

OFFICE OF INSPECTOR GENERAL
City of Chicago



***INSPECTOR GENERAL'S OFFICE ADVISORY
CONCERNING THE POTENTIAL USE OF A
FISCAL INTERMEDIARY BY THE
CHICAGO DEPARTMENT OF PUBLIC HEALTH***

JANUARY 2013

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VIA E-MAIL

January 30, 2013

Commissioner Bechara Choucair
City of Chicago Department of Public Health
333 South State Street, Room 200
Chicago, IL 60604

Dear Commissioner Choucair:

On July 31, 2012, you requested that the City of Chicago Inspector General's Office (IGO) assist the Chicago Department of Public Health (CDPH) in evaluating potential improvements to CDPH's grant administration. Specifically, you asked whether using a fiscal intermediary (FI) to help CDPH administer its grants would conform to the City's rules and regulations.¹ The IGO agreed to examine the potential use of an FI by CDPH and ascertain whether it could enhance the efficiency and effectiveness of the department's grant administration.

The IGO interviewed key CDPH staff and stakeholders in other jurisdictions that use FIs. We also reviewed research on FIs, state and municipal laws, and the collective bargaining agreements that apply to CDPH's workforce.

The U.S. Centers for Disease Control and Prevention (CDC), the National Network of Public Health Institutes, and the Association of State and Territorial Health Officials have found that the use of an FI can improve administrative efficiency.² A number of CPDH staff we spoke with stated that the department faces delays throughout the grant management process and is sometimes unable to expend grant dollars within the timeframe required by the grant. They expressed concern that the delays may jeopardize future CDPH grant awards and harm the

¹ A fiscal intermediary (also called a "bona fide agent" or "administrative partner") is an outside entity that assists a public health agency with grant administration and/or compliance assurance. Centers for Disease Control and Prevention, "Expediting the Grants Process with an Administrative Partner," accessed January 4, 2013, <http://www.cdc.gov/stltpublichealth/GrantsFunding/expediting.html>.

² Fiscal intermediaries "generally accomplish things faster and more competitively than state bureaucracies can." Association of State and Territorial Health Officials, "State Perspectives on the Use of Fiscal Intermediaries," 10, November 2009, accessed January 4, 2013, <http://astho.org/Workarea/linkit.aspx?LinkIdentifier=id&ItemID=5482>; National Network of Public Health Institutes, "Partnering for the Public's Health: The Role of Public Health Institutes as Fiscal Agents and Intermediaries," 7, November 9, 2009, accessed January 4, 2013, http://www.nnphi.org/uploads/media_items/fiscal-intermediaries-report-11-16.original.pdf; Centers for Disease Control and Prevention, "Expediting the Grants Process with an Administrative Partner," accessed January 4, 2013, <http://www.cdc.gov/stltpublichealth/GrantsFunding/expediting.html>.

department's overall mission of promoting public health. CDPH staff highlighted three areas of grant administration that they thought could be potentially improved with an FI:

1. Grant applications and initial planning: According to CDPH staff, the grant application process is delayed by City rules and regulations, which dictate that community partners cannot be identified until after the City wins the grant. This failure to specify a partner may make CDPH's grant applications less competitive nationwide.
2. Hiring grant-funded staff: CDPH staff reported that delays in the approval of new hires and Citywide hiring freezes have made the process for hiring grant-funded staff slow. This delay can be problematic because some grantors reduce funding for program staff if positions remain vacant for more than 90 days.
3. Issuance of Requests for Proposals (RFP) and finalizing service-provider contracts: CDPH staff stated that the City's lengthy process for issuing service-provider RFPs and finalizing contracts slows the implementation of grant-funded programs. Two of CDPH's major grants have months-long turnaround times from award to contracting (staff reported that the Ryan White Grant averages 127 days and the HIV Prevention Grant averages 242 days).

The IGO sought data on the time it takes a grant to proceed through each step of the City's process in order to evaluate delays and determine how an FI could ameliorate them. However, we found that while staff offered anecdotal evidence of specific delays, CDPH did not have consistent information on current grant processing times necessary to determine baselines for purposes of analysis.

Our limited legal review uncovered three primary areas of concern regarding laws and regulations related to use of an FI by CDPH:

- Collective bargaining agreements covering CDPH staff have provisions that may apply if tasks are eliminated or shifted to contractors. For instance, our limited review showed that CDPH must involve a union that represents some of its employees in the "decision making process concerning potential contracting out" when it is considering subcontracting work done by these unionized employees.³ CDPH should be mindful of these procedures as it considers using an FI.
- The Illinois municipal purchasing statute requires that large purchases and contracting expenses must be authorized by the City's purchasing agent.⁴ This mandate may restrict the ability for an FI to bypass the City's Department of Procurement Services without legislative change.

³ City of Chicago, "Agreement between Council 31 American Federation of State, County and Municipal Employees and City of Chicago – July 1, 2007 – June 30, 2012," accessed January 29, 2013, <http://www.cityofchicago.org/content/dam/city/depts/dol/Collective%20Bargaining%20Agreement2/AFSCMECBAJuly12007ToJune302012.pdf>.

⁴ 65 ILL. COMP. STAT. 5/8-10-6 (2012) ("[A]ll requests for purchase shall be void unless executed by such certified officers or employees and approved by the purchasing agent.").

- As required in *Shakman et al. v. City of Chicago, et al.*, the City developed and implemented a Hiring Plan, which aims to prevent politically motivated hiring.⁵ Exhibit C of the 2011 Hiring Plan, the “Contractor Policy,” discusses fourteen criteria to be evaluated to determine whether the relationship is truly an independent contractor or is instead a common law employee relationship.⁶ If the relationship is not truly independent, the City’s employment regulations would also apply to the contractor. Additionally, CDPH cannot participate in, or attempt to influence, the hiring and assignment decisions of the FI. The extent to which CDPH maintains direction and control over the work performed would be a key factor in evaluating whether an FI would be subject to the Contractor Policy. Any direct supervision and control of the employee’s work must be provided by the employing contractor.

These areas would require further legal analysis of the specific FI-CDPH relationship selected. However, before undertaking further legal analysis, we recommend that CDPH gather more information about its current grant administration processes in order to effectively design an FI system. CDPH needs comprehensive, reliable information on its current processes, including the resources expended on each stage of grant administration, so that it may accurately weigh the costs and benefits of using an FI to administer grants. We suggest that CDPH collect and analyze baseline information on the following three performance areas:

1. Grant Applications, Awards, and Carryover, by Funder and Type
 - a. Number of grant applications, awards, and dollars spent, by month or year.
 - b. Grant characteristics: reoccurring or one-time, locally or nationally competitive, service type, funding source, and past carryover.⁷
2. Time Spent Per Grant
 - a. Time spent on each step of grant administration by:
 - i. CDPH’s internal divisions (e.g., policy and planning, risk management).
 - ii. Other City departments.

⁵ City of Chicago, Hiring Plan, Exhibit C “Use of Non-City Employees to Perform Services for the City” (“Contractor Policy”), accessed January 16, 2013, http://www.cityofchicago.org/content/dam/city/depts/dhr/supp_info/ShakmanSettlement/Filed_General_Hiring_Plan_6_2011.pdf.

⁶ The fourteen factors are: (1) extent the City exercises direction and control over the work, (2) reasons the person is needed, (3) nature of the work to be performed, (4) extent to which the work is highly specialized, (5) extent to which the contractor is uniquely skilled or qualified, (6) similarity to work performed by City employees, (7) existence of a prior employment relationship between the contractor and the City, (8) similarity of services to be performed to services performed for non-City clients, (9) extent of contractors freedom to continue to provide services to clients, (10) extent the City will provide work space and materials to the contractor, (11) anticipated duration of the contract, (12) location of work to be performed, (13) basis for determining the number of hours, and (14) basis for determining the pay.

⁷ CDPH staff stated that carryover is often reported by the dollars remaining in the City’s fiscal year. However, if dollars remain at the end of the grant year (not necessarily the same as the City’s fiscal year), the funder may reclaim the money, distribute it the next year but reduce the next year’s disbursement, or consider the delay when reviewing the next grant applications. Carryover analysis can help identify grants that are ideal for streamlining internally (i.e., reoccurring grants might easily use past applications, contracts, and RFP documents).

3. Positions Funded through “Indirect Costs”⁸

- a. Number of positions funded through “indirect costs” by CDPH and by contracted service providers.
 - i. Analyzing the number of positions supported through indirect cost funding will allow CDPH to evaluate its operational dependency on revenue generated from grants. This analysis is important because if an FI were used, CDPH would face a reduction in indirect cost funding because the department would no longer be the sole administrator of the grant.

CDPH could analyze this data to determine the precise causes of delays. For example, the data may show that federal reoccurring grants are processed quickly within CDPH but suffer delays when sent to other City departments for their approval. Identifying the causes of delay for each grant type and funder will inform the determination of what tasks would be most improved by using an FI. The data analysis would also help CDPH develop performance measures, such as the ratio of grant awards to grant applications, and potentially improve internal operations. Finally, the indirect cost measures can identify funding risks for CDPH staff and programs.

If after analyzing the strengths and weaknesses of the department’s current grant administration CDPH wishes to pursue an FI relationship, there are a number of issues to consider.

Objectives of FI Relationship

Three objectives are important to consider when designing an FI structure: control, accountability, and flexibility. These objectives are not always compatible with one another. For example, as the government retains control, the advantages of an FI’s flexibility decrease. Accountability may suffer if the organizational structure becomes more complex or FI duties are assigned piecemeal. Setting these objectives in advance will add clarity to the FI design process.

FI Definition and Structure

Our research found a variety of terms used to describe FI relationships. Instead of “fiscal intermediary,” the CDC uses the term “administrative partner” to mean an outside entity that assists in processing grants and meeting grant requirements.⁹ Other literature refers to FIs as “bona fide agents”¹⁰ or lists several different “types” of FIs. Generally, FIs function as conduits for grant money: the FI may select and contract with the service providers, hire grant staff,


⁸ Many grants provide funding for overhead and administrative tasks by allowing grantees to bill for indirect costs.

⁹ Centers for Disease Control and Prevention, “Expediting the Grants Process with an Administrative Partner,” accessed January 4, 2013, <http://www.cdc.gov/stltpublichealth/GrantsFunding/expediting.html>. “A functional AP [“administrative partner”] relationship can be a valuable asset to a health department in the following aspects of the grant cycle: applying for and processing federal grants, hiring staff, implementing grant activities, assuring compliance with grant requirements, and submitting reports. A fully-authorized AP can take on some or all of the administrative tasks necessary to obtain and implement federal grants.”

¹⁰ Association of State and Territorial Health Officials, State Perspectives on the Use of Fiscal Intermediaries, 3, November 2009, accessed January 4, 2013, <http://astho.org/Workarea/linkit.aspx?LinkIdentifier=id&ItemID=5482>. ASTHO prefers “bona fide agents” as receiver of grant funds and then distributor (“implementer”) the money in lieu of the public health department.

and/or fulfill reporting requirements. The specific structure can vary, even within one health department.¹¹

The possible duties, responsibilities, and tasks assigned to an FI fall within a spectrum ranging from complete grant management by the FI to piecemeal processing on a case-by-case basis.¹²



FI-Run: FI applies for grants, receives grant funds directly, pays expenses and manages contracts, and completes reporting requirements.	Re-Granted Funds: FI acts as subgrantee through sole-source agreement or contract. Duties completed outside City processes, but designed by agreement or contract.	FI-Employer: FI assumes payroll, personnel records, procurement, and accounting functions.	FI-Managed: FI develops IT systems and provides program assistance and training to delegate agencies and program staff.	No FI
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After setting the overall FI design, task assignments must clearly identify what will be given to the FI and what will be kept by the City. In New York City, both the FI and the City emphasized the importance of delineating duties, responsibilities, and tasks. For example, the New York City Department of Health and Mental Hygiene (NYCDOHMH) originally had a misunderstanding with the FI regarding duties and authority for changing vendors' contracts. The duties, responsibilities, and tasks must be well defined to ensure cooperation and prevent duplication of efforts.

Managing an FI Relationship

Based on our research, we suggest that CDPH consider the following three questions related to managing an FI relationship:

1. Who is qualified to be an FI?

Depending on how the relationship is designed, the FI may be required to track and account for millions of grant dollars; it would need substantial management capabilities and experience. CDPH must be confident that the FI can accurately report on important public health grants. NYCDOHMH recommends requiring robust accounting systems with demonstrated past successes, including evidence of internal policies and procedures to handle large public health grants.¹³

2. How will the FI's performance be evaluated?

CDPH should determine whether the FI relationship is designed to reduce costs, increase grant revenues, improve public health service provision, or accomplish other goals. The FI's performance on these goals should then be measured.

¹¹ For example, the New York City Department of Health and Mental Hygiene permits its FI to receive grant money directly for some grants, while other grants are received by the City and then dispersed to the FI as a prime contractor, who then subcontracts to service providers.

¹² National Network of Public Health Institutes, Partnering for the Public's Health: The Role of Public Health Institutes as Fiscal Agents and Intermediaries, 7, November 9, 2009, accessed January 4, 2013, http://www.nnphi.org/uploads/media_items/fiscal-intermediaries-report-11-16.original.pdf.

¹³ New York City, New York City Department of Health and Mental Hygiene, Interview, October 1, 2012.

For example, if the FI is designed to reduce grant administration costs, CDPH will need to first calculate the current baseline costs of grant management in order to set an accurate target for future savings and hold the FI accountable.¹⁴ One method for creating an accurate cost of grant management would be to assess the labor time required in each step of grant processing. This calculation would show which grants and processes demand the most time.¹⁵ CDPH could calculate the cost of grant management by adding (1) the labor costs of this processing time and (2) the dollar value of lost grant funds (i.e., carryover that is not offset by future increased awards). Because FI services charge for their services, the price of an FI would need to fall below the current (baseline) cost to create any savings.

3. What effect would an FI have on CDPH's organization and staff?

The benefits of an FI relationship largely stem from shifting tasks from City employees to FI staff. Even if no City staff reductions occurred, staff duties would shift towards monitoring and overseeing the FI to prevent waste and ensure performance. One Indianapolis study estimated that 20 percent of a contract's value should go to oversight to protect the integrity of a new, outsourced public system.¹⁶

CDPH should also consider how the new structure would adapt to future organizational changes. The circumstances can change either (A) internally as personnel and leadership changes or (B) externally as emergencies or legal structures change. FI success can vary depending on how relationships between the organizations ebb and flow.¹⁷

¹⁴ U.S. Government Accountability Office, Questions State and Local Decision Makers Used When Considering Privatization Options, 14, 1998, accessed January 4, 2013, <http://www.gao.gov/special.pubs/gg98087.pdf>.

¹⁵ Indianapolis has used an "Activity-Based Costing" method that has received national attention for calculating municipal process costs. U.S. Government Accountability Office, Questions State and Local Decision Makers Used When Considering Privatization Options, 14, 1998, accessed January 4, 2013, <http://www.gao.gov/special.pubs/gg98087.pdf>.

¹⁶ Hai-Chiao Chang et al., "Managed Competition in Indianapolis: The Case of Indianapolis Fleet Services," 12, December 6, 2005, accessed on January 4, 2013, <http://www.innovations.harvard.edu/showdoc.html?id=11043>.

¹⁷ National Network of Public Health Institutes, Partnering for the Public's Health: The Role of Public Health Institutes as Fiscal Agents and Intermediaries, 13, November 9, 2009, accessed January 4, 2013, http://www.nnphi.org/uploads/media_items/fiscal-intermediaries-report-11-16.original.pdf.

We commend you for your efforts to improve CDPH's grant administration and seek efficient ways to deliver public health services. We hope that this letter is helpful to you as you evaluate whether CDPH's current grant administration could be better conducted through an FI structure. We ask that you respond in writing by February 28, 2013. Your response will be published on our website together with this letter. If you wish, we are available to meet and discuss issues related to FIs in the future. Should you have any questions, please contact Policy Analyst Nathaniel Inglis Steinfeld at 773-478-3124.

Respectfully,

A handwritten signature in blue ink, appearing to be "J. Ferguson", written over a horizontal line.

Joseph M. Ferguson
Inspector General
City of Chicago