



Auditor of Public Accounts
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Harmon Releases Audit of Harlan County Fiscal Court

FRANKFORT, Ky. – State Auditor Mike Harmon has released the audit of the financial statement of the Harlan County Fiscal Court for the fiscal year ended June 30, 2021. State law requires annual audits of county fiscal courts.

Auditing standards require the auditor’s letter to communicate whether the financial statement presents fairly the receipts, disbursements, and changes in fund balances of the Harlan County Fiscal Court in accordance with accounting principles generally accepted in the United States of America. The fiscal court’s financial statement did not follow this format. However, the fiscal court’s financial statement is fairly presented in conformity with the regulatory basis of accounting, which is an acceptable reporting methodology. This reporting methodology is followed for 115 of 120 fiscal court audits in Kentucky.

As part of the audit process, the auditor must comment on noncompliance with laws, regulations, contracts, and grants. The auditor must also comment on material weaknesses involving internal control over financial operations and reporting.

The audit contains the following comments:

The Harlan County Fiscal Court does not have sufficient internal controls over waste removal collections: This is a repeat finding and was included in the prior year audit report as Finding 2020-001. The Harlan County Fiscal Court has failed to implement controls to ensure compliance with requirements of the Solid Waste Franchise Renewal Agreement. The following controls were not in place for Fiscal Year 2021:

- The fiscal court does not have written agreements with districts for garbage collections.
- The fiscal court does not receive delinquent list for all outstanding collections.

- The fiscal court does not receive sufficient documentation of garbage fees collected by all the utility districts.

As of June 30, 2021, the fiscal court is aware of at least \$589,813 in accounts receivables for collection of residential and commercial solid waste throughout Harlan County. Utility districts do not provide monthly collection reports or lists of delinquent residents to the fiscal court. As such, the fiscal court cannot verify the amount of gross residential garbage removal fees collected by the districts or the amount of garbage removal fees remitted to the fiscal court. The lack of delinquent lists prevents the fiscal court from effectively monitoring uncollected revenues. Also, the fiscal court cannot provide a listing of delinquent residential customers to the company with the solid waste franchise.

The Harlan County Fiscal Court collects fees for garbage collections as allowed by KRS 109.056(2) and has chosen to collect these fees under the provisions of KRS 109.056(3). KRS 109.056(3) states the fiscal court “may enter into an agreement with other utilities either public or private to collect such charges.” Good internal controls require these agreements be in writing to provide all parties with the terms of the agreements. These written agreements should also include the supporting documentation to be provided to the fiscal court by third parties for fees collected and delinquent. In addition, the Solid Waste Franchise Renewal Agreement requires the fiscal court to provide quarterly to company with solid waste franchise with a list of residential customers with delinquent accounts that are subject to having pickup services terminated.

We recommend the fiscal court enter into written agreements with the utility districts detailing recordkeeping requirements for waste collections, monthly financial reports, and delinquent listings. When procedures are implemented to create a list of delinquent customers, the fiscal court should provide the listing to the county attorney for potential collection efforts and company with the solid waste franchise for potential termination of services, as necessary.

County Judge/Executive’s Response: From January 2015 through June 30, 2021, over \$8.7 million has been paid to the fiscal court for garbage service. From the reports that we receive from the districts, it is our belief that \$589,813 is outstanding/delinquent as of June 30, 2021. From the reports that we do receive, this places the county at over a 90% collection rate. We realize we can’t truly calculate the collection rate with the information we receive, but with the limited information we receive from the districts, we believe this to be in line with other collection services, and consider it to be a good collection rate and a tremendous improvement from several years ago when it was below 50%. The court has worked with the County Attorney and the districts to prepare a written agreement and enter into a contract with all districts for garbage collections. Some districts have signed and returned the agreement, while some have not. The court has also been working with the County’s District Court in resolving delinquent matters and have been successful in the cases that have been presented to date.

The Harlan County Fiscal Court failed to obtain certified payroll records to monitor Davis-Bacon requirements:

*Federal Program: Assistance Listing #12.000 Section 531 Program
Award Number and Year: 2021*

Name of Federal Agency and Pass-Through Agency: U.S. Department of Defense Passed-Through U.S. Army Corps of Engineers

Compliance Requirements: Special Tests and Provisions

Type of Finding: Significant Deficiency

Amount of Questioned Cost: None

Opinion Modification: No

The fiscal court failed to implement adequate monitoring controls over the Special Tests and Provisions - Davis-Bacon requirement. The fiscal court contracted with a third party that oversaw the planning, design, inspection services, environmental services, and construction administration for the project. The contractor did not submit weekly, when work was performed, a copy of the payroll and a statement of compliance to the fiscal court. The fiscal court did not monitor the third party contractor as required to ensure that the federal requirement was met. During single audit testing, auditors obtained certified payroll records from the contractor and concluded that Davis-Bacon wages were paid for the project.

The county stated that the grant did not require the payroll documentation within the reimbursement requests, thus the reason the county was not monitoring the payroll for the Davis-Bacon requirement. When grantees do not monitor federal grant requirements, they cannot ensure that federal grant compliance requirements are adhered to. This could result in noncompliance with the federal grant agreement and affect the county's ability to receive federal funds in the future

Per the grant contract Article I – Definitions I, “The term “sufficient invoice” shall mean documentation provided by the Non-Federal Sponsors containing the following: (1) a written certification by the Non-Federal Sponsors to the Government that it has made specified payments to contractors, suppliers, or employees for performance of work in accordance with this Agreement, or a written certification by the Non-Federal Sponsors to the Government that it has received bills from contractors, suppliers, or employees for performance of work in accordance with this Agreement; (2) copies of all relevant invoices and evidence of such payments or bills received; (3) written identification of such costs that have been paid with Federal program funds and a copy of the written verification from the Federal agency that provided the funds; and (4) a written request for reimbursement for the amount of such specified payments or bills received.”

Per the grant contract Article II – Obligation of the Government and the Non-Federal Sponsors C-4, “In performance of all work for the Project, the Non-Federal Sponsors must comply with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C 3141-3148 and 40 U.S.C 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act). Notwithstanding any other provision of this agreement, inclusion of costs for construction in total project costs may be withheld, in whole or in part, as a result of the Non-Federal Sponsors' failure to comply with their obligations under these laws.”

Uniform Guidance 2 CFR §200.303 states, in part, “The non-Federal entity must: (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that

the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award.”

According to 29 CFR part 5 “non-federal entities shall include in their construction contracts subject to the Wage Rate Requirements a provision that the contractor or subcontractor comply with those requirements and the Department of Labor (DOL) regulations. This includes a requirement for the contractor or subcontractor to submit to the non-federal entity weekly, for each week in which any contract work is performed, a copy of the payroll and a statement of compliance (certified payroll).”

We recommend the fiscal court implement adequate monitoring controls and obtain certified payroll records to ensure compliance with Davis-Bacon compliance requirement. Also, we recommend the fiscal court ensure compliance with the federal grant agreement requirements and with applicable federal, state, and local laws.

County Judge/Executive’s Response: Going forward, any vendor participating in a project that must meet the Davis Bacon requirement will be required to submit weekly certified payrolls to any third party contractor overseeing the project, as well as with their pay estimates so the county can monitor the requirement has been met. As the comment mentions above, certified payroll records were received from the contractor and Davis Bacon wages were paid for the project.

The audit report can be found on the [auditor’s website](#).

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