




DEPARTMENT OF PROCUREMENT SERVICES
CITY OF CHICAGO

To: Joseph M. Ferguson
Inspector General

From: 
Jamie L. Rhee
Chief Procurement Officer

Date: August 2, 2013

Re: City Response to Advisory Concerning the City's Local Hiring Ordinance

On July 3, 2013, the Office of the Inspector General issued an Advisory Concerning the City's Local Hiring Ordinance (the "Advisory"). The recommendations contained in the Advisory related to City enforcement of MCC 2-92-330, the City's Local Hiring Ordinance (the "Ordinance") and contained a number of recommendations that the IGO believes will ensure better compliance and enforcement of the ordinance. This memorandum addresses the steps that the City has taken, or will take, in response to the recommendations contained in the Advisory.

I. Background

As you know, DPS is the contracting authority for the procurement of goods and services for the City of Chicago. DPS works with the greater Chicago business community, all of the operating departments of the City, the Assist Agencies, the County, other units of local government and the people of Chicago to guarantee an open, fair and timely procurement process by establishing, communicating and enforcing superior business practices. Integrity, the public trust and the law are our guiding principles.

DPS' core mission is the fair, legal and effective execution of the City's procurement process. The City's operating departments determine their particular needs and requirements; DPS assists them in articulating those needs for the marketplace and in acquiring the goods and services necessary to meet those needs. The operating departments are responsible for timely and diligent administration and management of their contracts and processing of payments to vendors. DPS assists them in that effort by developing pertinent contract terms and conditions, and consulting with the departments with regard to the effective administration of the contracts. Although DPS is not responsible for the procurement of certain contracts, such as those for legal services, airport concessions, City Council contracts, and other contracts for which City Council has delegated authority to other City departments, it does coordinate with the departments where necessary, or when requested, in procuring and administering these contracts.

The DPS procurement process serves two fundamental purposes:

- 1) it empowers the public to participate in the business of government; and

2) is the means through which government obtains the goods and services necessary for day-to-day operations required to serve its constituents in the most cost-effective manner.

The same basic principles apply to public procurement that apply to participation in government generally: equal opportunity and due process. The application of due process to public procurement means that procurement must be open, transparent, non-discriminatory and fair to all who participate. DPS works as a team with our customers to guarantee an open, fair and timely procurement process by establishing, communicating and enforcing superior business practices and following applicable procurement law.

As a steward of taxpayer money, the City promotes participation and employment of City Residents. For non-federally funded construction contracts procured through DPS, the City is required by law to require its contractors to have at least 50 percent of the total hours worked by persons on the site of the construction project be performed by actual residents of the City of Chicago. For contracts advertised after May 8, 2013, 7.5% of the City residents must also be hired from within the local project area.

While DPS is the contracting authority for the City, other City departments also have been given authority to award contracts. DHED is one of those departments and the Advisory concerns a redevelopment agreement that was awarded by the Chicago City Council and not one that went through DPS.

Some background is appropriate to put the advisory into context. Prior to January 2012, the Office of Compliance was responsible for contract close-outs and making determinations regarding compliance with Local Hire. Under Mayor Rahm Emanuel, that function was moved to DPS. Generally, DPS does not have rules and regulations regarding joint responsibilities for "supervising departments" because the process is fairly straightforward. There is very little joint responsibility. For all of the City's construction contracts that are awarded by the CPO in a competitive bid process (2-92-330 only applies to construction), certified payrolls are required to be collected along with other information and either submitted to the City or, for newer contracts, input into LCPTracker. DPS performs periodic spot checks of the actual project sites and also reviews the supporting documents at contract close-out. DPS makes the determination concerning compliance with 2-92-330 (as well as compliance with EEO and MBE/WBE compliance plans) for final contract close out. The "supervising departments" do not make those determinations.

The Parkside of Old Town Project Redevelopment Agreement that is the subject of the Advisory falls outside of the contracts awarded by DPS for the various supervisory infrastructure departments. This project was awarded pursuant to a 1997 ordinance passed by City Council. This is a redevelopment project area pursuant to a tax increment allocation financing (TIF). Normally it has not been the practice of DPS to monitor, audit or close out these types of contracts. That role has been performed by DHED. However, as further explained below, DPS and the Law Department have worked closely with DHED in order to insure that DHED complies with not only the Local Hire ordinance, but also the MBE and WBE ordinance requirements as well.

The vast majority of City construction projects are closed out by DPS on behalf of the supervising departments. Any comments the IGO makes in its advisory apply to a very small universe of contracts (albeit for large dollar amounts) that have traditionally been the responsibility of DHED (and formerly Planning) to monitor and close out. We do appreciate the

IGO pointing out an area where there could be improvement in City processes. Our response to the IGO recommendations is as follows:

The IGO recommends and the City responses follow:

1. Establish rules and regulations mandating that contractors and/or subcontractor obtain and maintain specific verifiable identification documentation from their employees as a condition of obtaining credit for complying with the Local Hiring Ordinance.
 - a. The IGO states that the City might require employers to maintain a file copy of a current state driver's license along with a copy of a certification by the employer that it personally observed and copied the license. As described below, this appears to be a duplication of what is already required by state law and may be unnecessary. It might also be burdensome to City auditors as well. By law, the City is entitled to rely on certified payroll information which provides addresses of a contractor's employees.
 - b. All of the contracts for which the Local Hire ordinance is applicable also are subject to the Illinois Prevailing Wage Act. 820 ILCS 130 et. seq. Under the Act, it is mandatory that all contractors and subcontractors make and keep, for a period of not less than 3 years from the date of the last payment on a contract or subcontract for public works, records of all laborers, mechanics, and other workers employed by them on the project; the records shall include each worker's name, address, telephone number when available, social security number, classification or classifications, the hourly wages paid in each pay period, the number of hours worked each day, and the starting and ending times of work each day; and submit a certified payroll to the City that is accurate.
 - c. The submittal of a false certified payroll is a Class A misdemeanor. Additionally, all of the information regarding a contractor's employees is required by the PWA to be available for inspection by the City, the Department of Labor and to federal, state or local law enforcement agencies.
2. Conduct periodic spot check reviews of the supporting documents in the possession of contractors and subcontractors to confirm compliance with Local Hiring Ordinance.
 - a. As stated above, DPS does conduct periodic spot checks for the contracts that it is responsible for. For example, in 2012, DPS conducted over 80 site visits to City projects. This includes contracts awarded on behalf of all of the City's infrastructure departments such as: Aviation, Water, Transportation, and Streets & Sanitation. In regards to DHED projects, it is our understanding that DHED also conducts periodic checks of their projects.
3. Promulgate policies and procedures regarding the joint responsibilities of DPS and supervising departments for ensuring compliance with the Local Hiring Ordinance.
 - a. Again, as stated above, for the vast universe of competitively bid construction projects, there are few joint responsibilities related to ensuring compliance with the Local Hiring Ordinance. Contractors are required to submit certified payrolls and other documentation during the life of the contract either in paper format or electronically through C2 and LCPTracker. DPS also conducts interim and final audits of the contracts to determine compliance with Local Hiring EEO and MBE/WBE requirements.
 - b. In regards to DHED projects, DPS and the Law Department have worked closely with DHED in order to insure that DHED complies with the ordinance. DHED provides a copy of the Local Hiring Ordinance in the compliance package which they utilize at our monitoring meetings. These meetings are held with the

developer and the General Contractor on all multi-family federally assisted projects, TIF projects and land sales. The Law Department writes DHED agreements and compliance with the Local Hiring Ordinance is contained in these agreements. DHED receives payrolls for each of these projects and their monitoring staff provides every general contractor a quarterly report by contractor and subcontractor as to the local hiring percentage. DHED conducts a monitoring meeting where liquidated damages are assessed if necessary.

- c. DHED does visit the sites unannounced and they interview the workers. DHED is not currently not utilizing LCP Tracker. A project is not issued a close out letter until and damages have been paid. DPS will require DHED to input payments and payroll information into C2 and LCPTTracker.
- d. As suggested by the IGO, DPS has developed rules and regulations regarding compliance with the Local Hire ordinance for departments that procure construction contracts outside of the DPS process. Those regulations are attached hereto as Exhibit A.

As always, we appreciate the IGO advising DPS on improvements that can be made to our processes and procedures and will implement the new regulations as soon as possible.

EXHIBIT A

REGULATIONS OF THE DEPARTMENT OF PROCUREMENT SERVICES
FOR
PERCENTAGES OF CITY AND PROJECT AREA RESIDENTS WORKER HOURS

GENERAL PROVISIONS

Statement of Authority

These regulations are issued pursuant to the following Section of the Municipal Code of Chicago:

Section 2-92-330 of Municipal Code of Chicago establishes a minimum number of hours to be performed by City Residents as well as a minimum number of hours to be performed by Project Area residents. Subsection (a) requires the chief procurement officer to “develop standards and procedures for reducing or waiving these minimum percentages level of Chicagoans work hours for eligible residents when a bidder or contractor can demonstrate the impracticality or excessive cost of complying with these percentage levels for particular contracts or classes of employees.” Subsection (f) authorizes the chief procurement officer to “adopt, promulgate and enforce reasonable rules and regulations pertaining to the administration and enforcement” of the Section.

Subsection (a) provides that for any construction project advertised, or if not advertised, awarded, by the city that has an estimated contract value of \$100,000 or more, and where not otherwise prohibited by federal, state or local law, the total hours worked by persons on the site of the construction project by employees of the contractor and subcontractors shall be performed (i) at least 50 percent by City Residents; and (ii) at least 7.5 percent by Project Area residents. Work hours performed by Project Area residents shall be considered to be work hours performed by City Residents for purposes of calculating the minimum work hour percentage required to be performed by City Residents.

Application and Statement of Purpose

These regulations describe how the ordinance will be administered and enforced, including the right of the chief procurement officer to waive or reduce the residency requirement.

DEFINITIONS

Unless otherwise specified, whenever used in these regulations, the following terms have the following meanings:

“City residents” means persons domiciled within the City of Chicago.

“Contract” means a City funded construction project as defined by Section 2-92-670(e) of the Municipal Code of Chicago.

“Domicile” means an individual's one and only true, fixed and permanent home and principal establishment.

“Eligible residents” means city residents including Project Area residents.

“Project Area residents” means persons domiciled within that part of the city designated as the Project Area in the information for bidders issued by the Department of Procurement Services (“DPS”).

“Supervising departments” means those infrastructure departments procuring construction contracts through the Department of Procurement Services under the Municipal Code of Chicago Title 2-92 and the Municipal Purchasing Act 65 ILCS 5/.8-10-1 et. seq.

“Other departments” means those departments procuring construction contracts under their own authority or pursuant to an ordinance passed by City Council.

PROCEDURES

Percentages of City and Project Area residents worker hours

Unless otherwise prohibited by federal, state, or local law, for any construction project advertised, or if not advertised, awarded, by the city that has an estimated contract value of \$100,000 or more, the total hours worked by persons on the site of the construction project by employees of the contractor and subcontractors shall be performed (i) at least 50 percent by City Residents; including (ii) at least 7.5 percent by Project Area residents. Work hours performed by Project Area residents shall be considered to be work hours performed by City Residents for purposes of calculating the minimum work hour percentage required to be performed by city residents.

Purpose and Effect of the requirement

The purpose of the requirement is to provide increased employment opportunities for city residents and residents in the localities surrounding City construction projects and, as a result, will be beneficial to the City's economy by creating jobs and generating revenue that will help stimulate the community that work is being performed in as well as the economy of the City as a whole.

Project Area definition

Project Areas will be defined using the 77 City of Chicago “Community Areas”, as such areas are designated in section 1-14-010 of Municipal Code of Chicago. Prior to requesting that DPS place an advertisement for the project, a department must first make a request to the chief procurement officer for approval of the project area.

For fixed construction projects, the department must plot the project site on to a map of the Community Areas to determine what Community Area the project is in. When the project is close to the border of an area, the department should also identify the adjacent Community Area as part of the Project Area. The department must also include the size, duration, scope of the project and trades involved into its calculations. Project Area hiring for short, small projects would likely be limited to those initial 1 or 2

Project Areas. For larger, longer term projects (i.e. with potentially more job opportunities to fill) departments may look at the appropriateness of expanding the Project Area by adding adjacent Community Areas. A calculation of available resident labor in the community areas must be made to see if the Project Area should be expanded. This calculation may include: zoning information (is the area industrial or are there sufficient residents in the area to support the hiring requirement), local chamber of commerce data, and information on the availability of skilled trades or union members in the area.

For construction projects that cover specific areas of the City (for example North, Central, South), the Project Area shall be the boundaries of the area for the entire contract.

For projects funded by menu money, the project area will be the ward associated with the funding.

For City wide construction projects, the departments should look at the practicality of breaking the project into zones. Where that is not practical, or the work to be performed is of such short duration that the local hire provision may result in the hiring and firing of workers over a very short period of time, the department may request a waiver or reduction of Project Area participation. However, any reduction of Project Area participation shall not have any effect on the overall requirement that the contractor employ City Residents for 50% of the labor hours on the project. The Chief Procurement Officer will then approve the Project Area for inclusion in the bid.

Waiver

Contractors that can demonstrate the impracticality or excessive cost of complying with these percentage levels for particular contracts or classes of employees may apply for a waiver or reduction. A waiver or reduction shall be deemed appropriate if a contractor or subcontractor has unsuccessfully solicited a sufficient number of eligible city residents to perform the work identified in the bid solicitation and has documented such effort to the satisfaction of the chief procurement officer. The Chief Procurement Officer will also consider evidence from a contractor related to retention of long time employees and impracticality of hiring new employees for short term work. The Chief Procurement Officer will consider good faith efforts to meet the residency requirements as appropriate for reducing or waiving the minimum percentages of work hours for City Resident and Project Area resident requirements at the close out of the contract. The contractor must submit sufficient documentation to support any request for a reduction or waiver of the goals.

Waiver or reduction requests for the 7.5% Project Area resident requirements must be submitted separately from any waiver or reduction request for the 50% overall Chicago residency requirement. A waiver or reduction of the project area requirements does not constitute any reduction of the requirement that 50% of the total project hours be performed by city residents unless the Chief Procurement Officer has granted an express waiver of that requirement as well.

Supervising Departments must monitor the work performed by the contractors and subcontractors in order to assure that eligible residents are being utilized on their projects. Supervising Departments must work with DPS to insure that payment information is entered into C2 and certified payroll information is entered into LCPTTracker by their contractors. If C2 and LCPTTracker is superseded, then the

relevant information must be entered into whatever replacement database is current. Once the Supervising Department has made a determination on final quantities and received all documents necessary to close out the contract, that information must be forwarded to DPS for a determination concerning Local Hire (as well as MBE/WBE and EEO compliance).

Other Departments must notify the CPO when a Non-DPS contract has been awarded. It is the responsibility of the Other Departments to monitor the work performed by the contractors and subcontractors in order to assure that eligible residents are being utilized on their projects. It is also the responsibility of Other Departments to close out their contracts and make determinations regarding compliance with 2-92-330 (as well as MBE/WBE participation). Payment information must be entered into C2 and certified payroll information must be entered into LCPTTracker. Once the Other Department has closed out their contract and made a determination regarding compliance, it must notify the chief procurement officer so that the information may be reported to City Council as required.

Penalties

When work is completed, in the event that the city has determined that the contractor failed to ensure the fulfillment of the requirements of this section concerning the worker hours performed by eligible residents or has failed to report in the manner as indicated above, the city will be damaged in the failure to provide the benefit of demonstrable employment to eligible residents to the degree stipulated in this section. Therefore, in such a case of non-compliance, $\frac{1}{20}$ of 1 percent (.05%), 0.0005, of the approved contract value for this contract shall be surrendered by the contractor to the city in payment for each percentage of shortfall toward the stipulated residency requirement.

Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no eligible residents were employed in either of the categories. The willful falsification of statements and the certification of payroll date may subject the contractor or subcontractors or employee to prosecution.

Any retainage to cover contract performance that may become due to the contractor pursuant to Section 2-92-250 of the municipal code of Chicago may be withheld by the city pending the Chief Procurement Officer's determination whether the contractor must surrender damages.

Final Decision

The Chief Procurement Officer or her designee shall make the final determination regarding the establishment of a project area or waiver or reduction of any of the goals set forth in this ordinance.