by the Foundation, the City contacted the State Department of Commerce to report the error.

The State Department of Commerce acknowledged that the subject property was owned by the Foundation, rather than the City, and that the ownership "did not affect the eligibility of the City of Woodward to be awarded the grants."

OBJECTIVE IV Review possible conflict of interest in the process by which the treasurer's office staff evaluated local banks and selected Bank 7, Woodward branch, to be the City's primary depository bank.

Summary

- **There was no statutory conflict of interest involving the Assistant City Manager/CFO and Bank 7.**
- **There was no violation of City policy involving the Assistant City Manager/CFO and Bank 7.**

Background

This objective was based on a concern about a possible conflict of interest involving the contract for the City's banking services with Bank 7, for which the CEO is the brother and former business partner of Assistant City Manager/CFO Doug Haines.⁹

Results

There was no statutory conflict of interest involving the Assistant City Manager/CFO and Bank 7.

According to City officials, the City submitted either bids or requests for proposal (RFPs) for banking services since the 1980s. The City reviewed their banking services every three-to-five years.

On May 24, 2011, the City submitted a RFP to seven area banks for the City's primary depository account term, which was set to expire June 30, 2011. The City received responses from three area banks: Central National Bank of Alva, Bank 7, and MidFirst Bank.

A finance committee comprised of the city clerk, an accounting supervisor, and an IT specialist, reviewed and assessed the proposals. Each committee member evaluated and rated each proposal based on specific criteria. The committee members unanimously recommended that the City's depository account be awarded to Bank 7.

The City Commission meeting minutes from July 5, 2011, reflected Mr. Haines's explanation and review of the proposals and his recommendation to award service to Bank 7 for five years. The Commissioners voted to award the proposal as recommended.

⁹ Mr. Haines confirmed that his brother was the president and owner of Bank 7.

We reviewed state statutes and City of Woodward policies to determine if a conflict of interest existed between Assistant City Manager/CFO Doug Haines and Bank 7.

State statutes define a municipal officer or employee conflict of interest in **11 O.S. § 8-113(A) (F):**

A. Except as otherwise provided by this section, no municipal officer or employee, or any business in which the officer, employee, or spouse of the officer or employee has a proprietary interest, shall engage in...

2. Contracting with the municipality...

F. For purposes of this section, “proprietary interest” means ownership of more than twenty-five percent (25%) of the business or the stock therein or any percentage which constitutes a controlling interest but shall not include any interest held by a blind trust.

To satisfy the statutory definition of a conflict of interest in this case, either Doug Haines or his spouse would have partial ownership in the bank. Mr. Haines explained that he neither owns any portion of Bank 7 nor is he married. A letter from the Haines Financial Group further stated that Doug Haines did not and has never had an interest in Bank 7.

Furthermore, City employees were required to complete a conflict of interest form, disclosing any businesses they and/or their spouses had a proprietary interest in. We obtained a copy of the form submitted by Mr. Haines, which did not include Bank 7 as a business he had a proprietary interest in.

Results

There was no violation of City policy involving the Assistant City Manager/CFO and Bank 7.

The City policy pertaining to a conflict of interest was set forth in Section 107 of The City of Woodward Personnel Policy Manual, which provided in relevant part:

An actual or potential conflict of interest occurs when an employee is in the position to influence a decision that may result in a personal gain for that employee or for a relative as a result of the City’s business dealings. For the purposes of this policy, a relative is any person who is related by blood or marriage, or whose relationship with the employee is similar to that of persons who are related by blood or marriage.

No “presumption of guilt” is created by the mere existence of a relationship with outside firms. However, if employees have any influence on transactions involving purchases, contracts, or leases, it is imperative that they disclose to an officer of the City as soon as possible the existence of any actual or potential conflict of interest so that safeguards can be established to protect all parties.

Although committee members reached independent conclusions that Bank 7 was the best choice, an argument could be made that Assistant City Manager/CFO Haines was in the *position* to influence a decision that could result in the financial gain of a relative. However, the policy indicated that a “presumption of guilt” did not exist as a result of a relationship with an outside firm.

City policy also required the employee to disclose any potential conflicts to an officer of the City. Based on the policy, we would expect Haines to disclose his relationship with the owner of Bank 7 to the city manager. We asked City Manager Alan Riffel if he was aware of the relationship during the RFP process, and he responded that he was.

We also spoke with all of the City Commissioners who were members during the RFP process. All of these Commissioners said that they were aware that Bank 7 was owned by Mr. Haines’ brother.

We found it noteworthy that one of the two rejected proposals was submitted by a MidFirst Bank representative, who was also a City Commissioner.

OBJECTIVE V Review the status of an FAA investigation into the alleged theft (and/or improper disposal) of multiple tons of ground recycled asphalt from an airport runway renovation and the status/adequacy of the City's response to address issues raised in the FAA investigation.

Summary

- **The City did not consider the asphalt millings as an asset subject to the City policy concerning surplus property.**
- **The amount charged by the City for the asphalt millings was not unreasonable.**
- **The City sold the milled asphalt using an 'honor system' of accountability.**
- **The FAA concurred with the City's corrective actions in resolving the land-use issues noted in the FAA inspection report.**

Background

In 2008, the City sold asphalt millings from a pile of asphalt that was the result of airport renovations. The sale of the asphalt has been the subject of a review by the Federal Aviation Administration (FAA), an investigation by the District Attorney's Office and an investigation by the Oklahoma State Bureau of Investigation (OSBI).

A 2012, FAA report cited nine areas of non-compliance with Federal airport obligations requiring corrective action by the City. One of the issues requiring corrective action involved the removal of milled asphalt without compensation to the airport.

The FAA report provides in relevant part:

Also noted during the visit was a stockpile of milled asphalt material and base material located (sic) near the threshold of runway 5. There was documentation in the file that the airport was given FAA approval to mill up the NW/SE runway and to use the salvaged material on the airport. However, it appears that about half to two-thirds of the stockpile had been removed from the airport with little, if any, compensation to the airport. One estimate of the missing asphalt put the amount at 3,850 tons or roughly \$77,000 worth of material.

The issue of criminal activity that may be related to the potential theft of the milled asphalt was investigated by the OSBI. It is not our intention or objective to reinvestigate work already performed by the OSBI.

As such, we have limited our inquiry to the overall circumstances of how the City disposed of the milled asphalt.

Results

The City did not consider the asphalt millings as an asset subject to the City policy concerning surplus property.

The initial sale of the millings resulted from a 2008 inquiry by a local citizen to the City's street superintendent, Kevin Kornele. According to Kornele, he was contacted by the individual who saw the asphalt millings piled up on the west side of the airport property and wanted to know if the City would sell some of the millings.

Kornele asked City CFO/Assistant City Manager Doug Haines if the millings could be sold. Mr. Kornele stated that he was instructed to obtain a fair market price for the millings. To his recollection, Mr. Kornele called around and determined the fair market value was \$3-\$4 per ton.

Assistant City Manager/CFO Doug Haines also said that he called around and determined that the \$3 per ton amount was fair market value. Mr. Haines recalled that he phoned a few local businesses, but wasn't certain because of the time frame.

In instances where the value of the surplus property in question is below \$1,000, City policy permits the City Manager to declare the property as surplus property with certain specific criteria defined by policy. If the property under consideration is valued at an amount over \$1,000, the City Commission must declare the property as surplus property and it may be disposed of as follows:

- A. Provide public notice of sale of surplus property at least two (2) weeks prior to the date of sale.
- B. Conduct the sale by auction or by open or sealed bids.
- C. Any surplus property not sold when offered for sale at auction or bid may be given away or discarded by the City Manager if such property has minimal or no value.

The City neither took bids nor advertised the asphalt materials for sale.

City Manager Riffel and Assistant City Manager/CFO Haines said that they did not consider the asphalt millings to be an asset of the City that fell under the provisions of the City's surplus property ordinance. Mr. Haines believed that the milled asphalt was waste material and Mr. Riffel thought that the millings were spoils.

The City ultimately sold some of the millings for \$3.00 per ton and received \$3,594.31 from the sale of the milled asphalt.

Results

The amount charged by the City for the millings was not unreasonable.

One of our objectives was to determine if the \$3.00 per ton charged by the City was a fair market value.

We contacted the Materials Division of the Oklahoma Department of Transportation who referred us to Larry Patrick, Executive Director of the Oklahoma Asphalt Pavement Association. Mr. Patrick, who has approximately 40 years of experience in various aspects of the asphalt industry, advised that the value of the asphalt could range from \$6-\$15 per ton *including* the handling and trucking expenses. In a case where the seller was not involved in the handling or transportation of the asphalt sold, he concluded that \$3.00 per ton was not an unreasonable amount.

We also contacted two private construction companies based in Oklahoma and spoke with company officials. These officials, one with over 20 years experience and the other with over 30 years experience, explained that the price charged by the City was not an unreasonable amount, given the City was not involved in the handling or transportation of the materials sold.

Results

The City sold the milled asphalt using an 'honor system' of accountability.



During our fieldwork, we noted that access to the piles of ground asphalt in question was limited by a locked gate. According to Mr. Kornele, in 2008 the gate was rarely, if ever, locked.

Mr. Kornele stated that responsibility for recording the number of loads of asphalt purchased fell to individual buyers. This type of 'honor system' of accountability in which the buyer reports the number of loads purchased is not the best practice to ensure proper compensation to the City for the loads removed from the site.

We are aware there is some dispute over what may be a missing and/or unaccounted for amount of millings. The FAA report included that *one estimate* of the missing asphalt “put the amount at 3,850 tons or \$77,000 worth of material” (\$20 per ton).

In a letter dated March 25, 2013 from the FAA to the City, the FAA noted:

There seems to be a great disparity in the quantity of asphalt removed from the stockpile. One estimate says 1173 tons while another estimate says 3855 tons.

The City’s current asphalt purchasing system may have contributed to the disparity either by deliberate or inadvertent mistakes in record keeping and/or reporting.

We should note that the 3,855 *estimate* appeared to have been based on “historic size” of the pile as determined by the former airport manager.

Results

The FAA concurred with the City’s corrective actions in resolving the land-use issues noted in the FAA inspection report.

In June 2012, the FAA performed a land-use compliance inspection on the West Woodward Airport. The report cited the following required corrective actions for the City to complete:

- Title to released airport property should be returned to the airport from other city departments or entities.
- Rental for leases of airport property should be paid to the airport account.
- Leases of airport property for non-aeronautical uses should be for not-less-than fair market rental value based on appraisals with escalation clauses included to account for inflation.
- The gun range should be relocated off airport property.
- The travel trailer should be moved off airport property.
- The cargo trailer should be moved off airport property.
- The airport fund should be credited for the full fair market value of the removed milled asphalt.
- The airport should be credited for the full fair market value for the salvaged T-hanger building materials.
- The inconsistencies and the inaccuracies in the Property Map Exhibit A should be remedied.

On July 24, 2012, the FAA sent a letter to the mayor requesting the City to develop a plan to complete the corrective actions. The City submitted a proposed plan addressing the FAA's findings and required corrective actions the following September.

On January 26, 2013, the City submitted a letter to the FAA documenting the City's efforts to correct the issues identified by the FAA. To address the FAA's requirement that the airport be credited for the full fair market value of the removed milled asphalt, the City responded as follows:

667 tons of milled asphalt removed from the airport at an appraised value of \$15.00/ton, or a total value of \$10,005.00. Further consideration shall be given for the actual price received of \$3.00/ton, or a total value of \$2,001.00, netting the airport \$8,004.00.

The City revised the response on February 21, 2013, to include the following language:

Recent developments identified an additional 506 tons of asphalt sold during the same time period, equating to a \$7,590.00 credit to the Airport Department.

The FAA responded to the City's efforts to correct the land use issues in a letter dated March 25, 2013. Regarding the milled asphalt issue, the FAA was dissatisfied with the City's actions due to the discrepancy in the quantity of removed asphalt. The FAA's response was as follows:

There seems to be a great disparity in the quantity of asphalt removed from the stockpile. One estimate says 1173 tons while another estimate says 3855 tons. This discrepancy needs to be reconciled. However, we have not found the records for the construction project to reconstruct runway 5/23. We did find an authorization to use the salvaged material in that reconstruction project. Therefore, we would conclude that at this point this is still an open item.

In a letter, dated November 5, 2013, the City offered the following to address the FAA's concerns:

The City again assures the FAA that it has collected and recognized, to its knowledge, all asphalt millings sold off of the airport property. However, to demonstrate a good faith effort, the City will appropriate funds for the purpose of the CIP equal to one-half of the quantity difference, as identified in your letter, at \$15.00/ton, which equates to \$20,115.00, for resolution of this issue.

The FAA accepted the City's proposal to appropriate \$20,115.00 for an airport capital improvement project in a letter dated December 4, 2013. The letter also contained additional terms to satisfy the remaining unresolved issues. Later in December, City Commissioners voted in favor of agreeing to the FAA's terms.

As part of the terms accepted by the FAA, City Commissioners amended the City budget to provide an additional \$178,626.00 to the Airport Fund for FY 14, including \$20,115.00 for the asphalt milling sold off airport property. Documentation provided by the City showed an increase of \$178,626.00 to the Airport Fund.

In a letter, dated April 4, 2014, the FAA concurred with the City's proposal.

DISCLAIMER

In this report there may be references to state statutes and legal authorities which appear to be potentially relevant to the issues reviewed by this Office. The State Auditor and Inspector has no jurisdiction, authority, purpose, or intent by the issuance of this report to determine the guilt, innocence, culpability, or liability, if any, of any person or entity for any act, omission, or transaction reviewed. Such determinations are within the exclusive jurisdiction of regulatory, law enforcement, and judicial authorities designated by law.



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