

**Nassau County  
Office of the Comptroller**



**Limited Review of Nassau County's  
Contract for Waterway Debris Removal Services with  
VIP Splash Waterways Recovery Group, Inc.**

**GEORGE MARAGOS**

*Comptroller*

**August 17, 2017**

**NASSAU COUNTY**  
*OFFICE OF THE COMPTROLLER*

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## Executive Summary

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### **Introduction:**

VIP Splash Waterways Recovery Group, Inc. (“VIP Splash”), a partnership of VIP Metropolitan Management Group and Paumanok Recovery Group Inc., with a background in marine transportation, was created to provide large scaled reconstruction projects to various entities (corporations, governments, municipalities, etc. VIP Splash’s first contract after its incorporation was with Nassau County (“County”).<sup>1</sup> Under the contract, VIP Splash identified, removed and disposed of submerged and shoreline debris as a result of Superstorm Sandy.

Prior to the implementation of VIP Splash’s services, the County issued a Request for Proposals (“RFP”) for Emergency Waterway Debris Removal Services in June of 2013. VIP Splash filed as a corporation under the Department of State in June 2013<sup>2</sup> and was awarded the contract in October of 2013.

The contractual agreement between the County and VIP Splash was initially for the time period of October 1, 2013 through September 30, 2014, and was awarded for an initial amount of \$4,000,000. Since its initiation, the contract has been amended twice. The first amendment extended the contract through January 24, 2015 and allowed for a new contract maximum of \$12,171,897. The second amendment extended the contract through September 1, 2015 and allowed for a new contract maximum of \$12,558,539. See Appendix I for a detailed summary of the expenses by debris type incurred for the period October 2013 through January 2017 totaling \$12,552,689.

Gibbons, Esposito, and Boyce Engineers, P.C. (“GEB”) was hired by the County to monitor the waterway debris removal project of VIP Splash under a separate contract.<sup>3</sup>

### **Purpose:**

The purpose of this audit was to review waterway debris cleanup performed under a contract with VIP Splash. This review was to include VIP Splash’s compliance with the terms of their contract with the County for waterway debris removal services throughout Nassau County’s south shore line. The review was to also look at the monitoring of VIP Splash by both the Federal Emergency Management Agency (“FEMA”) and the monitor of VIP Splash contracted by the County. In addition, the auditors reviewed allegations of claim voucher misrepresentation and hauling of non-Superstorm Sandy related debris.

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<sup>1</sup> Contract No. CQEM13000003 between the Nassau County Office of Emergency Management and VIP Splash was approved by the Nassau County Legislature’s Rules Committee on November 18, 2013, as per Rules Resolution No. 34-2013.

<sup>2</sup> Please use this site to search any corporate filing with NY State (the direct link is too long to cite): [https://appext20.dos.ny.gov/corp\\_public/corpsearch.entity\\_search\\_entry](https://appext20.dos.ny.gov/corp_public/corpsearch.entity_search_entry)

<sup>3</sup> GEB’s program management services for disaster and debris monitoring were provided under Contract No. CFPW13000023.

## Executive Summary

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### **Key Findings:**

- A lack of cooperation by the Nassau County Office of Emergency Management (“OEM”) prohibited the auditors from reviewing the procurement process that led to awarding the waterway debris recovery contract to VIP Splash. The auditors were unable to review and evaluate the four proposals received by the County, and to determine if VIP Splash was the lowest proposer (in dollars) and identify what factors led them to be ranked with the highest score by the evaluators. Of the four contractors that submitted proposals, VIP Splash was established in 2013, while the other companies had 25 to 35 years of extensive experience.
- Errors and inconsistencies in VIP Splash’s reporting of amounts paid to its subcontractors in the claim voucher package submitted to the County were not detected by the Nassau County Department of Public Works (“DPW”). Further, VIP Splash did not respond to the auditors’ request for support for amounts paid to subcontractors. When the auditors’ reviewed VIP Splash’s records of payments to their subcontractors, a variance totaling over \$1 million was noted.
- A lack of adequate oversight by DPW allowed VIP Splash to ignore the Minority and Women Business Enterprise (“M/WBE”) requirements with respect to the contract amendments totaling \$8 million. There was no opportunity to ensure that there was active M/WBE subcontractor participation in the additional \$8 million of contract amendments.

### **Key Recommendations:**

- OEM should adopt “good government practices” including transparency of procurement procedures. OEM should make every effort to comply with requests from the County Comptroller’s Office.
- DPW should explain the failure of internal controls of their claim review with respect to the discrepancies found by the auditors during their review.
- DPW should ensure that vendors conform to contract M/WBE provisions.

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The matters covered in this report have been discussed with the officials of the Department of Public Works and VIP Splash Waterways Recovery Group, Inc. On May 30, 2017 we submitted a draft report to the Department of Public Works and VIP Splash Waterways Recovery Group, Inc. for their review. The Department of Public Works provided their response on June 9, 2017. VIP Splash Waterways Recovery Group, Inc. provided their response on June 8, 2017. Their responses and our follow up to their responses are included in Appendices V through VII at the end of this report.

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## Introduction

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### Background

VIP Splash Waterways Recovery Group, Inc. (“VIP Splash”) is a domestic business incorporated in New York State on June 24, 2013. At the commencement of the contract, the company was located in Island Park, NY operating out of a construction trailer, but relocated to office space in Bohemia, New York in late 2015.

In late October 2012, Superstorm Sandy caused great damage to the County’s waterways, resulting in extensive submerged and shoreline debris in south shore waters. On November 18, 2013, VIP Splash was awarded a contract with Nassau County for providing waterway debris removal services for the County along the south shore.<sup>4</sup> Although VIP Splash’s contract was with the Nassau County Office of Emergency Management (“OEM”), contract oversight was performed by the Nassau County Department of Public Works (“DPW”). This was due to the limited staffing at OEM, and because DPW staff had extensive experience with natural disaster repairs and storm debris cleanup following Hurricane Irene in 2011.

### VIP Splash Contract and Amendments

Exhibit I summarizes the amounts of the approved VIP Splash contract and amendments, which totaled \$12,558,539.

### **Exhibit I**

#### VIP Splash Waterways Contract and Amendments

<u>Description</u>	<u>Contract Term</u>	<u>Contract Number</u>	<u>Contract Amount</u>
Original Contract	10/01/13 - 09/30/14	CQEM13000003	\$ 4,000,000
Amendment No.1	01/24/14 - 01/24/15	CLPW14000015	8,171,897
Amendment No.2	01/24/14 - 09/01/15	CLPW16000007	386,642
<b>Total</b>			<b><u><u>\$ 12,558,539</u></u></b>

Source of Data: Nassau County Contracts and the County's general ledger, the Nassau Integrated Financial System (“NIFS”).

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<sup>4</sup> Contract No. CQEM13000003 was approved by the Nassau County Legislature’s Rules Committee on November 18, 2013, as per Rules Resolution No. 34-2013.

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The original contract for \$4 million was approved by the County Legislature on November 18, 2013.<sup>5</sup> The full amount of the project was anticipated to be approximately \$13 million and FEMA issued a \$13.5 million Project Worksheet (Subgrant application) detailing the scope of the project with an award date of February 26, 2014.<sup>6</sup> This FEMA worksheet can be found in Appendix II.

Amendment No. 1, for \$8,171,897 was approved by the County Legislature on May 5, 2014.<sup>7</sup> It allowed for the “additional removal, transport and disposal of waterway debris consistent with the pre-assessment identification report amount identified and certified eligible by the Federal Emergency Management Agency (FEMA)”.

Amendment No. 2 for \$386,642 was approved by the County Legislature on June 6, 2016. It represented the cost of additional removal of waterway debris deemed eligible for reimbursement by FEMA. It extended the project term to September 1, 2015 to allow for the payment of work already completed by VIP Splash.

Exhibit II below summarizes the claim vouchers submitted by VIP Splash to the County and the payment information.

### Exhibit II

#### VIP Splash Waterways Claim Vouchers Paid by Nassau County

<u>Claim Voucher</u>			<u>Amount</u>
<u>Reference</u>	<u>Period Covered</u>	<u>Date Paid</u>	<u>Paid</u>
VDPW14000093	10/01/13 - 10/18/13	03/05/14	\$ 1,598,100
VDPW14000610	03/01/14 - 04/29/14	07/02/14	673,557
VDPW14000879	04/30/14 - 05/22/14	09/22/14	882,380
VDPW14000880	05/23/14 - 06/18/14	08/06/14	822,423
VDPW14000881	06/19/14 - 06/27/14	09/22/14	1,308,442
VDPW14000895	06/28/14 - 07/09/14	09/22/14	1,029,616
VDPW14000956	07/10/14 - 07/24/14	09/22/14	1,191,817
VDPW14000957	07/25/14 - 08/21/14	09/22/14	1,363,630
VDPW14001112	08/22/14 - 09/26/14	12/15/14	1,377,860
VDPW14001375	09/27/14 - 11/14/14	12/24/14	1,266,842
VDPW14001612	11/15/14 - 12/12/14	01/23/15	651,642
VDPW16000280	12/12/14 - 06/07/16	01/02/17	386,380
<b>Total</b>			<b><u><u>\$ 12,552,689</u></u></b>

Source of Data: Claim Vouchers Submitted to the County by VIP Splash

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<sup>5</sup> Per a senior DPW official, the contract was entered at \$4 million in the County financial system, the amount of available cash in the FEMA fund in late 2013.

<sup>6</sup> A FEMA Project Worksheet is the form used to document the scope of work and cost estimate for a project.

<sup>7</sup> Nassau County Legislature, Rules Resolution No. 129-2014.

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### Waterways Debris Collection and Removal Process

VIP Splash hired and delegated various duties to eleven subcontractors to discover and dispose of debris from the County's waterways during the time period of October 2013 through December 2014.<sup>8</sup> VIP Splash also maintained or restored the waterways to an accepted ecological condition after removing debris. In total, the project resulted in the disposal of 15,470 cubic yards of debris and the collection of 163 boats/vessels, 6 vehicles and 5 household appliances (3 refrigerators, a water heater and a television). Exhibit III lists the eleven subcontractors and the roles each performed for VIP Splash.

### **Exhibit III**

#### VIP Splash Waterways Summary of Services Provided by Subcontractors

<u>Subcontractor Name</u>	<u>Services Provided</u>
Cameron Engineering	Prepared a comprehensive report of the debris field and provided expertise on how to remove the debris from the wetland without damaging the environment.
Operation Splash	Provided two bottomed boats, Carolina Skiff, and volunteers to remove small debris.
Northstar Marine Inc.	Provided two vessels to survey and to scan the entire waterway debris field.
Horton Dredge and Dock	Provided a landing craft, which is a specialized boat that is capable of moving equipment to the wetlands. The boat has a flat bottom and back tailgate to transport laborers as well as a winch to pick up debris from the water.
Hoffman Equipment	Provided heavy duty equipment such as a crane, excavators and bobcats for the project. No labor was provided.
McLean Construction Group	Provided skilled labor to operate the heavy duty equipment and well as providing expertise in removing debris from the waterways.
Puppa Group	Provided one man to operate some of the heavy duty equipment.
MTA Landscaping	Provided one boat captain for the debris removal project.
Ruben Treminio Landscaping	Provided and supervised a labor force to remove debris from the wetlands.
Noches Latinas Internacional	Company President acted as a Compliance Officer to ensure the County's Minority and Women Owned Business Enterprise (W/MBE) regulations were followed. They also checked the backgrounds of the labor force to ensure they were legal to work and paid an appropriate wage.
Liotta & Sons	Transported the debris via dumpsters from the removal site to their facility in Oceanside. In addition to working with VIP Splash, Liotta had a separate Purchase Order (a) with Nassau County for the debris removal project.

*Note (a): Liotta & Sons, PO #POPW14000479, \$432,000, to provide solid/liquid waste disposal services. Specifically the drop off of Superstorm Sandy debris removed from the South Shore.*

*Source: VIP Splash Claim Vouchers*

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<sup>8</sup> VIP Splash gathered and properly disposed of over 15,000 cubic yards of debris as calculated by both the Comptroller's Office and the Department of Public Works.

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### Summary of the Debris Collection and Removal Process

Debris Removal is the clearance, removal, and /or disposal of items such as trees, woody debris, sand, mud, silt, gravel, building components and contents, wreckage (including that produced during the conduct of emergency work), vehicles on public property, and personal property. For debris removal to be eligible for FEMA reimbursement, the work must be necessary to:

- eliminate an immediate threat to life, public health and safety;
  - eliminate immediate threats of significant damage to improved public or private property when the measures are cost effective.<sup>9</sup>
- The first step was to identify the areas in the waterways where the debris was located. In October 2013, VIP Splash contracted with Cameron Engineering (“Cameron”), a company familiar with the Long Island waterways, to perform this service. Project team members divided the waterways into six zones and individual quadrants.
- Northstar Marine, Inc. used Sidescan Sonar Technology to search each quadrant. This technology, along with aerial photography, helped identify the locations and types of debris that needed to be removed.
  - Cameron prepared a comprehensive report for VIP Splash that outlined where the debris was located.
- The next step was to remove the debris, which started in March 2014 and continued through the end of the year. The subcontractors who performed the debris removal and their specific roles were summarized in Exhibit III. Every crew that was sent out to remove debris consisted of two inspectors, one from FEMA and one from the oversight consultant hired by the County, Gibbons, Esposito and Boyce Engineers, P.C. (“GEB”), to monitor VIP Splash’s Waterway Debris Removal Project.

### GEB Contract to Monitor VIP Splash’s Waterway Debris Removal Project

In 2013, the County established a pool of disaster and debris monitoring consultants in order to ensure it could act quickly to protect the health and safety of residents if a disaster occurred. Following a Request for Proposal (“RFP”) process, GEB was chosen as one of the contractors in this pool.

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<sup>9</sup> *FEMA Public Assistance Policy Digest, FEMA 321/January 2008, page 31.*

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The County's contract<sup>10</sup> with GEB was approved by the County Legislature's Rules Committee on July 9, 2013.<sup>11</sup> The contract covered the period July 9, 2013 through December 31, 2016. GEB used one Project Manager, two Field Supervisors, eight Field Monitors, and two Data Managers for the monitoring project.

GEB's services included monitoring debris collection, debris management sites and drop-off sites, data reporting and related services. GEB reported to DPW on the progress of the project, and in May 2015 issued a final detailed report on the project's results. The contract was encumbered for \$500,000, and actual payments for services performed by GEB for the period March 2014 through May 2015 totaled \$385,478. Our review of GEB's role in this contract is covered in a separate report.

### Funds Paid to the County for the Waterways Debris Recovery Project (100% Federal/New York State Funding)

FEMA provided oversight and funding for the water debris recovery project. The waterways debris identified in the project pre-assessment was certified as eligible for FEMA reimbursement. Monies were also received from the U.S. Department of Housing and Urban Development through a Community Development Block Grant. Exhibit IV summarizes the federal funding received during the period January 2014 through February 2017 for the waterways debris recovery project.

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<sup>10</sup> GEB's program management services for disaster and debris monitoring were provided under Contract No. CFPW13000023.

<sup>11</sup> Contract No. CFPW13000023 was approved on July 9, 2013 by the Rules Committee per Rules Resolution No. 216-2013.

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### Exhibit IV

#### Federal Funds Received by Nassau County

<u>Date Posted</u>	<u>Document #</u>	<u>Source of Funds</u>	<u>Amount</u>
06/11/15	RCPW150000561	FEMA	\$ 9,230,668
06/16/15	RCEM150000022	FEMA	458
12/22/15	RCPW150001237	CDBG-DR*	1,025,630
12/29/15	RCEM150000040	CDBG-DR*	51
03/15/16	RCPW160000228	FEMA	361,538
03/16/16	RCEM160000005	FEMA	3
05/16/16	RCPW160000429	FEMA	2,305,554
05/16/16	RCEM160000007	FEMA	111
<b>Total Received</b>			<b>\$ 12,924,013</b>

Source of Data: Nassau County Office of Management and Budget and NIFS.

CDBG-DR - Community Development Block Grant - Disaster Recovery is a U.S. Department of Housing and Urban Development program.

FEMA - Federal Emergency Management Agency

*Note: Nassau County is still waiting for additional monies totalling \$38,271 from FEMA and \$300,609 from the NYS Governor's Office of Storm Recovery.*

#### Relationship of VIP Splash to Operation Splash and the Role of Operation Splash in the Debris Removal and Recovery Project

Operation Splash, Inc. is a non-profit (501)(c)(3) organization formed in 2005 with the mission of improving the quality of life on Long Island shores. It provides maritime ecology education to students from low and moderate income areas. The organization is located in Freeport, New York. Operation Splash was hired by VIP Splash as one of its subcontractors and provided equipment and volunteers to help remove small debris. The organization has also worked for several years with the Nassau County Office of Housing and Community Development under the federal Community Development Block Grant Program (“CDBG”)<sup>12</sup>.

“Splash” stands for “Stop Pollution, Littering and Save Harbors”. VIP Splash’s President and Secretary advised the auditors that Operation Splash was instrumental in encouraging their

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<sup>12</sup> The Community Development Block Grant Program (CDBG) is a U.S. Department of Housing and Urban Development (HUD) program that provides communities with resources to address community development needs. The program provides annual grants to states and local governments.

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participation in the waterways debris removal project, which led to the formation of VIP Splash. They noted that the “Splash” in VIP Splash was in honor of the non-profit organization. The VIP Splash principals are members of Operation Splash.<sup>13</sup>

### **Audit Scope, Objectives and Methodology**

The primary objectives of the audit were to review VIP Splash’s compliance with the terms of the contract for the removal of waterway debris from the County’s south shore and to assess any evidence related to the allegations made by two concerned constituents (see the section below on Relationships between VIP Splash and Its Subcontractors and Audit Finding (4)).

The audit covered the period from June 2013 through the date of this report.

The specific objectives included a review of:

- VIP Splash’s compliance with key contract terms and deliverables, such as adhering to the contract’s compliance with Minority and Women Owned Business Enterprise (M/WBE’s regulations;
- VIP Splash’s and DPW’s subcontractor approval process;
- payments VIP Splash made to its subcontractors;
- claim vouchers submitted by VIP Splash to the County, including subcontractor supporting documentation provided, such as sonar scanning reports and original “draft” load tickets prepared by GEB Field Monitors;
- affiliations among VIP Splash and any of its subcontractors;
- the allegations made by the two concerned constituents; and
- compliance by VIP Splash and each of its subcontractors with Nassau County’s Living Wage Law.<sup>14</sup>

We reviewed all claim vouchers submitted for payment to the County by VIP Splash and conducted interviews with employees of VIP Splash and County’s Department of Public Works. The allegations made by the two complainants were discussed with representatives of VIP Splash and DPW. The following scope limitations prevented a complete review of VIP Splash’s compliance with certain contract terms, VIP Splash’s subcontractor approval process and any of the subcontractor claims. The lack of cooperation by VIP Splash also hindered the ability to gather information in connection with the complainants’ allegations.

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<sup>13</sup> Operation Splash members pay a \$20 annual membership fee.

<sup>14</sup> Nassau County Living Wage Law, Nassau County Miscellaneous Laws, Title 57 (2007) as amended. The purpose of the Law is to ensure that employees of companies that do business with Nassau County earn the living wage, receive health benefits or a health benefit supplement, and that eligible employees receive compensated time off.

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### VIP Splash Scope Limitations

During the course of the audit, VIP Splash, Operation Splash and Ruben Treminio Landscaping were under investigation by various law enforcement agencies, including the U.S. Attorney's Eastern District of New York and the Nassau County District Attorney's Office. Due to these investigations, certain records requested by the auditors were unavailable for review because they were in the possession of the respective agencies. These limitations were as follows:

- **Certain parties were unavailable or refused to be interviewed.** Operation Splash, per correspondence with their attorney, declined to allow their officials to be interviewed by the audit team. Further, the FEMA employees who had monitored the debris removal project on a day-to-day basis, had left their employ with the agency.
- **Non-cooperation with auditors in obtaining supporting documentation.** VIP Splash did not provide the invoices and support requested by the auditors for the payments VIP Splash made to its subcontractors. Further, some of the VIP Splash subcontractors did not respond to requests from the auditors for payroll information needed to test their compliance with Nassau County's Living Wage Law.
- **Nassau County's Office of Emergency Management declined several requests to provide the auditors with the Requests for Proposals** (See Audit Finding (1)) that were issued for the Waterway Debris Removal Project, the vendor responses, the vendor evaluation documentation and the final documentation supporting the selection of VIP Splash.

Due to the unavailability of documents and/or individuals to be interviewed, the auditors were unable to perform the following procedures:

1. A review of the Request for Proposal ("RFP") process, and the rating of eligible vendors, could not be performed because OEM, with the concurrence of the Office of the County Attorney, declined to provide the documentation to the auditors. See Audit Finding (1) for additional details.
2. A review of the subcontractors' invoices submitted to VIP Splash could not be performed. As a result, the amounts that VIP Splash reported to the County as being paid to the subcontractors could not be verified.
3. The auditors were unable to interview anyone from Operation Splash regarding the work the organization performed during the waterways debris removal project, or to obtain supporting documentation for the payments it received from VIP Splash. The auditors were also unable to discuss Operation Splash's relationship and affiliation with VIP Splash.

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4. The auditors were unable to conduct interviews with the FEMA employees who had monitored the debris removal project on a day-to-day basis, as they had left their employment with the agency.
  
5. Compliance with Nassau County’s Living Wage Law could not be tested for the subcontractors that did not respond to requests for information or when the response was inadequate to verify their compliance.

### Issue Raised by Constituents - Relationships between VIP Splash and its Subcontractors

Constituents were concerned about potential issues due to relationships between VIP Splash and the 11 subcontractors listed in Exhibit III which were approved by DPW prior to delivering services to the County, as required. Exhibit V summarizes the related party affiliations identified between VIP Splash and three of its subcontractors during the contract time period. Although such relationships could lead to situations where the goals of the different organizations may be incompatible, or individuals could derive personal benefits from their actions or decisions, our review was restricted by scope limitations. The auditors were unable to compile a full list of those working for subcontractors under this contract.

### Exhibit V

#### VIP Splash and Its Subcontractors Summary of Related Party Roles

Name	VIP Splash	Subcontractors of VIP Splash		
		Operation Splash	McLean Construction	MTA Landscaping
Mr. M	<i>President</i>		<i>President</i>	
Mr. W		<i>President</i>		
Mrs. W	* <i>Principal</i>			
Mrs. A				<i>President</i>
Mr. A	* <i>Principal</i>	<i>Principal</i>		<i>Boat Captain</i>

\* Denotes husband and wife relationship

**Audit Finding/Scope Limitation**

**(1) Lack of Cooperation by OEM Prohibited a Review of the Procurement Process That Led to Awarding the Waterways Debris Recovery Contract to VIP Splash**

The Office of Emergency Management (OEM), after consulting with the Office of the County Attorney, declined to provide the auditors, with:

- the waterways debris removal Request for Proposals (“RFPs”), Both the original and re-issued,
- the responses from the four companies who submitted proposals, and
- the scoring documents prepared by the evaluation committee.

The lack of this documentation substantially hindered the auditors’ review of the circumstances surrounding the awarding of the waterways debris recovery contract to VIP Splash.

The auditors made multiple attempts to obtain the documents involved in the procurement process that ultimately led to the contract with VIP Splash. DPW was contacted first in November 2016 and provided an unofficial copy of an RFP (DPW was not sure it was the final document) and the Comptroller’s Vendor Claims unit provided VIP Splash’s response to the RFP. DPW referred the auditors to OEM for the official RFP and the other documents referred to above. OEM was contacted in early December 2016 and five other times in January 2017. The Commissioner of OEM responded by questioning the auditors need for the documents, claiming that according to Newsday, the audit had been concluded. This claim was incorrect because it referred to the County’s recent payment of a VIP Splash claim voucher by the Comptroller’s Office’s Vendor Claims Unit, which had nothing to do with the ongoing review by the Field Audit Unit. A Deputy County Attorney also responded by e-mail that the auditors' request for the RFP documents was considered to be outside the scope of the audit.

As a result, the auditors were unable to determine if the County's prescribed procurement procedures were followed, or to evaluate the rankings and qualifications of the four companies who offered proposals. See Appendix III for County RFP Procedures.

The auditors reviewed the unofficial copy of the RFP and VIP Splash’s response that was provided by DPW. The RFP was dated July 23, 2013. Auditors obtained the contract package from Vendor Claims and noted that eight vendors requested copies of the RFP and four submitted proposals by the August 5, 2013 due date.

The contract package also included information about the evaluation committee which consisted of the Director of the DPW Bureau of Equipment Inventory, the Director of Emergency Recovery, OEM, and a representative of the Town of Hempstead Waterway Conservation unit.

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## **Audit Findings/Scope Limitations**

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The ranking of the proposals included in the contract package is shown in Exhibit VI below and indicates that the highest average composite rating was for VIP Splash, and they were selected as the winning proposal. The Nassau County Legislature’s Rules Committee issued Rules Resolution No. 34-2013 on November 18, 2013, authorizing a personal services agreement between the County and VIP Splash.

### **Exhibit VI**

#### **Request For Proposal Scores**

<b><u>Name of Company</u></b>	<b><u>Score</u></b>
VIP Splash Waterways Recovery	70.10
Tully Environmental, Inc.	66.43
DRC Emergency Services, LLC	65.40
Galvin Brothers, Inc.	53.73

In researching the backgrounds of the companies identified in Exhibit VI, the auditors noted that although VIP Splash had been established in 2013, the other three companies which submitted proposals had extensive experience with disaster related projects, and had been in business for periods ranging from 25 to 35 years.

Without access to the original RFP, the reissued RFP, the proposals from the four responding companies and the evaluation committee’s analysis and rankings, the auditors were unable to:

- determine the cause of the reissuance of the RFP. VIP Splash officials and senior DPW staff did not know why the RFP had been reissued;
- determine if the RFP document provided by DPW was the actual RFP “reissued” on July 23, 2013. DPW did not know if the document they provided to the audit team was the final, published document;
- review and evaluate the four proposals received by the County in response to the reissued RFP. The auditors were only able to review one of the four proposals, the proposal furnished by VIP Splash. (The “unofficial” version of the July 23, 2013 RFP provided by DPW indicated that the evaluation criteria was based 30% on Contract Requirements and Proposed Solution, 20% on Vendor Profile, 20% on Related Experience, and 30% on the Cost of the Overall Project.);
- determine and compare the cost to the County identified in each of the four proposals;
- determine if VIP Splash was the lowest proposer (in dollars), and if not, why factors led them to be ranked highest by the evaluation committee;
- review any documents supporting the ranking of each proposal prepared by the evaluation committee;
- determine if the State and County’s prescribed RFP process were followed; and
- interview the evaluators and selectors of the winning proposal.

**Audit Recommendation:**

Nassau County should adopt “good government practices” including transparency of procurement procedures and cooperate with the County Comptroller’s audit staff.

**Audit Finding**

**(2) DPW Failed to Identify Errors and Inconsistencies in Subcontractor Payment Information Included in VIP Splash’s Claim Vouchers**

Errors and inconsistencies in VIP Splash’s reporting of amounts paid to its subcontractors in the claim voucher package submitted to the County were not detected by DPW. Further, VIP Splash did not respond to the auditor’s request for support for amounts paid to subcontractors.

As shown in Exhibit VII, our review found that the amounts reported by VIP Splash in the monthly claim vouchers submitted to DPW contained inconsistencies in the amounts paid to its subcontractors. In addition, VIP Splash’s response to the auditor’s request for the amounts and support for payments made by VIP Splash to its subcontractors resulted in a different total.

DPW provided VIP Splash with a form known as the “*Contractor’s, Subcontractor’s & Supplier’s and Consultant’s Subconsultant Monthly Report*”, that had to be submitted with each claim voucher sent to DPW. The top of the form includes space to enter the M/WBE goals and dollar amounts. The rest of the form is used to list each subcontractor and whether or not the subcontractor was M/WBE certified. The form also includes several columns to record, for each subcontractor, the amounts paid by VIP Splash for the *current month*, the *previous periods*, and the *total payments to date*. Our review found that the M/WBE goals and dollar amounts were never entered on the forms, nor was there any indication of a review by DPW.

Further, as shown in Exhibit VII:

- VIP Splash’s response to the audit request for payments made to subcontractors, is shown in Column 1 of Exhibit VII which shows a total of **\$4,724,865**.
- The sum of the *current month amounts* reported by VIP Splash as paid to each subcontractor on all claim vouchers totaled **\$3,560,831**, a difference of **\$1,164,034**.
- The sum of the total payments to date paid by VIP Splash to its subcontractors on the final claim totaled **\$4,239,310**.

**Audit Findings/Scope Limitations**

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**Exhibit VII**

**Summary and Analysis of Amounts Reported by VIP Splash of Payments  
Which VIP Splash Paid to Subcontractors**

<u>Name of Subcontractor</u>	<u>Response to Audit Request Amount Shown by VIP Splash as Total Paid to Subcontractors</u>	<u>* Sum of Monthly Amounts Reported by VIP Splash in Claim Vouchers</u>	<u>Total to Date Reported by VIP Splash in Final Claim Voucher</u>
NorthStar Marine Inc.	\$ 2,026,931	\$ 1,809,103	\$ 1,721,791
Ruben Treminio Landscaping	1,030,628	817,815	993,119
McLean Construction Group	466,562	290,552	440,427
Hoffman Equipment	256,870	1,304	238,074
Horton Dredge and Dock	214,377	175,577	201,177
Cameron Engineering	213,071	214,852	184,344
Liotta & Sons	171,079	157,335	170,070
MTA Landscaping	110,280	10,415	110,280
Puppa Group	106,448	13,298	106,448
Operation Splash	76,119	21,080	21,080
Noches Latinas Internacional	52,500	49,500	52,500
<b>Totals</b>	<b>\$ 4,724,865</b>	<b>\$ 3,560,831</b>	<b>\$ 4,239,310</b>

*\* These amounts were taken from the Contractor's Subcontractor & Supplier Reports that were submitted with each claim voucher and certified by VIP Splash's Corporate Secretary.*

A closer review of the subcontractor payments reported by VIP Splash on this form revealed the following:

- The sum of the *current month* and *prior payment* amounts did not always agree with the *payments to date* amount on the same form.
- Amounts from the prior claims were not always carried forward correctly to the current claim.
- Some subcontractors only appeared for the first time on the 11<sup>th</sup> claim voucher, and next to last claim voucher, and others were not listed on the 12<sup>th</sup> and final claim.

## Audit Findings/Scope Limitations

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The auditors met with representatives of VIP Splash who acknowledged that they made errors in filling out the monthly form submitted with each claim voucher.

### **Audit Recommendation(s):**

We recommend that DPW explain the failure of internal controls of their claim review with respect to the discrepancies found in the subcontractor payments reported in VIP Splash's claim vouchers.

### **Audit Finding**

#### **(3) Lack of Adequate Oversight by DPW Allowed VIP Splash to Ignore the M/WBE<sup>15</sup> Requirements With Respect to the Contract Amendments Totaling \$8 Million**

VIP Splash subcontracted with Noches Latinas International ("Noches Latina") to provide consulting services to ensure that VIP Splash complied with the M/WBE requirements set forth in Appendix EE of the contract. Our review revealed that neither VIP Splash nor DPW advised Noches Latina of the two contract amendments that increased the project amount from \$4 million to \$12 million. Due to the lack of oversight by DPW, Noches Latina was never given the opportunity to ensure there was active M/WBE subcontractor participation in the additional \$8,000,000.

Noches Latina provided oversight of VIP Splash's subcontractor hiring procedures and bargained on behalf of the W/MBEs to ensure they were given a fair portion of contract work and monies. Based on the \$4 million contract, Noches Latina arranged for minority participation wages of over \$850,000; which represented an M/WBE participation rate of 21.5%. As shown in Exhibit VIII, the increase in the contract amount to \$12 million automatically reduced the M/WBE participation rate to 7%. In New York State, the Governor has established goals for MBE/WBE participation in state-funded contracts. Since 2011, the Governor has raised the state-wide goal from 10%, to 20%, and in 2016 to 30%, which is the highest goal of any state in the nation.

In an email to the auditors, the M/WBE Compliance Officer stated that, "If I had known or if my contract included the entire amount, which should have been told to me by VIP Waterways Recovery, the additional \$8 million dollars from the original \$4 million should have represented at least an additional \$1.6 million dollars to local M/WBE's."

Exhibit VIII shows the MBE/WBE subcontractor participation in the VIP Splash contract based on the contract amounts and actual expenditures.

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<sup>15</sup> Minority and Women Owned Business Enterprise.

Limited Review of Nassau County's Contract for Waterway Debris Removal Services with VIP Splash Waterways Recovery Group, Inc.

**Exhibit VIII**

**Minority and Women Owned Enterprise Participation  
in the VIP Splash Contract**

	<u>Initial Contract</u>	<u>Final Amended Contract</u>	<u>Actual Amounts</u>
<b>Contract Amount</b>	\$ 4,000,000	\$ 12,000,000	\$ 12,558,539
<b>M/WBE Wages Paid *</b>	\$ 850,000	\$ 850,000	\$ 1,083,128
<b>M/WBE Participation Rate</b>	21.25%	7.08%	8.62%

\* Actual wages paid consists of \$1,030,628 to Ruben Treminio and \$52,500 to Noches Latina International.

The County’s contract with VIP Splash is subject to Title 53, Nassau County Local Law No. 14-2002 (“Local Law 14-2002”), entitled “Participation by Minority Group Members and Women in Nassau County Contracts”. These provisions are included in Appendix EE of the contract.<sup>16</sup>

Local Law 14-2002 requires submission of a utilization plan prior to the contract being awarded. The utilization plan includes the name, address and telephone number of each certified M/WBE that had committed to perform work in connection with the proposed contract, and any other enterprises with which VIP Splash intended to subcontract. The M/WBE Compliance Officer wrote the following, “I then filled out the proper utilization plan based on a percentage of over 20% participation of the original contract amount of \$4,000,000...The utilization plan is a formal required plan and is part of the compliance process. Since I was never allowed, invited or asked to attend meetings with the DPW Project Manager, I cannot tell you if the plan was submitted to or even approved by DPW”.

Further, Section 101 of Local Law No. 14-2002 requires that contractors “...make best efforts to solicit active participation by certified M/WBEs for the purpose of granting subcontracts. Contractors must submit a signed Best Efforts Checklist to the respective Department Head and obtain approval prior to issuing any subcontracts”.

In order for a vendor to be M/WBE certified, they must fill out a form issued by the Office of Minority Affairs (“Minority Affairs”) and be approved. Part of the responsibilities of the Compliance Officer, under Appendix EE, entails submitting M/WBE forms to Minority Affairs on behalf of subcontractors indirectly under contract with the County. A discussion with the president of Noches Latinas revealed that Minority Affairs had not responded to a submission of an M/WBE

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<sup>16</sup> Appendix EE of Contract No. CQEM13000003, titled Equal Employment Opportunities for Minorities and Women.  
Limited Review of Nassau County’s Contract for Waterway Debris Removal Services with VIP Splash Waterways Recovery Group, Inc.

## Audit Findings/Scope Limitations

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certification form for the main labor subcontractor, Ruben Treminio Landscaping. Minority Affairs did not provide needed information to Noches Latinas in order to establish if a subcontractor was M/WBE certified or not.

### **Audit Recommendation(s):**

We recommend that:

- a) DPW explain why its procedures failed to ensure that vendors conform to Title 53 during the course of a project and for any current County contracts applying the language in Appendix EE; and
- b) DPW identify the steps they will perform to ensure compliance with M/WBE in the future.

### **Audit Finding**

#### **(4) VIP Splash Provided Insufficient Supporting Documentation with its Claim Vouchers, Including a Lack of Actual Signatures and Inadequate Photo Documentation**

Claim vouchers submitted by VIP Splash to the County's DPW for the debris removal project should have been accompanied by proper load ticket documentation. The following issues were noted:

- the load tickets included only facsimile signatures, and
- the photo documentation did not always substantiate the contents of the dumpsters/loads.

Auditors reviewed all load ticket documents submitted by GEB on behalf of VIP Splash that were included with the claim vouchers submitted to the County by VIP Splash. The load tickets identified:

- the date and time of the pickup of debris,
- the location, including GPS coordinates, a description of the debris,
- its volume or size,
- a small color photograph of the debris,
- a description of the delivery site for the disposal of the debris, and
- frequently a small photo of the bin or dumpster used to convey the debris to the disposal site.

The auditors questioned GEB about the use of facsimile signatures for the Field Monitor and Drop-Off Site Monitors on the load tickets rather than actual signatures. GEB senior staff advised that the original or “draft” handwritten load tickets, prepared in the field by the Field Monitors and Drop-Off Site Monitors, were transcribed into PDF documents by the Project Manager, who scanned the photos into a program which embedded them in the corresponding load ticket. The

## **Audit Findings/Scope Limitations**

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auditors reviewed the original or “draft” handwritten load tickets which had been retained by GEB comparing the load tickets from the field (or debris collection boat) to those VIP Splash submitted to the County. All field or load tickets had original signatures. The transcribed load tickets included facsimile Field Monitor signatures as sign-offs for the debris pick up and drop off. The “finalized” load tickets were used to support the claim vouchers VIP Splash submitted to the County. Some of the facsimile Field Monitor signatures on the claims submitted for payment were not visible as the tickets had been copied so many times.

Upon review of all claim vouchers submitted under the waterways debris removal contract, it was noted that several load tickets contained insufficient photo documentation regarding dumpster identification, location, and status of capacity. See Appendix IV for photos depicting representative examples.

Dumpster identity, location, and capacity for several load tickets could not be determined. The auditors were advised by GEB’s officials and Project Manager that photos of the filled dumpster were often taken from the side, to ensure that the dumpster’s number was included in the photo. Photos were generally not taken from the top or from an elevation, to show the interior of the dumpster, which would have shown that the damaged vessel or objects pictured in the top photo of the load ticket was the same item in the dumpster delivered to the disposal site. Since vessels were paid for on an individual basis and not by volume, no estimation of the percentage volume of these containers was necessary.<sup>17</sup>

### **Audit Recommendation(s):**

We recommend that DPW take the necessary steps during the claim payment process to ensure that load tickets are fully completed and signatures are visible.

Photos of debris and/or vessels contained in dumpsters should be taken both from the side (to identify the dumpster) and from the top (to show the debris/damaged vessel/other items inside).

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<sup>17</sup> *GEB Engineers Nassau County Waterways Debris Recovery Project Final Report, May 2015, page 5.*

Limited Review of Nassau County’s Contract for Waterway Debris Removal Services with VIP Splash Waterways Recovery Group, Inc.

**Audit Finding**

**(5) Some Subcontractors Failed to Respond to Auditors' Request to Provide Evidence of their Compliance with the County's Living Wage Law or to Respond if the Law was Applicable to their Services**

On November 28, 2016, the auditors sent request letters to the eleven subcontractors asking them to provide documentation that they complied with the Nassau County Living Wage Law ("Law")<sup>18</sup>.

The following four companies responded and provided salary information that supported that their employees were paid above the Living Wage:

- Cameron Engineering
- Liotta & Sons
- McLean Construction Group
- Northstar Marine Inc.

The principal owners of the following two companies stated that they were the only ones to work on the project and were in compliance with the Law:

- Noches Latinas Internacional
- Puppa Group LLC

With respect to the other five companies:

- The auditors were advised that Hoffman Equipment did not provide any labor for the project.
- Operation Splash only rented and leased heavy duty equipment that was needed to clear and remove debris. The auditors received a letter from the attorney representing Operation Splash stating "that the small amount of services provided were NOT provided by employees of Operation Splash, Inc. but by independent contractors and/or other vendors.
- Representatives from Ruben Treminio Landscaping met with auditors and stated that all employees were paid at least \$18 per hour. However, they could not supply the payroll records as they are currently being held at the Nassau County District Attorney's Office. To date, the auditors have not been able to review these records.
- No response was received from Horton Dredge and Dock and MTA Landscaping. As shown in Exhibit II, Horton Dredge and Dock provided specialized boats for the project but without their response we cannot confirm if they provided any labor. MTA Landscaping is believed to have only provided one boat captain.

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<sup>18</sup> Title 57 of the Nassau County Living Wage Law states "County subcontractor means any entity or person that is engaged by a county contractor to assist in performing any of the services to be rendered pursuant to a county service contract."

Limited Review of Nassau County's Contract for Waterway Debris Removal Services with VIP Splash Waterways Recovery Group, Inc.

## **Audit Findings/Scope Limitations**

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### **Audit Recommendation(s):**

We recommend that consideration be given to not offering future contractual agreements to vendors who failed to reply to the Comptroller's Office's request for documentation to evidence their compliance with the Living Wage Law. This recommendation excludes Ruben Treminio Landscaping, which was unable to comply due to the circumstances described in the Finding above.

## Appendix I – VIP Splash Claims Summary

### VIP Splash Claims: Summary of Charges/Payments

Claim Number (VDPW)	Period Covered	Date Paid	Sonar Scanning	Decommissioned Boats							Total Amount	
				Debris	Less than 26'	Between 26' & 40'	Between 40' & 100'	Vehicles	Household Items	Hazardous Materials		
1400093	10/01/13 - 10/18/13	03/05/14	\$ 1,598,100	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,598,100
14000610	03/01/14 - 04/29/14	07/02/14	-	472,557	195,000				6,000			673,557
14000879	04/30/14 - 05/22/14	09/22/14	-	754,380		18,000	110,000					882,380
14000880	05/23/14 - 06/18/14	08/06/14	-	822,423								822,423
14000881	06/19/14 - 06/27/14	09/22/14	-	1,103,242	187,200	18,000						1,308,442
14000895	06/28/14 - 07/09/14	09/22/14	-	1,029,616								1,029,616
14000956	07/10/14 - 07/24/14	09/22/14	-	963,967	171,600	54,000				1,400	850	1,191,817
14000957	07/25/14 - 08/21/14	09/22/14	-	1,219,880	140,400				3,000	350		1,363,630
14001112	08/22/14 - 09/26/14	12/15/14	-	1,143,860	156,000	72,000			6,000			1,377,860
14001375	09/27/14 - 11/14/14	12/24/14	-	1,008,642	109,200	36,000	110,000		3,000			1,266,842
14001612	11/15/14 - 12/12/14	01/23/15	-	651,642								651,642
16000280	12/12/14 - 06/07/16	01/02/17	-	19,180	148,200	54,000	165,000					386,380
<b>Totals</b>			<u>\$ 1,598,100</u>	<u>\$ 9,189,389</u>	<u>\$ 1,107,600</u>	<u>\$ 252,000</u>	<u>\$ 385,000</u>	<u>\$ 18,000</u>	<u>\$ 1,750</u>	<u>\$ 850</u>		<u>\$12,552,689</u>
<b>Percentage</b>			12.73%	73.21%	8.82%	2.01%	3.07%	0.14%	0.01%	0.01%		100.00%

Items collected: 15,470 Cubic Yards of Debris, 163 Boats (142 less than 26', 14 between 26' and 40', 7 over 40'), 5 Automobiles, 1 Dump Truck, 3 Refrigerators, 1 Water Heater, 1 Television and a 55 Gallon Drum Containing Unknown Fluid

Source of Data: VIP Splash Claim Vouchers

## Appendix II – FEMA Worksheet

2/23/2015

Federal Emergency Management Agency E-Grants

<b>PA-02-NY-4085-PW-03531(1)</b>	
Applicant Name: NASSAU (COUNTY)	Application Title: 9905955 Nassau County Water Way Debris Removal
Period of Performance Start: 10-30-2012	Period of Performance End: 12-31-2014

Bundle Reference # (Amendment #) PA-02-NY-4085-State-0158(158)	Date Awarded 02-26-2014
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### Subgrant Application - FEMA Form 90-91

**Note:** The Effective Cost Share for this application is 90%

FEDERAL EMERGENCY MANAGEMENT AGENCY PROJECT WORKSHEET				
DISASTER FEMA 4085 - DR -NY	PROJECT NO.	PA ID NO. 059-99059-00	DATE 01-07-2014	CATEGORY A
APPLICANT: NASSAU (COUNTY)			WORK COMPLETE AS OF: 12-20-2013 : 95 %	
Site 1 of 1				
DAMAGED FACILITY: Nassau County Waterway Dabris Removal			COUNTY: Nassau	
LOCATION:  PA-02-NY-4085-PW-03531(0): Nassau County Wide			LATITUDE: 40.73801	LONGITUDE: -73.63967
DAMAGE DESCRIPTION AND DIMENSIONS:  PA-02-NY-4085-PW-03531(0):  During the declared incident period of October 27, 2013 through November 8, 2012, Hurricane Sandy produced high sustaining winds, storm surge, heavy rains and severe flooding resulting in damages throughout Nassau County. An estimated 18,385CY of disaster-related vegetative and C & D debris and approximately one hundred twelve (112) abandoned/derelict vessels were deposited in seven (7) local government owned waterways throughout Nassau County. The local government waterways include; Town of Hempstead, Town of Oyster Bay, City of Long Beach, Village of Atlantic Beach, Village of Cedarhurst, Village of Freeport, and Village of Island Park. In order to eliminate an immediate threat to lives, public health and safety, and improved public property emergency work is necessary to remove the vegetative and C & D debris, and abandoned/derelict vessels. The Nassau County main office building is located at 1550 Franklin Avenue, Mineola, NY 11501 (GPS 40.73801, -73.63967) which is being utilized as the central address location in this PW.				
SCOPE OF WORK:  PA-02-NY-4085-PW-03531(0):  --Work to be Completed: The subgrantee proposes to utilize contract services (VIP Splash Waterways Recovery Group, Inc.) to remove an estimated 18,385CY of disaster-related vegetative and C & D debris and approximately one hundred twelve (112) abandoned/derelict vessels that were deposited in seven (7) local government owned waterways throughout Nassau County. The waterways include; Town of Hempstead, Town of Oyster Bay, City of Long Beach, Village of Atlantic Beach, Village of Cedarhurst, Village of Freeport, and Village of Island Park.  --Note: This project will include the removal of vegetative, C&D, vessels, and other types of disaster-related debris in accordance with				

<https://source.fema.gov/emmie/sf0091Load.do?page=view&vo.reviewId=&topTitle=basicHeader&vo.internalWorkInstanceid=&vo.internalGoBackUrl=&ptActio...>

## Appendix II – FEMA Worksheet

2/23/2015

Federal Emergency Management Agency E-Grants

FEMA policy 9523.5. Nassau County will be the subgrantee for the project however the work will be completed for numerous cities, towns, and villages within the County by utilization of Memorandum of Understandings (MOU's). All signed MOU's are attached.

Nassau County completed the procurement process and awarded the contract to VIP Splash Waterways Recovery Group, Inc. All sites that warrant waterway debris removal have been determined by Local governments and Nassau County in consultation with FEMA and State Debris Team representatives. In addition, the contractor performed and completed side scan sonar assessment for Zones 1 thru 6 with FEMA and State Debris Team representatives present to validate eligible debris.

Listed below are six (6) zones in which the floating and shoreline debris and sunken debris target locations have been separated per zone;

--Floating and Shoreline Debris

ZONE 1: Atlantic Beach Bridge to Duck Point; 489CY

ZONE 2: Duck Point to Long Island Rail Road Trestle; 2,766CY

ZONE 3: Long Island Rail Road Trestle to Baldwin Harbor/Lido Beach; 2,366CY

ZONE 4: Baldwin Harbor/Lido Beach to Meadowbrook Parkway; 1,871CY

ZONE 5: Meadowbrook Parkway to Wantagh Parkway; 5,252CY

ZONE 6: Wantagh Parkway to Tobay Beach; 1,926CY

--Sunken Debris Targets (14,907 acres scanned)

ZONE 1: Atlantic Beach Bridge to Duck Point; a total of 500 acres scanned, 198CY debris

ZONE 2: Duck Point to Long Island Rail Road Trestle; A total of 1,188 acres scanned, 538CY debris, twenty one (21) vessels < 26LF

ZONE 3: Long Island Rail Road Trestle to Baldwin Harbor/Lido Beach; A total of 1,751 acres scanned, 586CY debris, twenty (20) vessels <26LF, one (1) vessel > 26LF to 40LF

ZONE 4: Baldwin Harbor/Lido Beach to Meadowbrook Parkway; A total of 2,701 acres scanned, 767CY, twenty five (25) vessels < 26LF, two (2) vessels 26LF to 40LF, one (1) vessel 40LF to 100LF

ZONE 5: Meadowbrook Parkway to Wantagh Parkway; A total of 3,354 acres scanned, 1,136CY, twenty (20) vessels < 26LF, one (1) vessel 26LF to 40LF

ZONE 6: Wantagh Parkway to Tobay Beach; A total of 5,413 acres scanned, 491CY, seventeen (17) vessels < 26LF, three (3) vessels 26LF to 40LF, one (1) vessel 40LF to 100LF

Vessels recovered under this Contract shall be managed in compliance with all applicable laws, procedures, and guidance of the County and/or State agencies.

--Prices used below are the subgrantees actual low bid prices for the contractor VIP Splash after the completion their procurement process.

1. Side Scan Sonar: \$100 per acre x 14,907 acres = \$1,490,700.00

2. Removal, loading, sorting, and transporting of vegetative and C & D debris to final disposal (< 50 miles) \$598.00 per CY x 18,385CY = \$10,994,230.00

3. Removal to final disposal of Vessels less than 26 LF: \$7,800.00 x 103 vessels = \$803,400.00

4. Removal to final disposal of Vessels 26 LF to 40 LF: \$18,000.00 EA x 7 = \$126,000.00

5. Removal to final disposal of Vessels 40 LF to 100 LF: \$55,000.00 EA x 2 = \$110,000.00

--Total estimated cost = \$13,524,330.00

--No quantities were established for the remainder items listed below, however are included in the contract proposal if necessary;

6. Removal to final disposal of Vessels greater than 100 LF \$85,000.00 EA

7. Debris Transportation to Final Disposal site per mile above 50 miles via barge \$240.00 per mile

8. Debris Transportation to Final Disposal site per mile above 50 miles via truck \$18.50 per mile

9. Removal to final disposal of White Goods and appliances: \$350.00 EA

10. Removal to final disposal of Sheet Metal: \$598.00 per CY

11. Removal to final disposal of Hazardous Materials: \$850.00 per 55Gal Drum

12. Removal to final disposal of E Waste: \$75.00 EA

<https://source.fema.gov/emm/lets/5081Load.do?page=view&vo.reviewId=&topTitle=basicHeader&vo.internalWorkInstanceId=&vo.internalGoBackUrl=&rpActio...>

## Appendix II – FEMA Worksheet

2/23/2015

Federal Emergency Management Agency E-Grants

13. Removal to final disposal of Vehicles: \$3,000.00

--The subgrantee proposes to utilize two (2) temporary staging locations including; Nassau County Park at Bay Park, NY (GPS 40.62594, -73.66242) and Village of Freeport Parking Lot/Boat Ramp Albany Ave, Freeport, NY (GPS 40.64812, -73.56786). Both sites consist of asphalt pavement and the contractor will off-load the debris onto roll-off containers and transport to the NYSDEC permitted final disposal sites. The proposed final disposal sites include; Liotta Bros Recycling Corp. 4014 Daly Blvd. Oceanside, NY 11572 (NYSDEC Permit #30W08R) and 110 Sand Company 136 Spanoli Road, Melville, NY 11747 (NYSDEC Permit #1-4726-00490/00011).

--Force Account Monitoring: The subgrantee will be utilizing Nassau County personnel to monitor contract services performing the debris removal operations and those costs will be included in an amended/ revised version PW or, during Closeout Final Inspection.

--Direct Administrative Costs: The subgrantee will be requesting reimbursement of Direct Administrative Costs (DAC) that is directly chargeable to this specific project. Associated eligible work is related to administration of this PA project only and in accordance with 44 CFR, Section 13.22. These costs are treated consistently and uniformly as direct costs in all federal awards and other subgrantee activities which are not included in any approved indirect cost rates. At the time of this project formulation, DAC costs were not ready for submittal. Therefore, costs will be included in a revised/amended version PW.

--Note: Nassau County has submitted a request for a Time Extension to the State beyond the one year date of the declared disaster to complete the waterway debris removal work. The Time Extension request has been submitted to FEMA for final approval, but has not been granted at the time of this subgrant application formulation. FEMA Closeout Specialist should request Time Extension approval letter documentation to verify compliance.

--Environmental:

The work being performed in this project will not include sediment removal or other types of dredging and all debris must have been generated as a direct result of Hurricane Sandy to be eligible for FEMA funding. All debris including; vessels and hazardous materials must be disposed at a permitted disposal facility authorized by the NYSDEC. All vegetative debris must be disposed within the Asian Longhorned Beetle (ALB) compliance method. All vessels must be checked for hazardous fluids and must be deemed decommissioned prior to disposal.

--Note: Although both locations reside within AE Zones, for this type of work temporary staging is exempt from EO 11988 Floodplain Management review. However, because of the close proximity of water bodies to these staging areas the State's Department of Environmental Conservation will request that the roll-off containers be surrounded with hay bales or some other type of barrier to minimize the run off from containers entering back into the water.

-- "Funds obligated pursuant to this Project Worksheet (PW) are subject to expenditure time limits imposed under Section 904(c) of the Disaster Relief Appropriations Act, 2013, P. L. 113-2, and are required to be expended by the grantee or sub-grantee (paid as an outlay of money in furtherance of the grant purpose) within 730 days of the date FEMA obligates the funds for this PW in its financial system. Any funds not expended by the grantee or sub-grantee within 730 days will be de-obligated by FEMA within 30 days from the end of this 730 day period and any funds withdrawn and not expended must be returned to FEMA within 30 days from the end of the 730 day period, ceasing FEMA's financial liability."

Current Version:

PA-02-NY-4085-PW-03531(2):

--Work Completed:

This amendment PW #03531 (V2) is being formulated to capture both scope alignment and scope costs for the Nassau County Wide Marine Debris Removal. The original Project Worksheet was written as an estimated PW in the amount of \$13,524,330.00. This version will deduct -\$700,378.51 and show actual costs of \$12,823,951.49 Nassau County utilized contract services and Direct Administrative Costs (DAC) in the removal and final disposition of an estimated 2,729.36TN 10,917.44CY of disaster-related vegetative, Construction & Demolition (C & D) debris and approximately one hundred twelve (112) abandoned/derelict vessels that were deposited in seven (7) local government owned waterways throughout Nassau County. The waterways include; Town of Hempstead, Town of Oyster Bay, City of Long Beach, Village of Atlantic Beach, Village of Cedarhurst, Village of Freeport, and Village of Island Park. All sites that warrant waterway debris removal have been determined by Local governments and Nassau County in consultation with FEMA and State Debris Team representatives. The PW Cost Estimate will show deductions of all estimated costs. The costs will then be replaced with actuals.

Note: Note Per FEMA 329/ September 2010 Estimating Guide Page 13 mixed debris tons can be converted into Cubic Yards by using a multiplier of 4. Therefore multiplying 2,774.82 TN by the mixed debris multiplier of 4 you get a total of 11,098.48CY.

--Note: This project included the removal of vegetative, C&D, vessels, and other types of disaster-related debris in accordance with FEMA policy 9523.5. Nassau County will be the sub-grantee for the project however the work will be completed for numerous cities, towns, and villages within the County by utilization of Memorandum of Understandings (MOU's)

--Contract Costs

-- From 01/02/2013 to 10/24/2013 Nassau County utilized three (3) contractors Gibson Esposito & Boyce (GEB), VIP Splash, and Liotta & Sons Inc. based on properly procured contracts to remove vegetative, C&D, floating and shoreline debris, sunken vessels, and other types of disaster-related debris. In order to eliminate an immediate threat to lives, public health/safety, or improved public property, emergency work was necessary to remove the disaster-related debris.

<https://source.fema.gov/ammis/sf8091/Load.do?page=view&vo.reviewId=&npTitle=basicHeader&vo.internalWorkInstanceId=&vo.internalGoBackUrl=&ptActio...>

## Appendix II – FEMA Worksheet

2/23/2015

Federal Emergency Management Agency E-Grants

--The following is a breakdown of contract costs incurred by Nassau County:

### --Side Scan Sonar Methodology

VIP Splash used side scan sonar to identify type and quantities of eligible submerged debris. As a part of the side scan survey assessment, the boundary of Nassau County was divided into 6 Zones. Each zone was divided into several quadrants. Side scan survey operations began on October 1st and continued until October 18th. Two vessels, each with an Edge Tec side scan Sonar conducted survey operations and completed Zones 1 through 6. Each vessel (Boat A and Boat B) traversed the water bodies collecting side scan data at a swath width of 50 meters. Both High and Low Frequencies was collected, processed and presented in report format as well as electronic files.

Side Scan Sonar Cost \$1,598,100.00

--From 02/12/2014 to 12/2014 Nassau County contracted VIP Splash based on a price per unit cost to provided labor, equipment including cranes, barges, towboats, divers, rigging and all support material and personnel for the safe removal of eligible submerged debris including vessels, vehicles, vegetative and C&D debris deposited by Hurricane Sandy within the waterways throughout Nassau County. Once the debris was removed from the waterways, it was then staged at Cow Meadow Park located at S Main Street Freeport, NY 11520 GPS: 40.638510° -73.573980° for the removal of chemicals (oil, gas, transmission fluid, and other containments), e-waste and mechanical components.

Total Debris Removal Cost- \$10,568,208.80

--From 03/17/2014 to 12/06/2014 Nassau County contracted with Gibson Esposito & Boyce P.C (GEB) based on an hourly rate to monitor and track all debris removal operations. GEB provided Project managers, Field Supervisors, Field Monitors and Data Managers to monitoring debris collection, Temporary Debris Management Sites (TDMs), as well as data reporting. GEB Monitors accompanied aquatic debris contract removal crews to ensure all eligible debris removed from the Nassau County waterways was documented in accordance with the Stafford Act and Federal Emergency Management Administration (FEMA) policies and guidelines. GEB Monitors used hand held electronic devices to take photos, document, geo-tag, quantify, and record all debris removed from Nassau County Waterway's. Monitors were also tasked with staging site duties such as hazardous fluid and e-waste removal oversight, coordination of loaded and unloaded roll off containers, and ticket writing for disposal of loaded containers for disposal. All debris removal crews had monitors with them throughout the duration of the debris removal operation. The following is a breakdown of rates for each GEB consultant.

Project Manager- \$60.00 Hr.

Field Supervisor- \$50.00 Hr.

Field Monitor- \$40.00 Hr.

Data Manager- \$15.00 Hr.

Monitors working in the field were reimbursed .55 cents a mile for use of their personal vehicle for debris monitoring operations. GEB totaled 6,137.50 miles at .55cents= \$3,375.63

Total Contract Monitoring Cost \$378,181.26

--From 04/16/2014 thru 12/16/2014 The Sub-grantee utilized Liotta Brothers Inc. for disposal of approximately 2,729.36TN of mixed debris deposited in roll off containers including vegetative, C&D and other types of disaster-related debris that was removed from Nassau County Waterways at a cost of \$72.00TN. This cost per ton remained constant throughout the debris operations. Total Tons- 2,774.62 x \$72.00TN = \$199,772.64. All debris was hauled to Liotta Brothers Inc. located at 4014 Daly Boulevard, Oceanside, NY 11572 DEC# 30W08 GPS: 40.617323°, -73.638946°

Total Contract Disposal Cost \$199,772.64

**DIRECT ADMINISTRATION COSTS:** The sub-grantee requested Direct Administrative Costs (DAC) in the amount of \$79,690.79 which is directly chargeable to this specific project. Associated eligible work is related administration of the PA project only and in accordance with 44 CFR 13.22. These costs are treated consistently and uniformly as direct costs in all federal awards and other sub-grantee activities and are not included in any approved indirect cost rates

From 06/14/2014 Nassau County Utilized CDM Smith Consulting to provide 6 employees 210.5 Hrs. for a total of \$4,367.04

From 06/24/2014 to 01/20/2015 Nassau County utilized 3PL Consulting who supplied 11 employees 584Hrs for a total of \$75,303.75.

Total DAC Cost \$79,690.79

**RECORD RETENTION:** Complete records and cost documents for all approved work must be maintained for at least 3 years from the date the last project was completed or from the date final payment was received, whichever is later. Applicant is responsible for retention of all documentation associated with this project.

**SUPPORTING DOCUMENTATION:** 20% or more of the documentation to support this project has been reviewed and verified by the Applicant and Project Specialist for eligibility and correctness.

**PROCUREMENT:** The applicant is required to adhere to State Government Procurement rules and regulations and maintain adequate records to support the basis for all purchasing of goods and materials and contracting services for projects approved under the Public Assistance program, as stated in 44 CFR 13.36. The applicant has advised they have/will follow their normal procurement procedures.

**PERMITS:** The PA Project Specialist has advised the Applicant that it is their responsibility to obtain all applicable local, state and federal permits prior to any construction or debris disposal activity referenced on this project. Applicant has also been advised that the lack of obtaining and maintaining these documents may jeopardize funding.

**INSURANCE:** The applicant is aware that all projects are subject to an insurance review as stated in 44 C.F.R. Sections 206.252 and

<https://sources.fema.gov/femnie/9081Load.do?page=view&vo.reviewId=&stopTitle=basicHeader&vo.internalWorkInstanceId=&vo.internalGoBackUrl=&reportAction=>

## Appendix II – FEMA Worksheet

2/23/2015

Federal Emergency Management Agency E-Grants

206.253. If applicable an insurance determination will be made either as anticipated proceeds or actual proceeds in accordance with the applicant's insurance policy that may affect the total amount of the project.

The overtime and straight time for the debris was calculated from the applicant's scanned and attached spreadsheet.

**HAZARD MITIGATION MEASURES:** This project worksheet is for emergency work only, therefore mitigation is not eligible.

Funds obligated pursuant to this Project Worksheet (PW) are subject to expenditure time limits imposed under Section 904(c) of the Disaster Relief Appropriations Act, 2013, P. L. 113-2, and are required to be expended by the grantee or sub-grantee (paid as an outlay of money in furtherance of the grant purpose) within 730 days of the date FEMA obligates the funds for this PW in its financial system. Any funds not expended by the grantee or sub-grantee within 730 days will be de-obligated by FEMA within 30 days from the end of this 730 day period and any funds withdrawn and not expended must be returned to FEMA within 30 days from the end of the 730 day period, ceasing FEMA's financial liability.

**-APPEALS:** Applicant must file appeal with the State within 60 days of receipt of a notice of the action that is being appealed, and must provide justification to support the appeal.

Does the Scope of Work change the pre-disaster conditions at the site?    Yes    No		Special Considerations included?    Yes    No			
Hazard Mitigation proposal included?    Yes    No		Is there insurance coverage on this facility?    Yes    No			
PROJECT COST					
ITEM	CODE	NARRATIVE	QUANTITY/UNIT	UNIT PRICE	COST
		*** Version 0 ***			
		Work To Be Completed			
1	9003	Contract Costs	1/LS	\$ 13,524,330.00	\$ 13,524,330.00
2	9901	Direct Administrative Costs (Subgrantee)	1/LS	\$ 0.00	\$ 0.00
		*** Version 1 ***			
		Work Completed			
3	9003	Contract Costs	1/LS	\$ 12,744,260.70	\$ 12,744,260.70
4	9901	Direct Administrative Costs (Subgrantee)	1/LS	\$ 79,690.79	\$ 79,690.79
		Other			
5	9999	Deduct: Estimated Cost	1/LS	\$ -13,524,330.00	\$ -13,524,330.00
				<b>TOTAL COST</b>	<b>\$ 12,823,951.49</b>
PREPARED BY Russell Towndrow			TITLE Project Specialist	SIGNATURE	
APPLICANT REP. Christopher Nolan			TITLE Manager of Fiscal Projects	SIGNATURE	

## **Appendix III – Summary of RFP Information**

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RFPs and their supporting documentation, including all amendments, proposals, and evaluation committee documents, should be maintained on file and available for review by County Officials and their designated representatives.

**According to the Nassau County Procurement Policy/Procedure Countywide Policy<sup>19</sup>**, the following information should be communicated within the RFP and any amendments to the RFP:

- 1) What should be included in an RFP?
  - a) Purpose of the RFP - general description of services
  - b) Contact Person and Rules
  - c) Timetable of dates relevant to the proposal submission
  - d) Specifications and detailed description of the Scope of Work to be performed
  - e) Evaluation criteria used to judge the RFP submissions (Price, Technical Excellence, Experience, Personnel Qualifications, and Past Performance)
  
- 2) Publishing and Advertising the RFP Specifications:
  - a) Title and RFP number
  - b) Name of the procuring department and contact name if there are questions
  - c) Description of what is being purchased
  - d) Eligibility requirements along with deadline and place for submitting proposals
  - e) Advertise in a newspaper of general circulation (i.e. Newsday) or a website or publication of an organization of vendors of the service
  
- 3) Amendments to the RFP:
  - a) RFPs may be amended at any time prior to the deadline for submitting proposals
  - b) Any party that has requested the RFP shall promptly be notified in writing or by email about any amendment to the RFP
  - c) Amendments shall be published in the same manner as the original RFP
  - d) Parties receiving an amendment shall be required to send a written acknowledgment of receipt

New York State has issued similar guidelines for RFPs, including how to evaluate and score the submitted proposals.<sup>20</sup>

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<sup>19</sup> Office of the County Executive Policy Number CE-01, dated September 20, 2004.

<sup>20</sup> New York State Procurement Guidelines, May 2014.

**Appendix IV - Example of Insufficient Photo Documentation of Vessels & Debris**

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**Photo of Load Pick Up**



**LT: 0402-3 on 4/2/14**

**Photo of Load Drop Off**



**LT: 0402-3 on 4/16/14**



**LT: 0408-1 on 4/8/14**



**LT: 0408-1 on 4/16/14**

**Appendix IV - Example of Insufficient Photo Documentation of Vessels & Debris**

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**Photo of Load Pick Up**



**LT: 0516-2 on 5/19/14**

**Photo of Load Drop Off**



**LT: 0516-2 on 5/21/14**



**LT: 0609-6 on 6/10/14**



**LT: 0609-6 on 6/10/14**

## Appendix V - VIP Splash Response

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MURRAY & McCANN  
ATTORNEYS AT LAW  
100 MERRICK ROAD, SUITE 514 WEST  
ROCKVILLE CENTRE, NEW YORK 11570

JOSEPH D. McCANN  
FRANCIS J. MURRAY

516-766-3131  
TELECOPIER: 516-678-4578  
IN NEW YORK CITY: 212-921-9500

June 8, 2017

### VIA FEDERAL EXPRESS

Honorable George Maragos  
Comptroller, Nassau County  
240 Old Country Road  
Mineola, New York 11501

RE: Response of VIP Splash Waterways Recovery Group, Inc.  
To Draft Report re Limited Review of Nassau County  
Contract for Waterway Debris Recovery Services

Dear Comptroller Maragos:

Reference is made to your letter dated May 30, 2017 addressed to VIP Splash Waterways Recovery Group, Inc. ("VIP Splash") concerning the above subject matter.

On behalf of VIP Splash, we are forwarding its formal response to the Findings and Recommendations contained in the Draft Report which accompanied your letter.

VIP Splash, its principals and staff wish to express their appreciation to you and your staff for the professionalism, civility and respect exhibited throughout the audit process pertaining to the subject Contract.

Respectfully submitted,

  
Francis J. Murray

Enclosure as stated

RECEIVED  
JUN 17 6-11 PM '17  
NASSAU COUNTY

## Appendix V - VIP Splash Response

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### VIP Splash Waterways Recovery Group, Inc. (“VIP Splash”) Response to Nassau County Office of the Comptroller Findings and Recommendations Contained in Draft Report Re Limited Review of Nassau County’s Contract For Waterway Debris Removal Services

#### Audit Finding No. 1/Scope Limitation

“Lack of Cooperation by OEM Prohibited a Review of the Procurement Process that Led to Awarding the Waterways Debris Recovery Contract to VIP Splash.”

#### VIP Splash Response to Audit Finding No. 1

VIP has no comment on inter-agency matters within Nassau County government.

#### Audit Recommendation Re Audit Finding No. 1

“Nassau County should adopt “good government practices” including transparency of procurement procedures and cooperate with the County Comptroller’s audit staff.”

#### VIP Splash Response to Audit Recommendation Re Audit Finding No. 1

VIP has no comment on inter-agency matters within Nassau County government.

#### Audit Finding No. 2

“DPW Failed to Identify Errors and Inconsistencies in Subcontractor Payment Information Included in VIP Splash’s Claim Vouchers.”

#### VIP Splash Response to Audit Finding No. 2

VIP has no comment on inter-agency matters within Nassau County government.

#### Audit Recommendation Re Audit Finding No. 2

“We recommend that DPW explain the failure of internal controls of their claim review with respect to the discrepancies found in the subcontractor payments reported in VIP Splash’s claim vouchers.”

#### VIP Splash Response to Audit Recommendation No. 2

VIP has no comment on inter-agency matters within Nassau County government. The Audit/Limited Review does not dispute the accuracy of any of the amounts paid to VIP Splash based upon the vouchers and supporting documentation submitted to Nassau County for services rendered under the subject contract.

#### Audit Finding No. 3

“Lack of Adequate Oversight by DPW Allowed VIP Splash to Ignore the M/WBE Requirements With Respect to the Contract Amendments Totaling \$8 Million.”

VIP SPLASH WATERWAYS RECOVERY GROUP

### VIP Splash Response to Audit Finding No. 3

VIP Splash has no comment on inter-agency matters within Nassau County government. VIP Splash disputes the characterization that it ignored “the M/WBE Requirements with respect to the Contract Amendments totaling \$8 Million.” VIP Splash fully complied with the subject contract’s M/WBE “best efforts” requirements as set forth in Appendix EE of the subject contract.

### Audit Recommendation re Audit Finding No. 3

“We recommend that:

- a) DPW explain why its procedures failed to insure that vendors conform to Title 53 during the course of a project and for any current County contracts applying the language in Appendix EE; and
- b) DPW identify the steps they will perform to ensure compliance with M/WBE in the future.”

### VIP Splash Response to Audit Recommendation re Audit Finding No. 3

VIP Splash has no comment on inter-agency matters within Nassau County government. VIP Splash fully complied with the subject contract’s M/WBE “best efforts” requirements as set forth in Appendix EE of the subject contract.

### Audit Finding No. 4

“VIP Splash Provided Insufficient Supporting Documentation with its Claim Vouchers, Including a Lack of Actual Signatories and Inadequate Photo Documentation.”

### VIP Splash Response

VIP Splash disputes the characterization that it “[p]rovided Insufficient Supporting Documentation with its Claim Vouchers” since the Audit found only that there were “several” load tickets that had photos of the filled dumpster that were taken from the side of the dumpster [to ensure that the dumpster’s number was included in the photo] and not taken from the top or from an elevation to show the interior of the dumpster. In addition, there is no dispute that the load tickets were signed by Monitors who provided oversight services which were the subject of a separate contract with Nassau County. The Audit merely questions the use of facsimile signatures, or barely visible signatures in certain instances, by these Monitors in compiling load ticket documentation.

### Audit Recommendation re Audit Finding No. 4

“We recommend that DPW take the necessary steps during the claim payment process to ensure that load tickets are fully completed and signatures are visible.

Photos of debris and/or vessels contained in dumpsters should be taken both from the side (to identify the dumpster) and from the top (to show the debris/damaged vessel/other items inside.)”

VIP SPLASH WATERWAYS RECOVERY GROUP

VIP Splash Response to Audit Recommendation re Audit Finding No. 4

VIP Splash has no comment on inter-agency matters within Nassau County government.

Audit Finding No. 5

“Some Subcontractors Failed to Respond to Auditors’ Request to Provide Evidence of their Compliance with the County’s Living Wage Law or to Respond if the Law was Applicable to their Services.”

VIP Splash Response to Audit Finding No. 5

The unexcused lack of responses on the part of two subcontractors, Horton Dredge and Dock (which it is understood provided specialized boats for the project) and MTA Landscaping (which it is understood provided one boat captain) represent a very small fraction of the services rendered under the subject contract requiring proof of compliance with the County’s Living Wage Law.

Audit Recommendation re Audit Finding No. 5

“We recommend that consideration be given to not offering future contractual agreements to vendors who failed to reply to the Comptroller’s Office’s request for documentation to evidence their compliance with the Living Wage Law. This recommendation excludes Ruben Treminio Landscaping, which was unable to comply due to the circumstances described in the Finding/Scope Limitation above.”

VIP Splash to Audit Recommendation re Audit Finding No. 5

VIP Splash has no comment on inter-agency matters within Nassau County government.

Issue Raised by Constituents

Relationships between VIP Splash and Three of its Subcontractors were disclosed in the Contract Documents.

VIP Splash Response to Issue Raised by Constituents

VIP Splash agrees with the Audit statement that relationships between VIP Splash and three of its subcontractors were disclosed in the Contract documents.

VIP SPLASH WATERWAYS RECOVERY GROUP

VIP Splash Reservation of Rights

VIP Splash reserves its right to offer further comment concerning any subject matter appearing in the Comptroller's Final Report.

Dated: June 8, 2017

Respectfully submitted,

*VIP SPLASH WATERWAYS RECOVERY GROUP, INC.*

VIP SPLASH WATERWAYS  
RECOVERY GROUP, INC.

VIP SPLASH WATERWAYS RECOVERY GROUP

## Appendix VI - DPW Response

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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

June 9, 2017

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

Re: Limited Review of Nassau County's Contract for Waterway  
Debris Removal Services with VIP Splash Waterways  
Recovery Group, Inc.

Dear Comptroller Maragos:

The Department of Public Works has reviewed the subject report and offers these comments in general and specifically to each audit recommendation.

The Executive Summary notes that the auditors reviewed allegations of claim voucher misrepresentation and hauling of non-Superstorm Sandy related debris. The Department of Public Works strongly disagrees with the allegations that any debris picked up and removed by VIP Splash was not related to Superstorm Sandy and therefore not eligible for reimbursement for its removal. The process to remove debris from the waterways was observed and monitored by two (2) independent entities. The Federal Emergency Management Agency (FEMA) monitors determined if debris was eligible for removal, and as indicated in your report has reimbursed the County for roughly 97.5% of eligible costs to date. Gibbons, Esposito and Boyce Engineers, P.C. (GEB), separately retained by the County also monitored the debris removal operations. There was never a time when VIP Splash operated without a monitor.

**Audit Recommendation #1**

The Department of Public Works fully complied and cooperated with the Comptroller's audit team.

**Audit Recommendation #2**

It is difficult to follow the Comptroller's presentation of information to support Audit Finding #2. If there were any discrepancies on the monthly subcontractor supplier form, it was an oversight that will be corrected moving forward.

**Audit Recommendation #3**

- a. As was noted in your report, this contract was initiated, processed and recommended for approval by the Office of Emergency Management (OEM). Accordingly, DPW was not responsible for an M/WBE Utilization plan at the initiation of the contract.
- b. Contracts initiated by DPW include the involvement of the OMA prior to contract award to ensure that the goals of Local law 14-2002 are fully met.

U:\Brian Schneider\VIP Splash Debris Comptroller Audit Letter.bjs.doc

## Appendix VI - DPW Response

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Hon. George Maragos, Comptroller

County of Nassau

Office of the Comptroller

June 9, 2017

Page Two

Re: Limited Review of Nassau County's Contract for Waterway

Debris Removal Services with VIP Splash Waterways

Recovery Group, Inc.

### **Audit Recommendation #4**

The Department strongly disagrees with this recommendation as this project required an atypical approach to debris monitoring. Generally, the Department in the past has erected debris monitoring towers at standard debris management sites. These towers would allow for observation and estimation of load measurements by debris monitors. Those typical sites would process hundreds of trucks around the clock with rotating shifts of debris monitors. Because of the sheer number of trucks, a photo of each load would be mandatory. In the waterway debris project, only a handful of monitors would observe the loading and transport of a single loaded container, removing the possibility of a container getting lost during loading and transport. The loads were properly measured and corroborated. This level of inspection and monitoring was further substantiated by a FEMA monitor.

### **Audit Recommendation #5**

The Department's was only made aware of this issue through this report. As part of the DPW's contracting process, each contractor is required to sign Appendix L (Local Law 1-2006) and comply with its terms.

### **Audit Recommendation #6**

There were no findings or recommendations pertaining to this section of the report.

The Department recommends removing it from the report as it does not conform to the audit format.

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

Very truly yours,



Shila Shah-Gavroudis, 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  
Joanne Greene, Director of Field Audit, Office of the Comptroller

**Audit Finding/Scope Limitation**

**(1) Lack of Cooperation by OEM Prohibited a Review of the Procurement Process That Led to Awarding the Waterways Debris Recovery Contract to VIP Splash**

**Audit Recommendation:**

Nassau County should adopt “good government practices” including transparency of procurement procedures and cooperate with the County Comptroller’s audit staff.

**VIP Splash Response:**

VIP has no comment on inter-agency matters within Nassau County government.

**DPW Response:**

The Department of Public Works fully complied and cooperated with the Comptroller's audit team.

**Auditors’ Follow-up Comments:**

*We concur with VIP Splash’s response as this is a departmental manner within the County.*

*We agree with DPW’s response, their compliance and cooperation was demonstrated throughout the audit.*

*The Commissioner of OEM responded during the audit by questioning the auditors’ need for the documents, claiming that according to Newsday, the audit had been concluded. This claim was incorrect because it referred to the County’s recent payment of a VIP Splash claim voucher by the Comptroller’s Office’s Vendor Claims Unit, which had nothing to do with the ongoing review by the Field Audit Unit. A Deputy County Attorney also responded by e-mail that the auditors' request for the RFP documents was considered to be outside the scope of the audit.*

*As a result, the auditors were unable to determine if the County's prescribed procurement procedures were followed, or to evaluate the rankings and qualifications of the four companies who offered proposals.*

*The County Executive should instruct the Department of OEM to cooperate with the County Comptroller’s audit staff in order to foster best practices for transparency in government.*

**Audit Finding**

**(2) DPW Failed to Identify Errors and Inconsistencies in Subcontractor Payment Information Included in VIP Splash’s Claim Vouchers**

**Audit Recommendation(s):**

We recommend that DPW explain the failure of internal controls of their claim review with respect to the discrepancies found in the subcontractor payments reported in VIP Splash’s claim vouchers.

**VIP Splash Response:**

VIP has no comment on inter-agency matters within Nassau County government. The Audit/Limited Review does not dispute the accuracy of any of the amounts paid to VIP Splash based upon the vouchers and supporting documentation submitted to Nassau County for services rendered under the subject contract.

**DPW Response:**

It is difficult to follow the Comptroller's presentation of information to support Audit Finding #2. If there were any discrepancies on the monthly subcontractor supplier form, it was an oversight that will be corrected moving forward.

**Auditors’ Follow-up Comments:**

*We reiterate that VIP Splash’s subcontractor detail, which was submitted with each VIP Splash claim voucher, contained multiple errors. In addition, VIP Splash did not respond to the auditors’ request for support for their amounts paid to subcontractors.*

*We reiterate the importance of DPW’s review of the subcontractor report forms for accuracy before submitting future claims to the Comptroller’s Office for payment.*

## Appendix VII – Auditors’ Follow-Up Comments to VIP Splash and DPW Responses

### Audit Finding

#### (3) Lack of Adequate Oversight by DPW Allowed VIP Splash to Ignore the M/WBE<sup>21</sup> Requirements With Respect to the Contract Amendments Totaling \$8 Million

#### Audit Recommendation(s):

We recommend that:

- a) DPW explain why its procedures failed to ensure that vendors conform to Title 53 during the course of a project and for any current County contracts applying the language in Appendix EE; and
- b) DPW identify the steps they will perform to ensure compliance with M/WBE in the future.

#### VIP Splash Response:

VIP Splash has no comment on inter-agency matters within Nassau County government. VIP Splash disputes the characterization that it ignored "the M/WBE Requirements with respect to the Contract Amendments totaling \$8 Million." VIP Splash fully complied with the subject contract's M/WBE "best efforts" requirements as set forth in Appendix EE of the subject contract.

VIP Splash has no comment on inter-agency matters within Nassau County government. VIP Splash fully complied with the subject contract's M/WBE "best efforts" requirements as set forth in Appendix EE of the subject contract.

#### DPW Response:

- a. As was noted in your report, this contract was initiated, processed and recommended for approval by the Office of Emergency Management (OEM). Accordingly, DPW was not responsible for an M/WBE Utilization plan at the initiation of the contract.
- b. Contracts initiated by DPW include the involvement of the OMA prior to contract award to ensure that the goals of Local law 14-2002 are fully met.

#### Auditors’ Follow-up Comments:

*With respect to the responses to Recommendation a), VIP Splash and DPW complied with the M/WBE requirements for the initial \$4 Million allocation of funds to this contract. However, when the contract funding increased by an additional \$8 Million, both VIP Splash and DPW failed to revisit the M/WBE requirement.*

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<sup>21</sup> Minority and Women Owned Business Enterprise.

Limited Review of Nassau County’s Contract for Waterway Debris Removal Services with VIP Splash Waterways Recovery Group, Inc.

## **Appendix VII – Auditors’ Follow-Up Comments to VIP Splash and DPW Responses**

*With respect to DPW’s response to Recommendation b), we reiterate that when DPW assumed the oversight of the contract, DPW should have sought to achieve compliance with Local Law 14-2002.*

### **Audit Finding**

#### **(4) VIP Splash Provided Insufficient Supporting Documentation with its Claim Vouchers, Including a Lack of Actual Signatures and Inadequate Photo Documentation**

##### **Audit Recommendation(s):**

We recommend that DPW take the necessary steps during the claim payment process to ensure that load tickets are fully completed and signatures are visible.

Photos of debris and/or vessels contained in dumpsters should be taken both from the side (to identify the dumpster) and from the top (to show the debris/damaged vessel/other items inside).

##### **VIP Splash Response:**

VIP Splash disputes the characterization that it "[provided Insufficient Supporting Documentation with its Claim Vouchers]" since the Audit found only that there were "several" load tickets that had photos of the filled dumpster that were taken from the side of the dumpster [to ensure that the dumpster's number was included in the photo] and not taken from the top or from an elevation to show the interior of the dumpster. In addition, there is no dispute that the load tickets were signed by Monitors who provided oversight services which were the subject of a separate contract with Nassau County. The Audit merely questions the use of facsimile signatures, or barely visible signatures in certain instances, by these Monitors in compiling load ticket documentation.

VIP Splash has no comment on inter-agency matters within Nassau County government.

##### **DPW Response:**

The Department strongly disagrees with this recommendation as this project required an atypical approach to debris monitoring. Generally, the Department in the past has erected debris monitoring towers at standard debris management sites. These towers would allow for observation and estimation of load measurements by debris monitors. Those typical sites would process hundreds of trucks around the clock with rotating shifts of debris monitors. Because of the sheer number of trucks, a photo of each load would be mandatory. In the waterway debris project, only a handful of monitors would observe the loading and transport of a single loaded container, removing the possibility of a container getting lost during loading and transport. The loads were properly measured and corroborated. This level of inspection and monitoring was further substantiated by a FEMA monitor.

**Auditors’ Follow-up Comments:**

*Although VIP Splash was paid on a weight basis, they were still responsible to ensure that all claim vouchers had complete documentation including visible signatures and adequate photos.*

*With respect to DPW’s response, we understand that DPW has a standard procedure in place for the monitoring of debris removal; and although Superstorm Sandy was an extraordinary event, it does not negate DPW’s responsibility to ensure VIP submitted adequate documentation. As discussed in the finding, some of the load tickets submitted with the claim voucher raised questions.*

**Audit Finding**

**(5) Some Subcontractors Failed to Respond to Auditors’ Request to Provide Evidence of their Compliance with the County’s Living Wage Law or to Respond if the Law was Applicable to their Services**

**Audit Recommendation(s):**

We recommend that consideration be given to not offering future contractual agreements to vendors who failed to reply to the Comptroller’s Office’s request for documentation to evidence their compliance with the Living Wage Law. This recommendation excludes Ruben Treminio Landscaping, which was unable to comply due to the circumstances described in the Finding/Scope Limitation above.

**VIP Splash Response:**

The unexcused lack of responses on the part of two subcontractors, Horton Dredge and Dock (which it is understood provided specialized boats for the project) and MTA Landscaping (which it is understood provided one boat captain) represent a very small fraction of the services rendered under the subject contract requiring proof of compliance with the County's Living Wage Law.

VIP Splash has no comment on inter-agency matters within Nassau County government.

## **Appendix VII – Auditors’ Follow-Up Comments to VIP Splash and DPW Responses**

### **DPW Response:**

The Department was only made aware of this issue through this report. As part of the DPW's contracting process, each contractor is required to sign Appendix L (Local Law No. 1- 2006) and comply with its terms.

### **Auditors’ Follow-up Comments:**

*VIP Splash had a responsibility to ensure that the subcontractors they hired complied with the Living Wage Law, regardless of the size of the subcontractor’s role under the contract.*

*The auditors agree that DPW’s contracting process requires contractors to sign Appendix L (Local Law No. 1-2006) and that the contractor is responsible to ensure that any subcontractors hired comply with the Living Wage Law.*