



City of Chicago  
Richard M. Daley, Mayor

Department of  
Procurement Services

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TO: Joseph M. Ferguson  
Inspector General

FROM:

  
Jamie L. Rhee  
Chief Procurement Officer

RE: Response to the Office of the Inspector General's  
recommendations relating to the City's MWBE Program

DATE: January 26, 2011

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I am writing to respond to your letter of December 14, 2010 regarding the Office of the Inspector General ("IGO")'s six-month follow up to the Review of the Minority and Women-Owned Business Enterprise ("MWBE") Program (the "Review").

As the Contracting authority for the City of Chicago, the Department of Procurement Services ("DPS") managed the award process for approximately 1,600 contracts and modifications that are expected to total approximately \$1.6 billion in 2010. During the course of 2010, DPS embarked on an aggressive strategic plan to improve operating efficiency, transparency and MWBE participation in City of Chicago contracting.

Our philosophy is to look at contracts as opportunities: opportunities to support the objectives of the City of Chicago, to not just meet but to exceed goals set by the City Council for MWBE participation, living wage, City residency requirements and more. DPS continues to evaluate lessons learned and will continue to implement improvements as we evaluate our past performance, as well as implement industry best practices or harness cutting edge technology to our benefit. But our mission is to remain committed to providing sound, fair and transparent procurement services for the City of Chicago.

To assist with those efforts, the DPS Alerts system automatically emails notifications of City procurement news, bid opportunities and events. This system expands DPS Outreach and Marketing efforts and provides a more convenient method of disseminating information to the business community. Year to date there are approximately 5,000 individuals who receive the alerts.

DPS has issued and updated the 2010-2011 Buying Plan and Vendor Resource Guide, along with creating two other publications: "The City of Chicago Guide to Procurement Fundamentals" and



"Your Business is Certified, Now What?" Additionally, DPS offers classes to vendors such as: How to Respond to a Request for Proposal (RFP); Compliance Documentation 101; Introduction to City Bonding Requirements; and Doing Business with the City of Chicago. DPS also hosts quarterly events that are audience led which give firms the ability to meet DPS staff, ask questions and offer opinions. We work closely with assist agencies to assess the impact of policy and procedure changes.

DPS has also trained over 600 City employees on how procurement policies and procedures are applied. We have had the federal Department of Justice speak to City Department heads and procurement liaisons and continue to look for opportunities to provide information to City stakeholders on ways to improve operating efficiencies and transparency.

Finally, DPS has made a fundamental shift from not only processing contracts, modifications and amendments in a timely manner but to gathering data from User Departments to identify MWBE subcontracting opportunities which now allows us to begin analyzing availability of MWBE firms on a contract-by-contract basis.

I have provided separate answers detailing DPS's responses to each of the IGO's recommendations below:

**1) The actions your department has taken on each of the recommendations contained in the IGO's Review of the Minority and Women-Owned Business Enterprise Program:**

**a) Track and Report Actual Payments to MWBEs**

As I stated in my letter to you dated December 14, 2010, this recommendation falls under the purview of the Office of Compliance ("OCX"). This recommendation is being addressed by OCX.

**b) File Contract Data Electronically**

This recommendation is being addressed by OCX, and a response will be submitted to the IGO by OCX. All solicitations are now being done on CD and we are working towards implementing E-Procurement.

**c) Ensure More Detailed Documentation of Payments to MWBEs**

As I stated in my letter to you dated December 14, 2010, this recommendation falls under the purview of OCX. This recommendation is being addressed by OCX. Additionally, there is in process an initiative by the Comptroller to consolidate payments for all departments.

**d) Direct Payment of Subcontractors**

We believe that the C-2 system will reduce questions concerning timely payments to subcontractors. The City has several concerns about paying subcontractors directly and could not support doing so at this time. As the Report acknowledges, we believe direct pay would not be feasible for a number of reasons. It would require a significant amount of additional resources for the City to process the payments and distribute them to

subcontractors. Additional staffing would not only be required for payment, but also for the mediation and arbitration of disputes between the primes and subcontractors. Given the City's very limited personnel resources, taking on new/additional activities that would require additional taxpayer support would not be appropriate at this time. Further, the City has serious concerns about inserting itself into the relationship between prime and subcontractors. There is not support for this role currently in our contracts and this could put the City in an awkward position where disputes arise. The City does not have a contractual relationship with subcontractors, so to become the entity responsible for paying subcontractors could greatly increase the City's liability and also lead to an increase in disputes between the City, prime contractor and subcontractor, issues regarding the quality and acceptance of the work, and payment of retainage (especially where EEO and CRO damages may apply). We have had some experience along these lines where disputes have arisen between primes and subcontractors in regards to changes in compliance plans. The fact that subcontractors look to the City to be their advocate can create a conflict of interest as the City's best interest is often at odds with the subcontractor.

**e) Increase Cooperation Between User Departments, DPS and Compliance**

DPS works closely with User Departments on contract administration, compliance, and closeout. With respect to internal City processes and procedures, DPS provided training to more than 600 City of Chicago Commissioners, First Deputies and User Department procurement professionals. Most recently, DPS invited the U.S. Department of Justice, Antitrust Division to present on bid rigging and contract fraud. As you know, I have invited the IGO to participate in joint training sessions for City departments. In addition, DPS works in partnership with OCX to ensure that we understand the challenges facing the certification community and we jointly engage in outreach events, training and other opportunities to educate the community on the City's MWBE programs. As I stated earlier, DPS and OCX work closely with assist agencies, meeting often to learn about and discuss solutions to challenges facing the contracting community.

**i) User Departments Should Monitor and Report MWBE Compliance on an On-Going Basis Throughout the Performance of Contracts**

This recommendation is directed to User Departments. We anticipate that C-2 will greatly assist with monitoring of MWBE compliance on an ongoing basis.

**ii) Project Managers Should Attest that Documents Submitted by Contractors Related to MWBE Compliance are Accurate**

This recommendation is directed towards Project Managers in the User Departments, however, part of our training for the departments that manage the contracts reminds them to monitor closely the companies performing on the contracts and report any inconsistencies between the vendor that is actually doing the work and the vendor that is supposed to be doing the work. Project managers sign off on invoices and there are several different levels of review.

**iii) MWBE Compliance Officers Could be Embedded in Each Department**

As I stated in my letter to you dated December 14, 2010, this recommendation falls under the purview of OCX.

#### f) Increase Contract-Specific Goal Setting

We are taking a three step approach to this issue. In the first step, we developed a Buying Plan that is geared toward showing both DPS and contracting community what the City's needs are for goods and services in the future. The second step was to ask for updated information in the last Buying Plan update. DPS asked the departments to submit a list of types of subcontracting opportunities that would be associated with each project (along with the type of funding – i.e. Federal or non-Federal). The third step will be going through each contracting opportunity (with the assistance of OCX) and determining the available pool of MBE/WBE/DBE vendors that may be available to do the work. We will also look to see if additional outreach efforts are needed for expanded MWBE certification in a particular area. If appropriate we will then utilize the data to develop contract specific goals.

#### g) Consistently Apply MWBE Regulations

As I stated in my letter to you dated December 14, 2010, this recommendation falls under the purview of OCX, to the extent it applies to regulations relating to compliance and certification. However, DPS is constantly working with OCX to ensure consistent application of the regulations. Additionally, the department training and memos to the departments, publication of policies and procedures manuals all help to insure consistent application of the regulations. The Affirmative Action Advisory Board is also part of the administrative review of compliance and certification regulations.

#### h) Increase Penalty Collection from Non-Compliant Firms

DPS is currently working with the Law Department to enhance a penalty collection process that can sustain a legal challenge from firms that fail to meet MWBE obligations pursuant to Section 2-92-445 of the Municipal Code of Chicago. As the Report acknowledges, DPS also has the ability to collect penalties under the construction MWBE program pursuant to Section 2-92-740 of the Municipal Code of Chicago. DPS's ability to impose penalties pursuant to Section 2-92-740 requires a finding that the contractor has failed to make good faith efforts to meet its MWBE goals, or that the contractor has made fraudulent misrepresentations with respect to its MWBE goals. Consequently, the decision to implement penalties pursuant to Section 2-92-740 is made on a case-by-case basis. As you know, OCX has assumed most of the duties regarding contract closeout and auditing of MWBE compliance. DPS works closely with OCX, utilizing C-2 to identify those contractors that have shortfalls regarding the goals set forth in their compliance plan. Where shortfalls are discovered, OCX will forward those matters to DPS where we will interview the vendors in order to determine whether or not good faith efforts have been made to achieve the goals and decide upon the appropriate course of action to take.

#### i) Increase Resources for MWBE Certification and Compliance

While this generally falls under OCX, DPS has one Compliance Deputy and one person as administrative staff.

## j) Responsibilities and Duties of Compliance Staff

### Duties and Responsibilities

- MWBE and DBE Compliance review for all contracts and modifications – determines if the bidder/respondent met the MBE/WBE/DBE requirement as stated in the specification.
- Waiver Requests – reviews documentation from bidders/respondents or prime contractors to determine if a waiver is justified or not.
- No Stated Goal Requests – reviews scope of work for a particular project to determine if the project should be let with zero (0) MBE, WBE or DBE goals.
- Setting Contract Specific Goals (non-construction) – reviews scope of work on a project to determine if the MBE or WBE goal should be lower or higher than 16.9% MBE or 4.5% WBE.
- Contract Specific Goal Requests (construction & A & E) – review MWBE or DBE departmental goal recommendations.
- MWBE and DBE Compliance review for all task orders – reviews Schedule C-3 and D-3 documents submitted by the prime contractor to determine if the compliance plan as submitted is acceptable.
- Substitution Requests – reviews documentation submitted by the prime contractor to determine if the substitution request is justifiable.
- Subcontractor Payment Requests – responds to inquiries regarding non-payment to subcontractors.
- Prime and Subcontractor disputes – meets with primes and subcontractors to assist in resolving matters that relate to either payments or services being performed.
- MBE/WBE/DBE Monthly Reporting – prepares monthly reports of all DPS awards and modifications.
- Semi-Annual and Annual Federal Transit Authority and Federal Aviation Administration Reporting – prepares report on new DBE awards and utilization and submits to the FTA and FAA.
- Annual (to be every 3 - years) DBE Goal Document – prepares justification for annual DBE goal.
- 2010 FTA Triennial Review – prepared and responded to FTA audit.
- C2 System (Certification and Compliance tracking system) – subject matter expert for Compliance.

- C2 Data Entry of all contracts and modifications
- Presenter at Doing Business with the City and Compliance Documentation 101 workshop
- Supervision of [REDACTED]

[REDACTED]

#### Duties and Responsibilities

- Monthly Reporting – responsible for the collection, updating and maintenance of the waiver, no stated goal, good faith effort and bid tabulation reports. Assists in the preparation of MWDBE reporting.
- Task Orders – intake officer for all Task Orders submitted to DPS for review and approval.
- Compliance Plan Change Requests – responsible for the collection and summation of prior requests for Deputy Procurement Officer review.
- Departmental MWDBE Goal Requests - prepares recommendation memos for CPO review and approval.
- General Clerical Duties – customer service, compiling documentation, data entry, file maintenance and all other duties as assigned.

#### k) More Detailed Descriptions of MWBEs' Scope of Services on Schedules C.

As a result of input from our meetings with the assist agencies, DPS has already revised Schedule C-1 forms to fit on one page in order to reduce the potential for fraud and, in conformance with IGO's suggestion, has also revised the forms to reflect subcontracting to non MWBE firms. We have our quarterly meeting with the assist agencies on January 27, 2011. This matter is on the agenda for discussion. While not decision makers, we wish to have input from others in order to avoid unintended consequences.

#### l) Detail Subcontracting to Non-MWBEs on All Schedule D-1's

Schedule Cs already require a vendor to detail work subcontracted to non-certified firms. A MWBE prime would still be required to fill out the Schedule C-1 to accurately reflect participation by non-certified subs. While we believe that the issue is already addressed where a prime accurately fills out the Schedule C forms, we would be happy to discuss the issue in order to improve the forms.

#### m) Conduct a Rigorous Analysis of the Personal Net Worth of MWBE Applicants

As I stated in my letter to you dated December 14, 2010, this recommendation also falls under the purview of OCX. This recommendation is being addressed by OCX.

#### n) Count the Commission of Brokers as Participation

In the Review, you have recommended that the City allow brokers to participate in the City's MWBE programs. Pursuant to Section 2-92-480 of the Municipal Code of Chicago, brokers are no longer permitted to participate in the City's MWBE programs. The decision to change the status of brokers in the City's MWBE programs is contrary to what the Municipal Code of Chicago mandates. Absent a change in the ordinance, brokers will not be allowed to participate in the City's MWBE programs.

**2. A list of the names of the contractors and the names of the people in your department who are currently working on the administration of the MWBE program. Please provide a description of the responsibilities of each staff member and contractor.**

[REDACTED]. See also Section 1(j), above.

**3. The status of the implementation of the C2 system.**

This recommendation is being addressed by OCX.

[REDACTED]

[REDACTED]

If you have any questions or if you require any additional information, please contact me at

[REDACTED]

cc: Aaron Feinstein, Office of the Inspector General

[REDACTED]