

State of New Jersey
Office of the State Comptroller



INVESTIGATIVE REPORT
UNION COUNTY ALLIANCE

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Acting State Comptroller

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I. Introduction

The Office of the State Comptroller (OSC) initiated an investigation into contracts between Union County and the Union County Alliance (UCA) after receiving a complaint that the UCA was spending public funds without proper oversight. The investigation focused on the time period January 1, 2008 through December 31, 2011, but expanded beyond that time frame when necessary for continuity and context. Our investigation revealed that, from 2008 through 2011, the UCA received and spent public money with virtually no oversight, record keeping, or controls. The vast majority of the UCA funding during this time period, in excess of \$1.5 million, came from Union County pursuant to no-bid contracts. The contractual arrangement, staffing and operation of the UCA created a situation where the UCA performed functions on behalf of Union County government without being subject to the standards applicable to most public entities.

The true value of the UCA's work product for Union County was indeterminable because Union County failed to properly monitor the UCA contracts. The UCA used hundreds of thousands of dollars that it received from the County for overhead and expenses and spent tens of thousands of dollars on meals, travel and donations with no supporting documentation or justification for these costs. Similarly, the UCA issued multiple paychecks at irregular intervals to its former President and other questionable checks to both the former President and the former Board Chairman (both of whom are now deceased). As discussed in more detail below, the UCA provided insufficient documentation to demonstrate that many UCA expenditures were incurred for legitimate business purposes.

Since learning of our investigation, the current Union County Manager stated that the County has amended its relationship with the UCA in an effort to provide for greater

accountability. While we recognize these intended changes attempt to address some of our findings, we recommend that additional measures be taken. As such, this report includes recommendations for Union County as well as other governmental units to follow when considering similar contracts.

II. Background and Methodology

Union County consists of 21 municipalities and spans more than 100 square miles with a population of over half a million people. It is governed by a nine-member Board of Chosen Freeholders and currently has an annual budget of approximately \$500 million. The Freeholder Board sets policies for the operation of the County and an appointed County Manager supervises the day-to-day operation of the County's various departments.

Within Union County's Department of Economic Development is the Office of Planning and Economic Development (Economic Development office). The Economic Development office has a number of functions, including developing and maintaining a County Master Plan, Comprehensive Economic Development Strategy, and the Transportation Circulation Plan for the County. These plans outline potential economic development opportunities while providing the principles and strategies to guide economic growth in Union County.

The UCA was founded in the early 1990's as a non-profit, 501c(4) organization to bring together business, labor, education and government. The stated purpose of the UCA was to initiate and develop a comprehensive long range plan for the economic development of Union County. The UCA reports on its website that early in its history it played a role in the redevelopment of Port Elizabeth and the construction of the Jersey Gardens mall. By 2002, the UCA was responsible for the publication of a newsletter called Union County Directions (Directions). The newsletter publicized programs, services, and accomplishments of Union

County government, public institutions, and local officials. This newsletter had previously been published by the County itself.

Earlier in its history, the UCA was funded by grants from Union County. However, beginning at some point prior to 2008, Union County instead entered into a series of successive annual no-bid contracts with the UCA that it routinely renewed. As legal justification for the decision to enter into the no-bid contracts with the UCA, the County asserted that the contracts called for “extraordinary unspecifiable services” that it claimed could not be provided by other vendors.

The UCA has been closely aligned with Union County. For example, during the time period of our review, the UCA Board included Union County officials, such as the former County Manager who approved the County’s contracts with the UCA. Union County also assigned its own Communications Director to the job of full-time President of the UCA from 2003 through 2008 while he was still being paid by the County. In 2008, the Communications Director officially left the County payroll and became employed directly by the UCA as its President.

The UCA’s funding also came primarily from County government. During the 2008 to 2011 time period, approximately 99% of the UCA’s operating revenues came from Union County and other public entities within Union County. Specifically, 80% of its funding was from Union County (a total of \$1.56 million). In addition to Union County, the UCA received \$185,000 from Kean University during the time period under review, primarily for advertisements placed in the Directions newsletter. The UCA also received smaller amounts of money from Union County College, the Union County Improvement Authority, the City of Rahway, the Township of Clark, Hillside Township, the Union County Vocational Technical

Schools and the Plainfield Municipal Utilities Authority, much of which was for advertising in Directions.

For purposes of our investigation, OSC obtained records from Union County, the UCA and other entities. We also conducted interviews of the former UCA President, the current Chairman of the Board, current and former Union County officials, and other individuals.

Pursuant to our request for financial records, the UCA provided our office with redacted bank records. We subpoenaed more detailed records from the UCA and the two banks in which the UCA had accounts in order to obtain canceled checks and other financial information. Due to the UCA's lack of record keeping, OSC was required to reconstruct details of expenditures from bank records and information provided by the UCA's accountant.

We sent a draft of this report to Union County and related officials, the UCA, its outside accountant, a representative of the former UCA President, the former President's wife, Kean University and the other public entities named in this report in order to provide them an opportunity to comment on the issues identified in this report. The responses we received were considered in preparing this final report and were incorporated herein where appropriate.

III. Investigative Findings

A. The Union County Contracts

1. No-Bid Contracts

From 2008 to 2011, Union County entered into a series of annual no-bid contracts with the UCA. The contracts generally called for the UCA to provide research, information, communications services and business strategies in furtherance of economic development in Union County. Under the Local Public Contracts Law, N.J.S.A. 40A:11-1, *et seq.*, contracts are legally required to be advertised publicly to allow for fair and open competition, unless an

exception applies. Union County justified the series of annual no-bid contracts with the UCA by relying on an exception and certifying the services were “extraordinary unspecifiable services (EUS).”

EUS is defined by statute as services which are specialized and qualitative in nature and require expertise, extensive training and proven reputation in the field of endeavor. EUS provides an exception to public advertising and bidding for services. Under State law, the application of the exception “shall be construed narrowly in favor of open competitive bidding whenever possible.” N.J.S.A. 40A:11-5(1)(a)(ii). In addition, the governing body “shall in each instance state supporting reasons for its action in the resolution awarding each contract.” Ibid. Pursuant to state regulation, a designated administrative official must file a certification with the governing body describing in detail why the contracted services meet the standard of being extraordinary and unspecifiable.

Generally, the EUS certifications relied on by the County described the contracted services as the promotion of economic development in Union County and the welfare of its citizens. The certifications do not go into any detail about the services to be provided, instead setting forth information about the UCA itself and the “specific expertise” of its then-President and Board Chairman. Thereby, the County partially justified the EUS contract by relying on the fact that it had provided its own employee to serve full time as the UCA’s President.

The work performed by the UCA also does not appear to qualify as EUS services. From 2008 to 2011, the only material work product completed by the UCA for the County was the Directions newsletter and electronic updates. The UCA also facilitated two conferences, although its actual work product is undocumented and unclear. In return for this work, the County paid \$1.5 million.

Two issues a year of the newsletter were mailed to Union County residents. Supplements were periodically placed on the Internet. The newsletters generally consisted of information prepared and provided by the County, occasional interviews with public officeholders, and advertisements. According to the former President of the UCA, the newsletters cost approximately \$120,000 a year to publish and mail. Union County and the UCA did not provide OSC with evidence of any other tangible work product or service provided to Union County for the remainder of the money (approximately \$1 million) paid to the UCA over the four years.

Union County has not provided a reasonable explanation as to why the services to be provided by the UCA were certified as extraordinary or unascertainable. The services the UCA provided -- the newsletter, electronic updates, and hosting two conferences -- do not appear to require any specialized expertise. As such, there does not appear to be a valid reason to explain why this type of service could not be competitively bid. Alternatively, Union County could have simply produced a newsletter in-house, as it had done in earlier years. At the least, it could have attempted to save money by opening the contracts to public bidding or other competitive contracting process. See OSC's March 4, 2010 report entitled *Best Practices for Awarding Service Contracts*.

2. Routine Renewal of the UCA Contracts

Exacerbating the lack of a competitive procurement process, the County routinely renewed its contracts with the UCA each year without assessing their merits or altering them until 2012, after our investigation commenced. For example, OSC determined that in 2012 the County's EUS certification continued to list the names of the then-deceased former Chairman of the UCA Board and the former UCA President as evidence that the UCA provided "specific expertise in the knowledge of Union County." In 2013, the EUS certification continued to rely

in part on the former UCA President's expertise, although he had been gone from the UCA for more than a year.

Information provided by the former County Manager further supports the conclusion that the UCA contracts were renewed as a matter of course. The former County Manager told us that there was limited negotiation between the UCA and the County when the contract was renewed each year and that the County essentially continued treating the contracts in the same manner it had when it provided grants to the UCA. Although the current County Manager denied that the contracts were treated like grants, he nevertheless confirmed that there was an "assumption" that the UCA would get money from the County every year. Renewing these contracts based on out-of-date information and in the absence of true negotiation clearly shows that these contracts were routinely renewed with minimal scrutiny of the contract's value to the County.

3. Questionable Benefit to the County

In addition to the deficiencies in the procurement process, the UCA contracts appear to have been of questionable value to the County. For example, Union County separately paid the UCA at least \$29,000 per year for advertisements in the Directions newsletter, above and beyond what the County was already paying the UCA. This amount did not include advertising for Union County Golf Operations, which was paid separately. The reasonableness of the cost for the advertisements placed cannot be evaluated due to the lack of itemization and the fact that the UCA did not provide the County a specific price quotation for the advertisements. Regardless, it appears unreasonable for the County to pay for advertisements in a newsletter it is also paying to produce.

The UCA also stated in its proposal materials that it would promote economic development and improve Union County's economic base. In this regard, the UCA's economic

development mission appears similar to that of the County's Economic Development office. According to its website, the Economic Development office develops and maintains a comprehensive economic development strategy and other efforts to "outline potential economic development opportunities while providing the principles and strategies to guide economic growth and enhance the quality of life in Union County." It also applies for and secures federal and state grant funding for smart growth and other studies. As noted previously, there is no documentation reflecting that the UCA performed economic development activity during our review period, making it nearly impossible to determine how the UCA's stated economic development function was distinct from the County's office.

4. Contract Management

Even though Union County officials were on the UCA's Board, there is no evidence that the County exercised adequate oversight of the work the UCA was performing on the County's behalf. In fact, the UCA's Board only met four times during the four-year period under review. During the time period reviewed, the UCA did not maintain any budgets or conduct any audits, and there is no evidence that Union County was provided with an accounting of the services provided in return for the public money the UCA received.

Although the former County Manager initially told us that the UCA provided annual reports to the County, he later conceded that he did not remember ever seeing them. In fact, the only document OSC received that sets forth the UCA's accomplishments was a three-page email summarizing activities performed by the UCA. The email was prepared by the UCA and provided to the UCA Board and County officials in August 2011. The email stated that, in addition to publishing the Directions newsletter and several electronic news updates, the UCA performed research for the County and served as a resource for various County entities and

projects. With the exception of Directions and the electronic updates, neither the County nor the UCA had a record of the work summarized in that email. For instance, although the email touted that the UCA had provided a Brownfields inventory document to the County, there was no record of that document being completed until February 2013.

Additionally, the UCA and Union County appeared to have differing views of the scope of the contracts. Specifically, the former President of the UCA told us that the contracts only covered salaries and communications services and that any other work performed by the UCA was “above what the County paid for” and outside the scope of the contracts. The former County Manager took a much broader view of the contracts and indicated that the contracts covered all activities of the UCA. The fact that the UCA and the County had differing views of the scope of the contracts raises questions about the County’s management of the contracts.

Finally, our review raises questions as to whether the contracts were managed in an objective manner considering the relationships between the UCA and Union County officials. Union County officials served on the Board of the UCA, and Union County provided its Communications Director to serve full time as the UCA President. Initially, he continued to be paid his County salary for his work as the UCA President. This close relationship, in conjunction with the apparent absence of formal reporting, appears to have contributed to inadequate oversight and management of the contracts.

B. Lack of Controls at the UCA

1. The UCA’s Lax Record Keeping

We determined that, other than information provided on its federal tax filings, the UCA had no budgets or audited financial statements. From bank records, we determined that the UCA had a checking account with a debit card and a separate bank account, apparently for payroll

purposes. A large percentage of its expenditures went to salaries and other employee compensation, as well as rent, reimbursements, travel expenses and meals.

The UCA had two employees during the period of our review, the former President and an office manager, both of whom are now deceased. Paychecks were not always issued on a regular basis and did not correspond to the payroll records we received from the UCA's accountant, who prepared the records. While the office manager was generally paid every two weeks, the former President received checks at different times in different amounts, and at times received multiple checks on the same dates.

The former President's contract called for an annual salary, plus 25 percent of his salary as payment in lieu of benefits, an unspecified car allowance and commissions of 15 percent of any advertising sales. Payroll records maintained by the UCA's accountant for the time period 2010 to 2011 indicate that the former President should have received a total net amount of \$171,257. However, he actually received UCA checks totaling \$387,104, which his representative claimed in response to the draft report was essentially the amount due to the former President. While some of the payments made to the former President are attributable to reimbursements, other allowances and possibly advertising commissions, due to the UCA's lack of record keeping and controls it is impossible to tell whether he received more than the amount to which he was entitled. For example, illustrating the irregular nature of the payments, during May 2010 the former President was issued six separate checks totaling \$21,277, while the UCA payroll journal reflects only two payments totaling \$6,630. The UCA failed to maintain records to support these or other payments made to the former President.

Based on bank records and records from the UCA's accountant, much of the \$90,000 charged to the UCA debit card was for meals and travel. Again, the UCA kept no receipts for

these expenses or any records as to their purpose or participants. We interviewed the UCA's accountant, who stated that the UCA should have been keeping receipts to support its expenses, as reported on its federal Form 990 tax returns.

Some examples of inexplicable expenses charged to the UCA debit card include the following:

| | | |
|----------|--|----------|
| 4/15/08 | Quality Inn, Winston-Salem, North Carolina | \$303.96 |
| 12/18/08 | Cold Stone Creamery, Boston, Massachusetts | \$11.51 |
| 4/28/09 | Logan's Restaurant, Tallahassee, Florida | \$130.49 |
| 6/16/09 | Chatham Bars Inn, Chatham, Massachusetts | \$203.01 |
| 8/11/09 | Lang's Liquors, Ship Bottom, New Jersey | \$21.38 |
| 11/3/09 | Putters Patio Grill, Winston-Salem, North Carolina | \$259.39 |

The UCA was unable to provide documentation indicating business reasons for these or any other expenses. In fact, the now-deceased former President advised us that he did not maintain receipts or invoices, reasoning that the canceled checks and other bank records would serve as receipts.

The UCA additionally donated thousands of dollars of public funds to various non-profit organizations, local sports teams and even an out-of-state college sports team. During our review period, the UCA also paid over \$38,000 dollars to vendors for services provided to a Union County sponsored event (Musicfest). The former County Manager, who approved the annual contracts with the UCA, told us that he solicited the UCA for contributions in support of Musicfest, further blurring the lines between the UCA and the County.

2. The UCA Disregarded Significant Requirements of Its By-Laws

The UCA did not follow a number of its own by-laws, which resulted in a lack of oversight and control over the UCA's spending. For example, it did not have a functioning treasurer for the period of our review even though the UCA by-laws provided that the treasurer had to co-sign all checks. As a result, each check issued by the UCA only bore one signature, bypassing an important internal control. In addition, the former President acknowledged that he, the former Office Manager and the former Board Chairman occasionally signed checks for each other with each other's permission.

Additionally, the former Board Chairman received regular \$2,000 monthly payments, which the former President described as an allowance. During our review period, he received such payments totaling \$82,000. The UCA by-laws do not authorize such payments to Board members, and the former Chairman did not submit any receipts or justifications for these payments.

As noted earlier, the UCA Board met only four times in four years, despite its by-laws calling for regular quarterly meetings. The Board minutes do not reflect that the Board took any official action in those meetings. Indeed, there were no votes taken at any of the meetings. The current Board Chairman told us that, for a period of time, the UCA was on "pilot mode." Further, although the UCA by-laws allowed for an examination of financial statements and expenses by an independent auditor, the Board never took such action. In sum, the limited meetings and action of the Board call into question the governance and oversight of this tax-exempt non-profit organization funded with public money.

3. Conflicts of Interest

Although the County outsourced production of the newsletter to the UCA ostensibly based on the expertise of the UCA staff, the UCA regularly hired outside vendors and consultants to work on the newsletter and electronic updates. One of the consulting companies the UCA hired was affiliated with the former President's wife. Company records show that the former President's wife had transferred her interest in the company to a relative in 2004, but she acknowledged performing unpaid work for the company and, in fact, endorsed checks for the company during OSC's review period. That consulting company was paid a total of more than \$108,000 during our review period which included "retainer" payments for research and editing, including work on the Directions newsletter. These payments were made despite the fact that the County touted the then-President as having the expertise in communications, which served as a basis for not bidding the UCA contract in the first place.

During our review period, the former President's wife also worked for Kean University as Executive Director of Media and Publications. Although Kean's relationship with the UCA predated her employment and Kean continues to advertise in Directions, the former President's wife was involved in approving payments to the UCA for advertisements placed in Directions throughout our review period. She eventually recused herself from dealings with the UCA in August 2011 as required by the New Jersey Uniform Ethics Code. However, by the time she recused herself, the UCA had received approximately \$167,000 from Kean.

The former President's wife additionally stated that she was not aware of her husband's contract entitling him to 15 percent commission on earned advertising revenue. Because of the UCA's lax record keeping, we were unable to determine if the former President actually received a portion of the Kean advertising revenue. Further, since the UCA is not a public entity, it was

not subject to restrictions government entities would have regarding conflicts of interest, including Union County's code of ethics.

IV. Union County and the UCA's Changes in Practices

The UCA hired a new President in March 2013. We advised the new President of the issues we uncovered and he informed us that changes were being made. He stated that the UCA is now reporting regularly to Union County. The UCA is now being reimbursed by Union County for expenses rather than receiving the money "up front" from the County. The UCA President also asserted that the UCA is seeking to generate sources of revenue other than Union County. He said that as other revenue is generated, the cost for Union County could be reduced. The President stated that he believes in the importance of a public/private partnership model and that he did not envision operating without any money from the County. He also advised that going forward, vendor contracts issued by the UCA that are valued over \$2,500 will go before the UCA Board and all potential conflicts of interest will be disclosed to the Board. Additionally, contributions or donations above \$1,000 will go before the Board. The UCA provided us with copies of policy statements approved by the UCA Board on September 10, 2013 regarding contracts, conflicts of interest and contributions and donations, requiring Board approval in such instances. In response to the discussion draft, the UCA reiterated that it has recently put financial controls in place and asserts that it plays a role in the economic development of Union County but that it would have "no problem being relieved of" the function of publishing the newsletter. The UCA's response does not dispute OSC's findings regarding our review period of 2008 to 2011.

We also interviewed the current Union County Manager. He began working in this capacity in August 2011. He advised that he recommended County-wide budget cuts, including

a reduction to the UCA's contract of \$100,000, in 2012. The County Manager stated that the UCA is now submitting quarterly reports regarding UCA projects and accomplishments. He asserted that there needs to be full accountability on the part of the UCA, including the quarterly reports. He advised that the UCA funding will be looked at carefully, and that the issue of defunding the UCA may also be considered. There may also be discussions about producing the Directions newsletter in-house or putting it out to bid separate from the UCA contract. The County Manager stated that while there is value in the services provided by the UCA, the question going forward is to determine the value to the County and the appropriate funding level by the County.

In its response to the draft report, Union County asserts that the contracts with the UCA were properly awarded pursuant to the EUS exception. The County's response relies heavily on the economic development aspects of the contracts. The response disregards our finding that there was little evidence that economic development activity was actually performed throughout our review period and that an EUS exception was inappropriate simply for the production of a newsletter.

The response further suggests that the economic development services procured can never be appropriately acquired through competitive means. In direct contradiction to its own stated position, the County already recently took a step towards utilizing such a process. In 2014, Union County issued a Request for Quotations (RFQ) for "economic development and marketing consulting services," which included production of the newsletter. While quotations were requested from five firms pre-selected by Union County, the contract was not competitively bid. Union County still classifies the services as EUS, despite the fact that it has set forth a scope of work for the types of economic development services and communications services

needed. Of the five firms to whom the RFQ was sent, the UCA was the only entity that submitted a proposal. In reviewing the RFQ, we noted that the descriptions of a number of the services solicited in the RFQ appear to have been based on language in the UCA's prior proposals, sometimes almost verbatim. The contract should have been procured through a more competitive process by opening the field to all other qualified firms, not just those pre-selected by the County. As noted in the recommendations, the County should consider utilizing a competitive process when obtaining these services.

As to the substance of the work to be performed, OSC notes that the scope of services listed in the RFQ includes the following: "Promote investment in Union County through economic development activities." Consideration should be given to whether the functions being contracted to the UCA are sufficiently distinct from work performed by the County itself, specifically, its Economic Development office.

It should also be noted that the Cost Quotation Sheet provided by the UCA in its response to the RFQ (see below) sets forth line items for salaries and wages, office expenses, professional services and consultant expenses, for a total contract amount of \$232,125.

**County of Union, New Jersey February 4, 2014
PROPOSAL FOR ECONOMIC DEVELOPMENT
&
MARKETING CONSULTING SERVICES**

COST QUOTATION SHEET

| | | |
|------------------------|--|-----------|
| SALARIES AND WAGES: | | \$130,000 |
| OFFICE EXPENSES: | | \$25,700 |
| PROFESSIONAL SERVICES: | | \$17,425 |
| CONSULTANT EXPENSES: | | \$59,000 |
| TOTAL QUOTATION: | | \$232,125 |

Essentially, without the contract with Union County, it appears that the UCA could not sustain itself. In fact, the Deputy County Manager acknowledged as much, which he advised was also a consideration in the County's decision to enter into the agreement. Additionally, we note that the County could retain professional services and consultants itself and does not need an outside vendor such as the UCA to do so on its behalf. Overall, while we recognize that both the UCA and the County are amending some past practices to ameliorate some of the issues we found, we make additional recommendations below to Union County and other public entities contemplating similar contracts.

V. Recommendations and Referrals

1. Union County should either solicit bids or use other competitive means for production of a newsletter or consider whether returning to producing the newsletter in-house would provide a cheaper alternative to having it produced by an outside vendor. The same holds true for the electronic newsletter.

2. Union County should consider whether the economic development functions currently being provided by the UCA are reasonable and sufficiently distinct from functions performed by County offices. If an outside vendor continues to be utilized, the level of funding should be appropriately connected to deliverables actually provided, and consideration should be given to using a competitive process to procure such services.

3. Union County and similarly situated public entities doing business with comparable third-party vendors should have in place appropriate policies and procedures concerning supervision of the vendor in its expenditure of public funds. This should include, at a minimum, seeking detailed invoices or other accounting of how public money is being spent, including independent audits, when appropriate. The public entity should review and monitor expenditures as appropriate and ensure that vendors have sufficient internal controls in place to guide the vendor's management in the responsible spending of public funds. See OSC's February 19, 2014 investigative report, *Newark Watershed Conservation and Development Corporation*.

4. Union County and other public entities should also take steps to ensure that vendor contracts include provisions designed to protect public funds, such as clear and unambiguous language detailing the vendor's scope of work and other obligations. Guidance and best practices in this regard may be found in previous OSC reports, such as OSC's March 4, 2010 report entitled *Best Practices for Awarding Service Contracts*.

5. In cases where the vendor is a non-profit entity receiving a majority of its funding from a government agency, the agency should consider further steps to ensure that the vendor is not used simply as a means to circumvent rules and regulations that would be imposed upon the government agency by law if it performed the service itself. These steps could include ensuring

that the vendor is awarding contracts pursuant to public contracting laws or through similarly transparent and competitive means. Guidance and best practices in this regard may be found in previous OSC reports, such as OSC's March 4, 2010 report entitled *Best Practices for Awarding Service Contracts*. See also, *Local Finance Notice AU 2002-2* from the Department of Community Affairs regarding EUS and contracting practices.

6. Public entities should consider including a code of ethics in contracts with non-profit entities, including a provision on conflicts of interest.

OSC is referring this matter to the Internal Revenue Service regarding the lack of supporting documentation for the UCA's Form 990s. Additionally, OSC is referring this matter to the NJ Department of Treasury, Division of Taxation and the NJ Department of Labor and Workforce Development due to the financial discrepancies described in this report.