

# Revitalizing New Orleans' Office of Inspector General Depends on Quality of New Leader, Improved Oversight

December 21, 2020



Recent news reports have exposed several problems in the administration of New Orleans' Office of Inspector General (OIG), including high staff turnover, internal disputes and the inspector general's significant absences.<sup>1</sup> Facing concerns about the office's productivity and his own potential dismissal, the inspector general resigned in October before completing his first term.<sup>2</sup> Now, the New Orleans Ethics Review Board (the Board) must find and appoint the office's next leader.

The appointment will be a crucial one. The next inspector general must have the leadership ability to address personnel problems, turn around the office's performance and revitalize its mission. The purpose of the OIG is to detect and prevent fraud, waste and abuse, as well as promote efficiency and effectiveness, in City of New Orleans government (City).<sup>3</sup>

The Board, which consists of seven New Orleans residents, appoints the inspector general to a four-year term.<sup>4</sup> The Board can reappoint the inspector general to unlimited additional terms and, if necessary, remove the inspector general for cause.<sup>5</sup> The Board helps to protect the OIG's independence from City government, while also providing public accountability for the office and its leadership.

The recent problems facing the OIG, combined with the inspector general's resignation, have raised questions about the Board's effectiveness in those key roles. They also demonstrate a need for the Board to strengthen its upcoming selection process for, and future oversight of the new inspector general. The Board has acknowledged it must improve in these areas and, to its credit, has already taken or proposed steps to address these deficiencies.

In this release, BGR discusses both the Board's selection process and its oversight role. It examines recent measures either proposed or implemented by the Board to im-

prove the existing selection process and strengthen Board oversight of the next inspector general. Finally, the release makes recommendations for further improvement.

## THE SELECTION PROCESS

The Board must initiate the selection process for a new inspector general within 60 days of a vacancy.<sup>6</sup> The Board already has met this requirement as it began discussing the selection process at its October and November meetings.<sup>7</sup>

The City's charter and ordinances establish the process to select the inspector general. In reviewing those laws and the previous inspector general search process, BGR identified three objectives important to the upcoming search:

- Developing a broad pool of candidates
- Conducting an efficient and effective nationwide search
- Ensuring a transparent selection process with public participation

## Developing a Broad Pool of Candidates

Individuals applying for the inspector general position must meet the following minimum requirements:

- Hold a bachelor's degree from an accredited institution.
- Demonstrate knowledge or skills in conducting audits, investigations, inspections and performance reviews.
- Have at least five years of experience as an inspector general or a supervisor within an inspector general's office, a federal law enforcement officer, a federal or state judge, a licensed

attorney experienced in audit or investigation of fraud, waste and other abuses, a senior-level auditor or comptroller, or other professional with investigative experience.

- Obtain an inspector general professional certification within one year of appointment.<sup>8</sup>

Additionally, City law requires a waiting period for certain candidates. Former or current elected officials and employees of City government as well as governmental entities that receive City funds are not eligible for the inspector general position unless at least four years have passed since their time of service.<sup>9</sup> The four-year waiting period also applies to former or current elected officials and employees of the State of Louisiana (State) and its political subdivisions, such as other parish or municipal governments.<sup>10</sup> The restriction, however, does not apply to current employees of the New Orleans OIG who have served in the office for at least two years.<sup>11</sup>

The rationale behind the waiting period is to maintain the office’s independence and prevent conflicts of interest. The eligibility restrictions discourage potential applicants with City or State government connections who might politicize the work of the office or improperly use information obtained for the OIG’s work (e.g., identifying a whistleblower whose complaints resulted in an investigation).

However, the Board contends that the eligibility restrictions limit the pool of potential candidates and prevent capable individuals from applying for the job. In 2017, for instance, the Board could not consider a candidate from another Louisiana inspector’s general office because of the four-year waiting period.

The Board has asked the City Council to consider amending these restrictions.<sup>12</sup> The Board proposes making employees of other inspector general offices in Louisiana immediately eligible as long as they have served in their respective offices for at least two years. The proposed change mirrors the eligibility exception currently given to employees of the New Orleans OIG and should enable more qualified candidates to apply for the position.

The Board also proposes reducing the four-year waiting period to two years for all former or current elected officials or employees of the City, government entities that receive City funds, and the State and its political subdivisions. A two-year waiting period may be sufficient for officials or employees of the State or its political subdivisions because their work or service likely does not directly involve City government or City funds. However, a two-year waiting period for employees and officials of the City and City-funded governmental entities would increase the risk of conflicts of interest that could harm the

## CURRENT AND PROPOSED WAITING PERIODS FOR INSPECTOR GENERAL CANDIDATES

	New Orleans Office of Inspector General employees with at least 2 years of service		Former or current elected officials or employees of the City of New Orleans, including governmental entities that receive City funds		
	Current	No waiting period	4 years	4 years	
	<b>Proposed</b>	<b>No waiting period</b>	<b>2 years</b>	<b>2 years</b>	
	Employees of other Louisiana offices of inspector general with at least 2 years of service		Former or current elected officials or employees of the State of Louisiana or its political subdivisions, such as parish or city governments and school districts		
	Current	4 years	4 years	4 years	
	<b>Proposed</b>	<b>No waiting period</b>	<b>2 years</b>	<b>2 years</b>	

Sources: City of New Orleans, Code of Ordinances Sec. 2-1120(3)(d) and City of New Orleans Ethics Review Board, Letter to the New Orleans City Council regarding Ethics Review Board Ordinance Request, received by the City Council on November 19, 2020.

OIG's independence. The public must have confidence that the next inspector general will audit, investigate and evaluate City government without bias and not use the office or its work for political purposes.<sup>13</sup>

### Conducting an Efficient and Effective Search

City ordinance requires the Board to conduct a nationwide search to find the next inspector general.<sup>14</sup> The Board plans to hire a professional firm to assist with the search. A search firm can bring expertise and experience to the hiring process, as well as generate interest in the position by using its professional networks and connections.

A search firm also can perform much of the time-intensive legwork to attract and vet potential candidates. Typically, a search firm will develop a profile for the position. This would include the qualifications and requirements for the inspector general, issues facing the OIG, and a description of the Board's ideal candidate. The firm would then create a job listing, advertise for the position, identify and evaluate applicants, and provide the Board with a shortlist of recommended candidates.

To find a qualified search firm, the Board is preparing a request for proposals (RFP). The RFP will provide the details about the search and the Board's expectations of the search firm. The Board will ask prospective firms to provide a timeline for the search, a history of hiring successes and an explanation of their candidate evaluation processes. It also will require the firm to advertise for the position in a manner that will produce a diverse pool of candidates. The Board has allocated up to \$50,000 for search firm expenses based on preliminary information it gathered on current prices for executive searches.<sup>15</sup>

Selecting a firm through a competitive process will help support the overall quality and transparency of the search. By contrast, the Board did not pursue a request for proposals for the 2017 search. In an effort to expedite the search, the Board asked a single firm to submit a proposal for slightly less than \$15,000, the City's threshold for requiring a competitive process.<sup>16</sup> The City awarded the contract without advertising for the work or requesting proposals from other firms.<sup>17</sup>

Once the Board hires a search firm, it must maintain engagement with the firm throughout the search process

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and hold the firm accountable for performance and deliverables. The Board has proposed requiring the search firm to provide regular updates on its progress during open meetings. This would ensure ongoing communication between the Board and the search firm, as well as improve transparency and public awareness.

In addition, the Board is considering whether to create a committee to work directly with the firm. The creation of a formal committee would yield several benefits. It would allow a few board members to work efficiently and consistently with the search firm to develop the shortlist of candidates for consideration by the full Board. The committee members could bring a mix of perspectives and insights to the discussions with the search firm. And, under Louisiana law, a committee of a public body must conduct its business during open meetings.<sup>18</sup> This would give the public more access to the search process and elevate the work and decisions of the committee.

During its last search, two Board members worked with the search firm on behalf of the full Board. However, because the Board did not formally create a committee, it did not require the two members to conduct or discuss their work in open meetings.

Finally, though the Board must carefully evaluate each candidate on the shortlist, it has not defined a process for doing so. The Board should create an evaluation process to assess qualifications, record and weigh opinions, and rank candidates. Under City law, inspector general candidates must meet the minimum education and professional requirements, as well as demonstrate integrity, potential for strong leadership, and ability to work with law enforcement agencies and the judiciary.<sup>19</sup> Given the recent problems within the inspector general's office, the Board may wish to conduct an extensive background review of candidates and add criteria that gauge candidates' management skills.<sup>20</sup> A well-

structured evaluation and ranking process would help ensure full Board engagement in decisions on semi-finalists, finalists and ultimately the selected candidate.

### **Ensuring a Transparent Search Process with Public Participation**

For its upcoming search, the Board has not yet determined how the public will participate in the selection process, including which documents will be shared with the public (e.g., candidate resumes and shortlists), what mechanism the public will use to communicate with the Board throughout the process, and how the public will provide input and ask questions during meetings. A clear Board policy on these matters is necessary to support meaningful public engagement.

The Board also should interview and evaluate candidates during open meetings, unless there is a valid reason to move into a closed executive session. While the Board, at its discretion, can enter into executive session to privately discuss candidates' character, professional competence and other matters specifically allowed by State law, it should do so only when necessary and not as a matter of course.<sup>21</sup> Some observers say candidate interviews and evaluations in open meetings might discourage qualified individuals concerned about jeopardizing their current employment. However, conducting this work in executive session would remove transparency and public participation from the process.

In addition, the Board's current practice of holding virtual meetings, instead of in-person meetings at City Hall, has made it easier for members of the public to attend. The Board should consider offering this option throughout the selection process.

While the Board released the resumes of all candidates who made the shortlist for the 2017 search, it interviewed the semi-finalists in a closed executive session. The opportunity for public participation occurred at the end of the process during the Board's meeting to vote

on the two finalists. The Board held a public meeting during which each finalist gave a presentation and answered questions from the Board. It also gave the public an opportunity to comment on or question the finalists before it voted.

By committing to an open process that limits executive session discussion only to necessary matters consistent with State law, the Board can assure the public it will act in a transparent and accountable manner.

### **OVERSIGHT OF THE INSPECTOR GENERAL**

The OIG is an independent office established in the City charter, separate from the Board. While the Board appoints and sets the salary of the inspector general, this person is not an employee of the Board.<sup>22</sup> City law directs the OIG to follow professional standards and "work cooperatively with the ethics review board in carrying out its functions and duties."<sup>23</sup>

In addition, while the Board can remove the inspector general for cause, it faces a high bar. The Board must hold a public hearing, obtain an affirmative vote of at least five of its seven members, and then publicly report the reasons for removal to the City Council. According to the charter, causes for removing the inspector general may include an abuse of power, a felony conviction, discrimination, ethical misconduct in office, unprofessional conduct or "other acts tarnishing the integrity of the office of inspector general."<sup>24</sup> Weak performance or ineffectiveness could keep an inspector general from being reappointed, but they are not causes for removal during the four-year term. The serious bases for removal from office protect the inspector general's independence in a line of work that is often politically unpopular.

Within this context, City law still provides the Board with specific avenues of performance oversight. The inspector general must present the OIG's findings for each investigation, audit or evaluation to the Board,

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as well as the office's activities from the past year and its work plan for the upcoming year.<sup>25</sup> In practice, the Board receives updates during its monthly meetings from the inspector general.

In addition, the Board receives periodic, external performance evaluations of the OIG's work. An annual citizen-led evaluation reviews the office's work and processes from the prior year, but does not evaluate specific findings or recommendations.<sup>26</sup> In 2019, the citizen committee raised serious concerns about the OIG's lack of productivity.<sup>27</sup> In response, the inspector general pointed to problems he inherited as the reason for low productivity.<sup>28</sup> While most Board members shared the committee's concerns, they expected the OIG's productivity to improve in the coming year.<sup>29</sup> In 2020, the citizen committee noted an increase in the OIG's productivity; however, it raised concerns that the savings uncovered by the office were not commensurate with its annual budget.<sup>30</sup>

The OIG also undergoes a peer review every three years.<sup>31</sup> The review, conducted by national peers of the inspector general, primarily focuses on whether the OIG's audits, investigations and inspections follow pro-

fessional standards. This follows a national best practice for reviews by a nonpartisan and objective group every three to five years.<sup>32</sup> The most recent peer review, conducted in 2018, found the OIG met all current and relevant standards for the previous three years.<sup>33</sup>

However, periodic reporting to the Board and external evaluations did not bring to light the internal problems that led to the departure of the inspector general. OIG employees brought those complaints informally to individual Board members. In light of this, the Board has acknowledged the need for a policy or law that enables OIG staff to report concerns regarding the inspector general confidentially to the Board.<sup>34</sup> It should define and limit the types of concerns to behavior by the inspector general that might qualify as cause for removal, and exclude complaints that should be addressed by OIG management or human resources staff. The Board also should establish a clear process to receive, investigate and resolve complaints in a manner that protects employee confidentiality.<sup>35</sup> This process would allow the Board to field and address specific complaints about a future inspector general that might be grounds for removal, without infringing on the OIG's independence.

## CONCLUSION AND RECOMMENDATIONS

Finding the right leader to turn around New Orleans' OIG depends on the quality of the Board's selection process. The Board is considering some steps to improve the process, including the competitive selection of a search firm and the creation of a committee to interact with the firm. However, the Board's proposed change to shorten the waiting period for employees and elected officials of the City and City-funded governmental entities from four years to two years would erode the OIG's separation from City government and protection against conflicts of interest. The Board and City Council should not pursue it. The Board must also determine how it will evaluate and rank the candidates who emerge on the shortlist and include the public in the selection process.

In addition, the current problems facing the OIG demonstrate a need to strengthen the Board's ability to hold the office and its leadership accountable for performance. The Board should maintain existing oversight mechanisms, including regular updates from the inspector general and the external reviews. It also should follow through on its plan to create a confidential way for OIG staff to report serious concerns or complaints about the inspector general to the Board.

A well-structured, transparent selection process and stronger oversight of the next inspector general will help the Board revitalize the OIG so it can achieve the impacts its mission envisions for citizens and taxpayers. With these goals in mind, BGR makes the following recommendations.

### Recommendations

To broaden the pool of eligible applicants for inspector general while protecting the office's independence, the City Council should:

- Retain the eligibility restriction that prohibits former or current City employees or elected officials, or those of government entities that receive City funding, from applying for the inspector general position unless at least four years have passed since their time of service.

- Approve the proposed two-year waiting period for former or current employees or officials of the State and its political subdivisions, as well as the immediate eligibility of employees in other Louisiana inspector general offices who have served at least two years.

To improve the inspector general selection process, the Board should:

- Clearly set forth the scope of work and deliverables in its contract with the search firm. Publish the contract on the Board's website, along with the RFP documents.
- Appoint a Board committee to work directly with the search firm in open meetings to increase transparency, oversight and involvement in developing the shortlist of inspector general candidates for Board consideration.
- Develop a process to require Board members to rank candidates on the shortlist based on qualifications, experience, skill set and other relevant criteria.
- Conduct the Board's interviews and evaluations of semi-finalists and finalists and other business related to the selection process during public meetings and adopt a policy that provides for public participation throughout the process. The Board should limit its executive sessions to necessary private discussions of character and professional competence of individual candidates and other matters allowed by State law.

To improve its oversight of the inspector general, the Board should:

- Establish a mechanism to properly and confidentially handle complaints from OIG employees about behavior by the inspector general that might qualify as cause for removal.

## ENDNOTES

- 1 Perlstein, Mike, “[Who’s Watching the Watchdog? | Staff mutiny, Absenteeism lead to departure of New Orleans Inspector General](#),” *WWL-TV*, October 29, 2020. Perlstein, Mike, “[Who’s Watching the Watchdog? | Corruption, payroll irregularities reported in N.O. Inspector General’s office](#),” *WWL-TV*, October 30, 2020. Perlstein, Mike, “[Documents obtained by WWL-TV reveal what pushed New Orleans Inspector General to leave](#),” *WWL-TV*, November 18, 2020.
- 2 The Board appointed the inspector general to a four-year term in December 2017.
- 3 City of New Orleans, Code of Ordinances, Sec. 2-1120(2).
- 4 Home Rule Charter of the City of New Orleans, Sec. 9-402(1) and City of New Orleans, Code of Ordinances, Sec. 2-719(2). The Board consists of seven New Orleans residents who must be registered voters in Orleans Parish. The mayor appoints six of the seven members from nominations submitted by presidents of local universities and colleges, but has discretion to select the remaining member. The City Council confirms all mayoral appointments. Board members should serve staggered seven-year terms and are not subject to term limits. However, delays in replacing members with expired terms have resulted in four new members joining the Board this year. See also *Ibid.* Sec. 2-1120(3)(c).
- 5 *Ibid.* Secs. 2-1120(3)(c) and 2-1120(4).
- 6 *Ibid.* Sec. 2-1120(3)(a). The inspector general resigned on October 31, 2020.
- 7 City of New Orleans Ethics Review Board, meeting agendas for October 26 and November 16, 2020.
- 8 City of New Orleans, Code of Ordinances, Sec. 2-1120(3)(b).
- 9 *Ibid.* Sec. 2-1120(3)(d)(1).
- 10 *Ibid.* Sec. 2-1120(3)(d)(2). Examples of political subdivisions of the State operating in New Orleans include the Orleans Parish School Board and the Port of New Orleans.
- 11 *Ibid.* Sec. 2-1120(3)(d)(1)(a).
- 12 City of New Orleans Ethics Review Board, Letter to the New Orleans City Council regarding Ethics Review Board Ordinance Request, received by the City Council on November 19, 2020.
- 13 For similar reasons, the national Association of Inspectors General recommends a five-year waiting period for inspectors general of federal agencies. Association of Inspectors General, *Model Legislation for the Establishment of Offices of Inspector General*, August 2, 2002.
- 14 City of New Orleans, Code of Ordinances, Sec. 2-1120(3)(b).
- 15 City of New Orleans Ethics Review Board, Meeting Agenda Packet, November 16, 2020.
- 16 The firm submitted a price of \$14,990. City of New Orleans Chief Administrative Office, *Policy Memorandum No. 122 (R), Appendix F: Written Justification for Contracts Under \$15,000*, October 28, 2014. See also City of New Orleans Ethics Review Board meeting minutes, June 14, 2017.
- 17 Professional Services Agreement between the City of New Orleans and Robert E. Slavin, Inc. d/b/a Slavin Management Consultants, August 2017.
- 18 Louisiana Legislative Auditor, *Open Meetings Law*, November 17, 2020, p. 5.
- 19 City of New Orleans, Code of Ordinances, Sec. 2-1120(3)(b)(1).
- 20 The background check may include, for example, whether the candidate has been a subject of an investigation, the results of peer reviews if the candidate is or has served as an inspector general, and disclosure of lawsuits filed against the candidate.
- 21 La. R.S. 42:17.
- 22 City of New Orleans, Code of Ordinances Sec. 2-1120(3)(a)(2).
- 23 *Ibid.* Secs. 2-1120(6)(c) and 2-1120(13).
- 24 *Ibid.* Sec. 2-1120(4).
- 25 *Ibid.* Secs. 2-1120(8), 2-1120(9) and 2-1120(17).
- 26 *Ibid.* Sec. 1120(16)(a). The committee consists of three Orleans Parish residents. The City Council, mayor and Ethics Review Board each appoint a member to the committee.
- 27 Quality Assurance Review Advisory Committee for the Office of Inspector General, *Written Report of Activities for 2018*.
- 28 Williams, Jessica, “[In fiery meeting, New Orleans inspector general defends job against claims he only published one report](#),” *NOLA.com | The Times-Picayune*, June 10, 2019.
- 29 Williams, Jessica, “[Ethics board backs Inspector General Derry Harper despite report that blasted his productivity](#),” *NOLA.com | The Times-Picayune*, June 24, 2019.
- 30 Quality Assurance Review Advisory Committee for the Office of Inspector General, *Written Report of Activities for 2019*.
- 31 City of New Orleans, Code of Ordinances, Sec. 2-1120(16)(b).
- 32 Association of Inspectors General, *Model Legislation for the Establishment of Offices of Inspector General*, August 2, 2002. Members of the Association of Inspectors General conduct the peer review for the New Orleans OIG.
- 33 Peer Review Committee, Association of Inspectors General, *Peer Review of the New Orleans Office of Inspector General, Audit Division, Investigations Division, and Inspections & Evaluations Division*, July 16, 2018.
- 34 Adelson, Jeff, “[After IG’s ouster, stronger whistleblower laws considered by New Orleans Ethics Review Board](#),” *NOLA.com | The Times-Picayune*, November 17, 2020.
- 35 The U.S. Department of Labor provides further detail on establishing an independent complaint review and reporting process in *Best Practices for Protecting Whistleblowers and Preventing and Addressing Retaliation*, April 21, 2015, pp. 6-7, available at [https://www.whistleblowers.gov/sites/default/files/2016-11/WPAC\\_BPR\\_42115.pdf](https://www.whistleblowers.gov/sites/default/files/2016-11/WPAC_BPR_42115.pdf).

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