



OFFICE OF INSPECTOR GENERAL
JEFFERSON PARISH

DAVID N. McCLINTOCK
INSPECTOR GENERAL



DATE: May 21, 2014

TO: Commissioner Carroll W. Suggs, Chair
Commissioner Kyle Marks, Vice-Chair
Commissioner Warren R. Bourgeois, III
Commissioner Maria Cisneros
Commissioner Paul LaRosa

FROM: David McClintock, Inspector General

RE: Synopsis of OIG Supplemental Memorandum of 04/08/2014
Hospital Lease – EJGH/WJMC

Please find attached the Jefferson Parish Office of Inspector General's (JPOIG) Finalized Supplemental Memorandum, originally issued in draft form on 04/08/2014, addressing "concerns relating to the lease negotiation process, or lack thereof, for the hospital facilities known as West Jefferson Medical Center ("WJMC") and East Jefferson General Hospital ("EJGH")." The memorandum was issued as part of the JPOIG's monitoring of broader issues regarding the anticipated leasing of the hospitals.¹

Monitoring efforts are proactive in nature and focus on issues as presented, or are otherwise discovered, as opposed to identifying and responding to issues at the conclusion of an event. Thus, monitoring is not intended to address all issues which may be raised in various forums. Rather, it is intended to address certain issues in limited areas where corrective measures remain a viable course of action.

The JPOIG Supplemental Memorandum of 04/08/2013 focused on the lack of an established process and concerns that actions by the individual hospital boards could result in substantial, uncoordinated and potentially duplicative expenditures.² In addition we remain concerned about potential conflicts of interest, or the appearances of such, and believe that the Council should take care to ensure that all future expenditures represent the most efficient use of the public's funds. To that end we made two recommendations that we believe would mitigate and/or remove conflicts of interest

No response to the Supplemental Memorandum of 04/08/2014 was received by the JPOIG, and the delay for responding has elapsed. The JPOIG notes, however, that the Supplemental

¹ On or about August 23, 2013, the JPOIG began monitoring the processes and procedures engaged by Jefferson Parish through the Parish Council and/or its appointed boards of East Jefferson General Hospital (EJGH), West Jefferson Medical Center (WJMC) and the Jefferson Parish Health and Hospital Services District (aka. "Third District") which were anticipated to culminate in the selection of a suitable partner to lease EJGH and WJMC.

² Open source http://www.nola.com/politics/index.ssf/2014/04/east_jefferson_hospital_board_1.html

Memorandum was leaked to the media before adequate time for response from any individual recipient or the Parish Council collectively. Notwithstanding the lack of response, some actions have been by both the West Jefferson Medical Center and the Parish Council to establish parameters for a process for negotiation which is largely consistent with our recommendations.

The JPOIG will continue to monitor in order to ensure that the public is properly informed and provided the opportunity to engage in the deliberative process and that the process is conducted fairly.

After the passage of at least five business days from May 20, 2014, the issuance of this memorandum and attachments will be made publicly available via www.jpoig.net.

cc: Council Chairman Elton M. Lagasse (w/encls)
Councilmember Christopher L. Roberts (w/encls)
Councilmember Ricky J. Templet (w/encls)
Councilmember Paul D. Johnston (w/encls)
Councilmember Mark D. Spears (w/encls)
Councilmember E. "Ben" Zahn, III (w/encls)
Councilmember Cynthia Lee-Sheng (w/encls)
Parish Attorney Deborah Foshee-Cunningham



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DAVID N. McCLINTOCK
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FINAL MEMORANDUM

DATE: May 21, 2014

TO: Councilman Elton M. Lagasse
Councilman Christopher L. Roberts
Councilman Ricky J. Templet
Councilman Paul D. Johnston
Councilman Mark D. Spears
Councilman E. "Ben" Zahn, III
Councilwoman Cynthia Lee-Sheng

FROM: David McClintock, Inspector General

SUBJECT: Hospital Lease - Recommendations Regarding Formal Negotiation

Confidentiality Notice

This confidential memorandum is issued by the Inspector General pursuant to the authority conferred by JPCO 2-155.10. It is intended for the sole use of the named council members. It is not intended to be read, disclosed, reproduced, distributed, disseminated, in whole or in part by anyone other than the council members. The report contains confidential information, information which would not be subject to public records request, and/or information which may be subject to other agreements of confidentiality and nondisclosure.

I. INTRODUCTION

The Jefferson Parish Office of Inspector General ("JPOIG") presents this supplemental memorandum in order to address concerns relating to the anticipated lease of hospital facilities known as West Jefferson Medical Center ("WJMC") and East Jefferson General Hospital ("EJGH"). The focus of this memorandum is the process, or lack thereof, regarding negotiations for the lease of the hospitals.

This is a supplemental memorandum to the memorandum made public on 11/22/2013. The memorandum of 11/22/2013 was issued as part of the JPOIG's monitoring of broader issues surrounding the leasing of the hospitals. The present memorandum must be read within the context of the [JPOIG Memorandum of November 22, 2013](#).

The JPOIG handles all memorandum, reports, and investigations involving official comments, findings, and recommendations as confidential and therefore subject to the draft comment and review process set forth below:

1. JPOIG submits the initial draft correspondence to the proper recipients for a review and comment period of up to thirty (30) days.

2. Upon receipt of any comments, additional information, etc., the JPOIG may choose to take additional actions to supplement the correspondence or to finalize the document.
3. Once the document is finalized the OIG will:
 - a. Submit the document along with any comments received to the Ethics and Compliance Commission, and
 - b. Forward a copy of the finalized document to original recipients.
4. Following the issuance of the finalized document and the passage of at least five (5) business days the JPOIG will issue a public document.

Monitoring efforts are proactive in nature and focus on issues as presented, as opposed to identifying and responding to issues at the conclusion of an event. Thus, monitoring is not intended to address all issues which may be raised or otherwise arise. Rather, it is intended to address certain issues where corrective measures remain a viable course of action.

Considering recent developments pertaining to the lease of the WJMC and EJGH, the JPOIG remains concerned about the absence of a definitive process regarding the lease negotiations.

BACKGROUND/CHRONOLOGY *(Supplemental)*

By way of history, the JPOIG presented a confidential, draft memorandum to the Council identifying areas of concern and recommendations relating to the lease of WJMC and EJGH on 9/13/2013. A comment and response period followed, and the JPOIG received several responses. The final memorandum, with attachments, was released and made public under a cover letter dated 11/22/2013.

As of September 2013, the board members of the WJMC and EJGH, who collectively represent the board members of the Jefferson Parish Hospital and Health Services District (also referred to as the “Third District”), were unable to recommend to the Council a single suitor with whom to begin negotiating a lease for the hospital facilities. At that time, there were three candidates on which the consultant, Kaufman Hall, had advised would be suitable. They were (1) HCA; (2) Louisiana Children’s Medical Center (LCMC); and (3) Ochsner Health System. In October 2013, Kaufman Hall released a 22 page report which contained a recommendation that WJMC and EJGH separately seek partners with whom to enter a lease.¹ Kaufman Hall reported:

“While Kaufman Hall believes that this outcome is less than optimal for Jefferson Parish, given the current dynamics we believe that the pursuit of separate partners has a greater likelihood of success than a partnership that is the result of forced choice with a divided Board of Directors and management team.”

Kaufman Hall, a national healthcare consultant, was initially engaged in early 2012 to provide a strategic plan for selecting a partner to lease the WJMC and the EJGH. In March 2013, Kaufman Hall received letters of intent and negotiations ensued. Following negotiated letters of intent, Kaufman Hall was to summarize and interpret each final letter of intent and provide a

¹ Open source http://www.nola.com/politics/index.ssf/2013/10/jefferson_parish_consultant_sa.html

comparative analysis for review by the hospital board(s). Differences of opinion between and among hospital boards stressed the process. This stress was further exacerbated by the lack of an agreed upon defined evaluation and scoring criteria. In or about August 2013, a dispute emerged as to whether Kaufman Hall would make a recommendation on a suitable lease partner. The debate became public, and additional questions arose regarding the process, or lack thereof.

The JPOIG's memorandum provided to the Council suggested the Council consider: (1) selecting a new expert consultant and/or outside council with an established expertise in managing and overseeing the processes involved in hospital lease negotiations; (2) establishing a clear structure and line of authority for future negotiations; and (3) permitting the negotiation team to act in a manner which ensures integrity of process.

On February 19, 2014, the Council by Resolution No. 122465 voted to approve a negotiated contract with Nemzoff & Company, LLC to analyze proposals to lease WJMC and EJGH. Entities which submitted proposals were the same entities Kaufman Hall had identified as being suitable lessees: (1) HCA; (2) LCMC; and (3) Ochsner.² Nemzoff performed an analysis of each of the proposals received, and he performed a credit analysis of LCMC and Ochsner.

The results were presented to the Council in open session at a special meeting held on April 2, 2014. In conclusion, the presentation identified "Next Steps" to moving the process forward. These steps were (1) selecting a suitor; (2) retaining a transaction team; (3) conducting due diligence; (4) reaching a definitive agreement and (5) closing. Significantly, Nemzoff further reported that both hospitals, management team, attorneys, financial advisors & board members all have a conflict of interest with respect to negotiating the transaction for reasons which he provided.

AREA OF CONCERN (*Supplemental*)

The absence of process with clearly defined lines of authority and direction remains an area of concern for the JPOIG. It is only with clarity of process and authority that accountability may follow.

The hospital service districts are created by parish ordinance pursuant to authority given by state statute.³ In creating the districts, the Council reserved unto itself the role of governing authority.⁴ The decision to lease, the selection of a lease partner, and the approval of lease terms rests with the Council and not with the hospital boards. Still, the hospital boards have certain delegated authority and responsibility.⁵ It must be assumed that each hospital board acts, and has

² On February 20, 2014, HCA conveyed by letter that it has decided to withdraw all proposals to lease and operate EJGH and WJMC and will no longer participate in the selection process.

³ R.S. 46:1051 *et seq.*

⁴ The parish council acting as governing authority of Jefferson Parish Hospital and Health Services District, Jefferson Parish Hospital Service District No. 1, and Jefferson Parish Hospital Service District No. 2 shall conduct the respective hospital service districts business at an appropriate time during the parish council meeting as indicated on the meeting agenda. JPCO 17-18.

⁵ See JPCO 2-933.4"Except as otherwise provided herein, the administration of each particular hospital service district, upon authorization of its board, shall be responsible for selecting professionals and negotiating, executing and administering professional services contracts necessary for the efficient operation of said hospital service

acted, in the best interest of its respective facility. The anticipated lease of the parish's hospitals challenges the relative roles and relationships of the boards to the Council. The absence and reluctance to establish a frame work for the process continues to color and compromise an optimal outcome for the citizens of the Parish. While it remains clear that the Council is the governing authority, it is equally unclear what role the respective boards should have during lease negotiations.

As Mr. Nemzoff indicated, there will be unavoidable conflicts of interest if the Council permits the hospital's management team, attorneys, advisors or board members to direct negotiations without a process in place. The risk of conflict is no less were individual Council members permitted to direct or influence negotiations. The responsibility rests with the Council to ensure that a process which removes potential conflicts and provides for adequate input is established. Part and parcel of the process must necessarily entail who and how authority will be exercised as it pertains to (1) engaging past, present or potential suitors; (2) developing negotiation teams; and (3) lines of communication which ensures integrity of process.

Given the aforementioned concerns, the JPOIG notes that the Council is scheduled to meet on April 9, 2014 and consider several agenda items relating to the lease of hospitals as follows:

- Agenda Item No. 139 calls for a resolution selecting and authorizing the negotiation of all necessary agreements among Hospital Service District No. 1 (West Jefferson Medical Center); Hospital Service District No. 2 (East Jefferson General Hospital) and Hospital and Health Service District (Third District) to lease, sub-lease or grant the use of assets and property under the control of the respective districts.
- Agenda Item No. 140 calls for a resolution authorizing board of directors of West Jefferson Hospital to negotiate a lease of the assets and property which are owned or under the control of the respective hospital service districts.
- Agenda Item No. 141 calls for a resolution authorizing board of directors of East Jefferson Hospital to negotiate a lease of the assets and property which are owned or under the control of the respective hospital service districts.

The Council retained Nemzoff. Nemzoff has provided the Council with an analysis of suitors and identified specific next steps to moving the process forward. Interestingly, the steps outlined by Nemzoff are not substantially variant from those which were anticipated to be carried out by Kaufman Hall. However and again, there remains (1) no clear structure and line of authority for future negotiations; and (2) no process which permits a negotiation team to act in such a manner which ensures the integrity of process.

The JPOIG is concerned with the expenditure of public funds on consultant services related to the hospital lease process. While the retention of consultants and related expenditures is to be expected, the Parish must exercise care to ensure that the expenditures are reasonable and coordinated in a manner that delivers maximum value. To date, the Parish and/or the EJGH and

district. The parish council shall make the selection of the person or firm to provide professional services involving accountants, architects, engineers, financial consultants, investment managers and legal counsel..."

WJMC, have expended \$1,300,000 with Kaufman Hall Associates;⁶ \$125,000 with Nemzoff & Company, LLC;⁷ and additional funds with McDermott, Will and Emory, LLC.

The JPOIG is concerned that the lack of established process may result in actions by the individual hospital boards which may result in substantial, uncoordinated and potentially duplicative institution specific expenditures.⁸ In addition to the aforementioned concerns regarding conflicts of interest, we believe that the Council should take care to ensure that all future expenditures represent the most efficient use of the public's funds.

RECOMMENDATIONS (*Supplemental*)

In order to mitigate and/or remove conflicts of interest the JPOIG recommends that the Council consider and adopt the following:

1. The retention of a single negotiation team which answers to the Council but reports through the Parish Attorney's Office. The JPOIG recognizes and understands that the negotiation team must have access to each hospital's respective management team, attorneys, advisors and board members.
2. Clear direction to the hospital boards in the form of a resolution and/or ordinance concerning the authority to (1) engage past, present or potential suitors in any manner; (2) engage in negotiation efforts; and (3) and expend funds related thereto. Action undertaken and completed should be rooted in specific authority that is aligned with the Parish's goal to ensure the future viability and sustainability of the public hospitals. In this manner, the Parish can ensure that necessary and proper input, advice, support and counsel is received from the stakeholders while mitigating the risk of conflict that arise from direct control over the negotiating process.

⁶ See JP Resolution #121828 of October 16, 2013 authorizing expenditures of approximately 1.3 million.

⁷ See JP Resolution #122465 of February 19, 2014. See also proposal of Nemzoff & Company, LLC citing fees of up to \$125,000 plus expenses at: <http://www.jeffparish.net/modules/showdocument.aspx?documentid=6888>

⁸ Open source http://www.nola.com/politics/index.ssf/2014/04/east_jefferson_hospital_board_1.html