OFFICE OF INSPECTOR GENERAL
City of Chicago

INSPECTOR GENERAL'S OFFICE ADVISORY CONCERNING THE CITY'S LOCAL HIRING ORDINANCE

JULY 2013

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OFFICE OF INSPECTOR GENERAL
City of Chicago

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VIA ELECTRONIC MAIL

July 3, 2013

Lisa Scharader
Chief of Staff
Mayor's Office
121 N. LaSalle Street
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Dear Chief of Staff Schrader:

In recent years, the IGO has received multiple complaints alleging violations of M.C.C. § 2-92-330, the City's Local Hiring Ordinance (the Ordinance). This ordinance requires that 50% of the total hours worked by persons on the site of a taxpayer-supported construction project having a value of $100,000 or more be performed by City residents employed by contractors and subcontractors on the project.

We initiated a review to examine both contractor/subcontractor compliance with and City monitoring and enforcement of the Ordinance by focusing on a single completed project – Phase I of the Parkside of Old Town (Parkside) – that had been closed out by the City, with the local hiring numbers finalized and any liquidated damages assessed.

We discovered the following:

- The Department of Housing and Economic Development (DHED) issued a non-compliance letter to the developer that originally determined that the Parkside project, with construction hard costs totaling $74,720,925, fell 1.02% short of the local hiring requirement, with City residents accounting for 48.98% of the 496,133.11 total hours worked. Based on the terms specified in its agreement with the City, the developer was assessed $38,107.67 in liquidated damages. However, the IGO review of the certified payroll records concluded there were 498,946.11 total worker hours, or 2,813 more total hours than DHED determined to be the case. The IGO found that the project actually fell about 3.96% short of the total worker hours performed by actual City residents, meaning the project should have been assessed damages of $147,947.43, or $109,839.76 more than the City assessed against the developer.

- Provisions of the Ordinance delegate responsibility for ensuring compliance to both the Department of Procurement Services (DPS) and the "supervising departments," (DHED in this case) but are generally silent on how that shared responsibility is to be implemented or coordinated.

- Neither the Ordinance nor the contract provisions between the City and the developer or the developer and the contractors specify the type of supporting documentation a contractor must maintain in order to claim an employee as a City resident for Local Hiring Ordinance purposes. In the absence of such standards, program enforcement is at best challenged and at worst defeated and reliant entirely on the good faith of contractors and developers.

To address these findings and ensure better compliance and enforcement of the ordinance, the IGO suggests the City consider taking actions such as:

- Establishing rules and regulations mandating that contractors and/or subcontractors obtain and maintain specific verifiable identification documentation from their employees as a condition of obtaining credit for complying with the Chicago Local Hiring Ordinance. For example, the City might require an employer to maintain on file a copy of a current State Driver's License or Identification Card for each employee for whom it is claiming Local Hiring Ordinance credit, along with a certification by the employer that it personally observed and copied the actual DL or ID produced by the employee. This would create regulations similar to those mandated by the federal government with the Employment Eligibility Verification Form I-9, created to document and verify employment identity and eligibility. A portion of the Form I-9 is completed by employers and requires that they physically examine identification documents submitted by employees to ensure that they are genuine. For employees lacking official identification, the Illinois Secretary of State's (SOS) website provides an extended list of documents it accepts in some combination to establish state residency for purposes of obtaining a driver's license or state identification card[1] that the City might adapt as an alternative means for contractors to substantiate an employee's City residency.

- Conducting periodic spot check reviews of the supporting documents in the possession of the contractors and/or subcontractors to confirm compliance with the Local Hiring Ordinance.

- Promulgating policies and procedures regarding the joint responsibilities of DPS and supervising departments for ensuring compliance with the Local Hiring Ordinance.

In our experience, "shared" responsibility provisions often result in confusion over the execution of enforcement and oversight by of the statutorily responsible parties. In this situation, as in others we have spoken to, we recommend the City consider whether primary responsibility

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[1] *See* http://www.cyberdriveillinois.com/publications/pdf_publications/dsd_x173.pdf, accessed June 28, 2013.

should reside with DPS; its purview is citywide, making it a logical party to impose and enforce a single set of compliance standards and protocols to be applied by all departments.[2]

Additional background material is attached to this letter.

The IGO intends to publish this advisory on or about August 9, 2013. We invite the City to respond in writing to the above before August 5. Any responses will be made public along with the IGO's advisory.

Respectfully,

Joseph M. Ferguson
Inspector General
City of Chicago

CC: Jamie Rhee, Chief Procurement Officer
Andrew Mooney, Commissioner of the Department of Housing and Economic Development

[2] This is not to say that DPS must itself conduct compliance monitoring, but instead that it should, minimally, establish a universal set of standards and procedures that it holds the supervising departments accountable for meeting.

I. METHODOLOGY

The IGO reviewed the City administration of Chicago Local Hiring Ordinance (M.C.C. § 2-92-330) requirements on Phase I of the Parkside of Old Town (Parkside) in order to identify potential ways to improve enforcement of the Ordinance.

The IGO's review included:

- Interviews of DHED senior officials and a DHED auditor regarding DHED compliance monitoring of the Ordinance requirements, as well as officials affiliated with the general contractor and with the subcontractor identified as having the highest number of misstated City resident employees.

- Examination of the certified payroll records for 1,662 employees[3] of 32 companies that worked on the roughly 120-week long Parkside project in order to calculate actual on-site hours worked.

- Cross-checking the identifying information of all of the employees listed on contractor/subcontractor certified payrolls claimed as City residents against a commercially available database to determine whether the individuals maintained a City address at any point during the project period.

- Review of the personnel records of the subcontractor with the largest number of questionable claimed City resident employees (Subcontractor A).

- Confirming the City residence of the 71 employees on Subcontractor A's certified payroll reports who were claimed as City residents.[4]

II. BACKGROUND

The Parkside project is bounded by Division Street to the north, Seward Park on the east, Elm Street on the south and Larrabee Street on the west.[5] It is a multi-phase planned community spanning eight blocks and consists of nearly 800 new homes.[6] Phase I includes two new-construction mid-rise condominium buildings and nine townhome buildings, for a total of 280

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[3] The actual number of workers is less than 1,662 because some employees were listed for more than one company if the same company was listed twice for two distinct elements of the construction. However, for the purposes of this analysis, those employees were listed separately because there were two sets of certified payrolls.

[4] The IGO's review of the residency of these employees did not include surveillances, the acquisition of subpoenaed materials (such as utility bills), or interviews of the employees, which the IGO typically performs when conducting residency investigations of City employees. In light of this, the IGO gave the benefit of the doubt in favor of the Subcontractor A employees except in the cases where the IGO concluded that obviously fraudulent identification documents were used, and where the employees' files contained only self-reported information regarding their residence, or identification bearing a non-City address.

[5] *See* recitals in Phase I Redevelopment Agreement, Purchase Order No. 12994, submitted on April 8, 2008.

[6] *See* http://www.prweb.com/releases/Old_Town_Condominiums/Chicago_townhomes/prweb4182634 htm

residential units, 72 of which constitute replacement public housing rental units.[7] Each phase of Parkside has its own Redevelopment Agreement (RDA) that contains the conditions which must be met in order to close out that particular phase. Parkside's start date was October 1, 2006 and the end date was April 1, 2009.

Parkside requested City assistance in the form of tax increment financing (TIF) incentives totaling over $9 million.[8] In order to obtain City TIF financing, the City and the Parkside developer entered into an agreement requiring, among other things, that City residents account for at least 50% of the total worker hours (hard cost hours) on the project.[9] In this agreement with the City, the developer agreed to contractually obligate its general contractor, and cause the general contractor to contractually obligate its subcontractors, as applicable, to agree that during the construction of Parkside they would comply with the minimum percentage of total worker hours performed by actual residents of the City as specified in M.C.C. § 2-92-330.

At the time of the Parkside project, Subcontractor A's labor division performed carpentry, painting, drywall and plaster work. Subcontractor A utilized 145 employees over the course of the Parkside project.[10]

A. The City's Local Hiring Ordinance

The City's Local Hiring Ordinance, M.C.C. § 2-92-330, requires that for any taxpayer-supported construction project having 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 at least 50% by City residents. "Resident" is defined as a person domiciled within the City of Chicago. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

Responsibility for monitoring compliance with the Local Hiring Ordinance is shared between the chief procurement officer and the "supervising department." The Ordinance indicates that the chief procurement officer shall separately monitor the utilization of residents of the City in skilled and unskilled positions and shall report his [her] findings to the city council committee on the budget and government operations when substantially all of the construction contracts for each construction season have been closed. The Ordinance indicates that implementation of such requirements be accomplished through the inclusion of specific contract language.

The contractor is required to provide for the maintenance of adequate employee residency records to ensure that City residents are employed on the project. The contractor and

[7] *See* recitals in Phase I Redevelopment Agreement, Purchase Order No. 12994.
[8] *See* Parkside of Old Town Redevelopment Agreement, Contract Number 12994, Exhibit C-1.
[9] *See* http://www.constructionplace.com/glossary.asp, accessed June 26, 2013. "Hard costs," also referred to as "construction costs" or "direct costs," are "[T]he direct contractor costs for labor, material, equipment, and services; contractors overhead and profit; and other direct construction costs. Construction cost does not include the compensation paid to the architect and engineer and consultants, the cost of the land, rights-of-way or other costs which are defined in the contract documents as being the responsibility of the owner.
[10] According to one of Subcontractor A's officials, Subcontractor A now operates only as a supplier and no longer has a labor division.

subcontractors are required to maintain copies of documents supportive of every employee's City address. In addition, the supervising department is authorized to direct a contractor to provide affidavits and other supporting documentation to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

In the event that the City determines that a contractor failed to ensure the fulfillment of the requirement concerning the worker hours performed by actual Chicago residents, the Ordinance states that the City will be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in the Ordinance. In cases of non-compliance, the contractor must surrender to the City 1/20 of 1 percent (.0005%), of the approved contract value in payment for each percentage of shortfall toward the stipulated residency requirement.

The Ordinance requires that the contracts and subcontracts include what is, in essence, strict liability language indicating that good faith efforts on the part of the contractor to provide utilization of actual Chicago residents will not suffice to replace the actual, verified attainment of the requirements concerning the worker hours performed by actual Chicago residents.

B. Redevelopment Agreement between the City and Developer

In order to obtain City TIF financing, the City and the Parkside developer entered into an agreement requiring, among other things, that City residents account for at least 50% of the total worker hours.[11] In the agreement, the developer also agreed to contractually obligate its general contractor and agreed to cause the general contractor to contractually obligate its subcontractors to agree that during the construction of Parkside they will comply with the minimum percentage of total worker hours performed by actual residents of the City as specified in Section 2-92-330 of the Municipal Code of Chicago (at least 50% of the total worker hours worked by persons on the site of Parkside will be performed by actual residents of the City). In addition to complying with this percentage, the agreement required the developer, its general contractor and each subcontractor to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions, and to use their respective best efforts to exceed the minimum percentage of hours stated above, and to employ neighborhood residents in connection with Parkside.[12]

In addition, the agreement required that weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) be submitted to the City's Commissioner of the Department of Planning and Development (DPD)[13] which will identify clearly the actual residence of every employee on each submitted certified payroll.[14] Additional discretion was provided to the DPD Commissioner to require that affidavits and other supporting documentation of the developer, the

[11] *See* Redevelopment Agreement, PO # 12994, Recital F, page 2.
[12] *Id.* at Section 10.02(a), page 33.
[13] On January 1, 2009, DPD and the City's Department of Housing merged to form the Department of Community Development (DCD). On January 1, 2011, the City consolidated the DCD and the Department of Zoning and Land Use Planning to form DHED.
[14] Redevelopment Agreement, PO # 12994, Section 10.02(e), page 34.

general contractor and each subcontractor be produced to verify or clarify an employee's actual address when doubt or lack of clarity arose.[15]

III. PARKSIDE PROJECT SHORTFALL IN CITY RESIDENT HOURS

DHED determined that the Parkside project, with construction hard costs totaling $74,720,925, fell 1.02 percent short of the local hiring requirement, with City residents accounting for 48.98 percent of the 496,133.11 total hours worked.[16] Based on the terms specified in its agreement with the City, the developer was assessed $38,107.67 in liquidated damages.[17] Our review of the certified payroll records concluded there were 498,946.11 total worker hours, or 2,813 more total hours than DHED determined to be the case. The IGO found that Parkside actually fell 3.96 percent short of the total worker hours performed by City residents, meaning the project should have been assessed damages of $147,947.43, or $109,839.76 more than the City assessed against the developer.

	DHED	IGO	Difference
Hours worked	496,113.11	498,946.11	2,813
City Resident Hours	242,996	229,715	13,281
City Resident %	48.98	46.04	2.94
Liquidated Damages	$38,107.67 (assessed)	$147,947.43	$109,839.76

Our review further revealed that City residence could not be confirmed for 21 of the 71 project employees Subcontractor A claimed in its certified payrolls were City of Chicago residents. Moreover, for five of those 21, the subcontractor's personnel files contained fraudulent forms of identification including two bogus Illinois ID Cards and three generic, unidentified forms of identification that bore a photograph, name, address and social security number. For the remaining 16 employees, their personnel files contained only self-reported information regarding their residence, or identification bearing a non-City address.

An official of Subcontractor A indicated that the company typically requested that its employees complete an application and provide a union card and some form of identification. The company official acknowledged, however, that the documentation was not scrutinized and that its bookkeeping at the time was not very good.

IV. LOCAL HIRING ORDINANCE ENFORCEMENT GAPS

Neither the Ordinance nor the contract provisions between the City and the developer or the developer and the contractors specify the type of supporting documentation a contractor must

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[15] *Id.* at Section 10.02(g), page 34.
[16] The total hours listed on the City's closeout letter to the developer differ slightly from the total hours on auditor spreadsheets compiled over the course of the project. DHED could not explain the discrepancy. The City used the closeout letter numbers to calculate the liquidated damages.
[17] Much of this project was monitored by the Department of Community Development (DCD) and the Department of Planning and Development, both of which have since been folded into DHED. For this report, references to DHED cover any department involved in the merger to create DHED.

maintain in order to claim an employee as a City resident for Local Hiring Ordinance purposes. In the absence of such standards, program enforcement is at best challenged and at worst defeated and reliant entirely on the good faith of contractors and developers.

Additionally, DHED explained to the IGO that it lacks the manpower to perform even random spot checks that would promote compliance with the Ordinance. In short, DHED largely relies on a contractor's word that an employee is a City resident living at the address listed on the certified payroll reports and does not routinely take steps to verify the residency of these employees, instead doing so only when a clear anomaly surfaces, in which case DHED may attempt to confirm an individual address.

The responsibilities of DPS and the "supervising departments" for ensuring compliance with the Local Hiring Ordinance should be more clearly defined. First, regarding DPS, the Ordinance calls for the chief procurement officer to "separately monitor utilization of City residents." However, the Ordinance is silent as to how or when DPS should go about doing this. DPS informed the IGO that it does not have written policies that explain how and when DPS is to monitor compliance with the Ordinance.

Second, regarding the supervising departments, the Ordinance requires that all contracts and subcontracts contain the following language: "At the direction of the supervising department, affidavits and other supporting documentation will be required of the contractor to verify or clarify an employee's actual address when doubt or lack of clarity has arisen." However, the Ordinance again is silent as to how or when the supervising departments should go about doing this. In addition, the Ordinance fails to address how and when DPS and the supervising departments are to coordinate their monitoring activities so as to avoid duplication of effort and to maximize results. In this particular case, there were no policies or procedures promulgated by either DPS and/or DHED regarding their joint responsibilities for ensuring compliance with the Local Hiring Ordinance.

CITY OF CHICAGO OFFICE OF THE INSPECTOR GENERAL

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- Audits of City programs and operations
- Reviews of City programs, operations, and policies

From these activities, the IGO issues reports of findings, disciplinary, and other recommendations to assure that City officials, employees, and vendors are held accountable for the provision of efficient, cost-effective government operations and further to prevent, detect, identify, expose and eliminate waste, inefficiency, misconduct, fraud, corruption, and abuse of public authority and resources.

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