

Contract Dispute Exposes Deep Rift Between WAPA Board and Management Over Oversight Role

A push to approve a \$2.77 million audit-support contract erupted into a wider clash over licensing rules, contract access, and procurement authority as board members sought greater review while WAPA argued such involvement crosses into management's domain

Board Meetings / **Published On November 16, 2025 07:38 AM /**

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The discussion over a request to greenlight a contract for audit support highlighted what seems to be a fundamental disagreement between the board and management of the Water and Power Authority, over the appropriate role the board should play when it comes to contract negotiations and oversight.

On Friday, WAPA Chief Financial Officer Lorraine Kelly asked the governing board to approve a two-year contract with Robert Half International “to assist with preparation of the single audits.” The support is needed, Ms. Kelly said, due to the receipt of over \$1.75 million in federal funds over past years. Audited financial statements are outstanding from fiscal years 2021 onwards, and “the prior audit had several items detailed as non-compliant,” she noted. The contract would help WAPA in “completing the audits while the regular monthly accounting activities are ongoing,” Ms. Kelly said. The proposed contract would cost a maximum of \$2.77 million in the first two years, with an option to extend for an additional year at a 3% fee increase. “Please note that this work is 100% reimbursable by FEMA,” Ms. Kelly pointed out.

A discussion followed, prompted by board member Hubert Turnbull, on the implications of the proposed contractor not having a business license to operate within the Virgin Islands. “How is the government able to tax this contractor...they're doing work in the Virgin Islands.” WAPA Chief Executive Officer Karl Knight explained that “in our contracting language we do make it clear that they have a responsibility of checking in with the Internal Revenue Bureau and making themselves aware what the tax implications are for their doing business in the territory.”

Board chair Maurice Muia suggested that a conditional contract approval might be appropriate, so as to ensure that local licensing requirements are met. But WAPA's CEO and CFO pushed back, noting that validation of all necessary licensing requirements is part of the contract execution process. “I don't believe the board would need to make it conditional, because every single contract that you've approved goes through the exact same process, and you don't make it conditional for anything else,” said Ms. Kelly. “Our procurement makes it clear we won't sign a contract if you're not in good standing with the requirements of local law,” Mr. Knight offered.

Robert Half International has been able to transact business with WAPA before, but didn't need a local business license at the time because “the law wasn't in place for the duration of that,” Ms. Kelly explained. Prior to the legislative change, companies with no local presence could operate remotely with a license issued by their home state, Mr. Knight said. He noted that the impact of recent changes to the law are perhaps only now beginning to be felt. “I do worry that it might affect the vendors available to us,” he fretted.

Nevertheless, WAPA management maintained that procurement guidelines were robust enough to ensure that any vendor would comply with local licensing and taxation requirements before contracts are executed.

With Mr. Muia continuing to express concerns, WAPA general counsel Dionne Sinclair also stepped in to support the executive team. “The procurement process, which includes the negotiations and the actual final contract, makes clear that all the elements that are necessary to have the contract be legal and binding must be provided before the contract can go into effect. So that includes any licenses, permits...so that is not something that has to be parsed out and separated,” Ms. Sinclair declared.

Mr. Turnbull asked to see a copy of the preliminary contract, but was told that one had not been prepared. “We will likely take last year's contract that was approved by the board, and we will change the date, go from two consultants to four consultants, change the dollar amount, and likely proceed with that,” said Ms. Kelly.

Mr. Knight also insisted that presenting draft contracts to the board for review was not a necessary or usual practice for WAPA. “We get proposals in. We look at the proposals, we share it with the board,” he said. “We said, ‘hey, we like this, so we would like to get into a contract based on this

proposal with this company based on the terms that the company has laid out in the proposal.” He noted that WAPA officials do not wish to spend time negotiating a contract the board might then decline to approve.

“It's hard for me as a board member, as a director, to say yes to something I can't read,” Mr. Turnbull countered. “I am not aware of any changes whatsoever to the standard T's and C's in the existing contract,” Ms. Kelly responded. Chairman Muia suggested that partial contracts could be presented to the board moving forward, so that members of the governing board could have “something that we can look at.” Ms. Kelly again suggested that “it would be very helpful for the board to read the standard T's and C's that we have and the standard language for FEMA and HUD that we have.” Any variations on those, she said, would be brought to the attention of the board when requests for contract approvals are made.

When Mr. Muia noted that the entirety of the power purchase agreement between VI Electron and WAPA was available for the board to scrutinize prior to approval being given, he was informed by attorney Sinclair that “it was not part of the typical procurement process.” A further query of whether the board might have the opportunity to review finalized contracts before approval received firm pushback from WAPA management.

“You're asking officers of the company, basically, to include the government board — to become the management team,” Ms. Kelly objected. “If you're asking us to add an additional step in the process so that the governing board can review a contract, I personally think that's the governing board stepping into management's role.” Mr. Knight argued that this scenario would be “an overlap of management and the board responsibilities. If the board is going to review the contracts, then why should I spend time reviewing it?”

Ms. Sinclair suggested that “maybe this is a conversation the board needs to have with its attorney, just to solidify the parameters of the board and management...maybe that's something the board wants to discuss amongst itself.”

Mr. Muia continued to push for some board involvement before the final execution of a contract, and management officials continued to resist. Eventually, members agreed to revisit the topic of how WAPA procurement is handled, and voted to authorize the CEO to enter into contract with Robert Half International. The vote passed over the objections of Mr. Turnbull, and with the abstention of Mr. Muia.