Before the Committee on Transportation and Infrastructure
United States House of Representatives

For Release on Delivery
Expected at
9:00 a.m. EDT
Friday
November 16, 2012
CC-2013-005

Observations on the Metropolitan Washington Airports Authority's Governance

Statement of
The Honorable Calvin L. Scovel III
Inspector General
U.S. Department of Transportation

Mr. Chairman and Members of the Committee:

Thank you for inviting me to testify on the governance of the Metropolitan Washington Airports Authority (MWAA). As an independent public body subject to few Federal and State laws, MWAA must rely on the strength of its policies and processes to ensure credibility in its management of two of the Nation's largest airports and a multibillion-dollar public transit construction project. However, in May 2012, we reported in an interim letter that MWAA's oversight and internal policies and procedures related to contracting, ethics, travel, and transparency were insufficient to ensure fiduciary and ethical responsibility and accountability to Congress, stakeholders, and the public.[1]

Our November 1, 2012, report details our observations on MWAA's (1) contract award and procurement practices, (2) code of ethics for its employees, (3) hiring and compensation practices, and (4) Board of Director activities.[2] My testimony today will highlight these observations and recent actions MWAA has taken in response.

In summary, MWAA's policies and practices have not provided the controls needed to ensure accountability, transparency, and sound governance. MWAA's lack of internal controls has created a culture that allows questionable contracting practices by staff as well as its Board of Directors and senior officials—including initiating work before contract award, awarding sole source and limited competition contracts without proper justification, and providing non-public information that gives potential contractors an unfair advantage in competition. MWAA's code of ethics and related policies and procedures have similarly been insufficient to detect violations of anti-nepotism and gift provisions and identify potential conflicts of interest. Lacking a formal policy for filling vacancies or creating new positions has allowed senior officials to place candidates into new or existing positions without job descriptions, competition, or completed background checks. Finally, MWAA's policies and processes have not ensured accountability and transparency for activities conducted by its Board of Directors.

MWAA has begun to take action to address these concerns. Notably, MWAA has terminated contracts with former Board members, approved a new travel policy and new codes of ethics for employees and the Board, and revised the Board's bylaws and Freedom of Information Policy. In a letter dated October 18, 2012, the Department of Transportation (DOT) Office of the Secretary (OST) referenced additional planned actions to improve MWAA's accountability, including appointing an Accountability Officer to monitor and report on any reform efforts and pursuing an amendment to the lease between MWAA and DOT to ensure greater oversight.

---

[1] OIG, "Interim Response Letter to Congressmen Wolf and Latham Regarding MWAA," May 15, 2012. OIG correspondence and reports are available on our Web site at http://www.oig.dot.gov/.

[2] OIG, *MWAA's Weak Policies and Procedures Have Led to Questionable Procurement Practices, Mismanagement, and a Lack of Overall Accountability*, Nov. 1, 2012.

BACKGROUND

MWAA was created through an interstate compact between the Commonwealth of Virginia and the District of Columbia as well as the Metropolitan Washington Airports Act of 1986.[3] In March 1987, the Secretary of Transportation and MWAA entered into a 50-year lease authorizing MWAA to occupy, operate, control, and use all land and related areas of Ronald Reagan Washington National Airport and Washington Dulles International Airport, with full power over operations and development of the airports. In April 2003, the term was extended to 80 years. More recently, MWAA assumed responsibility for the Dulles Corridor Metrorail Project, with a $3.1 billion budget for Phase 1—$977 million of which is Federal investment—and cost estimates of $2.7 billion for Phase 2.

As designed by the Airports Act and lease, MWAA was governed by a 13-member Board of Directors composed of members from Virginia, the District of Columbia, and Maryland, and Presidential appointees. In October 2012, Board membership increased to 17 members.[4] Board members serve 6-year terms without compensation. The Board is responsible for establishing policy and providing direction to MWAA's President/Chief Executive Officer (CEO).

The Airports Act and the lease established MWAA as an independent public body. As such, MWAA is not subject to Federal or State laws that govern procurement, ethics, civil service, and transparency. However, MWAA must abide by the provisions and terms of the Airports Act, the lease, and the interstate compact, as well as its own internal policies and processes. The Airports Act and lease require MWAA to develop a code of ethics to ensure the integrity of decisions made by MWAA's Board of Directors and its approximately 1,400 employees. MWAA has two separate codes of ethics policies—one for its Board of Directors and another for its employees. Each code describes situations causing both an actual or apparent conflict of interest, which could adversely affect the confidence of the public in the integrity and credibility of MWAA. Each code defines standards of ethical conduct, such as acceptance of gifts and annual financial interest disclosure requirements.

While MWAA is not required to follow Federal statutes or regulations for procuring goods and services, the Airports Act and the lease agreement with DOT require the Authority to obtain full and open competition for contracts in excess of $200,000, to the maximum extent practicable. The Act and the lease specify this be accomplished through the use of published competitive procedures. MWAA's Board of Directors may grant exception to this requirement by a vote of the majority of the Board.

---

[3] Pub. L. 99-591.

[4] In October 2012, the District of Columbia passed legislation to amend the interstate compact to complete the implementation of changes to the Board's composition mandated by the Consolidated and Further Continuing Appropriations Act of 2012 (Pub. L. 112-55, Div. C, Title I, § 191). Congress passed this Act in November 2011 to expand the MWAA Board from 13 to 17 members, including 7 appointed by the Governor of Virginia, 4 by the Mayor of the District of Columbia, 3 by the Governor of Maryland, and 3 by the President of the United States.

In 2011, amid multiple allegations of misconduct and mismanagement on the part of MWAA, Congressmen Frank R. Wolf and Tom Latham asked OIG to initiate a review of MWAA. In May 2012, we provided an interim letter to the Congressmen and briefed key stakeholders, including Loudoun and Fairfax counties, regarding our preliminary observations on weaknesses we identified in MWAA's management and questionable Board activities.[5] In response, the Secretary, the Governors of Maryland and Virginia, and the Mayor of the District of Columbia issued a letter in August 2012 to MWAA's Chairman and Board members mandating immediate reform of MWAA's business practices. Reforms include terminating all existing contracts with former Board members and former employees that were not competitively bid, strengthening MWAA's ethics code and ethics training requirements, and tightening Board travel procedures. In addition, the Secretary appointed an Accountability Officer to monitor and report on any reform efforts.

MWAA'S CONTRACTING POLICIES AND PRACTICES ARE INSUFFICIENT TO ENSURE COMPLIANCE WITH THE AIRPORTS ACT OR LEASE AGREEMENT

MWAA's contracting policies and practices are insufficient to ensure compliance with the Airports Act and the lease agreement between DOT and MWAA. The Act and the agreement require the Authority to competitively award contracts over $200,000 to the maximum extent practicable. However, for the period we reviewed,[6] MWAA used categorical exceptions to limit competition for almost two-thirds of MWAA's contracts that exceeded $200,000. While MWAA's Contracting Manual allows the use of categorical exceptions,[7] MWAA frequently did not meet its Contracting Manual requirements for adequate justifications when using these exceptions. Further, adding new out-of-scope work to existing contracts and issuing task orders without required justifications and approvals have also limited competition.

These weaknesses are exacerbated by ineffective contract management and oversight and a lack of adequate procurement integrity policies to ensure impartiality when awarding and administering contracts. Notably, MWAA has delegated procurement authority to employees outside its Procurement and Contracts Department but has not kept track of those with this authority and has not held employees to their delegated authority limits.

MWAA Board members and senior officials have set the tone for a lax internal control culture by engaging in questionable contracting practices—including initiating work

[5] At Congressman Wolf's request, our interim letter also included a preliminary review of MWAA's assumptions for Dulles Toll Road revenue, which found that the assumptions appeared reasonable.
[6] January 2009 to June 2011.
[7] MWAA's Board of Directors authorized six categorical exceptions to full and open competition in section 1.2 of MWAA's second edition Contracting Manual: (1) limited competition for urgent needs; legal, financial, audit, or legislative representation professional services; and local business set asides; (2) airport security controlled distribution RFP; (3) utility supplies and services; (4) Government purchasing agreements; (5) airline tenant procured projects; and (6) proprietary equipment and software. Use of these exceptions requires no further Board approval.

before contract award, awarding sole source contracts without proper justification, and providing non-public information that gives potential contractors an unfair advantage in competition.

MWAA'S ETHICS CODE AND PROCESSES HAVE BEEN INSUFFICIENT TO PREVENT ACTUAL AND PERCEIVED CONFLICTS OF INTEREST AMONG EMPLOYEES

MWAA recently approved a new employee code of ethics that will go into effect on January 1, 2013. However, MWAA's code of ethics and related policies and procedures in place at the time of our audit lacked the rigor needed to detect violations of anti-nepotism and gift provisions and to identify potential conflicts of interest. We identified several violations and conflicts, including:

- The Vice President of Human Resources indirectly supervised relatives, despite the code's explicit provision prohibiting such relationships.
- Employees regularly accepted inappropriate gifts from an MWAA contractor—including Super Bowl tickets, travel, and accommodations worth almost $5,000.
- The former President/CEO's 2009 financial interest form was missing a page with key details about the CEO's financial holdings.

Weak policies and procedures, cursory reviews of financial disclosure statements, and a lack of recurrent ethics training have provided little assurance that employees are fully aware of MWAA's ethics requirements, increasing the risk of unintentional ethics violations.

MWAA LACKS HIRING AND COMPENSATION POLICIES AND PRACTICES TO ENSURE SUFFICIENT OVERSIGHT AND ACCOUNTABILITY

MWAA's standard hiring process for filling vacancies or creating new positions has not been formally documented as an official policy, which has allowed senior officials to place candidates into new or existing positions without job descriptions, competition, or completed background checks. In some cases, senior officials abused MWAA's student program to hire employees who were not students, using personnel documentation that falsely showed student status. MWAA's lack of oversight also resulted in employees with known criminal convictions working at the Authority in sensitive and management positions for more than a year.

In addition, MWAA managers awarded excessive salaries, unjustified hiring bonuses, questionable cash awards, and ineligible benefits. For example, MWAA created a new position for a former Board member that included an annual salary of $180,000 for unspecified job duties, before ultimately terminating the position after public outcry. In

another example, an MWAA Human Resources manager deliberately abused MWAA's benefits programs to continue paying an individual who no longer worked for the Authority.

MWAA'S POLICIES AND PROCESSES DID NOT ENSURE ACCOUNTABILITY AND TRANSPARENCY FOR ITS BOARD OF DIRECTORS

MWAA's policies and processes have not ensured accountability and transparency for activities conducted by its Board of Directors. Unlike its policies for MWAA employees, MWAA's policies for the Board did not at the time of our review explicitly prohibit nepotism or other relationships that may cause undue influence at the Authority.

Without such controls, MWAA has not been able to hold its Board accountable to the same standards it holds its employees. Specifically, MWAA could not ensure that relatives and friends of Board members did not receive preferential treatment in hiring or contracting. Oversight weaknesses and a lack of training have further hindered MWAA's ability to prevent conflicts of interest for its Board members. For example, contrary to MWAA's ethics policies established specifically for the Board, a Board member participated in the selection of a contractor who employed the Board member's spouse. While MWAA has taken steps to improve Board accountability and transparency—including a new code of ethics for the Board and revised travel policies—significant attention will be required to ensure that new travel, ethics, and disclosure policies are implemented and enforced.

MWAA HAS BEGUN TO ADDRESS OIG OBSERVATIONS ON GOVERNANCE WEAKNESSES

On May 15, 2012, we issued an interim letter describing our observations of MWAA's governance. In particular, we observed that MWAA's oversight and internal policies and procedures related to financial disclosures, travel, and transparency were insufficient to ensure fiduciary and ethical responsibility and accountability to Congress, stakeholders, and the public. We also observed that MWAA's contracting policies and practices were insufficient to ensure compliance with the Act's provisions and MWAA's internal procurement procedures, resulting in contracts that are not subject to full and open competition and may not represent best value.

Following our May 2012 interim letter, MWAA has taken action to improve its accountability, transparency, and governance. For example, as of September 19, 2012, MWAA approved new codes of ethics for its Board of Directors and its employees. The revisions will go into effect December 1, 2012 (for the Board) and January 1, 2013 (for MWAA employees). In addition, the Authority has approved a new travel policy, and revised the Board's bylaws and Freedom of Information Policy to increase transparency.

According to MWAA officials, the Authority has also:

- suspended the use of categorical exceptions for professional services,
- terminated contracts with former Board members or let those contracts expire,
- established guidelines requiring contracting officers to select contractors under temporary staffing multiple-award contracts, and
- enhanced screening for nepotism.

In an October 18, 2012, memorandum to the Inspector General, OST noted that MWAA's pattern of conduct is unacceptable for a public body entrusted with the management and operation of important Federal assets. In exercising the full extent of its authority, OST referenced additional planned actions to improve MWAA's accountability, including appointing a Federal Accountability Officer to monitor and report on any reform efforts and pursuing an amendment to the lease between MWAA and DOT to ensure greater oversight. (OST's October 18, 2012, letter is provided as an appendix in our November 2012 report.)

While MWAA is taking positive steps to correct the deficiencies we identified, further actions are needed to fully address these deficiencies to ensure fiduciary and ethical responsibility and restore public trust in the soundness of its current and future activities.

Mr. Chairman, this concludes my prepared statement. I will be happy to answer any questions you or other members of the Committee may have.