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October 21, 2010

Honorable Todd H. Stroger
and Members of the Board of Commissioners
118 North Clark Street
Suite 567
Chicago, Illinois 60602

Re: OIIG Summary Report No. IIG-08-0122 (M/WBE Survey and Audit)

Dear President Stroger and Commissioners:

This letter is written in accordance with Section 2-289(c)(2) of the Independent Inspector General ("OIIG") Ordinance, Cook County Ill, Ordinance No. 07-O-52 (2007) (the "Ordinance") relative to a survey (the "M/WBE Survey") and audit ("the M/WBE Audit") conducted to assess whether M/WBE participation in Cook County contracts coincides with the M/WBE Ordinance program goals.¹ In accordance with the Ordinance, this statement is made to apprise you of the completion and results of the M/WBE Survey and Audit.

Background

In 2008, the Office of the Independent Inspector General ("OIIG") received complaints from several M/WBEs that alleged they were either excluded from or experienced limited participation in contracts awarded by Cook County government in which they had been designated as a subcontractor under M/WBE guidelines. Upon further inquiry, the OIIG discovered relevant M/WBE testimonial and documentary evidence to support those claims.

The OIIG subsequently initiated an M/WBE Survey and Audit to determine whether those complaints were aberrations from normal Cook County operations or whether those claims were indicative of a systemic deficiency with M/WBE contract participation. The scope of this Survey included a random selection of W/MBE vendors and an inquiry with the selected vendors into the level of their participation on contracts during a specified time period in which they have been identified as participants. The focus of the inquiry was whether the W/MBE participant was receiving the agreed to value under the contract and whether the W/MBE participant had been supplying the

¹ M/WBE refers to Minority-owned and Women-owned Business Enterprises.



agreed to product or service under the terms of the subject contract. In regards to the M/WBE Audit, the OIIG reconciled contract activity from the Cook County Purchasing Agent and M/WBE payment information from the Cook County Office of Contract Compliance (“Contract Compliance”).

Summary

In 2010, the OIIG completed the M/WBE Survey and Audit initiated to determine whether M/WBE participation was being adhered to pursuant to the M/WBE Ordinance.² Under the M/WBE Ordinance’s “program goals,” prime contractors are required to use their best efforts to allocate 25% to MBEs and 10% to WBEs for all Cook County government contracts awarded over \$25,000.³ The results of this effort revealed substantial deviations from the program goals. For example, the OIIG discovered that a vendor received over \$1.3 million in contract activity from Cook County in 2008 while the listed WBE reported receiving \$0. Additionally, the OIIG identified another vendor that received \$172,950.83 in contract activity and the listed WBE reported receiving \$2,661.88.

In addition to the deviations identified in the M/WBE Audit, the M/WBE Survey of 38 respondents revealed evidence of potentially fraudulent conduct in connection with contract bidding, reporting and performance. Specifically, M/WBEs reported instances where prime contractors offered them lump sum payments in exchange for serving as “Pass Through” enterprises.⁴ Importantly, these violations could have been discovered or prevented with the existence of an effective internal control framework in place to monitor M/WBE contract participation. Currently, Contract Compliance is responsible for contract monitoring pursuant to the M/WBE Ordinance. Accordingly, the OIIG’s recommendations are directed towards remedial changes in Contract Compliance’s policies and procedures as outlined below.

OIIG Findings and Conclusions

M/WBE Survey and Contract Audit

The OIIG initiated the M/WBE Survey and Contract Audit in response to complaints involving Cook County government’s “M/WBE Program.” Specifically, the OIIG received allegations that certain prime contractors failed to allow M/WBEs to

² See M/WBE Ordinance, Cook County Ill., Ordinance No. 88-O-29 §34-281 (1993).

³ There is an exception, however, when the Office of Contract Compliance issues a waiver to the participation goals. The CCA can issue a waiver when prime contractors demonstrate the need for a good faith waiver. This waiver is given before the contract is awarded to the prime contractor. See Section 34-281(c)(4). Nonetheless, waivers did not exist for the examples identified here.

⁴ In *Imagineering, Inc. v. Kiewit Construction Company*, 976 F.2d 1303, 1305 (9th Cir. 1992), plaintiffs alleged that the prime contractor developed and used a conduit scheme to circumvent M/WBE participation programs. Additionally, the plaintiff explained that a conduit or pass through is an MWBE that agrees to be named as a subcontractor but does not perform the subcontract in a commercially meaningful manner. This case is used for illustration purposes only.

participate in awarded contracts according to Cook County's program goals. The OIIG also received complaints indicating that M/WBEs were being asked to serve as Pass Through enterprises in order to assist prime contractors win Cook County contracts. In order to conduct the M/WBE Survey, the OIIG first obtained a current list of all certified M/WBE enterprises from Contract Compliance. The OIIG randomly selected 38 M/WBEs from the list who had been identified as a participant in a contract awarded during the specified time period. This office then made contact with each of the selected M/WBE vendors to review their individual circumstances under the specified contract. The OIIG then conducted a Contract Audit in order to review contract payment information in connection with certain M/WBE allegations.⁵ The OIIG's M/WBE Survey and Contract Audit raised major concerns of the integrity of Cook County's M/WBE Program.⁶

As part of this investigation, the OIIG reviewed evidence suggesting some Cook County contractors are not in compliance with program goals and may be engaged in Pass Through schemes with M/WBEs in order to win Cook County contracts. For example, "M/WBE #1" claimed, "...I have been offered \$75,000 a year to have the name of my company used on contracts without performing under the contract."⁷ Although M/WBE #1 claimed that she declined the offer, the OIIG found that Prime Contractor #1 received over \$1.3 million from Cook County contracts during 2008, and listed M/WBE #1 as the corresponding M/WBE.⁸ Upon further inquiry, the OIIG discovered that the M/WBE failed to report any contract participation as required pursuant to Contract Compliance's reporting policies. Unfortunately, Contract Compliance failed to review contract activity or apply any follow-up procedures when M/WBE #1 did not submit payment status reports. Similarly, the OIIG was told by M/WBE #2, "I provided *Letters of Intent* on contracts to prime contractor #2; however, the owner has refused to work with me."⁹ The OIIG reviewed contract activity that showed prime contractor #2 received \$172,950 in business from Cook County and M/WBE #2 reported to Contract Compliance that she received approximately \$2,661.88 during 2008. In both situations, Contract Compliance failed to successfully monitor contract performance, which enabled these prime contractors to circumvent M/WBE program goals. These represent examples of what appears to be potentially numerous instances of non-compliance with program goals.

⁵ These were payment status reports (available on the Cook County Office of Contract Compliance website), which are intended to track M/WBE contract participation.

⁶ When circumstances warrant, this office refers to and/or coordinates with outside law enforcement agencies to pursue the prosecution of offenders. Due to the confidential nature of on-going investigations, this report will not address specific cases involving potential criminal conduct.

⁷ See line item #1 on the M/WBE Survey.

⁸ See Attached entitled "Contract Audit" the first category of contracts is the total contract activity for Prime Contract #1.

⁹ A Letter of Intent is a contractual arrangement between the MWBE and Prime Contractor. The Letter of Intent must be included in the Prime Contractor's bid submitted to the Purchasing Agent.

Material Weaknesses in Internal Controls

Under the M/WBE Ordinance, the Contract Compliance Administrator has a duty to set specific M/WBE participation goals for individual contracts and review contractors' efforts during performance of the contract.¹⁰ Accordingly, a reasonable reading of the ordinance places an obligation on Contract Compliance to implement internal controls to ensure that the contractors put forth their "best efforts" to meet program goals. According to the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"¹¹), internal controls consist of policies and procedures that help ensure that management's directives are properly executed. Specifically, the COSO states, "internal control measures include a range of activities such as approvals, authorizations, verifications, reconciliations, and segregation of duties." During the M/WBE Survey and Contract Audit, the OIIG identified a number of material weaknesses in internal controls. For example, Contract Compliance issued letters to prime contractor #1 and #2 stating, "Failure to submit completed payment status reports on a monthly basis will be a violation of the general conditions and will cause your firm to be in Breach of Contract and necessitate a hold being placed on all monies due and to become due to your firm." Despite such warnings, the prime contractors failed to honor their reporting obligations. Nonetheless, Contract Compliance did not place a hold on monies going to these prime contractors. Moreover, this investigation revealed that Contract Compliance neglected to verify that prime contractors were putting forth their best efforts to ensure M/WBE participation complied with program goals.

The OIIG determined that Contract Compliance has mechanisms available to detect and potentially prevent non-compliance with M/WBE participation. Payment status reports are the primary red flag suggesting potential M/WBE non-compliance. The payment status report lists the contract amount and specific participation goals for the M/WBE and is to be submitted to Contract Compliance on a periodic basis by the prime contractor. As such, Contract Compliance could assess the level of participation from a review of the payment status reports. Additionally, Contract Compliance can request internal reports maintained by the Cook County Office of the Purchasing Agent. During our Contract Audit, the Purchasing Agent provided us with a purchase order schedule that displayed contract activity. Likewise, Contract Compliance could detect non-compliance with M/WBE participation by reconciling the contract activity and payment status reports or lack thereof. In sum, there is now an almost complete lack on the part of Contract Compliance to enforce contractor's reporting obligations and review of contract activity from the Purchasing Agent.

¹⁰ Section 34-281(a)(2) and Section 34-281(e)(1).

¹¹ The Committee of Sponsoring Organizations of the Treadway Commission (COSO) is a voluntary private-sector organization dedicated to providing guidance on fraud, financial reporting, internal controls and other business operational matters. The COSO also developed recommendations for public companies and their independent auditors, for the SEC and other regulators.

OIIG Recommendations

The OIIG identified numerous individual situations where M/WBE participation did not meet the program goals set forth in the M/WBE Ordinance. During the course of this Survey and Audit, Contract Compliance officials indicated that the office was operating without sufficient staff necessary to actively monitor compliance after a contract is awarded. However, officials also indicated that computer tracking and monitoring mechanisms were being considered to accomplish this goal. The OIIG recognizes that many County agencies are being requested to operate with less than optimal resources. The following recommendations, however, may require only limited adjustments to existing resources, additional training to existing staff, and/or limited additional staff. Accordingly, the following recommendations are made in support of the goals of the M/WBE Ordinance:

- The payment status report, on its face, should be used to alert Contract Compliance of potential violations. In the future, Contract Compliance should initiate action whenever payment status reports are not timely and completely submitted to Cook County. If a prime contractor fails to respond to notices of non-compliance, Contract Compliance should seek the enforcement of contract provisions mandating adherence to program goals.
- Contract Compliance should prepare M/WBE payment reconciliations, which would require comparing contract activity from the Office of the Purchasing Agent with Payment Status Reports submitted by contractors. As such, Contract Compliance will be able to expeditiously discover infractions and refer them for further action to the proper Cook County department.¹²
- Contract Compliance should commence a comprehensive contract audit or obtain assistance from an external auditor to determine which contractors are currently in violation of the M/WBE Ordinance. If additional violations are identified, Contract Compliance should enforce the contract provisions and potentially withhold monies until those contractors demonstrate compliance in accordance with law and policy.
- If relevant evidence is discovered that contractors attempted to create or operate “Pass Through” schemes in connection with Cook County government contracts, Contract Compliance should seek disbarment of those contractors from bidding on and winning Cook County government contracts in the future. Such circumstances should also give rise to a referral to this office or other outside law enforcement agency.

¹² Referral could be, under varying circumstances, to the Purchasing Agent, OIIG or user department.

Thank you for your consideration to these issues. Of course, please do not hesitate to contact me if you have any questions or require additional information. Finally, in accordance with Section 2-285(e) of the OIIG Ordinance, we respectfully request notification within 30 days of any action taken in response to these recommendations.

Very truly yours,



Patrick M. Blanchard
Inspector General

cc: Ms. Karen Crawford, Chief of Staff
Ms. Laura Lechowicz Felicione, Special Assistant to the President
Ms. Jaye Williams, Chief Financial Officer
Ms. Betty Hancock-Perry, Contract Compliance Administrator
Mr. William T. Foley, Chief Executive Office, Health and Hospital System

The Office of the Independent Inspector General of Cook County
 Cook County Government Contracts
 M/WBE Participation Survey - 2008

Vendor	M/WBE	WBE	Response	Notes/Comments
M/WBE #1	X	X	Yes	Owner claimed that she has been used as a "Pass Through" and offered \$75,000 a year to have the name of her company used on contracts without performing under the contract
M/WBE #2	X	X	Yes	Owner complained in her letter that she has provided "Letters of Intent" on contracts to the prime contractor, but the owner has refused to work with her.
M/WBE #3	X	X	Yes	In a correspondence from the Owner, it was alleged that the WBE may have been used as a "Pass Through" subcontractor. The Owner claimed that she notified the Office of Contract Compliance on several occasions to no avail.
M/WBE #4	X	X	Yes	Not used as an M/WBE
M/WBE #5	X	X	Yes	None
M/WBE #6	X?	X	Yes	None
M/WBE #7	X?	X	Yes	Does not appear on the Office of Contract Compliance's M/WBE list
M/WBE #8	X	X	Yes	None
M/WBE #9	X	X	Yes	Not used as an M/WBE
M/WBE #10	X	X	Yes	Not used as an M/WBE
M/WBE #11	X	X	Yes	None
M/WBE #12	X	X	Yes	Company claimed that it was not used as an M/WBE, but was apparently used as a WBE, per a Contract Compliance Audit Report. Also, the Company is not on Contract Compliance's M/WBE list
M/WBE #13	X	X	Yes	None
M/WBE #14	X	X	Yes	Owner tendered payment status reports that reveal incomplete or non-payments
M/WBE #15	X	X	Yes	None
M/WBE #16	X	X	Yes	The Owner submitted a few payment affidavits that showed \$0.00; however, the Owner confirmed that the Company did not experience any problems obtaining payments from the contractor.
M/WBE #17	X	X	Yes	The Company's response tends to indicate it may have been used as a "Pass Through," as it acknowledged that it received documentation from Contract Compliance about receiving a subcontract with a prime contractor, but no business as a result.
M/WBE #18	X	X	Yes	Not used as an M/WBE
M/WBE #19	X	X	Yes	The Owner insisted that he tendered documentation related to a County contract; although, the contract number provided could not be found on the Audit Report from Contract Compliance.
M/WBE #20	X	X	Yes	The Owner sent contradictory information at the request of the OIG. In addition, it is curious that the Owner is claiming well over \$1 million in payments but provided no documentation to substantiate this claim.
M/WBE #21	X	X	Yes	None
M/WBE #22	X	X	Yes	Only provided assurances of payment, but no supporting documentation was provided to the OIG.
M/WBE #23	X	X	Yes	None
M/WBE #24	X?	X?	Yes	The Company is not on the Office of Contract Compliance's list of M/WBEs. Also, personnel provided some commentary about why the Company has not been used as a WBE on any County contract in the last two years.
M/WBE #25	X	X	Yes	None
M/WBE #26	X	X	Yes	The Owner tendered several subcontractor payment status reports reflecting \$0.00 payment. However, it was clear from this report that the contract was awarded to other prime contractors.
M/WBE #27	X	X	Yes	Payment status affidavits provided for several contracts, but admittedly incomplete records. Follow-up appears to be in order.

The Office of the Independent Inspector General of Cook County
 Cook County Contract Audit
 MWBE Participation - 2008

Contract No.	Award Date	Prime Vendor	WBE	Contract Awarded	Amount Purchased	WBE Reported Payments	WBE Participation	MBE Reported Payments
		Prime Contractor #1	MWBE #1	131,651.84	152,422.28	-	0%	
				232,204.06	157,297.24	-	0%	
				252,531.11	195,518.01	-	0%	
				314,797.50	289,539.79	-	0%	
				711,485.00	530,477.55	-	0%	
Total				1,642,669.51	1,325,254.97	-	0%	
		Prime Contractor #2	MWBE #2	2,232.00	-	-	0%	
				60,300.86	6,012.81	-	0%	
				8,193.75	120.00	-	0%	
				100.00	-	-	0%	
				1,928.00	-	-	0%	
				7,808.48	725.44	-	0%	
				2,800.00	168.00	-	0%	
				33,186.85	9,412.27	-	0%	
				188,356.40	126,590.97	766.28	0%	
				735.00	-	-	0%	
				8,082.99	2,155.64	-	0%	
				1,781.40	-	-	0%	
				11,314.60	5,826.80	-	0%	
				159,600.00	-	-	0%	
				220,698.78	14,516.00	1,895.60	13%	
				105,185.40	6,084.90	-	0%	
				6,159.32	1,338.00	-	0%	
Total				818,473.83	172,950.83	2,661.88	1.54%	
		Prime Contractor #3	MWBE #3	open	3,489,617.01	-	0%	
Total					3,489,617.01		0%	
Total Audited Amount				\$2,461,143.34	\$ 4,987,822.81	\$ 2,661.88	0.05%	

Key
 Reported Payments are obtained from the Office of Contract Compliance
 Purchase Order data was obtained from the Office of the Purchasing Agent

Note: Prime Contractor #3 uses 3 MWBEs as subcontractors for this particular contract. Although the Prime Contractor reported that 35% of business has been allocated to the MWBEs it is difficult to reconcile actual participation and contract activity because the contractors do not use the recommended payment status report template.