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Inspector General

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March 28, 2013

To the Mayor, Members of the City Council, City Clerk, City Treasurer, and residents of the City of Chicago:

In July 2012, the Inspector General's Office (IGO) published a report detailing the findings of an investigation into a series of emergency contracts awarded to a single City vendor and provided several recommendations for improving the City's emergency contracting process. In response to the 2012 report, the City's Department of Procurement Services (DPS) stated that it would adopt the IGO's recommendations, including the use of a standard emergency contract request form to ensure City departments provide a more thorough written justification for emergency contracts.

The enclosed follow-up report reviews the City's emergency contracting activities in the six months following the IGO's report. To DPS's credit, the department authorized just one emergency contract during the six-month review period, a significant reduction from the previous year. The decline in emergency contracts, if continued, may significantly reduce the fiscal and operational risks involved in these expedited procurements.

However, the IGO's follow-up also found that the single emergency contract approved during this period did not meet DPS's own requirements for an emergency procurement. DPS failed to require that the department use the new standard request form that DPS pledged to use to ensure emergency contract requests are adequately documented and justified. The IGO, therefore, reiterated its recommendation to DPS that it require user departments to use the emergency contract request form and take the necessary steps to ensure that DPS employees follow relevant emergency contracting policies.

In its response to the report, DPS noted that there have been no additional emergency contracts awarded since the IGO's review period. DPS credited its ongoing efforts to improve the City's procurement process and procedures as the cause of the reduction. DPS also credited its continued efforts to educate City staff on procurement laws and policies, noting that it holds numerous trainings for City staff and the public.

Regarding the one emergency contract reviewed by the IGO, DPS emphasized its determination that the need for the services requested—investigating and televising work to ensure the integrity of the City's sewer system—constituted a bona fide operational emergency, despite the fact that the request did not meet the terms of DPS's emergency procurement policy. DPS did not specifically address, and we therefore view as a tacit admission, the fact that it did not administer

the emergency procurement in accordance with its own new policy and procedure and failed to document the justification for the emergency procurement as required. DPS's new standard request form was designed to require a department to explain what led to the emergency, and in the case of multiple contracts for the same emergency, require each contract to be independently justified and documented. The IGO therefore encourages DPS to ensure this form is completed for any future emergency contract requests.

Beyond the instance of this single deviation, the IGO's follow-up report otherwise confirms that this previously existing area of concern is one that we believe is trending strongly in a positive direction. We thank DPS and Chief Procurement Officer Rhee for their cooperation and responsiveness to the report.

As always, I welcome your ideas, suggestions, comments, and questions.

Respectfully,

A handwritten signature in blue ink, appearing to be 'JMF', is written above the printed name.

Joseph M. Ferguson
Inspector General
City of Chicago

OFFICE OF INSPECTOR GENERAL
City of Chicago



REPORT OF THE INSPECTOR GENERAL'S OFFICE:

***FOLLOW-UP REPORT TO 2012 RECOMMENDATIONS FOR
IMPROVING THE EMERGENCY PROCUREMENT PROCESS***

MARCH 2013

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In July 2012, the Inspector General’s Office (IGO) released a public report detailing the findings of an investigation into a series of emergency contracts awarded to a single City vendor and providing several recommendations for improving the City’s emergency contracting process.¹ In response to the 2012 report, the City’s Department of Procurement Services (DPS) stated that it would adopt the IGO’s recommendations, including the use of a standard emergency contract request form to ensure City departments provide a more thorough written justification for emergency contracts.

This IGO follow-up report describes the City’s emergency contracting activities in the six months following the IGO’s original investigation. The number of emergency procurements dropped from four in the six months from November 2011 through April 2012, to one in the six months from May through October 2012. This represents a further decrease from the 11 emergency contracts awarded during the same prior-year period, May through October 2011. DPS reported to the IGO that it renewed its efforts to steer departments toward other standard procurement processes and to reserve emergency contracting as a last resort. The decline suggests that emergency contracts are becoming increasingly rare, which, going forward, may significantly reduce the fiscal and operational risks involved when standard procurement processes are not followed.

However, the IGO’s follow-up also found that the single emergency contract approved during this period did not meet DPS’s own requirements for an emergency procurement. DPS failed to require that the department use the new standard request form that DPS pledged to use to ensure emergency contract requests are adequately documented and justified. The IGO, therefore, reiterates its recommendation to DPS that it require user departments to use the emergency contract request form and take the necessary steps to ensure that DPS employees follow relevant emergency contracting policies.

ORIGINAL INVESTIGATION

In April 2012, the IGO concluded an investigation into a series of ten emergency contracts awarded to a single City vendor between March 2010 and April 2011. Emergency contracts, under the City’s procurement policies, are not required to be advertised nor are they required to be awarded pursuant to an open, competitive bidding process. Under the Illinois Municipal Purchasing Act, 65 ILCS 5/8-10-5, the Chief Procurement Officer (CPO) may authorize non-competitive purchases of any supplies, materials or equipment needed to meet “bona fide operating emergencies,” and must make a full written description of the emergency and resulting purchase open to public inspection for at least one year after the purchase. The Chicago Municipal Code provides that emergency procurements must be for no more than \$250,000 and requires the CPO to file with the City Council a quarterly report of all awarded emergency contracts. Under DPS policy, bona fide operating emergencies *do not* include situations where the immediate need is the result of the expiration of grants or funding, a lack of advance planning for the purchase of goods or services, the expiration of a contract and lack of advance notice of

¹<http://chicagoinspectorgeneral.org/publications-and-press/press-releases/igo-finds-waste-in-citys-emergency-contracting-practices-2/>.

department's intent to renew through a new solicitation via competitive bid or Request for Qualifications (RFQ) or Request for Proposal (RFP), or the time period for competitive bidding or RFP is too long.

The contracts identified in the IGO's investigation were ten separate, sequential, unadvertised operating emergency contracts for concrete sewer pipes with an approximate total value of \$2.4 million. At the Department of Water Management's (DWM's) request, DPS issued the first emergency contract following DPS's abrupt termination of an existing competitively bid contract for the provision of those supplies. DPS chose to terminate the contract and initiate debarment proceedings against the supplier, Azteca Supply Co., after Azteca was indicted for MBE/WBE program fraud. DPS issued nine more emergency contracts before April 2011, when it entered into a new five-year supply contract with another vendor.

The IGO investigation revealed the following:

- DPS authorized the emergency contracts without sufficient documentation supporting the need for an emergency contract;
- At least some of the emergency contracts may have been avoided with due care and diligence by DPS in managing the procurement process for a new supply contract, which took nearly a year to let;
- The use of emergency contracts has a significant financial cost to the City, given that the ten emergency contracts cost approximately \$467,000 more than the City's later competitively bid contract and \$201,000 more than if the City had kept the previous supply contract in place;
- A significant number of emergency contracts awarded in 2011 were the result of vendor debarment or contract cancellation. And while the Municipal Code and Debarment Rules afford the CPO important discretion in determining whether to refrain from terminating an ongoing contract based on the contract's impact on the public health, safety, or welfare, DPS did not, as a matter of course, review whether interim restrictions or contract termination would necessitate an emergency procurement, which often result in higher costs to the City.

The IGO issued several recommendations for DPS to improve the emergency procurement process:

- Develop standards for more thorough documentation of its justification for emergency contracts, including a standardized request form for use by City departments;
- Improve its management of the emergency contracting process to avoid excessive delays that necessitate the sequential issuance of emergency contracts;
- Proactively consult with departments to determine whether interim restrictions or contract termination will necessitate emergency contracts; and
- Undertake a cost-benefit analysis of a proposed contract termination to assure it does not result in disproportionate cost to the taxpayer.

In her reply, DPS Chief Procurement Officer Jamie Rhee explained that DPS's termination of the Azteca contract was consistent with both existing law and the DPS policies at the time of

Azteca's indictment. The CPO stated, however, that DPS is always interested in better ways of approaching emergency procurement situations and welcomed the IGO's suggestions. The department reported that it had developed a new request form to improve documentation of its justification for authorizing emergency contracts. The new form asks the requesting department to provide a detailed description of the emergency, the anticipated duration of the emergency, the justification for the continued emergency if the request is for an additional emergency contract, a detailed description of the goods sought, an explanation why normal contracting procedures are not feasible, a description of the anticipated vendor solicitation process, and the consequences or cost of not granting the request. DPS further stated that it would take measures to improve its communication with the Department of Law and City departments requesting emergency procurements to address the concerns raised by the IGO.

The IGO reported that it would perform a follow-up evaluation of the design and operational effectiveness of the planned improvements during the fourth quarter of 2012.

FOLLOW-UP

In November 2012, the IGO conducted a follow-up review of all emergency contracts issued during the period of May 10, 2012 through October 31, 2012 and DPS's use of the new, standard emergency contract request form since its inception in May 2012. While the review found that DPS reduced the number of emergency contracts it authorized during the six-month review period, it also revealed that DPS did not effectively implement its new emergency contract request form.

1. Only One New Emergency Contract Awarded since May 2012

In early November 2012, DPS's on-line listing of awarded emergency contracts² showed no new emergency contracts issued since March 2012. That listing, and thus DPS's statutory reporting of emergency contracting to the City Council, were not accurate, as DPS's own on-line Contract Award and Vendor Database³ reflected a contract, P.O. 26661, for "Emergency Sewer Cleaning and Televising Services" with National Power Rodding Corporation, awarded August 8, 2012.

In a November 29, 2012 response to the IGO's request for information as part of its follow-up review, DPS initially reported that it had no instances of emergency contracting since March 23, 2012. DPS explained that it had received informal inquiries from City departments for emergency contracts, but that it was able to steer the departments to other means of procurement, thereby avoiding the need for any additional emergency contracts.⁴ A day later, at specific IGO

²http://www.cityofchicago.org/city/en/depts/dps/provdrs/contract/svcs/emergency_contracts.html.

³<http://webapps.cityofchicago.org/VCSearchWeb/org/cityofchicago/vcsearch/controller/contracts/display.do?contractNumber=26661>.

⁴ DPS did not provide details of any specific instances in the six month follow-up review period of having steered informal emergency contracting inquiries to alternative procurement channels. However, DPS's emergency contracting procedures expressly specify that emergency contracts are to be treated as an option of last resort. Departments are instructed to review alternatives including existing City contracts, small order purchases, or contracts available through arrangements with U.S. Communities or the U.S. General Services Administration.

prompting, DPS reported that since March 23, 2012, it had in fact issued one emergency contract, the contract with National Power Rodding.

DPS explained that the one emergency contract with National Power Rodding did not appear on DPS's on-line list of awarded emergency contracts and was inadvertently omitted from DPS's report to City Council due to an administrative error. Due to the mistake of an inexperienced DPS employee, the contract was not flagged as an emergency contract in DPS's database and therefore did not appear in searches conducted for reporting purposes. DPS stated that it was in the process of notifying City Council of the emergency contract, and has since corrected the DPS website. DPS further reported that it had reminded all DPS staff of the importance of accurately identifying emergency contracts, as well as the need to follow DPS's emergency contracting procedures.

The IGO commends DPS for reducing the number of emergency procurements in the approximate six-month period following the IGO's report, specifically awarding only one emergency contract, down from the four emergency contracts awarded in the previous six months, and down from the 11 emergency contracts awarded during the same six-month period in 2011, May through October 2011. DPS's increased efforts to direct departments to alternative means of procurement thus appear to be having a positive effect in reducing emergency contracts. Such contracts present operational risks and may cost significantly more than regular procurements because they are not required to be advertised or competitively bid.

2. New Procedure Was Not Followed for Emergency Contract P.O. 26661

Despite this overall reduction in the number of emergency procurements, IGO review of the contract file for P.O. 26661—the sole emergency contract awarded since the original IGO report—shows that DPS failed to effectively implement the new standard emergency contract request form it had previously pledged to use. In May 2012, DPS provided the new form to the IGO, explaining that it had been designed to ensure departments follow DPS procedures and adequately document the emergency as required by the Municipal Purchasing Act. With respect to P.O. 26661, however, DWM requested authorization for the emergency contract on June 28, 2012, in a one-page memorandum. That memorandum stated only that DWM was seeking a second emergency contract for sewer televising program services because the prior emergency contract, awarded in March 2012, would run out in approximately one month and a new competitively bid contract had not yet been awarded. Despite the fact that DWM failed to provide the majority of the information required by the new form, the CPO, on July 3, 2012, authorized DWM to solicit bids in the City's bid and bond room. On July 17, 2012, DWM responded that it had received two bids, the lowest from National Power Rodding. On August 7, 2012, DPS approved DWM's request for a contract with National Power Rodding.

The emergency contract with National Power Rodding was the second emergency contract issued for sewer inspection services following the expiration of a competitively bid contract for the services with the same vendor, National Power Rodding. The first emergency contract was issued to Sheridan Plumbing & Sewer, Inc., in March 2012, after National Power Rodding had refused DWM's request to extend its contract with the City (P.O. 10853), which expired on January 31, 2012. DWM requested authorization for an emergency contract to continue sewer

inspection services until a new contract could be awarded, in order to “assure the structural integrity of the City’s Sewer System.” The original request explains that DWM was working with DPS to create a new contract and that an emergency contract would be sufficient to continue services for two to three months until a new contract was expected to be in place.

As found in the IGO’s initial investigation, DWM’s justifications for the emergency procurement do not meet DPS’s own requirements. While the circumstances surrounding National Power Rodding’s refusal to extend the original contract are unclear, based on the minimal information provided by DWM in its first emergency contract request, a vendor’s refusal to continue performance beyond the expiration date of its contract is a foreseeable event. Moreover, DPS specifically excluded as a justification for emergency contracting a department’s failure to plan for the expiration of a contract. And while situations where the time period for competitive bidding is too long are also excluded, the second emergency contract request was based on the fact that the procurement process for the competitively bid replacement contract lasted longer than initially anticipated. The CPO asserted that DPS worked with DWM to award a replacement to the original contract as quickly as possible, but this process appears to have lasted at least 11 months. DPS awarded the replacement contract on October 25, 2012, P.O. 26965, to Sheridan Plumbing & Sewer, ending the need for the emergency contract with National Power Rodding.

CONCLUSION

On the whole, the IGO commends DPS for dramatically reducing the number of emergency contracts it authorized during the six-month review period. DPS’s new request form and proposed improvements to emergency procurement processes, however, are important measures necessary to ensure that emergency contracts remain options of last resort. Even the best processes are only as good as their implementation. The IGO therefore reiterates its recommendation to DPS that it require user departments to use the emergency contract request form to ensure departments provide more thorough written justification for emergency contracts to better assure appropriate levels of transparency, accountability, and public confidence in the integrity of the requested (and approved) emergency procurement. The IGO further recommends that DPS take appropriate steps to ensure that DPS employees follow relevant emergency contracting policies.