

**Nassau County
Office of the Comptroller**



**Limited Review of
Gibbons, Esposito & Boyce Engineers, P.C.'s
Contract Compliance with Waterway Debris Monitoring and
the Nassau County Living Wage Law**

GEORGE MARAGOS

Comptroller

June 15, 2017

NASSAU COUNTY
OFFICE OF THE COMPTROLLER

George Maragos
Comptroller

James Garner
Chief Deputy Comptroller

Sergio Blanco
Deputy Comptroller - Legal

Karen C. Green
Director of Communications

Audit Staff

JoAnn Greene, MBA, CPA
Director of Field Audit

Aurora Scifo, CPA
Assistant Director of Field Audit

Janis McDermott
Field Auditor V

William Holtmeyer
Field Auditor III

Salvatore Ubaldini
Field Auditor II

Executive Summary

Introduction:

Gibbons, Esposito, & Boyce Engineers, P.C. (“GEB”) entered into a contract with Nassau County commencing in August 2013, through August 2016, to monitor the recovery efforts of the County’s debris management contractors in the field, in accordance with the Stafford Act¹ and Federal Emergency Management Administration (“FEMA”) policies and guidelines.² In 2014, GEB was selected by the County for the task of monitoring the waterway debris removal services performed by VIP Splash Waterways Recovery Group, Inc. (“VIP Splash”)³.

GEB monitored VIP Splash’s removal and disposal of submerged and shoreline waterway debris on the County’s south shore following Superstorm Sandy. In addition, GEB monitors other construction for the County by having an onsite engineer at the site of the new County Crime Lab. That engineer is paid above the Living Wage rate and is not part of this review.

Purpose:

The objective of this review was to determine whether GEB was in compliance with terms of the Debris Monitoring contract and the Nassau County Living Wage Law (“Law”) and the related rules⁴ for its employees.

Key Findings:

- Eight GEB Field Monitors were paid less than the Living Wage rate in 2014 and 2015, resulting in underpayments totaling \$14,661. This represented 50% of employees on the project.
- Compensated time off for eight GEB Field Monitors totaling \$2,424 was not awarded, contrary to the Living Wage Law.
- GEB failed to maintain proof of Field Monitor training and did not have complete personnel files for employees working under the Nassau County contract for Waterway Debris Cleanup.
- Some of the GEB time sheets and expense reports submitted to the County for reimbursement did not contain either the employee’s signature or a supervisory approval signature.

¹ The Stafford Act was signed into law November 23, 1988. This Act constitutes the statutory authority for most Federal disaster response activities, especially as they pertain to FEMA and FEMA programs.

² GEB was one of nine companies with which the County entered into agreements for debris monitoring services in the aftermath of Superstorm Sandy.

³ CFPW13000023, Contractual Agreement between Nassau County and GEB.

⁴ Living Wage Law Rules of the Nassau County Comptroller and Rules of the Nassau County Executive.

Executive Summary

Key Recommendations:

We recommend that GEB take steps to:

- Pay the \$14,661 owed to the eight employees who were not paid the Living Wage rate. Proof of these payments should be provided to the Comptroller's Office.
- Promptly pay the Field Monitors who were eligible for an accrued leave payout. Proof of these payments should be provided to the Comptroller's Office.
- Provide documentation regarding training of Field Monitors; and, if unable to obtain such documentation, attest to their compliance with the contract's training requirement. (GEB's executive staff attested to the firm's knowledge of FEMA's procedures, but did not provide training documentation for the specific monitors working under the Nassau County contract.)
- Ensure that GEB time sheets and expense reports submitted to the County for reimbursement are complete, and include employee signatures and a supervisor's signature attesting to their accuracy.

The matters covered in this report have been discussed with the officials of Gibbons, Esposito and Boyce Engineers, P.C. On April 19, 2017 we submitted a draft report to Gibbons, Esposito & Boyce and Nassau County's Department of Public Works for their review. Gibbons, Esposito and Boyce Engineers, P.C provided additional information on May 8, 2017. We sent a revised draft to GEB on May 11, 2017. We received their response on May 24, 2017. We received the response from the Department of Public Works Their responses and our follow up to their responses are included at the end of this report.

Table of Contents

	<u>Page</u>
INTRODUCTION.....	1
Background.....	1
Audit Scope, Objectives and Methodology	2
FINDINGS AND RECOMMENDATIONS	3
(1) GEB Paid Eight Employees Less than the Living Wage Rate in 2014 and 2015 Resulting in Underpayments Totaling \$14,661.....	3
(2) Compensated Time Off for Eight GEB Employees totaling \$2,424 was not Awarded, Contrary to the Living Wage Law	4
(3) GEB Failed to Comply with the Contract by not Maintaining Proof of FEMA Training, and Did Not Have Complete Personnel Files for Employees Working as Field Monitors for the Waterway Debris Cleanup	6
(4) 10.5% of Employee Time Sheets and 1.7% of Expense Reports were Not Signed by Employees or Properly Authorized by Management.....	8
(5) Lack of Detail in the Contract and Failure to Review the Format Resulted in Weaknesses in Personnel, Training, and Performance Measures	9
Appendix A – GEB Response	11
Appendix B – DPW Response.....	30
Appendix C – Auditor’s Follow Up Comments to GEB and DPW Responses	32

Introduction

Background

After Superstorm Sandy, the Nassau County Department of Public Works (“DPW”) prequalified several firms to provide Property Management Services for Disaster and Debris Monitoring, GEB was one of those pre-qualified, and entered into a contract approved by the Nassau Interim Finance Authority (“NIFA”) in February 2014. GEB was selected by the County to monitor VIP Splash’s removal and disposal of submerged and shoreline waterway debris on the County’s south shore.⁵

GEB had several employees assigned to the VIP Splash project in 2014 and 2015 including one Project Manager, three Data Managers and eight Field Monitors.

GEB is an engineering and consulting firm, with a concentration in construction inspection management, design, planning, and grant services. GEB has also been contracted by the County on other projects, including currently for the new County Crime Lab and on-call projects for other departments.⁶

GEB received \$385,478 for the work on the debris monitoring contract. The funding came from the Federal Emergency Management Agency (“FEMA”)⁷ to respond to and mitigate the storm debris hazards.

The Nassau County Living Wage Law (“Law”) was enacted by the Nassau County Legislature in 2007 to ensure that all employees that do business with Nassau County earn the Living Wage and receive health benefits or a health benefits supplement. Under the Law, full-time employees are to receive no less than 12 paid days⁸ off a year, while part-time employees working at least 20 hours per week receive proportionate compensated days off.⁹ The contract between GEB and Nassau County for providing Property Management Services for Disaster and Debris Monitoring provided that GEB would comply with the requirements of the Law.¹⁰ While GEB’s professional staff, such as Senior Engineers and Project Managers are not covered by the Law, non-professional staff, including Field Monitors and Data Managers, are covered.

⁵ The task of monitoring waterway debris removal by VIP Splash, which was assigned to GEB, was encumbered by the County on April 1, 2014 for \$500,000 (Document No. CAPW14000060).

⁶ In 2014 and 2015, GEB was also contracted with the County under: Contract #CFPW13000039, a Construction Support project for a Public Safety Center and various on-call projects, such as: Construction Management Services (Contract #CFPW13000042) and Civil Engineering Site Designs (Contract #CFPW14000053).

⁷ FEMA’s (Federal Emergency Management Agency) mission is to support the citizens and first responders to promote that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards.

⁸ Title 57 Nassau County Living Wage Law, §3.b. Paid holidays, consistent with established employer policy, may be counted toward provision of the required twelve compensated days off.

⁹ Title 57 Nassau County Living Wage Law (2010).

¹⁰ Contractual Agreement between Nassau County and GEB (Contract # CFPW1300023).

Introduction

Audit Scope, Objectives and Methodology

The Auditors reviewed the contract to determine if GEB had performed the services listed in the contract. This review was performed by conducting interviews with DPW personnel, officials of VIP Splash, as well as GEB officials. The auditors examined load tickets and photographs tracing the debris from the numerous waterways, wetlands, marshlands and shore line pick up sites to the drop off sites. They also traced the official load ticket documents back to field notes/draft load tickets prepared in the field.

In testing for compliance with the County Living Wage Law, we reviewed GEB's individual Employee Payroll History Reports for the time period March 15, 2014 through May 23, 2015. We verified hourly rates paid to GEB employees working as Disaster and Debris Monitors (for the contract with VIP Splash) to determine if they were in compliance with the Law.

We also reviewed GEB's Employee Handbook to ensure compliance with the Law for 2014 and 2015 regarding the granting of compensated days off and personal and leave time accruals to full time, part time, and per diem employees. However, because most health insurance records were not available due to an ongoing investigation by the New York State Attorney General's Office ("NYS AG"), the auditors used the Living Wage rate without benefits for those GEB employees for whom health insurance coverage could not be determined.

We believe our review provides a reasonable basis for the findings and recommendations contained herein.

Findings and Recommendations

Audit Finding:

(1) GEB Paid Eight Employees Less than the Living Wage Rate in 2014 and 2015 Resulting in Underpayments Totaling \$14,661

The auditors reviewed GEB’s individual Employee Payroll History Reports for the time period covering March 15, 2014 through May 23, 2015 to verify that the hourly rates paid to GEB employees working as Disaster and Debris Monitors for the contractor VIP Splash Waterway Recovery Group, Inc. were in compliance with the Law.

The contract with Nassau County for debris monitoring paid GEB \$40 per hour for each Field Monitor.¹¹ Regarding the eight monitors that were underpaid, the auditors found that seven of the GEB Field Monitors were paid \$13 per hour and the eighth was paid \$15 per hour.

Exhibit I below shows the Living Wage rates for 2013 through 2016.

Exhibit I

Nassau County Living Wage Law Rates				
Effective Dates		Hourly Rates		
From	To	With Benefits	Without Benefits	Benefit Supplement
August 1, 2013	July 31, 2014	\$13.35	\$15.21	\$1.86
August 1, 2014	July 31, 2015	\$13.58	\$15.50	\$1.92
August 1, 2015	July 31, 2016	\$13.59	\$15.54	\$1.95

Source: These rates were established under the Nassau County Living Wage Law and are updated on an annual basis accordingly.

Auditors found that eight employees (with varying average hours per week) earned less than the Living Wage required for employees who did not receive health benefits in 2014 and 2015. This can be broken down as follows: eight out of the sixteen employees, or 50%, earned less than the Living Wage from March 15, 2014 through May 23, 2015.

Exhibit II lists the amount owed to each of the eight employees.

¹¹ The contract Payment Schedule (Exhibit B of Contract No. CFPW13000023) provides that the hourly labor rates “are fully burdened to include all applicable taxes, benefits, handling charges, overhead and profits (excluding lodging, meals and transportation)”.

Findings and Recommendations

Exhibit II

Summary of Amounts Underpaid to Employees from March 15, 2014 through May 23, 2015

<u>Employee</u>	<u>Title</u>	<u>Type</u>	<u>Calculated Using Living Wage Rate</u>	<u>Actual Paid to Employee</u>	<u>Underpaid Due to Employee</u>
Employee F	Field Monitor	Full-Time	\$ 7,449	\$ 6,325	\$ 1,124
Employee G	Field Monitor	Full-Time	13,963	13,443	520
Employee H	Field Monitor	Full-Time	13,054	11,063	1,991
Employee I	Field Monitor	Full-Time	1,833	1,566	267
Employee J	Field Monitor	Full-Time	18,321	15,489	2,832
Employee K	Field Monitor	Full-Time	11,255	9,568	1,687
Employee L	Field Monitor	Full-Time	18,983	16,029	2,954
Employee M	Field Monitor	Full-Time	21,083	17,797	3,286
			<u>\$ 105,941</u>	<u>\$ 91,280</u>	<u>\$ 14,661</u>

Audit Recommendation(s):

We recommend that GEB:

- a) pay the monies due to the eight employees who were not paid the Living Wage rate. Proof of payment should be provided to the Comptroller's Office with supporting calculations; and
- b) ensure that all employees under current or future contracts with Nassau County are paid in accordance with the County Living Wage Law.

Audit Finding:

(2) Compensated Time Off for Eight GEB Employees totaling \$2,424 was not Awarded, Contrary to the Living Wage Law

Eight employees who worked on this contract for Nassau County that did not receive compensated time off as required per the Law are due approximately \$2,424 in compensated time off. Exhibit III lists the amount owed to each of the eight employees.

Findings and Recommendations

Exhibit III

Estimated Amounts Due Employees for Leave Time Living Wage Years 2014 - 2015 *

(Amounts rounded to the nearest dollar)

<u>Employee</u>	<u>Employee Title</u>	<u>Number of Pay Periods > 40 Hours</u>	<u>Estimated Amount Due for Leave Time</u>		
			<u>2014</u>	<u>2015</u>	<u>Total **</u>
Employee L	Field Monitor	13	\$ 197	\$ 299	\$ 496
Employee M	Field Monitor	14	184	277	461
Employee J	Field Monitor	14	132	284	416
Employee K	Field Monitor	7	200	124	324
Employee G	Field Monitor	10	197	44	241
Employee F	Field Monitor	6	110	124	234
Employee H	Field Monitor	9	119	47	166
Employee I	Field Monitor	1	86	-	86
			<u>\$ 1,225</u>	<u>\$ 1,199</u>	<u>\$ 2,424</u>

* For the purposes of this audit, the Living Wage year periods are 5/1/14 to 8/2/14, and 8/3/14 to 7/31/15 for the 2014 and 2015 years; respectively.

** The dollarized amounts were estimated using the Living Wage Law rates in effect during the audit period. A bi-weekly pay period = 80 hours: 6 pay periods in 2014 Living Wage year, 21 pay periods in 2015 Living Wage Year.

According to GEB’s Employee Handbook, “Rehired employees must serve a new six month probation period if their employment with GEB has lapsed for six months or longer. A six month or greater lapse in employment with GEB is not considered continuous service”. As such, previous months of employment for these individuals are not counted towards length of service when accruing for vacation, sick, or personal time. This practice is not in compliance with Section 3.b. of the Law¹² which states, “Compensated days off shall not be forfeited upon separation from service; such days shall be paid out to the employee upon separation at the Living Wage rate at the time of separation”.

¹² Title 57 Nassau County Living Wage Law, §3.b.

Findings and Recommendations

Audit Recommendation(s):

We recommend that GEB:

- a) promptly pay employees who were eligible for an accrued leave payout at the amounts listed above. Proof of payment should be provided to the Comptroller's Office with supporting calculations; and
- b) display the required Nassau County Living Wage posters alerting employees to the wage rate and accrued time off provisions of the Law for those employees working under the Nassau County contract.¹³

Audit Finding:

(3) GEB Failed to Comply with the Contract by not Maintaining Proof of FEMA Training, and Did Not Have Complete Personnel Files for Employees Working as Field Monitors for the Waterway Debris Cleanup

In order to verify that the GEB complied with Exhibit A, "Technical Specifications/Scope of Services" (Field Supervision) of their contract, auditors requested to see the personnel files for all Field Monitors working under the contract.

Exhibit A of the Contract, specifically Section 5.2, states that the "Consultant shall train all Field Monitors and Supervisors to ensure that proper FEMA documentation protocol requirements are instituted and followed." Section 3.1 states "Consultant shall provide **trained** personnel to observe, direct, and document the activities of the debris management contractor". The auditors asked GEB to provide proof of FEMA training and to allow them to examine the personnel files for the Field Monitors and other employees working on the County contract.

At the time of our review, the New York State Attorney General's Office ("NYS AG") was conducting an ongoing investigation of GEB's affiliate organization HiRise Engineering.¹⁴ GEB stated their files were taken by the NYS AG's Office for the investigation, but they were not sure if the informal training files had been retained. In addition, many of the employees working on this project no longer work at GEB. We contacted the State AG's Office and were told that GEB could go to their (NYS AG) offices to retrieve the files, but the auditors could not have access.

¹³ Living Wage Law Rules of the Nassau County Comptroller
<https://www.nassaucountyny.gov/DocumentCenter/View/1340>

¹⁴ HiRise subsequently pled guilty to a fifth-degree criminal solicitation violation regarding an engineer's report involving an employee that no longer works for HiRise and did not work on the County contract.

Findings and Recommendations

The auditors were looking for evidence of FEMA training, or, if that was unavailable, evidence that the Field Monitors had appropriate education or experience for the job. We contacted GEB again and they submitted limited documentation for the Field Monitors to the auditors. A review of these files found:

- There were no job applications or references made available to the auditors and resumes were only provided for two out of eight Field Monitors.
- The two resumes submitted to us indicated that these individuals lacked experience for the Field Monitor position. Both were recent college graduates, one with a degree in psychology and no engineering experience. The other had a degree in mechanical engineering, but his only experience was three internships over an eight month period.
- GEB never provided any training documentation for the auditors to determine if the employees working under the County contract were FEMA trained and if they had the qualifications to perform the job.

The lack of documentation causes significant concern regarding whether qualified and trained individuals worked as Field Monitors. The County's contract with GEB (as with all contractors) states the firm shall maintain and retain complete and accurate records, documents, and accounts pertinent to the performance of the agreement for six years. These records shall, at all times, be available for audit and inspection by the Comptroller's Office.

Therefore, the auditors were not able to determine if the Field Monitors had received FEMA training as required by the contract. In addition, GEB was not in compliance with the County contract by failing to keep or obtain the requested documents.

Audit Recommendation(s):

We recommend that GEB comply with all contract requirements including:

- a) providing documentation evidencing training of the Field Monitors by FEMA and the remaining requested job applications and resumes; and/or
- b) attesting to their compliance with the contract's training requirement, if the aforementioned documents cannot be located. Failure to follow contract requirements may preclude a vendor from future contracts.

Findings and Recommendations

Audit Finding

(4) 10.5% of Employee Time Sheets and 1.7% of Expense Reports were Not Signed by Employees or Properly Authorized by Management

GEB provided management oversight services for the VIP Splash waterways debris removal project under a separate contract with the County.¹⁵ Under the contract, GEB was paid set hourly labor rates for the employees who worked on the project. GEB was paid a total of \$385,478 for these services, which were primarily performed during the period of March 2014 through May 2015. Exhibit IV below details the payments to GEB by claim voucher and amounts paid.

Exhibit IV

GEB Claim Voucher Payments
Documents Missing Signatures
March 2014 - May 2015

Claim Number VDPW	Period Covered	Date Paid	Amount Paid	Timesheets		Expense Reports	
				# In Voucher	# Without Signatures	# In Voucher	# Without Signatures
14000812	03/17/14 - 04/12/14	06/16/14	\$ 5,405	4	-	10	-
14000813	04/13/14 - 05/10/14	06/16/14	23,126	12	1	23	-
14000854	05/11/14 - 06/07/14	06/26/14	45,239	15	1	48	-
14000894	06/08/14 - 07/05/14	08/05/14	60,574	21	1	35	-
14001094	07/06/14 - 08/02/14	09/29/14	61,820	20	3	42	-
14001095	08/03/14 - 12/30/14	10/07/14	58,001	21	1	45	-
14001331	08/31/14 - 09/27/14	10/22/14	38,898	16	3	33	-
14001364	09/28/14 - 10/25/14	11/18/14	33,006	14	3	24	2
14001567	10/26/14 - 12/06/14	12/30/14	47,824	15	2	27	3
Total Paid in 2014			\$373,893	138	15	287	5
14001602	12/07/14 - 01/03/15	02/04/15	\$ 4,185	7	1	-	-
15001049	01/04/15 - 02/28/15	10/13/15	1,450	3	-	-	-
15001051	03/01/15 - 03/31/15	10/09/15	1,750	1	-	-	-
15001050	04/01/15 - 05/29/15	10/09/15	4,200	4	-	-	-
Total Paid in 2015			\$ 11,585	15	1	-	-
Grand Total			\$385,478	153	16	287	5

Source of Data: FAMIS Vendor Inquiries and Claim Vouchers for Contract CFPW13000023

The auditors reviewed the 13 claim vouchers submitted by GEB and their supporting documentation, which consisted of summaries of hours worked, time sheets and mileage claims for the GEB employees assigned to the project. The following exceptions were noted:

¹⁵ CFPW13000023, the agreement between Nassau County and GEB to provide program management services for disaster and debris monitoring, covered the period February 25, 2014 through December 31, 2016.

Findings and Recommendations

- The approval signature of GEB's Management was missing from four time sheets and one mileage form;
- Employee signatures were missing from 12 time sheets and five mileage forms; and
- Inconsistencies were noted with the calculation of mileage between locations on different dates.

These exceptions demonstrate a lack of oversight in GEB's senior staff when reviewing timesheets and expense reports.

Audit Recommendation(s):

We recommend that:

- a) GEB review the time sheets, mileage form, and expense reports that were missing signatures and attest to their accuracy; and
- b) the Department of Public Works and the Comptroller's Office's Vendor Claims Section should now perform heightened reviews for GEB's claims.

Audit Finding

(5) Lack of Detail in the Contract and Failure to Review the Format Resulted in Weaknesses in Personnel, Training, and Performance Measures

The auditors' review of the contract between DPW and GEB noted instances of inconsistencies and lack of detail, as follows:

- The contract provides for GEB to train all Field Monitors and Supervisors to ensure that proper FEMA documentation protocol requirements are instituted and followed.¹⁶ However, the contract does not provide specific guidance on the training or require the training records to be maintained.
- Tree removal and trimming guidance, which relates to a previous, unrelated project, is included in the contract's technical specifications and scope of services.¹⁷
- Provisions for consultant personnel cover County payments for salary (\$40 per hour for Field Monitor personnel and \$15 per hour for Data Managers) and required safety equipment but do not detail the required qualifications and experience needed for each position. As noted in Audit Finding (4), the auditor's review of personnel records found

¹⁶ Contract No. CFPW13000023, Exhibit A, Section 5.2.

¹⁷ Ibid, Sections 5.3 and 5.5.

Findings and Recommendations

that two Field Monitors had little or no qualifying experience for their positions and the auditors were not provided with any documentation on the others.¹⁸

Audit Recommendation(s):

DPW should detail qualifications and training requirements of monitors in their contracts. During contract preparation, a review should be conducted to ensure that unrelated material is removed or excluded.

¹⁸ Ibid, Section 7.

Appendix A – GEB Response



James F. O'Brien
914-872-7233 (direct)
James.O'Brien@WilsonElser.com

May 25, 2017

Nassau County Comptroller's Office
240 Old Country Road, Room 207
Mineola, New York 11501

Att: JoAnn Greene, MBA, CPA
Director of Field Audit

Re: Gibbons, Esposito & Boyce, Engineers, P.C.
Living Wage Audit

Dear Ms. Greene,

We are writing in response to the County's revised draft report regarding its limited review of Gibbons, Esposito & Boyce, Engineers, P.C.'s ("GEB") compliance with the Nassau County Living Wage Law, as well as the County's May 18th correspondence regarding this matter.

Initially, and as set forth below, as a professional engineering firm, GEB was always of the belief that the Living Wage Law, which excludes professionals, was not applicable to GEB. Nevertheless, and without admitting any liability, GEB is paying the allegedly underpaid hourly wages as set forth in the draft report, as well as the estimated amounts due for leave time, as adjusted by the amounts previously paid by GEB. Otherwise, GEB responds to the draft report as follows:

Introduction paragraph:

This paragraph is incorrect – GEB entered into an agreement to provide program management services for disaster and debris monitoring on 9-24-2013, not a contract to provide monitoring services of debris removal performed by VIP Splash. As per the executed agreement, the purpose of this contract was to establish a pool of highly experienced and qualified disaster and debris monitoring consultants to protect the health, safety, and welfare of the residents of the county should a disaster strike. GEB successfully completed this project ahead of schedule, below budget, and to the satisfaction of both the Nassau County DPW and FEMA. Please see the excerpt below from the April 24, 2017 email from the NCDPW's Assistant to Deputy Commissioner of Public Works for Administration:

1133 Westchester Avenue • White Plains, NY 10604 • p 914.323.7000 • f 914.323.7001

Albany • Atlanta • Austin • Baltimore • Beaumont • Boston • Chicago • Dallas • Denver • Edwardsville • Garden City • Hartford • Houston • Kentucky • Las Vegas
London • Los Angeles • Miami • Michigan • Milwaukee • New Jersey • New Orleans • New York • Orlando • Philadelphia • San Diego • San Francisco • Stamford
Virginia • Washington, DC • West Palm Beach • White Plains

wilsonelser.com

6525316v.1

Page 2

On page *i*, - Introduction: you state “Gibbons, Esposito and Boyce Engineers, P.C., (“GEB”) entered into a contract with Nassau County commencing August 2013, through August 2016, to provide monitoring services of debris removal performed by VIP Splash Waterways Recovery Group, Inc. (VIP Splash”)....this statement is not factual accurate in that this contract was not specifically crafted or awarded specific to waterway debris monitoring for VIP Splash. The debris monitoring agreement with GEB as with the eight (8) other debris monitoring agreements awarded about the same time frame entail monitoring the recovery efforts of the County’s Debris Management Contractors in the field in accordance with the Stafford Act and Federal Management Administration (FEMA) policies and guidelines. The agreement was actually approved by NIFA on February 25, 2014. A specific work task for the monitoring of waterway debris removal by VIP Splash assigned to GEB was encumbered on April 1, 2014.

Background paragraph-page 1:

The draft report states that GEB’s professional staff is not subject to the Living Wage Law, but then opines that some of our staff was not professional and therefore subject to the law. GEB is a New York State certified “Professional Corporation.” All of our employees are covered under our professional liability insurance. We were hired by Nassau County to provide a professional service. Section 1, § 2 of the Living Wage Law states as follows: “Any person who is a managerial, supervisory or professional employee shall not be considered an employee for purposes of this definition” and therefore not subject to the Living Wage Law. All of our staff, including the managers who managed the data and the field operations, should not be subject to the Living Wage Law.

Audit Finding (1)-pages 2-3 & Audit Recommendations:

Since the Comptroller interprets the Living Wage Law differently than GEB, GEB is paying the employees the small difference between what they were already paid and the amount dictated by the Living Wage Law and GEB will provide proof of payment. GEB will also ensure that all employees under current or future contracts will be paid in accordance with the Living Wage Law.

Audit Finding (2)--Pages 4-6 & Audit Recommendations:

The employees cited in Exhibit III did receive compensated time off. Again, it is GEB’s belief that none of these employees who worked on the project should be subject to the Living Wage Law, however, since the Comptroller interprets the Living Wage Law differently, GEB is paying these employees the small difference between what they were already paid and the amount dictated by the Living Wage Law and GEB will provide proof of payment with calculations. All required Nassau County Living Wage posters are displayed in GEB offices.

The GEB Handbook section cited by the NC auditor on page 5 does not apply to any of the individuals who worked on this project since none were rehired employees.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

6525316v.1

Page 3

Audit Finding (3)-pages 6-7:

It is stated that GEB failed to comply with the contract regarding training. Please note the following:

GEB has successfully performed work as a primary contractor, on full-service Disaster Debris Monitoring contracts, including but not limited to, the following:

Nassau County Department of Public Works
Hurricane Irene Storm Debris Removal

Nassau County Department of Public Works
Super Storm Sandy Debris Removal (Award winning project)

Suffolk County Department of Public Works
Suffolk County Multi-jurisdictional Hazard Mitigation:
Suffolk County Department of Fire Rescue and Emergency Services

GEB has also successfully completed similar debris monitoring services, as a primary consultant for the Town of Hempstead, the Town of Oyster Bay and the New York State Department of Transportation.

In addition to the experience listed above, in reference to this specific project, GEB management attended numerous meetings with FEMA personnel where the project specific guidelines, rules, regulations, and instructions were given to GEB directly from FEMA. All of these project specific guidelines, rules, regulations, and instructions (training) were discussed with each field monitor and data manager before the individual employee started on the project. Each employee worked directly with a FEMA representative on a daily basis to ensure that the monitor was performing his professional duties in a manner that was in complete compliance with all FEMA rules and regulations. All field monitor produced reports were reviewed by the licensed professional engineer tasked with their supervision by GEB. Periodically, FEMA personnel would hold informal training sessions for GEB and contractor staff throughout the term of the contract. There was never an indication by any FEMA personnel that they were unhappy with the training of the GEB staff or the quality of the reports they produced. In fact, FEMA always indicated that it was very pleased with GEB's services.

Therefore, GEB strongly disagrees with the statement "GEB was not in compliance with the County contract by failing to keep or obtain the requested documents." Nowhere in GEB's agreement with Nassau County does it state the training requirements nor does it state the documents which should be retained to prove training. Since all the FEMA training provided by GEB management, Nassau County employees and FEMA personnel to GEB employees was verbal, there is no document to retain or produce for the Comptroller's office. FEMA did not provide a documented record of training.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

6525316v.1

Appendix A – GEB Response

Page 4

In summary, and in response to the Audit Recommendations at page 7, GEB attests that it fully complied with the contract regarding FEMA training. Further to the point, below please see the Nassau County DPW's response to this section of the audit report:

Page 7 - The auditors were looking for...evidence that the Field Monitors had appropriate education or experience for the job. In accordance with FEMA Public Assistance Debris Monitoring Guide (FEMA 327) qualified individuals could be:

- University Students
- Code Enforcement Employees
- Retired local government personnel

There is no specific educational background or requirements according to FEMA guidance...so it is unclear how you can determine what is proper experience for the Field Monitor position.

Furthermore, the Monitoring Guide also states;

Public Assistance Debris Monitoring Guide FEMA 327 / October 2010 speaks to qualifications of the firm being contracted and outlines what a debris monitor should understand as their responsibilities. The guide states that engineers are not necessary and that the monitors should understand the Debris Removal contract. FEMA's Recovery Fact Sheet 9580.201 states that Professional engineers and qualifications are not required to perform debris monitoring duties.

The GEB Field Monitors worked on a daily basis directly with FEMA monitors on all debris removal operations. Was FEMA contacted to determine whether FEMA as the agency reimbursing the County for all eligible expenses had any issues with the training, qualifications or job performance of the GEB field monitors? We understand that FEMA had no issues with GEB's overall effort with Field Monitoring and Data Management on this operation. As the Department of Public Works was in routine communication with FEMA throughout the project there were no red flags or issues of concern raised. The Department of Public Works therefore questions your statement that two of the resumes you reviewed indicated that the individuals lacked experience for the Field Monitor position...both College graduates and one had a degree in Mechanical Engineering. Your additional comment also on Page 7 stating that a lack of documentation causes significant concern regarding whether qualified or trained individuals worked as Field Monitors is overstated and we recommend removing this reference.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

6525316v.1

On page 6, it incorrectly states that HiRise is an affiliate organization of GEB, when in fact they are separate companies and do not meet the criteria for the definition of affiliate as defined by New York State. In footnote 11 on page 6, it states that HiRise pled guilty to a violation regarding an engineer's report involving an employee that no longer works for HiRise and did not work on the County contract. While NC is correct that the employee in question no longer works for HiRise and was not involved in the contract at issue, HiRise (not GEB) pled to a violation, not a misdemeanor. In any event, as GEB was not involved in the criminal matter, and it did not involve the contract at issue, we see no reason why this footnote is in the draft report and ask that it be removed.

Audit Finding (4)-pages 8-9:

The draft report notes that some of the time sheets and expense reports were not signed by employees or properly authorized by management. In response to the Audit Recommendations, it is GEB's position that the time sheets, mileage form and expense reports are accurate. With very limited exceptions, all employees signed their time sheets and all expenses were authorized. Also, to the extent an employee may not have signed some time sheets, he was working on a boat and unable to do so. The onsite "field supervisor", who knew exactly what each employee did each day, or his supervisor, signed all of such time sheets. See the field supervisor's attached affidavit.

The draft report claims that there are four (4) time sheets missing "the approval signature of GEB's Management". However, each of those timesheets was for the project manager who is also a partner of GEB and was in fact signed by himself. Since the project manager is an owner of the company and was the principal in charge of this project, GEB does not believe that it needs to have any other GEB signature for approval. The rest of the timesheets and expense reports were reviewed and attached please find an attestation to their accuracy.

GEB obviously feels that, based on the above simple explanation, the audit statement "These exceptions demonstrate a lack of oversight in GEB's senior staff when reviewing timesheets and expense reports" is overstated and we recommend removing this reference, especially since each timesheet was reviewed by multiple parties at the Comptroller's office before each invoice was approved by the Comptroller for payment.

Audit Finding (5) – pages 9-10:

Refers to the DPW.

Again, GEB was always of the belief that the Living Wage Law, which excludes professionals, was not applicable to GEB; and GEB's services under the contract at issue were performed in a competent and professional manner. In any event, and without admitting any liability, GEB is paying the allegedly underpaid hourly wages, as well as the estimated amounts due for leave time, as adjusted by the amounts previously paid by GEB.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

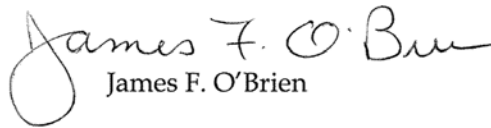
6525316v.1

Page 6

We trust this is responsive to the issues raised in the draft report. Should you wish to discuss this matter further, or if you believe an exit conference would be useful, please do not hesitate to contact us.

Respectfully submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP


James F. O'Brien

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

6525316v.1

**New York State
Vendor Responsibility**

Definitions List

Administrative Proceeding

Any government entity proceeding in which a determination of the legal rights, duties or privileges of named parties thereto is required by law to be made only on a record and after an opportunity to be heard. Such a proceeding may be solely comprised of an exchange of written materials, which can include, but is not limited to, testimony recorded electronically, transcriptions, letters, documents, etc.

Affiliate

For-Profit:

SEE ASSOCIATED ENTITY

Not-For-Profit:

Any business entity (not-for-profit or for-profit) which is entitled to exercise the membership rights of participation in the election of board members, participation and service on the committees of the not-for-profit and approval of changes to a business entity's governing documents, and any company or other legal entity which controls or is controlled by the not-for-profit business entity.

Construction:

- a. Any business entity in which the submitting Business Entity holds 5% or greater ownership interest; and/or
- b. Any business entity or organized group of principal owners or officers holding 5% or greater ownership interest of the submitting business entity; and/or
- c. Any business entity which is owned
 - i. 5% or more by the same entity or group described in (b) or
 - ii. by an individual holding 5% or greater ownership in the submitting business entity and/or
- d. Any business entity in which the submitting Business Entity directs or has a right to direct such entity's daily operations, regardless of percentage of ownership interest.

Associated Entity

Generally, any entity that the Reporting Entity controls or is controlled by, including:

- a. Owner: Any business entity or organized group of principal owners or officers holding 50% or greater ownership interest in the Reporting Entity (i.e., holding company, parent company).
- b. Controlling entity: Any business entity which directs or has a right to direct the Reporting Entity's operations, regardless of percentage of ownership interest (i.e., headquarters).
- c. Controlled entity: Any business entity in which the Reporting Entity holds 50% or greater ownership interest, or the Reporting Entity directs or has a right to direct operations, regardless of percentage of ownership interest (i.e., subsidiaries, units under the Reporting Entity).

Note: "Associated Entity" does not include "sibling organizations" (i.e., entities owned or controlled by a parent company that owns or controls the Reporting Entity), unless such sibling entity has a direct relationship with or impact on the Reporting Entity.

Business Entity

Includes a Legal Business Entity, a Reporting Entity or an Associated Entity as defined herein.

**New York State
Vendor Responsibility**

Business Entity Leaders

An officer, general partner, managing partner, manager of an LLC, and/or director.

Business Entity Officials

Individuals serving in an executive capacity, as staff and/or corporate officers, who have decision-making authority and responsibility for the oversight of a business entity; includes individuals who perform the functions of chief executive officer (CEO), chief operating officer (COO), chief financial officer (CFO), and/or chairman of the board, or their equivalents. (Equivalent titles may include, but are not limited to, President, Executive Vice President, Treasurer, Secretary, Managing Trustee)

Instructions:

Corporations: Identify the Business Entity Officials.

Partnerships: Identify the Senior Managing Partners, and any other partners with powers equivalent to Business Entity Officials.

Limited Liability Companies (LLC): Identify the Executive Managing Directors/Members, Senior Managing Directors/Members, and any other members/managers with powers equivalent to Business Entity Officials.

Sole Proprietors: Identify the individual who is the sole owner and manager of the business entity, or other persons, including staff, with powers equivalent to Business Entity Officials.

Unincorporated Associations: Identify the Executive Committee Members, including President, Vice President, Secretary and Treasurer, Executive or Managing Trustees, or other persons, including staff, with powers equivalent to Business Entity Officials.

Certificate of Good Standing

Certificate issued by the Business Entity's controlling jurisdiction indicating that the Business Entity is current with the filing requirements of the jurisdiction, issued within one year of the date of certification of the Vendor Responsibility Questionnaire.

Charities Registration Number

Number issued by the New York State Attorney General's Charities Bureau to qualified not-for-profit charitable organizations.

CIK Code

The Central Index Key (CIK) is a designation number established for each entity which has filed disclosures with the Securities and Exchange Commission (SEC). It is used on the SEC's computer systems to identify corporations and individual people who have filed disclosure with the SEC.

Citation, Summons, Notice, Violation Order

A notice to appear in court or at an administrative hearing or administrative proceeding, usually issued by a State or Local Government enforcement agency. Includes court issued writs, police issued orders, administrative orders or writs to appear at a certain time and place to do something demanded in the writ, or to defend against the citation, or to show cause for not doing so.

New York State Vendor Responsibility

Claim

A written, formal demand for money due, for property, for damages or for enforcement of a right, e.g., a fine or penalty sought by a Government Entity.

Construction

Contracts for work involving general contracting, building new structures and remodeling existing structures, demolition, concrete, paving and masonry, excavation, heating, ventilation and air conditioning, painting, plumbing, electrical work, roofing, asbestos abatement, lead abatement, and remediation and abatement of hazardous materials or hazardous waste. Construction activity also includes grant and other activities in which a not-for-profit entity contracts with the State for construction services (e.g., the building of permanent and transitional housing, and day care facilities). Includes all construction activities whether provided directly or through the use of subcontractors.

Corporation – For-Profit

Entity organized for the purpose of making profit, created under the laws of a State or United States federal government. Ownership may consist of publicly traded or privately held shares of stock.

Corporation – Not-For-Profit

A corporation formed for purposes other than financial gain, pursuant to and in accordance with a state's Not-For-Profit Corporation Law.

DBA - Doing Business As

An assumed name a business entity uses for doing business, in lieu of using the legal business name or owner's personal name. The entity must have filed a "Business Certificate," otherwise known as a Certificate of Conducting Business Under an Assumed Name, or DBA, in the county clerk's office of the county in which the business entity is located, or in the case of corporate entities with the Department of State.

Debarred

The exclusion of an individual or business entity from participating in the government procurement process for specified period of time.

Disadvantaged Business Enterprise (DBE)

A United States federal designation through a program run by the U.S. Department of Transportation. A for-profit small business concern that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, in which 51% of the stock is owned by one or more such individuals. State Agencies designate a business entity as a DBE based upon the federal standards.

Disqualification

Any action taken by a government entity which prevents or precludes a business entity from receiving an award for a particular contract or from being placed on a prequalification list. A business entity may be disqualified for a number of reasons, including but not limited to determinations of non-responsibility or lack of required experience.

**New York State
Vendor Responsibility**

DUNS - Data Universal Numbering System

A unique 9-digit number provided by Dun & Bradstreet (D&B), a commercial information company. The DUNS Number is site-specific and division-specific. Therefore, each physical location of an entity may have its own DUNS Number. Further, each separate division or branch of an entity may have its own, unique DUNS Number.

EIN - Employer Identification Number

Federal Employer Identification Number used for federal income tax reporting. Although this number may be the Social Security Number of an individual operating a business as a sole proprietor, vendors are encouraged to obtain an EIN for business purposes.

Federal

Any department, division, board, commission or bureau of any federal department designated by the United States federal government.

Financial Statements

Presentation of financial data including balance sheets, income statements, and statements of cash flow, or any supporting statement(s) intended to communicate a business entity's financial position at a point in time and its results of operations for a period then ended.

Formal Unsatisfactory Performance Assessment

A written (including electronic), unsatisfactory performance assessment or evaluation issued by a government entity, after providing due process to a business entity. May include unsatisfactory past performance assessments determined under audit and/or required by law, rule, regulation, policy or procedure.

Former Name

Any previous name by which Legal Business Entity has done business as, inside or outside the State of New York.

General Partnership

An association of two or more persons to carry on as co-owners of a business.

**New York State
Vendor Responsibility**

Good Faith Effort(s)

An effort to achieve a Minority-Owned Business Enterprise, Women-Owned Business Enterprise (M/WBE) or Disadvantaged Business Enterprise (DBE) goal, federal requirement or New York State requirement, which, by its scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the program requirements.

The code of Federal Regulations 49 C.F.R. Part 26 sets forth the standards to determine whether a contractor has made good faith efforts to reach a DBE goal. Appendix A to Part 26 provides the following guidance for a bidder: "First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful."

Article 15-A of the Executive Law of the State of New York sets forth the standards for the M/WBE Program. These standards are to be used to determine whether a contractor has made "active and conscientious efforts to employ and to utilize minority group members and women at all levels and in all segments of its work force on state contracts, and the contractor will document these efforts."

Government Audits

Financial, compliance and/or performance audits completed for or by a government entity.

Government Contract

A contract entered into by a United States federal, state or local government entity.

Government Contracting Process

Bidding, evaluation, award and administration of a government contract.

Government Entity

Any United States federal, state or local government-created bureau, agency, department, division, board, commission, public authority or public benefit corporation.

Investigation

An inquiry has been or is being made by any prosecutorial, investigative or regulatory agency concerning an individual or business entity or the activities and/or the business practices thereof.

Joint Venture

When two or more persons or business entities join together for a specific business undertaking in which profits, losses and control are shared. Usually an enterprise with limited scope and duration but with shared liability and responsibility for debts or losses. Joint ventures normally terminate when the contract or project for which the entities have joined is completed. The Joint Venture may be established as a separate legal entity with its own federal Employer Identification Number (EIN).

**New York State
Vendor Responsibility**

Judgment

A court decision or judgment that settles the rights of the parties and disposes of all issues in controversy, except for award of costs and enforcement of the judgment. A judgment rendered by a lower court is deemed to be a final judgment, even if such judgment is subject to appeal.

Key Employee

Any officer, managing director or managing trustee, executive director, and persons or entities that manage and/or control the daily operations of the Business Entity, and any person having responsibilities or powers similar to those of officers, managing directors, or managing trustees, including the chief management and administrative officials of the Business Entity (such as executive director or chancellor), but does not include the heads of separate departments or smaller units within the business entity.

A chief financial officer and the officer in charge of administration or program operations are both Key Employees if they have the authority to control the Business Entity's activities, its finances or both. The "heads of separate departments" reference applies to persons such as the head of the radiology department or coronary care unit of a hospital, or the head of the English department at a college. These persons are managers within their specific areas but not for the business entity as a whole and therefore, are not Key Employees.

Legal Business Entity

A Business Entity registered with the Internal Revenue Service and assigned a federal Employer Identification Number. (Note: Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use an Employer Identification Number.)

Legal Business Entity includes for-profit and not-for-profit entities, and may take the form of:

- a. a Corporation, Partnership (including General, Limited or Limited Liability Partnership), Limited Liability Company, Sole Proprietor, Unincorporated Association, or any other business organization, in the case of for-profit entities, or
- b. a Not-for-Profit Corporation, Foundation, Partnership, Limited Liability Company, Unincorporated Association, or any other business organization, in the case of not-for-profit entities.

Legal Business Entity Name

The name of the entity as set forth in the Legal Business Entity's creation documents.

- a. For Corporations, the name as set forth in the Certificate of Incorporation.
- b. For General Partnerships, the name as set forth in the Certificate of Assumed Name.
- c. For Limited Partnerships, the name as set forth in the Certificate of Limited Partnership.
- d. For Limited Liability Partnerships, the name as set forth in the Certificate of Registration.
- e. For Limited Liability Companies, the name as set forth in the Articles of Organization.

For purposes of this questionnaire, a Sole Proprietor or an individual seeking to do business as him/herself may use his/her name anywhere it asks for the name of the Legal Business Entity Name.

**New York State
Vendor Responsibility**

Liens

A form of security interest against property or property interest to secure the payment of a debt, judgment, or taxes, including, but not limited to, judgment liens, mechanics' liens, tax liens, attorneys' liens, New York State of Department of Environmental Conservation liens, but shall not include purchase credit liens, Uniform Commercial Code filings, or mortgages.

Liquidated Damages

Compensation that contracting parties have agreed should be paid to one party for any loss or damage arising from breach of the agreement by the other party.

LLC - Limited Liability Company

A Limited Liability Company (LLC) is a type of business structure that offers limited liability for the debts and obligations of the business entity to the owners. An LLC provides management flexibility and the income and losses are passed through the owners of the entity, like a partnership. It must be formed pursuant to and in accordance with the Limited Liability laws of the state. The designation "LLC" must follow and be a part of the business entity's legal name.

LLP - Limited Liability Partnership

A Limited Liability Partnership is a partnership with no limited partners, where each partner is a professional by law and qualified to render a professional service, and is engaged in the practice of such profession. The business entity is registered as an LLP with the New York State Department of State, or a partnership with no limited partners registered or otherwise created under the laws of another jurisdiction. The designation "LLP" must follow and be a part of the business entity's legal name.

LP - Limited Partnership

A Limited Partnership is a type of partnership which has two types of partners; general and limited. A LP has at least one general partner and one or more limited partners. The general partner acts in the same capacity as in a general partnership such as management control, right to use property of the partnership, shared profits and joint/several liability. The limited partner has limited liability, is not involved in the day-to-day activity of the partnership and has no management control. The designation "LP" must follow and be a part of the business entity's legal name.

Material Disallowance

Expenditures which have occurred in a contract or grant which an auditor has determined were not allowed under the guidelines established by the agency, the terms of the contract or grant, or by statute, in an amount that would be material in relation to the total value of the contract or grant.

Minority Community-Based Organization (MCBO)

A not-for-profit, local human service organization having its origins in the geographic area that it serves. Generally, the governing bodies and personnel of community-based organizations reflect the racial, ethnic and cultural makeup of the community being served. These types of organizations are characterized by majority representation of Native Americans, Asian-Americans, African-Americans and/or Hispanic-Americans, in both policy formulation and decision-making regarding management, service delivery and staffing reflective of the geographic area it serves.

**New York State
Vendor Responsibility**

Minority-Owned Business Enterprise (MBE)

A business enterprise which is at least 51% owned, operated or controlled by United States citizens or permanent resident aliens who are minority group members (as listed under Article 15-A of the New York State Executive Law).

A business entity must be certified by the New York State Division of Minority and Women-Owned Business Development as a Minority-Owned Business Enterprise in order to qualify for this status.

New York State Small Business (SB)

A business which is a resident of New York State, independently owned and operated, not dominant in its field and which employs one hundred or fewer people.

New York State Vendor ID

The NYS Vendor ID is a ten-character identifier issued by New York State when the vendor is registered on the Vendor File.

Non-Responsibility Finding

A determination by a government entity that a business entity does not have the requisite financial or organizational capacity, and/or legal authority, and/or integrity, and/or acceptable performance on previous government contracts to perform on a government contract.

Not-For-Profit

A business entity organized for the purpose of social, religious, charitable, educational, athletic, literary, and political or other such activities, which is registered with either:

- a. the New York State Department of State as a Not-for-Profit Corporation in accordance with Article 13 of the Not-for-Profit Corporation Law; and/or
- b. the New York State Attorney General Charities Bureau;

or, is exempt from taxation under Section 501 of the Internal Revenue Code.

Not-For-Profit Corporation

A corporation formed for purposes other than financial gain, pursuant to and in accordance with a state's Not-For-Profit Corporation Law.

**New York State
Vendor Responsibility**

Official(s)

Individual who serves in an executive capacity with decision-making authority and responsibility for the oversight of a Legal Business Entity, a Reporting Entity or an Associated Entity; includes individuals who perform the functions of chief executive officer (CEO), chief operating officer (COO), chief financial officer (CFO), and/or chairman of the board, or their equivalents.

Equivalent titles may include, but are not limited to the following:

- a. Corporations: The chief executive officer (CEO), chief operating officer (COO), chief financial officer (CFO), and/or chairman of the board
- b. Partnerships: The Senior Managing Partners
- c. Limited Liability Companies (LLC): The Executive Managing Directors/Members, Senior Managing Directors/Members
- d. Sole Proprietors: The individual who is the sole owner and manager of the business entity
- e. Unincorporated Associations: The Executive Committee Members, including President, Vice President, Secretary and Treasurer, Executive or Managing Trustees

Organizational Chart

A diagram which illustrates the relationship and management structure of the Reporting Entity to the Legal Business Entity and other Associated Entities as herein defined

Organizational Unit

An established portion of a Legal Business Entity which is within and operating under the authority of the Legal Business Entity, with a designated manager or management team responsible for the operation thereof. For example, a department, division, branch or chapter directly or primarily responsible for fulfilling the terms of the contract. (See Reporting Entity)

OSHA Violation

Serious

A violation designated as "serious" by the Occupational Safety and Health Administration (OSHA). Generally, where there is substantial probability that death or serious physical harm could result and that the employer knew or should have known of the hazard.

Willful

A violation designated as "willful" by the Occupational Safety and Health Administration (OSHA). Generally, a violation that the employer knowingly commits or commits with plain indifference to the law. The employer either knows that what he or she is doing constitutes a violation, or is aware that a hazardous condition exists and makes no reasonable effort to eliminate it.

PC – Professional Service Corporation

A Professional Service Corporation (PC) is organized by one or more individuals authorized to provide a professional service for the purpose of making a profit and for the purpose of rendering such professional service as licensed thereto. Shares may only be issued to those licensed individuals as are authorized to practice their professional service in this state and who have engaged in such profession or will be engaged in the practice of such profession of the PC within 30 days of the issuance of the shares. The designation "PC" must follow and be a part of the business entity's legal name.

**New York State
Vendor Responsibility**

PLLC – Professional Service Limited Liability Company

A Professional Service Limited Liability Company (PLLC) is a limited liability company organized for the purpose of providing professional services. Members may only consist of those licensed individuals as are authorized to practice their professional service in this state, and who have engaged in such profession, or will be engaged in the practice of such profession. The designation "PLLC" must follow and be a part of the business entity's legal name.

Primary Place of Business

The location where the direction and management of the Reporting Entity takes place.

Principal Owner

Any person holding 10% or more of the voting stock of a publicly traded corporation, or 25% or more of a privately held corporation. For construction business entities, any person whose ownership interest is 5% or more.

Principal Place of Business

The location of the primary control, direction and management of the Legal Business Entity.

Registered to do business in New York State

A business entity is registered to do business in New York State, when it has met the statutory filing requirements of filing for authority to do business in New York State, usually by filing with the New York Department of State.

Reporting Entity

The Reporting Entity may be either the entire Legal Business Entity or a portion of the Legal Business Entity, which does or anticipates doing business with the State of New York. If it is not the entire Legal Business Entity, the portion must be an established organizational unit within and operating under the authority of the Legal Business Entity, with a designated manager or management team responsible for the operation thereof. The established organizational unit must have the same Employer Identification Number as the Legal Business Entity. The organizational unit must also be part of the Legal Business Entity, with primary responsibility for fulfilling the terms of the anticipated contract. Examples of a Reporting Entity include, but are not limited to, a department, division or branch.

Sanction

(Sanction or sanctioned) Any fine, penalty, judgment, injunction, violation, debarment, suspension or revocation.

Shared Space

Space is considered to be shared when any part of the space utilized by the submitting Business Entity, at any of its sites, is also utilized on a regular or intermittent basis for any purpose by any other entity, and where there is no lease or sublease in effect between the submitting Business Entity and any other entity that is sharing space with the submitting Business Entity.

Sole Proprietor

A business entity owned and operated by one individual, although there may be employees. All business decisions are made by the sole owner.

**New York State
Vendor Responsibility**

State Contracting Entity

Any New York State government-created entity with the authority to enter into a contract. This includes any New York State created agency, department, division, board, commission or bureau, including public authorities and public benefit corporations.

State Government Entity

Any state government-created agency, department, division, board, commission or bureau of any state, including public authorities and public corporations.

Statutory Affirmative Action Requirements

The statutory inclusion of language in government procurement contracts that

- a. requires a business entity to affirmatively act to ensure and promote equal opportunity employment on government contracts,
- b. prohibits a business-entity from discrimination in employment, and
- c. provides for termination of such contracts for a business entity's failure to comply with such terms.

Suspension

(Suspension or suspended) Action taken by a government entity to temporarily restrict the business entity's right to provide new or continuing contractual obligations.

Terminated for Cause

The exercise of a government entity's right to completely or partially terminate a contract due to the business entity's failure to perform its contractual obligations or for the business entity's failure to comply with statutory and/or regulatory responsibilities.

TIN – Taxpayer Identification Number

Taxpayer Identification Number used for federal income tax reporting. This number may be the federal Employer Identification Number (EIN) or the Social Security Number (SSN) of an individual operating a business as a sole proprietor. (Note: Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use an Employer Identification Number.)

Trade Name

Any name used by a person to identify a business or vocation of such person. A person shall include an individual (natural person), firm, partnership, corporation, union, association or other business entity capable of suing and being sued in a court of law. This also includes any trade, franchise or licensee names.

Unincorporated Association

This is a type of business entity that may be created contractually. The contractual relationship is between the members of the association, all of whom have agreed to join together for a particular purpose. These types of business entities include, but are not limited to, unions, historical societies, professional membership associations, and recreational societies.

**New York State
Vendor Responsibility**

Women-Owned Business Enterprise (WBE)

A business enterprise which is at least 51% owned, operated or controlled by U.S. citizens or permanent resident aliens who are women. A business entity must be certified by the New York State Division of Minority and Women-Owned Business Development as a Women-Owned Business Enterprise in order to qualify for this status.

Appendix A – GEB Response

MARTIN P. DOHERTY, P.E.

SENIOR ENGINEER

5-4-2017

RE: Waterway Debris Monitoring Task Order Project for Nassau County

To whom it may concern;

I have reviewed the attached timesheets and expense report and as the onsite Field Supervisor for GEB Engineers during this entire project, I do hereby attest that they are an accurate representation of the hours worked and actual expenditures.

A handwritten signature in blue ink, appearing to read "Martin P. Doherty", written over a horizontal line.

Martin P. Doherty, P.E.

Appendix B - DPW Response

EDWARD P. MANGANO
COUNTY EXECUTIVE



SHILA SHAH-GAVNOUDIAS, P.E.
COMMISSIONER

**COUNTY OF NASSAU
DEPARTMENT OF PUBLIC WORKS**
1194 PROSPECT AVENUE
WESTBURY, NEW YORK 11590-2723

May 26, 2017

Hon. George Maragos, Comptroller
Office of the Nassau County Comptroller
240 Old Country Road
Mineola, New York 11501

Re: Limited Review of Gibbons, Esposito and Boyce Engineers, P.C.
Contract Compliance with Waterway
Debris Monitoring and the Nassau County Living Wage Law

Dear Mr. Maragos:

The Department of Public Works has reviewed the subject report and has made comment on its content in an email from Assistant to Deputy Commissioner Brian J. Schneider dated April 24, 2017. As requested however, the Department will be responding to your report in the suggested format.

Audit Recommendation #1

The Department agrees that this Contract, and all Department of Public Works contracts require compliance with the Nassau County Living Wage Law.

Audit Recommendation #2

The Department agrees that all applicable mandates of the Nassau County Living Wage Law are required to be met by the contractor.

Audit Recommendation #3

- a. As is evident by the contract provisions restated in the audit finding, the Contract does **not** require training by FEMA personnel; it requires training **by the Consultant** to ensure that the monitors possess an understanding of FEMA documentation protocol.
- b. Please see answer (a.) above.

Audit Recommendation #4

- a. The Department expects GEB to respond to this directive.
- b. The Department of Public Works will take the Comptroller's recommendation under advisement.

U:\Brian Schneider\Contract Compliance Waterway Debris Monitoring GEB Comptroller.bjs.doc

Appendix B - DPW Response

Hon. George Maragos, Comptroller
Office of the Nassau County Comptroller
May 26, 2017

Page two

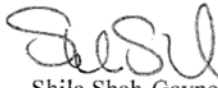
Re: Limited Review of Gibbons, Esposito and Boyce Engineers, P.C.
Contract Compliance with Waterway
Debris Monitoring and the Nassau County Living Wage Law

Audit Recommendation #5

The Department's contracts for disaster response are drafted to comply with all New York State and Federal requirements. To the extent that either the State or Federal guidelines provide qualification and training requirements for monitors, those requirements are met by referencing State and Federal Regulations and Guidance in the disaster response contracts. Further, the Department does not agree that the contracts contained unrelated material.

Should you have any questions, please feel free to contact me.

Very truly yours,



Shila Shah-Gavnoudias, P.E.
Commissioner of Public Works

SSG:KGA:BJS:las

c: Kenneth G. Arnold, Assistant to Commissioner of Public Works
Brian J. Schneider, Assistant to Deputy Commissioner for Administration
Joann Greene, Field Audit Director, Office of the Comptroller

Audit Finding:

(1) GEB Paid Eight Employees Less than the Living Wage Rate in 2014 and 2015 Resulting in Underpayments Totaling \$14,661

Audit Recommendation(s):

We recommend that GEB:

- a) pay the monies due to the eight employees who were not paid the Living Wage rate. Proof of payment should be provided to the Comptroller's Office with supporting calculations; and
- b) ensure that all employees under current or future contracts with Nassau County are paid in accordance with the County Living Wage Law.

GEB Response:

Audit Finding (1)-pages 2-3 & Audit Recommendations:

Since the Comptroller interprets the Living Wage Law differently than GEB, GEB is paying the employees the small difference between what they were already paid and the amount dictated by the Living Wage Law and GEB will provide proof of payment. GEB will also ensure that all employees under current or future contracts will be paid in accordance with the Living Wage Law.

DPW Response:

The Department agrees that this Contract, and all Department of Public Works contracts require compliance with the Nassau County Living Wage Law.

Auditors' Follow-Up Comments:

We concur with the corrective actions to be taken by GEB to pay the monies due to the eight employees who were not paid the Living Wage rate, and to provide proof of payment to the Comptroller's Office.

With respect to GEB's response to Recommendation (b) we reiterate that Section 6. (b) of GEB's contract with Nassau County states that the "Firm shall comply with the applicable requirements of the Living Wage Law, as amended." Furthermore, per the contract Payment Schedule, GEB

Appendix C - Auditor's Follow Up Comments to GEB and DPW Responses

was paid an hourly labor rate of \$40 for Field Monitors. At that time, the Living Wage rates were \$15.21 and \$15.50, without benefits, for the two respective fiscal years¹⁹.

We concur with DPW's response to Recommendation b) that the GEB contract, and all Department of Public Works contracts require compliance with the Nassau County Living Wage Law.

Audit Finding:

(2) Compensated Time Off for Eight GEB Employees totaling \$2,424 was not Awarded, Contrary to the Living Wage Law

Audit Recommendation(s):

We recommend that GEB:

- a) promptly pay employees who were eligible for an accrued leave payout at the amounts listed above. Proof of payment should be provided to the Comptroller's Office with supporting calculations; and
- b) display the required Nassau County Living wage posters alerting employees to the wage rate and accrued time off provisions of the Law for those employees working under the Nassau County contract.²⁰

GEB Response:

Audit Finding (2)--Pages 4-6 & Audit Recommendations:

The employees cited in Exhibit III did receive compensated time off. Again, it is GEB's belief that none of these employees who worked on the project should be subject to the Living Wage Law, however, since the Comptroller interprets the Living Wage Law differently, GEB is paying these employees the small difference between what they were already paid and the amount dictated by the Living Wage Law and GEB will provide proof of payment with calculations. All required Nassau County Living Wage posters are displayed in GEB offices.

The GEB Handbook section cited by the NC auditor on page 5 does not apply to any of the individuals who worked on this project since none were rehired employees.

¹⁹ The applicable Living Wage rates apply to the following two time frames: August 1, 2013 through July 31, 2014, and August 1, 2014 through July 31, 2015.

²⁰ Living Wage Law Rules of the Nassau County Comptroller
<https://www.nassaucountyny.gov/DocumentCenter/View/1340>

Appendix C - Auditor's Follow Up Comments to GEB and DPW Responses

DPW Response:

The Department agrees that all applicable mandates of the Nassau County Living Wage Law are required to be met by the contractor.

Auditors' Follow-Up Comments:

We concur with the corrective actions to be taken by GEB to pay the monies due to the employees who were eligible for an accrued leave payout (shown in Exhibit III of the report), and to provide proof of payment to the Comptroller's Office.

We also concur with all required Nassau County Living Wage posters being displayed in GEB offices. We reiterate that Section 3.b. of the Living Wage Law states "Compensated days off shall not be forfeited upon separation from service; such days shall be paid out to the employee upon separation at the Living Wage rate at the time of separation."

We concur with DPW's response to Recommendation b) that all applicable mandates of the Nassau County Living Wage Law are required to be met by the contractor.

Audit Finding:

(3) GEB Failed to Comply with the Contract by not Maintaining Proof of FEMA Training, and Did Not Have Complete Personnel Files for Employees Working as Field Monitors for the Waterway Debris Cleanup

Audit Recommendation(s):

We recommend that GEB comply with all contract requirements including:

- a) providing documentation evidencing training of the Field Monitors by FEMA and the remaining requested job applications and resumes; and/or
- b) attesting to their compliance with the contract's training requirement, if the aforementioned documents cannot be located. Failure to follow contract requirements may preclude a vendor from future contracts.

GEB Response:

Audit Finding (3)-pages 6-7:

It is stated that GEB failed to comply with the contract regarding training. Please note the following:

Appendix C - Auditor's Follow Up Comments to GEB and DPW Responses

GEB has successfully performed work as a primary contractor, on full-service Disaster Debris Monitoring contracts, including but not limited to, the following:

Nassau County Department of Public Works
Hurricane Irene Storm Debris Removal

Nassau County Department of Public Works
Super Storm Sandy Debris Removal (Award winning project)

Suffolk County Department of Public Works
Suffolk County Multi-jurisdictional Hazard Mitigation:
Suffolk County Department of Fire Rescue and Emergency Services

GEB has also successfully completed similar debris monitoring services, as a primary consultant for the Town of Hempstead, the Town of Oyster Bay and the New York State Department of Transportation.

In addition to the experience listed above, in reference to this specific project, GEB management attended numerous meetings with FEMA personnel where the project specific guidelines, rules, regulations, and instructions were given to GEB directly from FEMA. All of these project specific guidelines, rules, regulations, and instructions (training) were discussed with each field monitor and data manager before the individual employee started on the project. Each employee worked directly with a FEMA representative on a daily basis to ensure that the monitor was performing his professional duties in a manner that was in complete compliance with all FEMA rules and regulations. All field monitor produced reports were reviewed by the licensed professional engineer tasked with their supervision by GEB. Periodically, FEMA personnel would hold informal training sessions for GEB and contractor staff throughout the term of the contract. There was never an indication by any FEMA personnel that they were unhappy with the training of the GEB staff or the quality of the reports they produced. In fact, FEMA always indicated that it was very pleased with GEB's services.

Therefore, GEB strongly disagrees with the statement "GEB was not in compliance with the County contract by failing to keep or obtain the requested documents." Nowhere in GEB's agreement with Nassau County does it state the training requirements nor does it state the documents which should be retained to prove training. Since all the FEMA training provided by GEB management, Nassau County employees and FEMA personnel to GEB employees was verbal, there is no document to retain or produce for the Comptroller's office. FEMA did not provide a documented record of training.

In summary, and in response to the Audit Recommendations at page 7, GEB attests that it fully complied with the contract regarding FEMA training. Further to the point, below please see the Nassau County DPW's response to this section of the audit report:

Appendix C - Auditor's Follow Up Comments to GEB and DPW Responses

Page 7- The auditors were looking for...evidence that the Field Monitors had appropriate education or experience for the job. In accordance with FEMA Public Assistance Debris Monitoring Guide (FEMA 327) qualified individuals could be:

University Students

Code Enforcement Employees

Retired local government personnel

There is no specific educational background or requirements according to FEMA guidance...so it is unclear how you can determine what proper experience for the Field Monitor position is.

Furthermore, the Monitoring Guide also states;

Public Assistance Debris Monitoring Guide FEMA 327 / October 2010 speaks to qualifications of the firm being contracted and outlines what a debris monitor should understand as their responsibilities. The guide states that engineers are not necessary and that the monitors should understand the Debris Removal contract. FEMA's Recovery Fact Sheet 9580.201 states that Professional engineers and qualifications are not required to perform debris monitoring duties.

The GEB Field Monitors worked on a daily basis directly with FEMA monitors on all debris removal operations. Was FEMA contacted to determine whether FEMA as the agency reimbursing the County for all eligible expenses had any issues with the training, qualifications or job performance of the GEB field monitors? We understand that FEMA had no issues with GEB's overall effort with Field Monitoring and Data Management on this operation. As the Department of Public Works was in routine communication with FEMA throughout the project there were no red flags or issues of concern raised. The Department of Public Works therefore questions your statement that two of the resumes you reviewed indicated that the individuals lacked experience for the Field Monitor position...both College graduates and one had a degree in Mechanical Engineering. Your additional comment also on Page 7 stating that a lack of documentation causes significant concern regarding whether qualified or trained individuals worked as Field Monitors is overstated and we recommend removing this reference.

On page 6, it incorrectly states that HiRise is an affiliate organization of GEB, when in fact they are separate companies and do not meet the criteria for the definition of affiliate as defined by New York State. In footnote 11 on page 6, it states that HiRise pled guilty to a violation regarding an engineer's report involving an employee that no longer works for HiRise and did not work on the County contract. While NC is correct that the employee in question no longer works for HiRise and was not involved in the contract at issue, HiRise (not GEB) **pled to a violation**, not a misdemeanor. In any event, as GEB was not involved in the criminal matter, and it did not involve the contract at issue, we see no reason why this footnote is in the draft report and ask that it be removed.

Appendix C - Auditor's Follow Up Comments to GEB and DPW Responses

DPW Response:

- a. As is evident by the contract provisions restated in the audit finding, the Contract does **not** require training by FEMA personnel; it requires training **by the Consultant** to ensure that the monitors possess an understanding of FEMA documentation protocol.
- b. Please see answer (a.) above.

Auditors' Follow-Up Comments:

With respect to GEB's response to Recommendation a):

- *We reiterate that GEB failed to provide proof of training. According to Section 12. of GEB's Contract with Nassau County, "The firm shall maintain and retain, for a period of six years...complete and accurate records, documents, accounts, and other evidence...pertinent to performance under this Agreement."*
- *We acknowledge GEB's experience with working with FEMA. However, with the exception of two resumes, GEB failed to provide any documentation that the Field Monitors in question were university students, code enforcement employees, or retired local government personnel. The resumes provided for the two Field Monitors indicated both were recent college graduates; one with a degree in psychology and another with a degree in mechanical engineering, with neither having any full time engineering experience.*

With respect to DPW's response to Recommendation a):

GEB did not provide evidence that the Field Monitors were trained by FEMA or by the Consultant. We reiterate that GEB should have maintained complete and accurate records, including training, as required by the contract.

With respect to GEB's request to remove footnote 14 on page 6 (formerly footnote 11), we do not agree that GEB's relationship with HiRise did not involve the contract at issue. GEB was initially unable to provide requested documentation due to an ongoing investigation by the New York State's Attorney General's Office of HiRise Engineering. While GEB's response states that GEB and HiRise are separate companies and do not meet the criteria for the definition of an affiliate as defined by New York State, we believe that regardless of the technical term for their relationship, it was because of this relationship that GEB's files were taken by the New York State Attorney General's Office (in connection with its investigation of HiRise) and therefore not available to be provided to the auditors. During the audit, the auditors observed the following which support the existence of this relationship:

- *almost 700 Load Tickets furnished to the County contained both the GEB and HiRise logo, with both corporate names spelled out in the upper left hand corner;*

Appendix C - Auditor's Follow Up Comments to GEB and DPW Responses

- *in September of 2016, when the auditors visited GEB's office headquarters, they noted the Suite nameplate displayed both GEB and HiRise;*
- *during the course of the audit, in October 2016, GEB's website listed both entities; and*
- *as of May 2017, auditors' email correspondence with GEB employees contained references to both GEB and HiRise; and*
- *GEB stated their personnel files were taken by the NYS AG's Office for the HiRise investigation, and they were unsure if the personnel files we had requested had been retained.*

With respect to GEB's response to Recommendation b), we concur with the portion of their response that states, "In summary, and in response to the Audit Recommendations at page 7, GEB attests that it fully complied with the contract regarding FEMA training." We reiterate that failure to follow contract requirements may preclude a vendor from future contracts.

Audit Finding

(4) 10.5% of Employee Time Sheets and 1.7% of Expense Reports were Not Signed by Employees or Properly Authorized by Management

Audit Recommendation(s):

We recommend that:

- a) GEB review the time sheets, mileage form, and expense reports that were missing signatures and attest to their accuracy; and
- b) the Department of Public Works and the Comptroller's Office's Vendor Claims Section should now perform heightened reviews for GEB's claims.

GEB Response:

Audit Finding (4)-pages 8-9:

The draft report notes that some of the time sheets and expense reports were not signed by employees or properly authorized by management. In response to the Audit Recommendations, it is GEB's position that the time sheets, mileage form and expense reports are accurate. With very limited exceptions, all employees signed their time sheets and all expenses were authorized. Also, to the extent an employee may not have signed some time sheets, he was working on a boat and unable to do so. The onsite "field supervisor", who knew exactly what each employee did each day, or his supervisor, signed all of such time sheets. See the field supervisor's attached affidavit.

The draft report claims that there are four (4) time sheets missing "the approval signature of GEB's Management". However, each of those timesheets was for the project manager who is also a partner of GEB and was in fact signed by himself. Since the project manager

Appendix C - Auditor's Follow Up Comments to GEB and DPW Responses

is an owner of the company and was the principal in charge of this project, GEB does not believe that it needs to have any other GEB signature for approval. The rest of the timesheets and expense reports were reviewed and attached please find an attestation to their accuracy.

GEB obviously feels that, based on the above simple explanation, the audit statement "These exceptions demonstrate a lack of oversight in GEB's senior staff when reviewing timesheets and expense reports" is overstated and we recommend removing this reference, especially since each timesheet was reviewed by multiple parties at the Comptroller's office before each invoice was approved by the Comptroller for payment.

DPW Response:

- a. The Department expects GEB to respond to this directive.
- b. The Department of Public Works will take the Comptroller's Recommendation under advisement.

Auditors' Follow-Up Comments:

With respect to Recommendation a), we acknowledge GEB's affidavit pertaining to all time sheets. We stress that going forward, all time sheets and expense reports should contain both the employee's and authorizer's signatures at the time of submission, regardless of title.

With respect to DPW's response to Recommendation b), we reiterate that DPW should perform heightened reviews for GEB's claims.

Audit Finding

(5) Lack of Detail in the Contract and Failure to Review the Format Resulted in Weaknesses in Personnel, Training, and Performance Measures

Audit Recommendation(s):

DPW should detail qualifications and training requirements of monitors in their contracts. During contract preparation, a review should be conducted to ensure that unrelated material is removed or excluded.

GEB Response:

Audit Finding (5)-pages 9-10:

Refers to the DPW.

DPW Response:

The Department's contracts for disaster response are drafted to comply with all New York

Appendix C - Auditor's Follow Up Comments to GEB and DPW Responses

State and Federal requirements. To the extent that either the State or Federal guidelines provide qualification and training requirements for monitors, those requirements are met by referencing State and Federal Regulations and Guidance in the disaster response contracts. Further, the Department does not agree that the contracts contained unrelated material.

Auditors' Follow-Up Comments:

We concur with GEB's response to defer to DPW.

With respect to DPW's response, we reiterate that Exhibit A of the contract contains references to hazardous tree stumps that appear to relate to a different debris project.

GEB Response – Closing Paragraph

Again, GEB was always of the belief that the Living Wage Law, which excludes professionals, was not applicable to GEB; and GEB's services under the contract at issue were performed in a competent and professional manner. In any event, and without admitting any liability, GEB is paying the allegedly underpaid hourly wages, as well as the estimated amounts due for leave time, as adjusted by the amounts previously paid by GEB.

Auditors' Follow-Up Comments:

Section 6.(b) of GEB's Contract with Nassau County states that the "Firm shall comply with the applicable requirements of the Living Wage Law, as amended". While the auditors acknowledge that GEB's services were performed in a professional manner, recordkeeping practices showed a need for improvement. As stated previously, we concur with the corrective actions to be taken by GEB to pay the monies due employees for underpaid hourly wages and leave time and provide proof of payment to the Comptroller's Office. .