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Date: April 22, 2024

To: Marissa Madrigal, COO
Andrew Scott, Deputy COO
Brian Kennedy, CFO and Procurement Officer

CC: Metro Council and Local Contract Review Board
Carrie MacLaren, Metro Attorney

From: Brian Evans, Metro Auditor

RE: Early Communication - Budget Process and Performance Measures Audit

Summary

Reliance on payment approval processes rather than procurement processes reduced transparency and accountability in a contract we reviewed as part of the Budget Process and Performance Measures audit. The contract's dollar value and scope of work changed several times without formal contract amendments. Documentation of the changes and who approved them was not included in the contract file. Outreach to Procurement Services occurred, but it happened after key decisions had already been made. This reduced the effectiveness of controls to ensure open competition and efficient use of resources, and increased the risk of unauthorized purchases.

Changes to scope of work reduced competition and increased the risk of unauthorized purchases

In March 2022, Metro's Human Resources department requested proposals for its Core Competencies project. Only one proposal was received. The resulting contract's scope of work was for about \$49,000 for work to be completed between April 2022 and October 2022. The contract was awarded for \$150,000 because additional work was anticipated on the project, but it was not defined at that time.

In early March 2023, employees in the COO and Council Offices discussed a different project (Strategic Targets) with the same contractor. They also began an internal discussion about the appropriateness of using the existing contract for Core Competencies with one of the employees involved in that work. That employee believed there was continuity between the two projects.

Metro's Procurement Services division within Finance and Regulatory Services was consulted at that time. Procurement Services stated there was \$101,000 available on the Core Competencies contract and asked if that would be sufficient to cover the anticipated costs for the Strategic Targets project. Procurement Services stated they would start the formal amendment process, but it did not move forward. The employee who worked on the Core Competencies project shared an inaccurate scope of work for the Core Competencies project which may have influenced internal decisions.

The Strategic Targets team negotiated a new scope of work with the contractor for about a month. The additional work was eventually approved on April 5, 2024, by an employee in the COO's Office for \$100,000. The contractor held the first workshop for the project on April 17, 2024. The scope of work was revised again on April 25, 2024, bringing the project total to \$124,000. This change exceeded the original contract's maximum value. It also brought the total commitment for both projects (Core Competencies and Strategic Targets) above \$150,000, which was the limit in administrative rules for contracts awarded using the intermediate contract solicitation process. Had the full scope of work been known when the request for proposals was initiated, a formal procurement process would have been required.

The next day Procurement Services was informed of the new scope of work. They stated that a contract amendment was not needed and advised the Strategic Targets team to document the change using a work order process. The work order process was only appropriate for certain types of services and certain types of contracts. Neither of those conditions was present for this contract. At the same time, Procurement Services notified the team that the contract had \$91,000 remaining. That amount was insufficient to cover the scope of work in place at the time.

On July 10, 2023, another change to the project's scope of work was approved. This raised the total project cost to \$141,000 which further exceeded the contract's maximum value. That change also exceeded another threshold in Metro's procurement administrative rules. The rules stated that contracts could not be amended for more than 125% of the original contract amount. The rules also provided other procedures to approve contract amendments in excess of 125% of the original contract amount. Some aspects of the other approval procedures were pursued but they did not meet the requirements outlined in the administrative rules.

On August 7, 2023, a Finance Manager in FRS initiated the formal contract amendment process with Procurement Services. At that time, Procurement Services agreed that a formal amendment was needed. About a week later, a contract amendment justification memo was signed by the Strategic Targets project manager and COO. The justification memo documented some of what led to changes to the contract's scope of work. It appeared to be structured to meet the administrative rule requirements for documenting and approving unauthorized purchases.

Approval of the justification memo did not appear to follow the standard process. The template for the justification memo said signatures by the Department Director and Procurement Manager were required for all contract amounts, and the COO's signature was required for contracts over \$150,000. The memo was not signed by the Procurement Manager. We reviewed the justification memos in Metro's contract management files from January 1, 2023, to March 13, 2024. The memo for this contract was the only one not signed by the Procurement Manager.

On August 23, 2023, the contract's only formal amendment was approved. By that time, the Core Competencies scope of work was complete, and nearly all the work on the Strategic Targets project was complete. As of February 21, 2024, the contractor had been paid about \$190,000 for both projects.

Exhibit 1: The scope of work and payment amounts changed several times

Date	Approved Scope of Work	Amount
4/29/22	Core Competencies Project: “Consultant to help provide guidance [to] Metro [as it] develops a set of employee Core Competencies...The scope of this project would include facilitating focus groups and compiling key themes that will then be used to influence a set of core competencies that will be established by Metro...” <ul style="list-style-type: none"> • Phase 1a: A comprehensive recommended plan to execute on the Phase 2 activities. • Phase 1b: Preliminary competency themes and summary of feedback. • Phase 2: List of 7-10 competencies and recommendations for performance evaluation process. 	\$49,000 plus \$400 in estimated workshop expenses
4/8/23*	Strategic Targets Project: “Design and facilitation of the Metro Strategic Outcomes and Targets Project. Metro is undertaking a project to develop organization-wide, five-year, strategic outcomes in three focus areas – housing, economy, and environment. The goal is to develop a future-state vision and outcomes in these focus areas, as well as strategic targets to measure progress.” <ul style="list-style-type: none"> • Phase 1: Discovery work to set the stage • Phase 2: Development of Outcomes and strategic targets through collaborative workshops • Phase 3 – Data synthesis and recommendations development 	\$100,000 plus expenses
4/25/23*	Strategic Targets Project: Same general statement of work as the 4/8/23 version, but additional workshops and costs added for Phase 2.	\$124,500
7/10/23	Strategic Targets Project: Same general statement of work as the previous versions, but additional workshops and costs added for Phase 2.	\$141,000

Source: Auditor’s Office analysis of contract documents and project scopes of work.

*Signed scopes of work for the Strategic Targets project that were later changed.

Metro’s Contracting Administrative Rules Seek to Balance Administrative Flexibility with Fairness and Good Stewardship of Public Funds

To meet legal requirements for public contracts, Metro has adopted Local Contract Review Board Administrative Rules (administrative rules) that document the procedures for awarding contracts. In addition to meeting legal requirements, the administrative rules seek to:

- Instill public confidence through ethical and fair dealing, honesty and good faith on the part of government officials and those who do business with the government.
- Promote efficient use of federal, state and local government resources, maximizing the economic investment in public contracting within this state.
- Allow impartial and open competition, protecting both the integrity of the public contracting process and the competitive nature of public procurement.

For this contract, Metro’s processes to ensure the administrative rules were followed were ineffective. When the contract’s scope of work switched to the Strategic Targets project, either a formal contract amendment should have been approved or a new request for proposals (RFP) should have been initiated. A formal contract amendment would have been appropriate if the department, Procurement Officer or their delegate determined that the scopes of work for each project were similar enough to amend the existing contract. A contract amendment could also have been approved by the Procurement Officer or COO if they found it to be “advantageous to Metro” to continue the contractor’s work. A new RFP should have been initiated if the department, Procurement Officer or their delegate determined that the project scopes of work were not reasonably related and continuing the work would not be advantageous to Metro.

Informal Processes Reduced Transparency and Accountability

Not amending the contract or issuing a new RFP reduced transparency and accountability, and resulted in potential violations of the administrative rules. For example, if the contract was formally amended before the Strategic Targets project started in March, or in April or July when changes to the scope of work were approved by the project manager, it would have decreased the chances of exceeding the allowable amounts for contract amendments in August 2023.

None of the deliverables in the scope of work were changed, even though additional work was added. For example, the summary for phase two of the project listed additional workshops and costs in each of the three signed versions, but the deliverables associated with phase two did not change. Inconsistencies between the scope of work and project deliverables could reduce clarity about what Metro's paid for if there was ever a contract dispute. Had the formal contract amendment process been used, it's possible these discrepancies would have been corrected before Metro approved the changes.

Lack of formal amendments also created incomplete documentation in the official contract file. The file did not include any of the scopes of work associated with the Strategic Targets project. As a result, there was no documentation of how the contract changed from focusing on Core Competencies to Strategic Targets. Procurement guidance states that contract scopes of work should be specific enough that an individual not involved in the contract would be able to understand what goods or services were expected to be provided by the contractor. This standard was not met. Several interviews and document requests were required to understand how the project progressed between October 2022 and August 2023.

Relying on Informal Processes Reduced the Effectiveness of Contracting Rules

Employees with knowledge of both projects believed the scopes of work between the two contracts were similar enough that a contract amendment or new contract was not needed. They stated that a work order process was appropriate. We did not receive any documentation showing that the department determined that the scopes of work were reasonably related before changes were approved. Even if the scopes of work were reasonably related a contract amendment was still required when the cost of the new services exceeded 25% of the contract's original value. Alternatively, a contract amendment could have been approved by the Procurement Officer or COO if the two scopes of work were not determined to be reasonably related, but the additional work was considered to be in the best interest of Metro. The contract's only amendment was not approved by either position.

We were unable to find any documentation to support the idea that the work order process was appropriate for this contract. Work orders were referenced in some administrative rules, but they were only applicable to specific types of services. Also, they were only appropriate for use with contracts awarded as "on-call" contracts. On-call contracts were not for specific projects like Core Competencies or Strategic Targets. They were for services where the procurement solicitation process and contract itself documented a general scope of work that would be applicable to many projects.

Work orders appeared to be an informal component of the purchase order approval process. The goal is to ensure good communication among departments to ensure there are sufficient funds available on existing contracts and within department budgets. When done successfully, this communication sets aside resources in advance to be matched later with contractor invoices after their work is complete.

Employees may have used informal processes because they felt pressure to engage a consultant to meet Council's deadline for the Strategic Targets project. The August 2023 justification memo indicated the

Council President and Metro Councilors were interested in the project and who would be included in the external workshops.

It was difficult to assess the impact the project's timelines had on contract management decisions. The project originated in a discussion at a Fall 2022 Council budget retreat, but implementation of the project did not appear to get started until roughly February 2023. By that time, employees were concerned that there was not enough time to issue a new RFP. A review of the Core Competencies RFP would have been helpful to address this concern. The solicitation and the contract award took less than a month. This indicates it could have been possible to issue a new RFP and get a contract in place by March or April 2023. If that occurred, the contract would have followed the procurement processes at nearly the same time, or even before, the first scope of work for the Strategic Target project was signed on April 8, 2023.

Another perspective we heard was that work orders were more efficient than contract amendments. However, formal contract amendments are required by the rules for personal service contracts that were not solicited or awarded as "on-call" contracts. In addition, formal amendments are not administratively burdensome and provide additional benefits that work orders do not. For example, they provide documentation of compliance with administrative rules and increase the likelihood that timely decisions are made by the appropriate authority. The formal amendment process requires engagement with subject matter experts who are not directly involved in project management. This provides valuable independent feedback about the legal, procurement, and financial risks associated with contract changes. That engagement can reduce the risk of unauthorized purchases or the appearance of favoritism.

Administrative Rules for Contract Amendments Should be Clarified

The administrative rules were not specific enough to ensure consistent decision-making about contract amendments. The administrative rules state that contract amendments must be *reasonably related* to the scope of work in the original contract, but there doesn't appear to be any guidance to help ensure decisions are made consistently. Although Procurement Services was engaged at least three times during the Strategic Targets project, their feedback appeared to vary. This indicated a need for additional guidance or criteria to inform decisions.

Changes to the contract's scope of work also exposed lack of specificity about who had the authority to make contract amendment decisions. The administrative rules for personal service contracts state that *a department* can authorize an amendment if certain conditions are met. It appears that the intent of this provision to give the department that signed the contract the decision-making authority.

The contract for Core Competencies was solicited and executed by Human Resources. As such it appears they were authorized to approve contract amendments. However, we did not see any documentation that they were involved in the decision-making process for the Strategic Targets project. Once the decision was made to use the contract for the Strategic Targets project, it seems appropriate that employees in the COO's Office would be better positioned to manage the contract since no one from Human Resources was involved in that project, but there did not appear to be a process in place to formally transfer contract ownership between departments.

The rules state that the Procurement Officer has authority to interpret and implement the administrative rules, so departments could have sought input from the Procurement Officer when they received inconsistent advice about the appropriate process to use. We did not receive any documentation that the Procurement Officer's input was sought. It appears the Procurement Officer had delegated their

authority for personal service contract administrative rules to the Procurement Manager. We did not receive any documentation that the Procurement Manager's input was sought either. Making sure departments know who has authority to interpret the administrative rules if questions arise would be helpful.

Documentation of the Core Competencies Proposal Evaluation was Incomplete

Documentation of the original proposal's evaluation scores for three of the five categories to award the contract were not in the contract file. Typically, Procurement Services conducts the scoring for price, equity, and sustainability, which accounted for 50% of the total points available. Scores for these criteria were listed in the final scoring summary, but it was not clear who completed the scoring or what it was based on. Since there was only one proposal it may not have made a difference in the result. However, it did not seem to follow documentation requirements for proposal review and scoring.

Recommendations

To strengthen controls for contract amendments, the COO, Procurement Officer, and Procurement Manager should:

1. Develop guidance for departments and procurement analysts to increase the consistency of review and decisions about whether new work is reasonably related to an existing contract's scope of work.
2. Revise Procurement Administrative Procedures Section XII. A. (Amendments to Personal Services Contracts) to specify which department has authority to amend contracts.
3. Use the contract amendment summary form or another process to:
 - a. Document department review and approval of contract amendments before scopes of work are changed including changes that affect the goods or services expected to be provided, not just the dollar amounts.
 - b. Document review and approval of changes to contract scopes of work by the Procurement Manager or the Procurement Officer when departments are unsure if the scopes of work of existing contract are reasonably related to proposals for additional work.
 - c. Document a separate review process for amendments to any contracts managed directly by the Procurement Officer.
4. Ensure changes to a contract's scope of work are included in Metro's official contract records.
5. Ensure documentation of all RFP proposal scoring is included in Metro's official contract records.

Methodology

A performance audit of Metro's budget process and performance measures was included in the FY 2023-24 audit schedule. The audit was initiated in November 2023. To inform the scope of the audit, information about Metro's Strategic Targets project was reviewed. Discrepancies in the contract's scope of work indicated potential control weaknesses. Audit standards require auditors to follow up when control weaknesses are identified. To determine what caused the discrepancies and the significance of the risks they posed to Metro, additional information was collected through interviews, project documents, and procurement criteria. The audit is being conducted according to 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 the findings and conclusions in this memo.



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Auditor Evans,

Thank you for the opportunity to respond to your April 22nd Letter to Management – Budget Process and Performance Measures Audit. As you reference in your letter, Metro seeks to balance administrative flexibility with fairness and good stewardship of public funds. Metro’s administrative rules for procurement and other internal processes are designed to strike that balance and ensure that the agency can be nimble while also meeting the public’s expectations for accountability and transparency. We view the situation raised in this letter as a good example of the type of situation staff routinely face that illustrates these tradeoffs. In this case, staff used an existing contract that was competitively procured to nimbly respond to a time-sensitive request and amended that contract in accordance with Metro’s administrative rules. Staff engaged with subject matter experts in a good faith effort to understand and follow the rules. While we differ in our view of events, we agree that there are opportunities for improvement in the future and we appreciate the specific recommendations provided. More detail on our response to those recommendations is below.

First, you note that the Justification Memo was not signed by the Procurement Manager. While you are correct that these type of memos are typically signed by the Procurement Manager, that is not a requirement of Metro’s administrative rules. In this case, the Justification Memo was signed by the Chief Operating Officer (COO) because both the Procurement Manager and Procurement Officer (Chief Financial Officer) were out of the office. The Chief Operating Officer always has authority to approve these types of actions, even if the contract value in question could be approved by others with less signature authority.

Second, as we shared when we met earlier in the process, we disagree that a contract amendment or new RFP was required. Metro’s rules allow additional work to be authorized under an existing contract if the scope of work is “reasonably related” to the scope of work under the original contract, and it was determined that this scope of work was reasonably related. Even though this contract adhered to Metro’s administrative rules, we agree that initiating a formal amendment at the time the additional scope of work was identified would have been clearer and more transparent and we have directed Procurement staff to follow this process in the future.

Third, you state the contract amendment was not approved by either the COO or the Procurement Officer. While that is correct, it does not represent a violation of Metro’s policies or administrative rules. The COO has delegated signature authority for contracts to other staff in the agency. The Deputy Chief Operating Officers, General Manager for Visitor Venues and Chief Financial Officer have been delegated unlimited authority to sign contracts. In this case, one of the Deputy Chief Operating Officers signed the contract, consistent with the COO’s delegation of signature authority.

Fourth, you state that there is no mechanism to transfer contract ownership between departments. That is correct, but there is no process because departments do not “own” contracts. Part of administrative flexibility is ensuring that competitively procured contracts are available, when appropriate, across the agency to reduce duplicative administrative work securing multiple contracts for the same services with the same vendors. Procurement Services staff work closely with department staff to find opportunities to leverage existing contracts, subject to Metro’s administrative rules and policies.

Finally, you note that staff signed work orders/scopes of work that authorized work in excess of the contract value at the time before the contract was amended. We agree that this is not best practice and are working on improving internal documentation and procedures to prevent this from happening in the future.

Management response to recommendations:

1. Develop guidance for departments and procurement analysts to increase the consistency of review and decisions about whether new work is reasonably related to an existing contract’s scope of work.

Management Response: We agree with this recommendation, and we will develop more formal guidance for Procurement staff and ensure that those decisions are clearly documented. However, the determination as to whether something is “reasonably related” is inherently subjective and should be determined on a case-by-case basis by subject matter experts, as happened in this instance.

2. Revise Procurement Administrative Procedures Section XII. A. (Amendments to Personal Services Contracts) to specify which department has authority to amend contracts.

Management Response: We do not agree with this recommendation. As a matter of best practice, we treat all contracts as agency contracts, not belonging exclusively to the department that originally solicited and executed the contract. This allows Metro to be nimbler and more efficient through the use of existing contracts. Implementing this recommendation would be a step in the opposite direction and would create barriers to other Metro staff utilizing contracts for work in a way that benefits the agency and the public.

3. Use the contract amendment summary form or another process to:
 - a. Document department review and approval of contract amendments before scopes of work are changed including changes that affect the goods or services expected to be provided, not just the dollar amounts.

Management response: We agree with this recommendation and will improve internal processes in this area.

- b. Document review and approval of changes to contract scopes of work by the Procurement Manager or the Procurement Officer when departments are unsure if the scopes of work of existing contract are reasonably related to proposals for additional work.

Management response: We agree with this recommendation and will improve internal processes to clearly document decisions made by Procurement Services staff.

- c. Document a separate review process for amendments to any contracts managed directly by the Procurement Officer.

Management response: We do not agree with this recommendation. Metro's administrative rules define the Procurement Officer as the Director of Finance and Regulatory Services. This contract was not directly managed by the Procurement Officer. Rather, the contract was managed by staff reporting to the Chief Operating Officer. The administrative rules ultimately vest these decisions with the COO.

4. Ensure changes to a contract's scope of work are included in Metro's official contract records.

Management response: We agree with this recommendation.

5. Ensure documentation of all RFP proposal scoring is included in Metro's official contract records.

Management response: We agree with this recommendation.

Thank you again for the chance to respond. We appreciate the opportunity to improve our systems based on this information.

Sincerely,



Marissa Madrigal