



Ethics Line Case 129:
Contract illustrates administrative weaknesses

October 2014
A Report by the Office of the Auditor

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MEMORANDUM

October 15, 2014

To: Tom Hughes, Council President
Shirley Craddick, Councilor, District 1
Carlotta Collette, Councilor, District 2
Craig Dirksen, Councilor, District 3
Kathryn Harrington, Councilor, District 4
Sam Chase, Councilor, District 5
Bob Stacey, Councilor, District 6

From: Suzanne Flynn, Metro Auditor

A handwritten signature in black ink, appearing to be "SF", written over the name "Suzanne Flynn".

Subject: Ethics Line Case #129

An anonymous report was received on Metro's Ethics Line in July 2014. The reporter stated that there had been billing irregularities in a specific contract and that actions had been taken to obscure these irregularities. As a result, I decided to conduct an audit to determine if the information was accurate. We found that there had been overpayments made to the contractor, but that Metro had taken steps to correct them. We did not find evidence that there was an attempt to hide these overpayments. The attached report is a summary of the work that was completed.

I have discussed the findings and recommendations with Martha Bennett, COO; Scott Robinson, Deputy COO; and Tim Collier, Director, Finance and Regulatory Services. I would like to acknowledge and thank the management and staff in the departments who assisted me in completing this audit. A response by management is attached at the end of the report.

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Background

On July 3, 2014, Metro received a report on the Ethics Line (Case #129) about billing irregularities in Metro's contracts with a vendor for electrical services. The report stated that the contractor overcharged Metro and that management inappropriately renewed the vendor's contract to obscure overpayments.

Metro's first contract with the vendor (2009-2012) was for electrical work at facilities operated by Parks and Environmental Services. Metro used a contract between Portland Community College (PCC) and the vendor without going out for bid. Metro procured another contract through a competitive process in May 2012. It covered electrical work at all Metro facilities.

Scope and methodology

The purpose of this audit was to determine whether the reported irregularities occurred.

We interviewed Metro managers and staff in Finance and Regulatory Services, the Office of Metro Attorney, and Parks and Environmental Services. We were not able to interview the project manager with responsibility for contract administration for much of the period reviewed because they were no longer employed at Metro. We reviewed state regulations and Metro's Code and procurement guidelines.

We reviewed all of Metro's contracts with this vendor, but focused on two contracts used for electrical work between FY 2009-10 and FY 2013-14. We analyzed contract expenditure data from the accounting system and reviewed samples of invoices that appeared irregular. We also assessed a second sample of recent payments to the vendor (January through May of 2014).

This audit was added to the FY 2014-15 audit schedule. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results

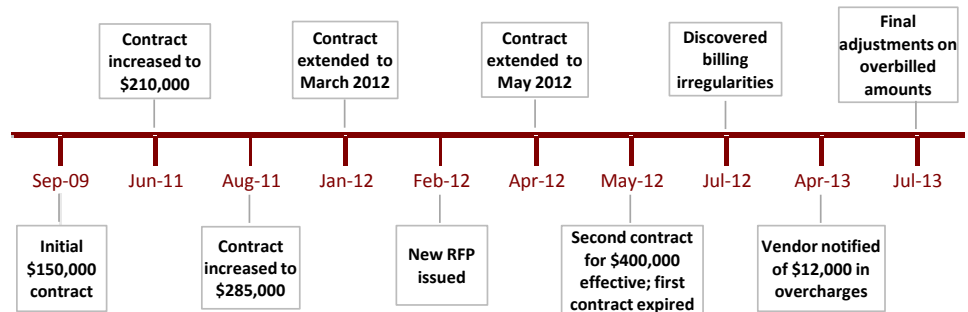
Metro identified overpayments to the vendor of about \$12,000 for work performed between 2011 and 2013. The vendor had billed Metro at premium rates for after hours work and these rates were not in the contract. The work performed took place under both contracts, but was paid through the second one.

It took Metro over a year to document the extent of the overbillings. This was partly due to the fact that work orders were not used to scope and cost the work performed and the vendor did not submit invoices on a timely basis. To correct the overpayments, Metro adjusted invoices submitted on the second contract to get reimbursed for the overcharges as credits for additional work.

The Ethics Line reporter believed management renewed the vendor's contract to obscure the overpayments. Our review did not substantiate this allegation. Metro entered into the second contract before the overpayments were reportedly discovered. We found no evidence that there was an attempt to hide these overpayments.

The second contract was effective in May 2012. Metro discovered irregularities with the vendor's invoices in July 2012, but did not determine the extent of the overcharges until April 2013. Project and procurement staff considered termination of the second contract, but notified the vendor of the overcharges and provided an opportunity to compensate Metro for them. Credits were accounted for as adjustments on invoiced payments made in July 2013.

Exhibit 1
Contract timeline



Source: Metro Auditor's Office analysis

Weaknesses in contract and administration

Our investigation found a number of weaknesses in both contracts and their administration. These made it difficult for Metro to hold the vendor accountable for contract terms and ensure consistent expectations and practices by the different project managers and procurement staff administering the contracts.

For example, Metro's initial contract was not consistent with the terms of PCC's underlying contract and neither contract provided sufficient detail on billing procedures. The vendor submitted invoices months after the work was performed, without details on hours worked or receipts for materials.

It was difficult to determine how much of the overpayment was attributable to each contract because some of the work paid under the second contract took place under the first. For example, we found one invoice for work done in January 2012 that was paid through the second contract in June 2012. The first contract expired in May 2012. About \$46,000 in invoices were paid through the second contract for work done before its effective date.

Although Metro was reimbursed for identified overbillings on the second contract, there may have been similar issues with the first contract that were not identified. Our review of a sample of invoices identified about \$4,000 in overbillings from the first contract.

Additionally, Metro required review by the Office of Metro Attorney (OMA) on amendments to public contracts over \$100,000 and contract amendments were limited to 20% of the contract amount. Although the initial contract exceeded \$100,000, most amendments were not reviewed by OMA. Twice, contract amounts were amended by more than 20% without the review by OMA and Metro Council approval. Procurement staff did not obtain legal review until the fourth amendment to extend the duration of the contract.

Improvements made in second contract

After the overbillings were discovered, Metro improved the scope of work in the second contract to better clarify wage rates and the vendor's responsibilities for billing. Work orders were to be used to scope project work and costs so invoices could be compared to estimated costs before approval.

In addition, Metro recognized the potential risks in its decentralized procedures for contract administration and in 2013, initiated an organization-wide effort to strengthen overall procurement practices. Guidelines were updated to better clarify contract administration roles for project managers and departmental procurement specialists. We did not perform audit work to determine whether this would impact the problems we saw.

We tested a sample of recent invoices submitted under the current contract (January – May of 2014) and found that the vendor's submitted invoices included documentation on hours and materials with appropriate wage rates. Work orders were used on some larger projects. There was one area where the vendor did not comply with contractual requirements. Invoices were not always submitted on a timely basis in compliance with the 30-day contractual requirement.

Confusion about state requirement

At the time of our review, we also found that there was a lack of clarity on wage rate requirements and underlying confusion about the related requirements under Oregon's Bureau of Labor and Industries (BOLI) wage regulations. Over the course of our interviews with Metro employees, we found various interpretations of these regulations.

State regulations require that covered on-call contracts pay a wage rate set by BOLI if the total contract amount exceeds \$50,000. Some Metro staff we interviewed believed that this threshold only applied to individual project-related costs. State guidelines generally exclude maintenance work from BOLI requirements. Both of the contracts we reviewed covered a combination of maintenance and other remodeling and construction work that would be subject to BOLI, but Metro's current contract related documents were not always consistent as to BOLI requirements.

State law and Metro's procurement policies require that the vendor submit certified payroll statements on a monthly basis before work subject to prevailing wage rates is paid. Although Metro paid for work at BOLI's rates, neither contract stated explicitly that the vendor should submit certified payroll. The vendor did not submit these statements with invoices for work on either contract.

Recommendations

In order to administer contracts effectively and efficiently and hold contracts accountable, Metro should:

1. Ensure that roles and contract administration responsibilities are consistently performed throughout Metro.
2. Comply with guidelines and state and local procurement regulations.
3. Ensure that all project managers and procurement staff involved in public improvement contracts have a clear and consistent understanding of BOLI's prevailing wage rate regulations and requirements.

Management response

Date: October 13, 2014
To: Suzanne Flynn
From: Martha Bennett, Chief Operating Officer
Scott Robinson, Deputy Chief Operating Officer
Tim Collier, Director of Finance and Regulatory Services
Subject: Management Response to Ethics line case 129

Thank you for the opportunity to respond to your findings from Ethics Line case number 129. The audit is very useful in helping us further identify how to improve our processes and utilize our systems and training to improve our overall performance. We would also like to point out that the ethics line reporter believed that the contract was renewed to cover up overpayments and no substantiation was found in those allegations.

In this memorandum we respond to how we will implement your recommendations and highlight some of the areas of the report that we believe have significance to our processes.

One of the areas that the audit alluded to, but should have been more emphasized, is the improvement that has occurred between the first contract with this firm and the progress made under our process improvement efforts more recently. Over the last four years since the initial contract with this firm was executed, we have placed an increased focus on the importance of the procurement process and have worked diligently to standardize processes across the agency. In addition, significant efforts have been placed on enhancing our training efforts.

The procurement enhancement project was initially launched in April of 2013, with phase one completed in May of 2014. The purpose behind this project was to clarify rules, provide clear documentation in a single place, and to train people fully on the procedures. While this project was led by the procurement department, the project team consisted of project managers from across the agency. Additional phases of the project include a focus on improving the Metro code and providing standardized procurement templates.

Overall, we believe that the auditor recommendations are sound and reflect issues that we have already identified and are in the process of improving.

Recommendation: 1. Ensure that roles and contract administration are consistently performed throughout Metro.

Response: With the recent completion of phase 1 of the Procurement Enhancement Project, we believe that the roles are now clarified. We will continue to train on procurement, maintain our current 360 meetings which we discuss procurement topics and changes with the departments and work to ensure we continue to improve the contracting process. Our goal is to make the procurement process as clear and streamlined as possible.

Recommendation 2. Comply with guidelines and state and local procurement regulations.

Response: Compliance with both the Metro code and state regulations are always at the heart of any procurement program. We will work to continue to train departments on current regulations and processes. We will also be reviewing the Metro procurement code in phase two or the procurement enhancement process to help update and improve the code. We believe that this will be completed in summer of 2015. As mentioned earlier, great strides have been

made from when the original contract that was at the forefront of this ethics complaint was originally signed.

Recommendation: 3. Ensure that all project managers and procurement staff involved in public improvement contracts have a clear and consistent understanding of BOLI's prevailing wage rate regulations and requirements.

Response: We have begun to set up regular BOLI trainings, the first was in September, to ensure that we stay up to date with the current rules and ensure that we are in compliance. We will continue to include this in all of our trainings and make sure it is included as part of the regular procurement updates.



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