

INVESTIGATIVE SUMMARY AND REPORT

TO: Jacqueline Martin
Human Resources, Levy County Board of County Commissioners

Mary-Ellen Harper
County Manager

FROM: Kimberly Wittman, Esquire
Allen Norton & Blue, P.A.

RE: Investigative Report

DATE: October 25, 2024

I. BASIS FOR INVESTIGATION

On or about October 7, 2024, Mary-Ellen Harper, County Manager, was made aware that the spouse of the Director of Emergency Management, John MacDonald, was employed by a current contractor of the County, AC Disaster Consulting, LLC. Ms. Harper looked up Mr. MacDonald's spouse and found that Mrs. MacDonald's LinkedIn profile showed she has been employed by AC Disaster Consulting since 2022. Due to Mr. MacDonald not having previously disclosed his wife's employment with AC Disaster Consulting in writing and the County's current utilization of AC Disaster Consulting for multiple services, Mr. MacDonald was placed on paid administrative leave.

The County retained the undersigned and the law firm of Allen Norton & Blue, P.A. to investigate a potential violation of Levy County Policy.

II. INVESTIGATION BACKGROUND AND PROCEDURE

With the assistance of Human Resources, the undersigned received and reviewed the following documentation:

- Notice of Investigation to John MacDonald;
- Director of Emergency Management Job Description;
- Personnel File of John MacDonald;
- February 5, 2022 AC Disaster Consulting Offer of Employment to Sherri MacDonald
- Levy County Personnel Policy 806 - Conflicts of Interest;
- Levy County Ordinance 2-211 – Conflicts of Interest and Lobbying;
- Levy County Purchasing Manual;
- Levy County Procurement Code;
- Conflict of Interest Disclosure Statement Form;

- Bid Details for RFP 2020-005;
- Minutes from the June 2, 2020 Meeting of the Levy County Board of County Commissioners;
- Agenda and Agenda Item Summary Form from the August 6, 2024 Meeting of Levy County Board of County Commissioners;
- May 20, 2024 Letter from AC Disaster Consulting, LLC to John MacDonald regarding management of Levy County's State Housing Initiatives Partnership Program grant;
- August 6, 2024 Extension of Agreement Between Levy County and AC Disaster Consulting, LLC for Disaster-Related Recovery Services dated August 18, 2020;
- Email correspondence between John MacDonald and AC Disaster Consulting, LLC regarding the Extension of Agreement Between Levy County and AC Disaster Consulting, LLC for Disaster-Related Recovery Services dated August 18, 2020;
- Email correspondence between County employees regarding HHRP/Idalia Fund Management;
- Email correspondence between County employees and AC Disaster Consulting, LLC regarding Hazard Mitigation Grant Program Support;
- September 23, 2024 letter from AC Disaster Consulting to Mr. MacDonald regarding the Dock Street Living Breakwater Shoreline and Infrastructure Hazard Mitigation Grant Program Support;
- Public Notice of the Staff Committee Discussions for Selection for Disaster Related Recovery Services held on May 20, 2020;
- Audio recording of the May 20, 2020 Staff Committee Discussions for Selection for Disaster Related Recovery Services;
- Evaluation Scores for Levy County RFP 2020-005;
- Committee Score Sheets for Levy County RFP 2020-005;
- Reference checks for AC Disaster Consulting in relation to RFP 2020-005;
- August 18, 2020 Agreement Between Levy County and AC Disaster Consulting, LLC; for Disaster-Related Recovery Services; and
- Various email correspondence.

Additionally, the undersigned interviewed the following individuals:

- John MacDonald, October 17, 2024;
- Jessie Durrance, October 17, 2024; and
- Alicia Thretheway, October 21, 2024.

The County placed no restrictions on any interviews in terms of the scope of questioning or time allotted for each interview. No person was restricted from being interviewed. The findings in this investigative report are based on a preponderance of the evidence standard. Under this standard, allegations are found to be substantiated where, after considering all evidentiary support that was provided, including the relative credibility of the witnesses and statements during the interviews, it is determined that the conduct at issue more likely than not constituted a violation of County policy or law.

While this report may not directly address every factual allegation made throughout the course of the investigation, all allegations have been considered and are either addressed specifically herein, or they have been determined to be immaterial to the ultimate question of whether Mr. MacDonald violated Levy County policy.

III. INVESTIGATION

a. Allegations.

Mr. MacDonald failed to disclose in writing the conflict of interest arising from his wife's employment with County contractor AC Disaster Consulting, LLC in violation of Levy County policy.

b. Summary of Facts.

i. Levy County Policies Pertaining to Disclosure of Conflict of Interest.

Levy County Personnel Policy 806 provides:

It is the policy of Levy County to prohibit its employees from engaging in any activity, practice, or conduct which conflicts with, or appears to conflict with, the interests of Levy County, its citizens, or its suppliers. Since it is impossible to describe all of the situations that may cause or give the appearance of a conflict of interest, the prohibitions included in this policy are not intended to be exhaustive and include only some of the more clear-cut examples.

Employees must disclose any financial interest they or their immediate family have in any firm that does business with Levy County. Levy County may require divestiture of the interest if it considers the financial interest to be in conflict with its best interests.

(6) **Any conflict or potential conflict of interest must be disclosed to Levy County. Failure to do so will result in discipline, up to and including termination.**

- a. Employees must comply with any provisions of Chapter 112 part III F.S., governing Code of Ethics for Public Employees.
- b. Employees who violate the Code of Ethics as set forth in Part III of Chapter 112 of the Florida Statutes shall be subject to disciplinary action up to, and including, discharge, as well as any applicable civil penalties.

Section 112.313(3), Fla. Stat. (2023) provides:

No employee of an agency acting in his or her official capacity as a purchasing agent, or public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency **from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest.** Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer's or employee's own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business or when such offices are on property wholly or partially owned by the legislator.

Levy County's Procurement Manual contains a Procurement Code of Ethics which states:

In its dealings, Levy County will observe the highest standards of ethics. Government business must be fair, open and demonstrate the highest levels of integrity consistent with the public interest.

- Fairness and Impartiality – Potential suppliers/vendors are to be treated equally and must have the same opportunity to access information and advice.
- Use of Competitive Process – Consistent with Board policy, a competitive process should be used unless an alternative method of procurement is in the best interest of the County, as determined by the Procurement Coordinator.
- Consistency and Transparency of Process – Proposers and bidders are to be evaluated in a systematic manner against explicit predetermined evaluation criteria.
- **Identification and Resolution of Conflicts of Interest – Any person involved in the procurement process is to declare and address any actual or perceived Conflict of Interest prior to undertaking any quote, bid or proposal evaluation.**

Sec. 2-211 of Levy County's Procurement Code provides,

(2) County employees, officers and agents involved in any procurement process shall abide by the following standards to avoid conflicts of interest, which standards are specifically found to be consistent with the provisions regulating conflicts of interest in the county's personnel policies and procedures manual: (2) No county employee, officer or agent involved in the selection, award or

administration of a contract, any member of his/her immediate family, his/her partner, **or an organization which employs or is about to employ any of the foregoing parties**, may have a financial or other interest in or a tangible personal benefit from a firm considered for such contract. Additionally, county employees, officers and agents involved in the selection, award or administration of such a contract may not solicit or accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts, with the exception of unsolicited items of nominal value such as novelties with company logos.

(4) In the event a procurement is intended to be funded or reimbursed with federal or state funds, **any potential conflict of interest discovered during the applicable procurement process shall be disclosed in writing upon such discovery** to the federal agency, state agency, or pass-through entity awarding the funds being used for the procurement process, as required by the policies of the applicable federal or state agency

ii. Investigation.

Mr. MacDonald has been the Director of Emergency Management for Levy County since about 2016. According to Mr. MacDonald, he has no say in who is awarded contracts with the County and has zero involvement in procurement.

Mr. MacDonald's wife has been employed by AC Disaster since February 2022. Her job is essentially data entry, and she has not worked on any projects paid for by Levy County. Mrs. MacDonald learned about AC Disaster through her former position as the town administrator for Yankeetown. When his wife found the job opening at AC Disaster online, Mr. MacDonald told her it might be a potential conflict of interest if he were involved in procurement with AC Disaster. Mr. MacDonald stated he knew he would need to abstain from the procurement process with AC Disaster in the future due to his wife's employment.

Mr. MacDonald further stated during his interview that shortly after his wife's employment with AC Disaster began, he disclosed her employment to Wilbur Dean, the then-County Coordinator and Alicia Tretheway, the Procurement Coordinator. According to Mr. MacDonald, Mr. Dean stated it was not a problem and that Mr. MacDonald would just have to abstain from any future contract procurement with AC Disaster. Mr. MacDonald did not make any written disclosures of his wife's employment with AC Disaster.

Ms. Tretheway stated during her interview that she had just found out about Mr. MacDonald's wife's employment with AC Disaster around the time that Mr. MacDonald's administrative suspension began. Mr. Dean is no longer employed by the County. When asked whether Mr. Dean knew of Mr. MacDonald's wife's employment with AC Disaster, Ms. Tretheway stated Mr. Dean may have had an inkling that Mrs. MacDonald was employed by AC

Disaster, but that she, the County Manager, and the County attorney had just recently learned of it.

Mr. MacDonald also stated that his wife submitted an application for employment with Levy County as Grant Manager which disclosed her employment with AC Disaster Consulting. Mrs. MacDonald's Interview was on the Agenda for the September 6, 2022 Levy County Board of County Commissioners Meeting.

1. 2020 Agreement with AC Disaster.

According to Mr. MacDonald, he was not involved in the procurement process that resulted in the 2020 Agreement between the County and AC Disaster and it was Ms. Tretheway who presented the bids to the Board of County Commissioners, as well as the extensions of the Agreement. He stated he does not make recommendations to Ms. Tretheway regarding who the County should contract with. He merely informs Ms. Tretheway of the services he is looking for, she drafts a scope of work and handles the rest of the procurement process.

However, per the audio recording of the May 20, 2020 Staff Committee Discussions for Selection for Disaster Related Recovery Services and the score sheets, it is clear that Mr. MacDonald did play a role in the procurement process that resulted in the 2020 Agreement with AC Disaster. Mr. MacDonald informed the Staff Committee of what he knew about AC Disaster, the services the County was looking to get from the Request for Proposals, and how the agreement would be administered. Mr. MacDonald was also one of three scorers of the bids submitted in response to the Request for Proposals that resulted in AC Disaster being awarded the contract.

Further, according to Ms. Tretheway, in general, directors do play a role in the procurement process. Directors typically come to her with the scope of work that is needed, and her job is to mainly ensure the documentation is correct, which she sends to the directors for approval.

2. Extension of the 2020 Agreement.

Mr. MacDonald stated that he played no role in any of the extensions of the 2020 Agreement. That was undertaken by Ms. Tretheway.

However, according to Ms. Tretheway, Mr. MacDonald asked her to renew the 2020 Agreement with AC Disaster. She as the Procurement Coordinator did not decide whether an Agreement should be extended or whether a new Request for Proposals should be done. Ms. Tretheway mentioned that they were in the middle of hurricane season when it came time to renew the 2020 Agreement, so extension of the Agreement was the best option given the length of the Request for Proposals process.

After Mr. MacDonald asked her to extend the 2020 Agreement, Ms. Tretheway drafted the August 6, 2024 letter to AC Disaster. According to Ms. Tretheway, Mr. MacDonald had reached out to AC Disaster prior to that letter to let them know the County wanted to extend the 2020 Agreement.

Ms. Tretheway did not know Mr. MacDonald's wife was employed by AC Disaster at the time of the extension.

3. HHRP Grant Management

Mr. MacDonald stated the Board of County Commissioners told him, Ms. Tretheway, and Marlon Gayle, the Housing Planner, to reach out to AC Disaster Consulting to see whether they could manage the Hurricane Housing Recovery Program ("HHRP") Grant. Mr. MacDonald stated that he, Ms. Tretheway, and Mary-ellen Harper, the current County Manager, were all part of discussions with AC Disaster regarding HHRP Grant management.

Mr. MacDonald received a letter from AC Disaster on May 20, 2024 with a proposal for the HHRP Grant management. This letter was sent after Mr. MacDonald reached out to AC Disaster regarding management of the grant.

Mr. MacDonald described an informational Board Meeting in July 2023, wherein Mr. Dean tasked them with finding out whether AC Disaster could manage the HHRP Grant under the 2020 Agreement.

According to Ms. Tretheway, she had nothing to do with the process of AC Disaster coming to manage the HHRP Grant. However, she was questioned about whether AC Disaster was able to provide those services under the 2020 Agreement, which she advised they could. An alternative would have been the County sending out a Request for Proposals for grant management. MR. Tretheway did not contact anyone from AC Disaster to see whether they could provide these services. Ms. Tretheway had never seen the May 20, 2024 letter from AC Disaster to John MacDonald with a proposal for management of the HHRP Grant. Ms. Tretheway did not know Mr. MacDonald's wife was employed by AC Disaster at the time.

Email correspondence from April 22, 2024 to June 10, 2024 shows that Mr. MacDonald played a pivotal role in having AC Disaster manage the County's HHRP Grant.

On April 22, 2024, Mr. MacDonald sent an email to County employees including Mr. Dean and Mr. Gayle, following up on a prior meeting with Mr. Gayle and asking whether legal had given input regarding Levy County's contract with AC Disaster Consulting. He indicated that if it was approved, he would reach out to AC Disaster.

On April 24, 2024, Mr. MacDonald sent an email to the same parties, this time including Ms. Tretheway, addressing Mr. Dean and stating it was a reminder so that Mr. MacDonald did not forget about Mr. Gayle and his need for contractor support to assist him with the HHRP. He indicated he was waiting for approval to reach out to AC Disaster. Ms. Tretheway responded that in her opinion, they should use AC Disaster for the services because the Agreement provided for such services. Mr. MacDonald responded that was correct and that he just wanted to make sure Mr. Dean was comfortable with using AC Disaster. Mr. Dean indicated he comfortable with AC Disaster being used. Mr. MacDonald indicated he would reach out to AC Disaster.

On May 7, 2024, Mr. Gayle emailed Mr. MacDonald, Mr. Dean, Levy County Commission District 3, Levy County Attorney, Leatha Keene, Levy BOCC, and Ms. Tretheway asking Mr. MacDonald for an update on AC Disaster Consulting administering the HHRP-Idalia funds. Mr. MacDonald responded that AC Disaster was on board and all he needed to do was get back with them to work out the particulars.

On May 22, 2024, Mr. Gayle emailed Mr. MacDonald, Ms. Tretheway, Mr. Dean, and others the engagement letter from AC Disaster that Mr. MacDonald provided. Mr. Gayle mentioned he was following up on the April 16, 2024 meeting between Mr. Gayle, Mr. MacDonald, Mr. Dean, and Desiree Mills to formulate a plan to move forward. Mr. Gayle's email outlined what each person was to do after the meeting. Mr. MacDonald was to: (1) "[c]ontact Consultant current used by County for Disaster Recovery to determine their capabilities and willingness to administer the HHRP-Idalia; and (2) "[r]equest an engagement letter for consultants highlighting Cost for Administration. Recommended administration fee should not exceed 8% of allocation."

Mr. MacDonald responded to Mr. Gayle's email on June 6, 2024, stating that once Ms. Tretheway confirmed that a new subrecipient agreement was not required then the contractor [AD Disaster Consulting] was ready to go and he would set up a meeting with AC Disaster Consulting to get things moving.

On June 7, 2024, Ms. Tretheway sent an email stating that a new subrecipient agreement was not needed because the Agreement and the RFP cover the services contemplated. MacDonald responds that they should be ready with Mary-Ellen to get the marketing campaign. Mary-Ellen responds that she received details from Marlon and will put together a communications plan.

4. HMGP Grant Management

Mr. MacDonald indicated that Commissioner Brooks, Mr. Dean, and Ms. Tretheway had a meeting in Cedary Key to discuss whether they wanted to use AC Disaster for a project regarding a water damage mitigation ("WAD") device. According to Mr. MacDonald, Ms. Tretheway stated during that meeting that they had a contractor of records that could likely perform the services needed, but they would need to check.

According to Ms. Tretheway, the County was considering applying for the HMGP grant to get funding for a WAD. She stated there was then maybe some discussion about using AC Disaster to manage the grant. Mr. MacDonald set up a Teams meeting between Ms. Tretheway, Mr. MacDonald, and AC Disaster in late September or early October. Ms. Tretheway stated it was Mr. MacDonald's idea to potentially use AC Disaster for the HMGP Grant. Ms. Tretheway felt that was a good idea because those services would also fall under the 2020 Agreement.

According to the documents reviewed by the undersigned, On June 6, 2024, Josh Norman of DRMP emailed Bridget Flynn of Tidal Basin with Mr. MacDonald copied. Mr. Norman told Ms. Flynn regarding what they had completed to date.

On September 12, 2024, Mr. MacDonald forwarded an email regarding the Cedar Key project to Cameron Morris of AC Disaster Consulting. On September 18, 2024, Mr. Morris emailed Mr. MacDonald asking if he should send a proposal to support HMGP. Mr. MacDonald indicated he should, that he was trying to get a call scheduled, and once he received the proposal he would push it. On September 19, 2024, Mr. Morris sent Mr. MacDonald a proposal for approval and indicated once Mr. MacDonald approved of it, he would sign the proposal and return it.

That same day, Mr. MacDonald forwarded Mr. Morris' proposal to Ms. Harper and Ms. Tretheway, indicating it was a proposal from AC Disaster to manage the Cedar Key Water Attenuation Device Project on Dock Street. He asked to set up a call between them and Mr. Morris to discuss the implementation.

Mr. MacDonald set up the call between the County and AC Disaster on September 23, 2024 to discuss the project management for the Cedar Key Shoreline Protection HMGP Project.

On September 23, 2024, Mr. Morris emailed Mr. MacDonald and Ms. Tretheway a letter containing a proposal for Dock Street Living Breakwater Shoreline and Infrastructure Hazard Mitigation Grant Program Support.

IV. CONCLUSION

Section 2-211(2) of Levy County's Procurement Code prohibits any organization that employs the immediate family or partner of a county employee involved in the selection, award, or administration of a contract from having a financial interest in or tangible personal benefit from a firm considered for such contract. Further, Section 2-211(4) requires any potential conflict of interest discovered during the applicable procurement process¹ to be disclosed in writing.

Levy County Personnel Policy 806 requires employees to disclose any conflict or potential conflict of interest to Levy County.

Despite Mr. MacDonald's statements during his interview, he played a role in the procurement process in 2020 evidenced by the audio recording of the May 20, 2020 Staff Committee Discussions for Selection for Disaster Related Recovery Services and his score sheet. Further, in his role as Director of the Emergency Management Division, he was responsible for the administration of the 2020 Agreement with AC Disaster, which has been extended and remains in effect as of the date of this Investigative Summary and Report. Further, emails from Mr. MacDonald show he was involved in the procurement of additional services with AC Disaster Consulting pursuant to the 2020 Agreement. Therefore, Mr. MacDonald is a county employee "involved in the selection, award, or administration of a contract" as contemplated by the Procurement Code.

¹ Levy County's Procurement Code does not define the term "procurement." However, the ordinary meaning of the term "procurement" contemplates more than just a Request for Proposals and would include the solicitation of additional services from a contractor of the County and facilitation of an agreement for said services. This is true even where the new services were contemplated under a prior agreement and may not require a new agreement or an amendment to a prior agreement.

While Mr. MacDonald's wife was not employed by AC Disaster Consulting until February 2022, after the 2020 Agreement was entered into, Mr. MacDonald was involved in the extension of the 2020 Agreement and the solicitation of grant management services from AC Disaster. While these services did not require a Request for Proposals because they were contemplated within the 2020 Agreement with AC Disaster Services, Mr. MacDonald never the less played a role in procuring these additional services as shown through his email correspondence with other County employees and AC Disaster.

Mr. MacDonald admitted that he at no point disclosed his wife's employment with AC Disaster Consulting in writing as required by Section 2-211(4) of Levy County's Procurement Code. While Mr. MacDonald alleges he disclosed his wife's employment to Mr. Dean and Ms. Tretheway in 2022, the undersigned credits Ms. Tretheway's testimony that she, as the Procurement Coordinator since 2018, was not aware of Mrs. MacDonald's employment with AC Disaster until recently. Further, the County Manager, Ms. Harper, who has taken over Mr. Dean's previous position, was similarly unaware of this employment relationship between AC Disaster and Mrs. MacDonald, which tends to support the conclusion that the County was not aware of the potential conflict of interest between Mr. MacDonald and AC Disaster. However, Mr. MacDonald's verbal disclosure of the potential conflict in 2022 is of little to no consequence as Section 2-211(4) of Levy County's Procurement Code requires written disclosure.

Therefore, the preponderance of the evidence supports that Mr. MacDonald engaged in conduct which conflicts with, or appears to conflict with, the interests of Levy County by continuing to be involved in the administration of the 2020 Agreement with AC Disaster and the procurement of additional services pursuant to that agreement.

Having conducted a thorough review of the circumstances surrounding Mr. MacDonald's potential conflict of interest, findings are hereby **sustained** as to violations of the Levy County Procurement Code Section 2-211(4) and Levy County Personnel Policy 806.

County employees who violate Personnel Policy 806 and/or Levy County Procurement Code Section 2-211, are subject to disciplinary action up to, and including, discharge. Therefore, the undersigned recommends appropriate discipline up to and including discharge.

V. CLOSING REMARKS

Should you have any questions regarding this report or any other matters relating to this investigation, please do not hesitate to contact me.

Respectfully Submitted,

/s/ Kimberly A. Wittman

Kimberly A. Wittman, Esq.