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Office of the County Auditor

Shelly A. Banks, C.P.A.

Cook County Auditor

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March 24, 2016

The Honorable Toni Preckwinkle, President
And Board of Cook County Commissioners
118 N. Clark Street, Room 537
Chicago, Illinois 60602

Dear President Preckwinkle and Board of Commissioners:

We have conducted an audit of the Office of the Chief Procurement Officer's Sole Source and Emergency Procurements. We conducted our audit in accordance with the [Cook County Auditor Ordinance](#).

Our objectives for this examination were to verify that internal controls are in place and to ensure compliance with Sole Source and Emergency procurement policies, procedures and ordinance.

Please refer to the following audit report for the results of the audit. The audit report contains three audit findings. The [Executive Summary](#) provides an overview of the audit with the main finding areas.

We express our appreciation for the cooperation the Office of Chief Procurement Officer staff extended to Mark Wehren during the course of our audit. We have discussed our findings with the Office of Chief Procurement Officer and would be pleased to discuss our recommendations in greater detail in order to assist management with their implementation of our recommendations.

Respectfully Submitted,

Shelly A. Banks, CPA
Cook County Auditor

cc: Shannon Andrews, Chief Procurement Officer



COOK COUNTY GOVERNMENT
OFFICE OF THE COUNTY AUDITOR

Sole Source and Emergency Procurements

Internal Audit Report

Report Date: March 2016

Issued By:
Shelly A. Banks, County Auditor

Audit Conducted By:
Mark Wehren, Field Auditor V

EXECUTIVE SUMMARY

We reviewed sole source and emergency procurements for the period December 1, 2013 to August 31, 2015. The sole source and emergency procurements are defined in the [Cook County Procurement Code](#).

The scope and objectives of the audit were to verify that internal controls are in place to ensure compliance with sole source and emergency procurement policies, procedures, and ordinance.

We noted the following findings in regards to the internal control structure:

- The Emergency Purchase Justification Form does not define the process and requirements for obtaining quotes as stated in the Procurement Code.
- There was a lack of controls noted with the approval process for sole source and emergency procurements.
- Originating departments are not consistently providing sufficient justification to document the sole source procurements.

The findings noted were presented to the Office of Chief Procurement Officer (OCPO) management. Please refer to the [Findings](#) section for more detail on the findings with the management responses, corrective action plans and estimated completion dates.

BACKGROUND

Chapter 34, Article IV of the Code of Ordinances of Cook County is known as the Cook County Procurement Code. The Office of Chief Procurement Officer's (OCPO) mission is to procure goods and services for Cook County agencies in a transparent manner in accordance with the Procurement Code and other applicable laws while promoting competition and utilizing best procurement practices. Additionally, with respect to competitive bids, the OCPO's mission is to obtain the equipment, supplies, goods or services, at the best price by awarding Contracts to the lowest Responsive and Responsible Bidder.

Section 34-139 Sole Source Procurements states "Procurements of supplies, equipment, goods or services may be made without use of one of the competitive processes if there is either only one source or there is a need for the unique or specialized skill, experience, or ability possessed by a particular source. The Using Agency must submit a letter to the CPO justifying the sole source Procurement, and provide any other documents or information required by the CPO."

In addition, Section 34-141 Emergency Procurements states "The CPO may make procurements and execute contracts without use of one of the competitive processes set forth in this Procurement Code and without prior approval of the Board, when such procurements are necessary (i) due to a threat to public health or safety, (ii) for repairs to County property in order to protect against further loss or damage, (iii) to prevent or minimize serious disruption in County services, (iv) to ensure the integrity of County records, or (v) in the reasonable opinion of the CPO, for the best interests of the County. If practicable under the circumstances, the CPO shall obtain quotations or proposals from at least three persons. The CPO shall report the basis for the emergency procurement and reasons for the selection of the contractor to the Finance Committee of the Board within five business days of making an emergency procurement."

Based on a list provided by the OCPO, there were 5 emergency procurements totaling \$102,121.00 in FY14 and 22 emergency procurements totaling \$525,092.97 as of 8/31/15. In addition, there were 112

sole source procurements totaling \$10,096,480.11 in FY14 and 63 sole source procurements totaling \$7,662,820.84 as of 8/31/15.

AUDIT SCOPE AND OBJECTIVES

The overall scope and objectives was to ensure that internal control procedures exist for both sole source and emergency procurements. The specific objectives include the following:

- Verify that written policies and procedures are in place.
- Confirm compliance with policies, procedures and the procurement ordinance.
- Verify that appropriate reviews and approvals were obtained.
- Determine that sole source and emergency procurements are supported by proper justification and documentation.
- Assess the adequacy and effectiveness of controls over the procurement process.

FINDINGS

Finding #1:

The Emergency Purchase Justification Form does not define the process and requirements for obtaining quotes as stated in the Procurement Code. The Procurement Code Section 34-141 states “If practicable under the circumstances, the CPO shall obtain quotations or proposals from at least three persons.” There is no guidance provided on what is practical and there is no requirement for justification of the exceptions. There were 12 out of 15 emergency procurements reviewed that did not contain three quotes. From the 12, 6 of them had a sole source justification form. The Emergency Purchase Justification Form does not require justification as to why three quotes were not obtained, and does not provide an area to list the actual quotes obtained from the vendors.

Recommendation

We recommend updating the Emergency Purchase Justification Form to add the following to improve the transparency and accountability for emergency purchases:

- Separate the vendors solicited section and define the guidelines.
- Expand on the vendors solicited section to include an area to document the three vendors with the vendors’ responses and actual quotes obtained.
- Expand on the vendors solicited section to document the justification if the three quotes were not obtained or if one of the vendor’s quotes is lower but not selected. The justification area could include a check box to select a specific justification such as time constraint, before/after work hour emergency, sole source and other to list any specific justification to not obtaining three quotes.
- Add a section to indicate the department’s verification of supplies, goods, equipment or services lack of availability in CC Marketplace.

Management Response

As stated above, Section 34-141 of the Procurement Code provides that “if practicable under the circumstances, the CPO shall obtain quotations or Proposals from at least three Persons.” Finding #1 of the Audit provides that the current Emergency Form does not require a justification as to why three (3) quotes were not obtained and does not provide an area to list the actual quotes obtained from the Contractors. The Auditor recommends revising the Emergency Form to document whether three (3) quotes or Proposals were obtained. The Auditor also recommends revising the Emergency Form to include an area to justify why three (3) quotes or Proposals were not obtained. Finally, the Auditor recommends separating the Contractors solicited section, defining the guidelines and adding a section to indicate whether the requested supplies, equipment, goods or services are available on CC Marketplace.

As an initial matter, prior to approving any request for an Emergency Procurement, the OCPO checks whether the requested supplies, goods, equipment or services are available on CC Marketplace or any active Cook County Contract. Additionally, as the OCPO previously advised the Auditor, since 2013 the OCPO has implemented various policies and procedures, created new forms related to the OCPO process and revised other forms. Specifically, the OCPO has revised the Sole Source Justification and Certification Form (“Sole Source Form”) as well as the Comparable Government Procurement (Reference/Piggyback) Contract Request Form. Prior to the release of this Audit, the OCPO has been working to modify the Emergency Form to clearly delineate the parameters of an Emergency Procurement as well as the respective duties of Using Agencies. For example, the revised Emergency Form will state that Using Agencies should provide possible Contractor(s) contact information directly to the OCPO so that the OCPO can obtain the quotes or Proposals. Further, the revised Emergency Form will provide examples of when it is permissible for the Using Agency to obtain the quotes or Proposals, for example maintenance or service is immediately required on the weekend and OCPO staff members are unavailable to obtain the quotes or Proposals. This should be done in limited circumstances.

Estimated Completion Date: June 1, 2016

Finding #2:

There was a lack of controls noted with the approval process for sole source and emergency procurements.

The following was noted from the review of the files:

- 24 of 52 sole source procurement contracts were approved by the OCPO after the start of the contract period. There is an opinion from the State’s Attorney’s Office (SAO) dated November 13, 2012 that indicates it is permissible for the Chief Procurement Officer (CPO) to approve procurements after a department has already received supplies, goods, equipment or services. The use of this practice is not a strong control and should only be exercised as an exception.
- 2 of 20 sole source procurement contracts over \$150,000 were approved by the Board of Commissioners after start of the contract period.
- 1 of 2 sole source procurement contracts over \$1,000,000 did not show approval by the SAO as required by the Procurement Code Section 34-302(h).
- Approval signatures of the OCPO were missing from 28 of 52 Sole Source Justification Forms and 13 of 15 Emergency Purchase Justification Forms reviewed. It should be noted that the purchase orders and contracts contained the approval signature for these vendors; however, CPO approval on the justification forms is important to demonstrate the prior review and approval for these types of procurements that are exceptions to the competitive process.

Recommendation

We recommend that controls be strengthened over the approval of sole source and emergency procurements.

- The OCPO should reinforce with management the requirement to submit all documentation to procurement in a timely manner to ensure that all procurement policies are followed and that the proper review and approval occurs prior to the commencement of contracts and purchase orders. The SAO opinion that permits contracts to be approved after commencement should be utilized as an exception based on justification.
- The OCPO should require management to provide written justification for procurements that are approved after the start date of the contract.

- The OCPO should sign and date to approve the procurement justification forms prior to commencement of the contract and/or issuance of a purchase order. The written approval prior to the contract or purchase order supports the review and approval process for the procurement method prior to initiating work with the vendor.
- The OCPO should ensure procurements over \$1,000,000 are only processed after receiving the written approval from the SAO.

Management Response

I. Management Response and Estimated Completion Date for Contracts Approved After the Effective Date Specified in Contract

Finding #2 of the Audit provides that there were a lack of controls noted with the approval process for Sole Source and Emergency Procurements. The purported lack of controls can be characterized as the follows: (1) the OCPO's approval of Sole Source Contracts after the effective date specified in the Contract; (2) the Cook County Board of Commissioners' (the "Board") approval of Contracts after the effective date specified in the Contract; (3) failure to obtain the Cook County State's Attorney Office's ("SAO") signature on Contracts over \$1,000,000; and (4) missing signatures on the Sole Source and Emergency Forms.

As acknowledged by the Auditor, the OCPO has an opinion from the SAO which states that it is permissible for the CPO to process contracts after a Using Agency has received supplies, equipment, foods or services. Specifically, the opinion provides that the CPO has the authority to execute Contracts which are less than \$150,000, and also to process Contracts which are \$150,000 or more and require Board approval, in those instances where Using Agencies have received supplies, equipment, goods or services subsequent to the effective date set forth in the Contract. The Audit provides that although the SAO opinion provides that Contracts can be executed or processed for Board approval after the effective date, this is not a strong control and should only be exercised as an exception. As previously explained to the Auditor, the OCPO has allowed this exception to be exercised sparingly and we have ensured that there are sufficient controls when exercising the exception. Specifically, the OCPO does not arbitrarily execute or process for Board approval any Contract which has a prior effective date that precedes the OCPO's execution or the Board's approval. Rather, the OCPO's policy is to execute or process for Board approval such Contracts if: (1) the County has previously approved a Contract to a Contractor and continuity of services, equipment, goods, or supplies is needed until a Contract amendment is processed; or (2) the County has previously awarded a Contract to a Contractor and continuity of services, equipment, goods or supplies is needed until a new Contract is awarded. In both instances, it is necessary that the Using Agency request a Contract amendment or new Contract prior to the expiration of term of the current Contract.

The OCPO believes that it has sufficient controls regarding the approval of Contracts after the effective date set forth in the Contracts. The OCPO conducts monthly Procurement Liaison meetings at which time various Procurement topics are discussed, including OCPO staff reminding representatives from the Using Agencies (Procurement Liaisons) to review expiring contracts so that they may submit all necessary documentation to the OCPO in a timely manner. This is to ensure that amendments and new Contracts are processed prior to the expiration of the term set forth in a Contract. OCPO reminds the Procurement Liaisons to check the Cook County expired contract list(s) which is available to all User Agencies on Prodiagio and CCNET. On or before **June 1, 2016** the OCPO will issue a memoranda to Using Agencies, Department Heads and separately Elected Officials reminding them of their responsibility to review their expiring Contracts and prepare accordingly to allow continuity of equipment usage, supplies, goods or services. Additionally, effective **June 1, 2016**, OCPO will require the heads of all Using Agencies to submit in writing why they failed to timely submit the necessary documentation to the OCPO to amend or enter into new Contracts for existing goods or services with Contractors.

II. Management Response and Estimated Completion Date for Obtaining SAO Signature on Contracts over \$1,000,000

The Auditor states in Finding #2 that one (1) of the two (2) Sole Source Contracts that it reviewed did not include the SAO's approval as required by Section 34-302(h) of the Procurement Code. Section 34-302(h) requires the SAO's signature on all Contracts over \$1,000,000 including but not limited to Sole Source Contracts. During FY 2014 and FY 2015, the OCPO processed a total of 63 new contracts which had a total fee or amount over \$1,000,000. The only Contract which did not have the required signature was the Sole Source Contract with Dominion Voting Systems for the Cook County Clerk's Office, which was identified in the Audit.

In order to ensure that it does not inadvertently fail to obtain the required signature from the SAO for any Contract, the OCPO will, **on or before June 1, 2016**, redistribute a copy of a prior memoranda dated August 14, 2013 reminding Using Agencies that the OCPO will not concur on any Contracts over \$1,000,000 if the SAO has not executed the Contract. Additionally, at the next OCPO staff meeting, the senior management team will remind OCPO staff to ensure that the SAO executes all Contracts over \$1,000,000 prior to the OCPO's execution of such Contracts.

III. Management Response and Estimated Completion Date for Obtaining CPO Signature on Sole Source and Emergency Forms

Finally, the Audit provides that 28 of 52 Sole Source Forms and 13 of 15 Emergency Forms did not contain a signature from the OCPO. The Auditor recommends that the OCPO sign and date the Sole Source and Emergency Forms prior to the commencement of the Contract and/or issuance of a purchase order. The OCPO acknowledges that many of the Sole Source Forms and most of the Emergency Forms do not contain a signature from the OCPO because those forms did not require Using Agencies to disclose sufficient information, and did not sufficiently set forth the entire process and considerations undertaken by the OCPO when approving purchases on a Sole Source or Emergency basis. An execution by the OCPO on these forms would at least imply that the OCPO determined that the information contained solely in these forms was sufficient for the OCPO to approve purchases on a Sole Source or Emergency basis. On May 1, 2014, the CPO distributed a revised Sole Source Form to all Elected Officials, Bureau Chiefs and Department Heads. As such, the OCPO has executed all Sole Source Forms after May 1, 2014. As stated in the response to Finding #1, the OCPO is revising the Emergency Form. As such on or before **June 1, 2016**, all Emergency Forms will contain the CPO's signature. Although many of the older Sole Source Forms and most of the Emergency Forms do not contain the signatures, as the Auditor acknowledges, each of the respective Contracts and/or purchase orders did contain the required signatures and as such were approved by the CPO. The CPO's signature on the Contracts and/or Purchase Orders is an affirmation that each of the respective purchases of the equipment, supplies, goods or services meets the requirements of a Sole Source or Emergency as set forth in the Procurement Code.

Estimated Completion Date: June 1, 2016

Finding #3:

Originating departments are not consistently providing sufficient justification to document the sole source procurements. In some cases, the justification for the sole source is not clear and convincing evidence that there is only one source that could provide the goods or services. Explanations were vague in regards to supporting the research the department conducted to ensure the vendor is the only vendor and that the best cost has been obtained. In addition, from the 52 files reviewed two files were missing the Sole Source Justification Form and one file was missing the first page of the Sole Source Justification Form. Without strong, quantifiable justification of sole source purchases, controls are weakened to ensure competitive procurement practices are adequately followed.

Sole source purchases are an exception to standard competitive quotations or bidding, and as such, should require additional efforts. Research to locate other providers should be part of the detailed justification in a department decision to recommend a sole source provider. Uniform documentation should be maintained to reduce the appearance and opportunity for favoritism and establish public confidence.

The OCPO stated that they are considering implementing a policy to post public notification of sole source procurements. Currently, the OCPO is not required to post public notification of any proposed sole source procurement contracts. A public notice provides the opportunity for the public to state whether there is another vendor that could provide the goods or services and provides improved transparency and accountability to the process. As a best practice, the State of Illinois requires a public notice at least 14 days prior to entering into the contract with the designated sole source vendor.

Recommendation

We recommend that the OCPO require a more quantifiable and comparable justification along with a cost analysis to support the decision to sole source. Management should be required to provide quantifiable factors that are specific and measurable. The determination should include the specific research for other vendors, substitute products and comparing vendor's prices or fees to determine if they are offered within market guidelines for comparable services and supplies.

In addition, we recommend a policy be implemented to post public notice of sole source procurements. The public notice should provide for the ability for a vendor to submit rationalizations for why they feel the procurement is not sole source.

Management Response

I. Management Response and Estimated Completion Date Regarding Single Contractor

In Finding #3, the Audit states that Using Agencies have not provided sufficient documentation to justify the Sole Source request. Additionally, the Audit states that in some instances the Using Agencies have failed to present clear and convincing evidence that there is only one source that can provide the goods or services. The Audit also states that Using Agencies provided vague explanations to support its research that only one Contractor can provide the goods or services.

Section 34-139 allows Using Agencies to request a Sole Source Contract in two instances. The first instance is if there is only one source that can provide the equipment, supplies, goods or services. However, Section 34-139 also allows Using Agencies to request a Sole Source Contract if there is a need for the **unique or specialized skill, experience, or ability possessed by a particular source**. Although in many instances the Contractor, i.e., the *particular* source possessing the specialized skill, experience or ability is also the *only* source, the Code does not require that a Using Agency show that the proposed Contractor, i.e., *particular* source is the *only* or *single* source. As such, in many instances Using Agencies are submitting a Sole Source Form because of the need for the unique or specialized skill, experience, or ability possessed by a *particular* source. In such instances, Using Agencies are required to submit supporting justification that based upon the proposed scope of work, the proposed Contractor possesses the unique or specialized skill, experience or ability which is needed by the Using Agency. Further, Questions 3 and 5 of the Sole Source Form currently require Using Agencies to submit a justification that the Contractor is the only source that can provide the service, goods or supplies, or that the Contractor possesses specialized skill, experience or ability required by a particular source. On or before **July 1, 2016**, the OCPO will remind Using Agencies that they should submit a thorough explanation and documentation to support their request for a Sole Source Contract based upon an only source, or that a particular source possesses a unique or specialized skill, experience or ability. Additionally, the OCPO will conduct a bi-annual workshop for Using Agencies concerning the required documentation for Sole Source Procurement requests and role of the new Sole Source Review Committee ("SSRC").

II. Management Response and Estimated Completion Date for Missing Sole Source Justification Forms

Finding #3 of the Audit provides that two (2) of the Sole Source Contracts were missing the Sole Source Form in its entirety and one (1) was missing the first page of the Form. On or before **July 1, 2016**, the senior staff for OCPO will remind OCPO staff that the entire Sole Source Form should be kept in the proper location in the file. Effective immediately, once final signatures have been received on the Sole Source Form documentation, the senior staff for OCPO will be responsible to ensure that the entire Sole Source Form documentation is scanned into Prodagio, which is the OCPO's contract document management system.

III. Management Response Concerning Obtaining Cost Analysis

Finding #3 of the Audit provides that the OCPO should require more documentation from Using Agencies concerning costs analysis. Specifically, the Audit provides that "explanations were vague in regards to supporting the research the department conducted to ensure the vendor is the only vendor and that the best cost has been obtained." Additionally, the Audit recommends that the "OCPO require a more quantifiable and comparable justification along with a cost analysis **to support the decision to Sole Source** (Emphasis Added). Management should be required to provide quantifiable factors that are specific and measurable. The determination should include the specific research for other vendors, substitute products and comparing vendor's prices or fees to determine if they are offered within market guidelines for comparable services and supplies."

As an initial matter, Section 34-139 of the Procurement Code does not set forth cost as a consideration for the OCPO's decision to support awarding a Contract on a Sole Source basis. However, as a component of the Bureau of Finance, which is charged with leading fiscal responsibility, the OCPO included language in the Sole Source Form asking Using Agencies to provide an explanation on their best efforts to obtain the best possible price and how it was determined that the prices are fair and reasonable. The OCPO has included these questions on the Sole Source Form in order to ensure that the Using Agencies are negotiating the best possible price. However, the negotiation of pricing is not a determination or factor on whether to award a Contract on a Sole Source basis as set forth in Section 34-139. The OCPO strongly believes that requiring the OCPO to mandate that the Using Agencies submit a cost analysis will impose an obligation which is not legislatively required and suggests that pricing is a deciding factor on whether to award a Sole Source Contract. Further, the OCPO firmly believes that the Using Agencies stand in the best position to opine whether the pricing is fair and reasonable for their respective budgets and industry standards. As such, the OCPO will not require the Using Agencies to submit a cost analysis or any other comparable justification concerning pricing. Finally, the OCPO is reconsidering whether it is in its best interest to delete any questions or references to pricing on its Sole Source Form.

IV. Management Response and Estimated Completion Date for Public Notice of Sole Source Procurement

As the Auditor acknowledges in Finding #3, the OCPO has considered implementing a policy to notify the public about possible Sole Source Contracts. The OCPO has previously advised the Auditor that implementing a policy notifying the public will increase transparency. The Audit recommends that the OCPO implement a policy notifying members of the public about Sole Source Contracts that allow Contractors to submit rationalizations for why they believe that the Procurement is not a Sole Source.

Based upon the current protest procedures set forth in Section 34-136 for Bids and Section 34-138 for Request for Qualifications or Request for Proposals, the OCPO believes that Contractors should have an opportunity to protest possible Sole Source Procurements within three (3) days of the OCPO posting the Sole Source Contract on the Intent to Award or Intent to Execute Lists. Additionally, the OCPO believes that forming a Sole Source Review Committee ("SSRC") to review requests to award Contracts on a Sole Source basis will improve transparency.

Estimated Completion Date: July 1, 2016