

# INTERAGENCY AGREEMENTS REPORT

*PROGRAM EVALUATION AND AUDIT*



April 16, 2014

# INTRODUCTION

## *Background*

Interagency agreements are written agreements between the Met Council and other public sector organizations. The agreements are used to assign roles and responsibilities between the signatory partners for projects that require cooperation between the partners. Interagency agreements are used for projects that require lease of public lands, operations and maintenance of joint use facilities, operations of service, and construction, among other uses.

Interagency agreements are in several different formats and names. The types of agreements include:

- Master cooperative agreement
- Master funding agreement
- Subordinate funding agreement
- Subrecipient grant agreement
- Memorandum of understanding
- Joint powers agreement

The choice of agreement will depend on the requirements of the project and of the funding organization.

Met Council's Contracts and Procurement Department is the repository for all of the Council's interagency agreements. Prior to 2010, interagency agreements were not required to be reviewed by Contracts and Procurement. Contracts and Procurement now prefers to review all agreements with the exception of grant agreements.

## *Purpose*

This audit is to evaluate the processes by which the Met Council drafts, negotiates, and executes interagency agreements. The audit will identify improvements to those processes.

## *Scope*

The audit focuses on the processes used by the Met Council to draft, negotiate, and execute interagency agreements. Interagency agreements executed within the past 5 years for projects and services for or provided by the Met Council will be reviewed.

## *Methodology*

To understand the processes and practices the Met Council uses as they relate to interagency agreements, the following methods of inquiry were used:

- Review a random sample of interagency agreements.
- Review of processes followed by business units to draft, negotiate, and execute interagency agreements.
- Review Office of General Counsel Tracking Process.
- Interview Metro Transit, Environmental Services, Metropolitan Transportation Services, Community Development, Regional Administration, Contracts and Procurement, Risk Management and Office of the General Counsel staff.
- Analyzed the review time of agreements by Contracts and Procurement.
- Reviewed use of Contract Initiation Memos and/or Document Execution Sheets by Business Units.

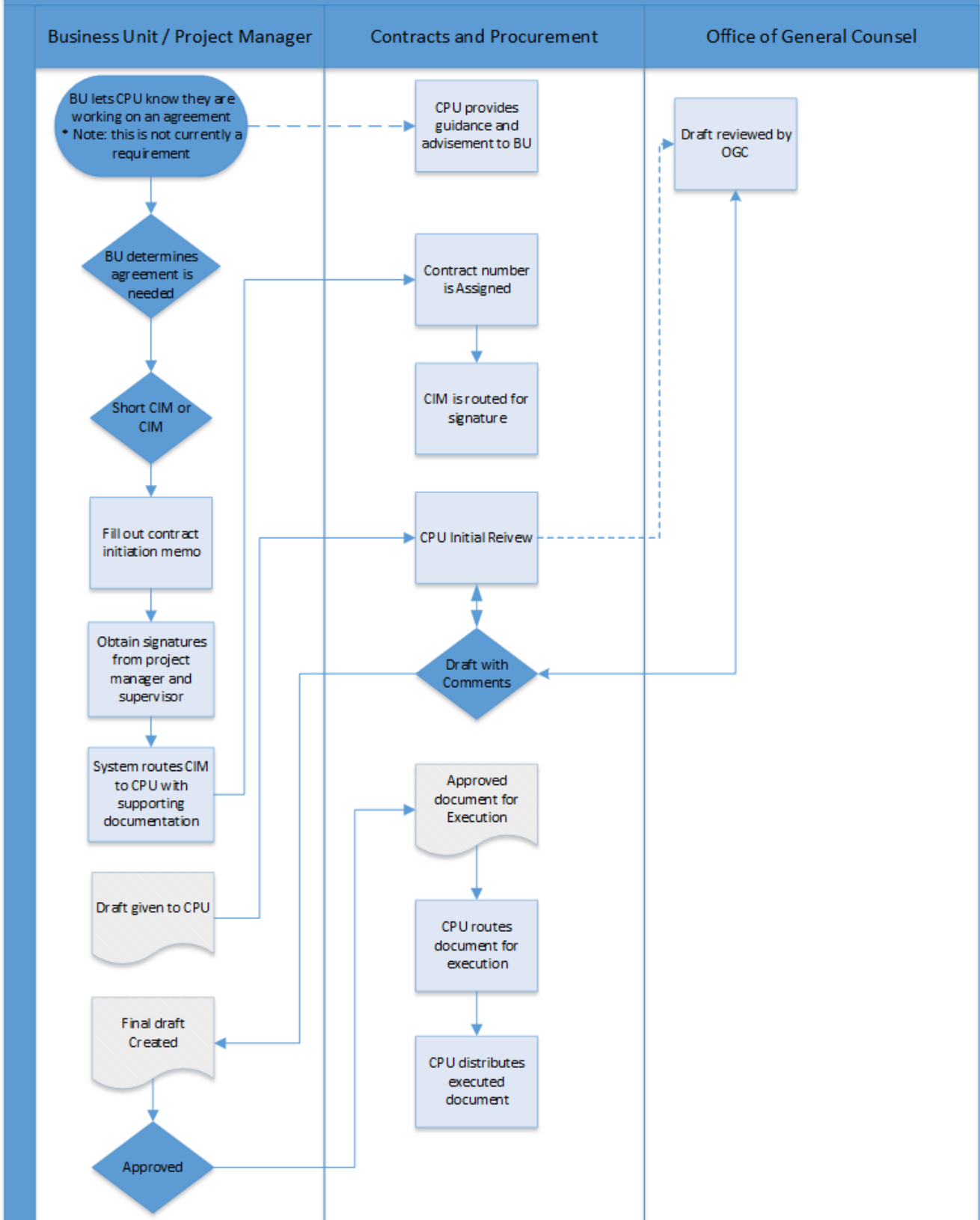
## *Assurances*

This audit was conducted in accordance with the Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing and the U. S. Government Accountability Office's Government Auditing Standards.

# **OBSERVATIONS**

In order to evaluate the processes by which the Met Council drafts, negotiates, and executes interagency agreements it is necessary to outline the process. Presented below and in Appendix 1 is the process as observed by Audit from both the perspective of Contracts and Procurement (CPU) and Business Unit Project Managers. This report will also discuss some observations that we have made during this process.

## Interagency Agreement Process as of November 2013



## Drafting Process

### *Description of the Drafting Process*

First, CPU prefers business units to give them a “heads up” that they are working on an agreement or that one is in the works. However, this is not a required step. A business unit will determine that an interagency agreement is needed. Next, an initiating document needs to be completed. Depending on the dollar amount of the agreement, a project manager determines if a Contract Initiation Memo (CIM) or the short form of that is needed. The project manager completes the CIM and obtains signatures from the project manager and supervisor.

The project manager then routes the CIM to CPU along with supporting documentation. CPU staff then assigns a contract number and routes the CIM for all other necessary signatures. Grant agreements, though, are administered by the Finance Departments. The Met Council's Finance departments assign contract numbers for grant agreements.

A hardcopy draft of the agreement is then given to CPU by the project manager for an initial review. CPU determines if the agreement needs to be reviewed by the Office of General Counsel (OGC). If so, then the agreement is routed to OGC. Otherwise, the draft is returned to the project manager with comments. A final draft is then created and approved or not approved by all parties.

### *Delays of agreements can result when CPU is not involved early in the process*

In interviews with CPU staff members, they said that project managers should communicate with them as early as possible. This is preferred so that there are no surprises for CPU later. Some business units tend to seek CPU's involvement toward the end of the process, which can lead to delays or resubmission of the agreements for signatures.

Business units that do not involve CPU early in the process may request unreasonably quick turnaround time from CPU when they submit their agreements for processing. In most cases, turnaround time would be reduced if CPU were involved earlier in the process, rather than waiting until the end.

CPU staff commented that having a liaison on a particular division team, as is the case for Information Services and Metro Transit Engineering and Facilities, can help expedite the process. The liaison can package a procurement request and agreement with the information CPU needs.

### *Inefficient routing of CIMs within business units have delayed submittal to CPU*

The CIM notifies CPU of an upcoming contracting opportunity. CPU requires original signatures, not photocopies of signatures, on a CIM. Although CPU requires the signatures of the requestor, project manager, and the supervisor, business units may require other signatures prior to submitting the CIM to CPU. CPU staff mentioned instances where multiple signatures have delayed submittal of a CIM by

several weeks. An interview with a staff person in Environmental Services (ES) identified the difficulty of the timely routing of a CIM to multiple facilities. In this case, there had been an attempt to fax the CIM to managers to sign and fax the signed CIM forward to the next approver in order to submit a CIM quickly.

During the course of the audit, CPU introduced an electronic CIM module for standard agreements and short CIMs. This module has been rolled out to the business units. Since the form is electronic it eliminates the need for original signatures and expedites the routing process.

### *Misunderstanding the process has led to bypassing CPU which can lead to delays in execution of agreements*

The Metropolitan Council's procurement procedure assigns CPU the responsibility for coordinating the execution of procurements. The Council's Executive Team determined in July 2013 that all contracts and agreements going to any signatory must be accompanied with a document execution cover sheet from either CPU or OGC. This document assures the signer that the process, regulations, and laws have been followed and CPU and/or OGC attest to that fact. Additionally, an agreement is supposed to start with CPU so that CPU can determine if the agreement is a standard or non-standard agreement. In interviews with CPU, OGC, and business unit staff, Audit observed that project managers bypass CPU during the initial review in some cases going directly to the Regional Administrator or OGC. By bypassing CPU, a document execution sheet may not be attached to the document. Business Unit staff and project managers told Audit that they do not understand why CPU is now involved with the interagency agreement process.

Having project managers go to OGC, rather than to CPU first with draft agreements takes time away from the other duties of the OGC. It is possible that agreements would not need to be reviewed by the OGC, which can be determined by CPU. OGC staff works with project managers and representatives of other government entities in discussions that later lead to agreements. Attempting to bypass the process also leads to delayed execution by not including CPU earlier in the review of the agreement. OGC's practice, however, is to send the agreements to CPU. OGC staff might begin a review if it is anticipated that CPU will request that OGC staff review the agreement later.

In interviews with a number of Business Unit managers and directors, many stated that they did not understand the value added by the review of agreements by CPU.

The process that project managers are supposed to follow for review and execution is not clearly described according to business unit staff. CPU staff has also commented that they get multiple questions on what their process is. OGC staff also commented that newer project managers are not as familiar with the process and that the process is not clearly defined.

Attempts by Audit to understand the interagency agreements process via MetNet – the Council's intranet – and Contracts and Procurement intranet page did not clarify the Audit team's understanding of the process for executing non-standard agreements, especially interagency agreements.

### *On average, it takes three days for CPU to review an interagency agreement*

In interviews with several project managers and business unit staff, the Audit team heard from many project managers that there were “significant” delays when agreements went to CPU.

As part of their review, the Audit team calculated the average number of days CPU took to review the sampled agreements. On average, the time for CPU to review interagency agreements was three days. The sampled observations do not support the claim by project managers of significant time delays by CPU to review drafts of agreements.

### *According to the Audit sample, business units selection of the correct interagency agreement template is not a significant problem*

In pre-audit interviews with business unit staff, the staff raised concerns over whether or not the right type of interagency agreement template was being used in some instances.

In their review, Audit did not find any instances in the random sample of interagency agreements where the wrong interagency agreement template was used.

### *CPU sends project managers updates during the review process*

In interviews with CPU, the Audit team learned that the Principal Contract Administrator of CPU sends project managers updates during the review process. CPU also has a tracking sheet for agreements that it reviews and tracks agreements in the Contracts Log Database.

During the course of the audit, CPU made the tracking sheet available on MetNet.

## **Negotiations Process**

### *Description of the Negotiation Process*

Project managers and their Business Unit are responsible for negotiations. If needed, CPU can help with negotiations. The OGC, particularly when potentially contentious issues exist, will work directly with business units and representatives of other government entities in discussions that will lead to formal agreements.

## **Execution Process**

### *Description of the Execution Process*

Once an agreement is approved for execution, CPU routes it for execution and signature according to Regional Administration’s approval process. CPU then distributes the executed document to a partnering agency (if applicable) and to Council staff. The project manager is then responsible for confirming that all terms of the agreement are met once the agreement is executed.

### *Interagency agreements are filed and maintained by CPU*

Interagency agreements are filed by CPU. The original agreement is maintained by CPU. There is the risk that agreements executed prior to 2010, when CPU was given the responsibility to review most interagency agreements, may not be centrally filed within CPU. The audit did not find interagency agreements that had been executed, but not filed with CPU.

### *Inaccuracies were found in the Contracts Log Database with regards to contract values and agreement titles*

CPU maintains an online database of Met Council contracts, including interagency agreements. The Contracts Log Database contains description and information about the agreements, but the agreements in their entirety are not in the database. The Contracts Log Database should have a record of all contracts executed through CPU since the late-1990s. Electronic copies of the contracts are maintained by CPU since July 2010.

Audit staff observed that 17 out of the 54 sampled interagency agreements had contract values that differed from the values in the Contracts Log Database. The range of difference was from \$0.50 to \$7,991,783. One record did not have the correct agreement title. Incorrect values occurred for various reasons such as not including all values within the agreements, not updating amended agreements, and not updating the value from the executed agreement.

CPU explained that six months ago there had been a data conversion from the previous platform to the Oracle platform to explain the conditions that led to the observation, “inaccuracies were found in the Contracts Log Database with regards to contract values and agreement titles.”

### *Central Corridor Project Office uses subordinate funding agreements to authorize activities that support the master funding agreements*

The Central Corridor Project Office uses subordinate funding agreements (SFA) for the purpose of authorizing specific activities between the partnering public agencies that support the master funding agreements (MFA). An MFA between the Met Council and a partnering public agency outlines the roles and responsibilities between the two parties. The MFA also contains the template for the SFA. The SFAs describe the specified activity’s project scope, cost, and time frame. The relocation of laboratory facilities on the University of Minnesota campus, for example, was authorized through a SFA. A memorandum of understanding and a master funding agreement, in this case, outlined the roles and responsibilities between the Met Council and the University of Minnesota.

SFAs have been used for the Central Corridor Project when a partnering public agency requests betterments that are outside the scope of the project. For example, streetscaping by a city may be requested along the project area in order to minimize disruptions to neighboring residents and businesses if the streetscaping were to be completed after LRT construction. The SFA would describe the scope of the project and acknowledge the source of funding would be from the partnering agency, rather than part of the Central Corridor Project’s scope or budget.

CPU maintains the master file of procurement contracts for the project. The SFAs, as part of the master file, are maintained by CPU as part of the permanent record.

CPU reviews all subordinate funding agreements. Given that the SFA template is agreed to within the master funding agreement, there have been questions raised as to the need for review by CPU of these agreements. Both CPU’s role to protect the interests of the Met Council during the procurement



process and the high risk major construction projects present to the Met Council, support the need for CPU to continue to review subordinate funding agreements.

*In one instance, an agreement was executed after work had already begun*

In an interview with a Project Manager (PM), Audit learned of at least one instance of an agreement being executed after work on the agreement had already started. The Project Manager also said that while it is nice to have the agreement executed before work starts, that is not always possible. The agreement reimbursed the Metropolitan Council for staff services. Council staff time would have been devoted to this project regardless whether an agreement had been executed. Failure to have an agreement in place prior to commencement of work, places the Council at risk on the entity performing the work.

*The closeout process for interagency agreements is not clear according to project managers*

In interviews with project managers, the Audit team observed that the closeout process for agreements is not clear for project managers (PM). The Metropolitan Council Contract Process assigns project managers the responsibility of closing out the purchase order assigned to their agreement. There is a box to check on the request for payment form that allows a PM to indicate that the payment request is for a final payment but there was at least one instance in the sample of a PM not checking the box which left the PO open for longer than necessary.

Failure to close a PO (or Master Purchase Order or Blanket Purchase Order) can leave the organization at risk to making additional payments to the vendor.

## CONCLUSIONS

1. The role of the Department of Contracts and Procurement in guiding the review and execution of interagency agreements is not widely understood across the organization. The Office of General Counsel, which prior to 2010 had guided the interagency agreement review process, is approached by business units at times prior to CPU being informed of a potential agreement. At times, Contracts and Procurement has been bypassed during the process.
2. The process for developing and executing non-standard agreements, such as interagency agreements, is not well understood by business units' staff. New project managers or project managers that infrequently draft interagency agreements are more likely not to understand the process for developing and executing non-standard agreements. Errors within the terms of the interagency agreement and delays in execution of the interagency agreements have occurred when CPU was not involved early in the development of the agreements.

# RECOMMENDATIONS

Program Evaluation and Audit recommendations are categorized according to the level of risk they pose for the Council. The categories are:

- **Essential** – Steps must be taken to avoid the emergence of critical risks to the Council or to add great value to the Council and its programs. Essential recommendations are tracked through the Audit Database and status is reported twice annually to the Council's Audit Committee.
- **Significant** – Adds value to programs or initiatives of the Council, but is not necessary to avoid major control risks or other critical risk exposures. Significant recommendations are also tracked with status reports to the Council's Audit Committee.
- **Considerations** – Recommendation would be beneficial, but may be subject to being set aside in favor of higher priority activities for the Council, or may require collaboration with another program area or division. Considerations are not tracked or reported. Their implementation is solely at the hands of management.
- **Verbal Recommendation** – An issue was found that bears mentioning, but is not sufficient to constitute a control risk or other repercussions to warrant inclusion in the written report. Verbal recommendations are documented in the file, but are not tracked or reported regularly.

**1. (Significant) The interagency agreements process should be communicated to all staff involved in the drafting and execution of agreements.**

The current process of giving CPU the lead role for reviewing non-standard agreements began in mid-2010. Staff should be informed of the process for initiating and executing agreements. A variety of forms of communication could be considered by CPU. This might include trainings, email communication, and presentations at staff meetings. Another consideration would be the availability of a flow chart to Council staff via the Metropolitan Council's intranet. Procurement policies and procedures should also be presented online in a format that is easier for Council staff to navigate and understand. More formal acknowledgement of the process by executive management may help to reinforce to staff across the organization that CPU must be contacted to assist in the development of interagency agreements and other non-standard agreements. Another consideration is for divisions to appoint a CPU liaison.

**Management Response:** *The Procurement Department is updating its procedures on MetNet and the flow charts for non-standard agreements as well as others will be posted there. The Procurement Department also holds two Council training sessions as well as on-demand training sessions for Council staff as requested or when a need is identified.*

**Staff Responsible:** *Micky Gutzmann, Director Procurement Department*

**Timetable:** *Completed*

- 2. (Significant) Contracts and Procurement staff should review and ensure that information fields in the Contract Log Database are complete and accurate.**

CPU staff will need to ensure that information is complete and accurate in the Contracts Log Database. Methods to strengthen ongoing assurance of the completeness of the information may be considered including periodic review of entries in the database, identification of data fields requiring data entry, and updating of the database after approval of contract amendments.

**Management Response:** *The Procurement Department is working cooperatively with the Information Systems department to evaluate and coordinate the appropriate way to do this. At this time, The Procurement Department is going in on a one-on-one basis to review and correct the database. The Department has also hired a 3 month temp to assist in this function. The IS team has committed to running queries as requested to see if there is a pattern to the discrepancies and to see if we can do some changes by utilizing technology.*

**Staff Responsible:** *Micky Gutzmann, Director Procurement Department*

**Timetable:** *December 2014*

- 3. (Consideration) Consideration should be given to communicating the contract closeout process to all project managers.**

It is necessary for staff to be informed of the process for closing out a contract if a purchase order is associated with that contract. A variety of forms of communication can be considered, such as training, email communication and presentations at staff meetings.

**Management Response:** *The Procurement Department, mid 2013, started a process called "contract handoff." This hand off takes place on each Notice To Proceed where the Contract Administrator and the Project Manager sit and go over key points of the contract. Procurement will add this item to its hand-off process.*

**Staff Responsible:** *Micky Gutzmann, Director Procurement Department*

**Timetable:** *Completed*



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390 Robert Street North  
St Paul, MN 55101-1805

651.602.1000  
TTY 651.291.0904  
[public.info@metc.state.mn.us](mailto:public.info@metc.state.mn.us)  
[metro council.org](http://metro council.org)