

County of Ventura
AUDITOR-CONTROLLER
MEMORANDUM

To: Lyn Krieger, Director, Harbor Department

Date: November 27, 2012

From: Christine L. Cohen *clc*

Subject: AUDITOR'S EVALUATION OF THE HARBOR DEPARTMENT'S RESPONSE TO THE REPORT ON PERFORMANCE OF LIMITED PROCEDURES REGARDING THE ADMINISTRATION OF THE HARBOR DEPARTMENT'S SERVICE COSTS BILLED TO THE CITY OF OXNARD FUNDED BY COMMUNITY FACILITIES DISTRICT NO. 4

We have completed our evaluation of the Harbor Department ("Harbor") response to our report dated October 10, 2012, on the limited audit procedures applied to Harbor's administration of the service costs billed to the City of Oxnard ("City") funded by the City's Community Facilities District ("CFD") No. 4. Harbor's written response is included as an attachment to this evaluation.

Our overall report finding identified that establishing a service agreement, which is required by the Seabridge memorandum of understanding/legal settlement agreement ("MOU"), would provide the opportunity to clarify certain significant elements of the patrol services to be provided and corresponding costs. Following are details of our evaluation addressing Harbor's response to each of the elements identified in our report.

A. **Establishing Service Level Expectations.**

Harbor's response signifies a difference of interpretation regarding the Seabridge MOU. We agree that the Seabridge MOU incorporated by reference provisions of the Westport Settlement Agreement, in which the City agreed to enter into the Westport Service Agreement with the County. However, we believe that Harbor's assertion is not accurate that Section 1(a) of the Seabridge MOU requires that the same terms of service applied to Westport through the Westport Service Agreement automatically apply to Seabridge. Section 1(a) of the Seabridge MOU states:

The terms of the service agreement that is to be made between Oxnard and County pursuant to paragraph 1(a) of the Westport Settlement Agreement (the "Service Agreement") shall be expanded so that OMB is a party and the service agreement governs the Seabridge Waterways, as well as the Westport Waterways, or a separate service agreement will be made by County, Oxnard and OMB, that will apply to the Seabridge Waterways and will establish OMB's rights and obligations, on the same terms.

We believe that explicit action was needed to expand the Westport Service Agreement to include Seabridge. Therefore, our finding remains as written.

B. **Specifying Labor Cost Calculations.**

While we believe that using fully developed labor rates would better ensure full cost recovery for the County, we understand that a prospective change to the methodology could place an unexpected burden

on the CFD. However, we continue to believe that specifying how labor costs will be calculated is essential to support the labor costs charged and strengthen the understanding of all parties. Therefore, our finding remains as written.

To address Harbor's comment that our Footnote 4 was not relevant, we recognized in our report that the Seabridge MOU specified funding levels and we were not implying that invoicing should be based on actual time worked. Footnote 4 was intended to provide additional perspective to emphasize the need to establish service level expectations and specify the method of determining the labor costs charged. Therefore, our footnote remains as written.

C. Identifying Billable Costs.

Although both County Counsel and the City concurred that the charges in our finding were allowable, we continue to maintain that the costs were not clearly identifiable as billable costs. Section 1(d) of the Seabridge MOU states:

Oxnard and OMB also agree that the CFD will provide County with all funds reasonably needed for County to hire and continuously employ three Harbor Patrol Officers (Level II, top range) and one Sergeant, Harbor Patrol Officer III, and to provide the County with funds sufficient to purchase, maintain, repair, and replace every five years, if reasonably needed (or, sooner, if beyond repair), the following items: a suitable motor vehicle, two Harbor patrol boats, a boat trailer, the size of and equipment for each of which is specified in Exhibit B, and the other items specified in Exhibit B hereto.

Exhibit B includes the following items: bench locker; storage container; fire box; dewatering pumps; suction discharge hoses; 75-foot hose; slip lift; showers; indoor lockers; computers and printers; base radio with four handhelds; telephones/fax/cell phones; emergency medical supplies; general office supplies; harbor patrol boats; boat trailer; and motor vehicle. The Seabridge MOU does not allow for expansion of charges beyond these items. Therefore, our finding remains as written.

Although Harbor's response took issue with certain points in our findings, Harbor management planned to request modifications to the proposed Seabridge Service Agreement to address the findings. Harbor planned to request that the City agendize approval of the Seabridge Service Agreement by December 15, 2012. If the City does not take action, Harbor will continue to make this request every year with the Harbor invoice.


Attachment

cc: Honorable John C. Zaragoza, Chair, Board of Supervisors
Honorable Peter C. Foy, Vice Chair, Board of Supervisors
Honorable Steve Bennett, Board of Supervisors
Honorable Linda Parks, Board of Supervisors
Honorable Kathy Long, Board of Supervisors
Michael Powers, County Executive Officer

**HARBOR
DEPARTMENT****MEMORANDUM**

DATE: November 1, 2012

TO: Christine Cohen, Auditor-Controller

FROM: Lyn Krieger, Director 

SUBJECT: **Limited Procedures Regarding Harbor Department's Service Costs Billed to the City of Oxnard Funded by Community Facilities District No. 4**

We have reviewed the findings resulting from your department's limited audit procedures with regard to administration of service costs billed to the City of Oxnard.

First, we appreciate your overall finding that Harbor's service costs billed to the City were allowable in accordance with the Seabridge MOU.

We would like to provide the following information to clarify certain points in your Findings.

A. Establishing Service Level Expectations. Your report indicates that although funding levels for Seabridge Harbor Patrol services were specified in the Seabridge MOU, corresponding service levels have not been specified. This finding further states that although the Westport Service Agreement stated services would be provided 24/365, this expectation has not been established for Seabridge.

This assertion is not correct. The Seabridge MOU incorporates by reference provisions of the Westport Settlement Agreement regarding patrol of waterway areas. The Westport Settlement Agreement in turn provides that the subsequent Westport Service Agreement would specify details for provision of services. Copies of both Westport documents were provided to your staff May 22, 2012. Specifically, Section 1(a) of the Seabridge MOU requires that the same terms of service that apply to Westport also apply to the Seabridge area. The City's failure to approve a separate service agreement for Seabridge does not invalidate the existing provisions.

B. Specifying Labor Cost Calculations. Your report states the method of determining HPO labor costs has not been specified, and goes on to state that such specification is necessary to support the labor costs charged.

We agree with your finding that the County could charge significantly more to the City for services provided if charges were calculated to include overhead allocations, rather than only direct salary and benefit costs. However, the practice of charging direct salary and benefit expense has been consistently applied to this agreement since 2006. A prospective change to the methodology would be contrary to past practice and place an unexpected burden on the CFD.

In addition, your footnote #4 suggests that billing based on actual services provided would result in a lower charge to the City. We do not understand why this note would be relevant. The Seabridge MOU specifically states that funding is to be provided for three Harbor Patrol Officer II positions at top step, along with one Harbor Patrol Officer III, also funded at top step. Invoicing based on actual time is not contemplated in the agreement, and would significantly increase the time and cost required to administer Seabridge services.

C. Identifying Billable Costs. This section indicates that the Harbor Department billed the City for fees that were not specifically allowed under the Seabridge MOU.

Section 1(d) of the Seabridge MOU requires that CFD provide all funds reasonably needed. Both County Counsel and the City concurred that these charges were allowable under the agreement. We are relying on County Counsel's interpretation of the terms of this legal agreement.

Harbor staff will continue to periodically request that the Oxnard City Council agendize approval of the Seabridge Service Agreement and further negotiate its terms, as deemed necessary by the parties.

We appreciate your staff's communication and prompt responses during this process.

cc: Supervisor John Zaragoza
Supervisor Peter Foy
Supervisor Kathy Long
Supervisor Steve Bennett
Supervisor Linda Parks
Michael Powers, CEO