

# **COUNCIL-WIDE NON-CONSTRUCTION CONTRACT AMENDMENT REVIEW**

*PROGRAM EVALUATION AND AUDIT*



April 2015

# INTRODUCTION

## Background

The Metropolitan Council (Council) procured goods and services worth approximately \$340 million annually during the period covered by this audit, about \$17 million of which represents amendments to non-construction type contracts. Program Evaluation and Audit (Audit) has conducted reviews of construction contract amendments (change orders), resulting in recommendations regarding updating policies and procedures and strengthening internal controls. Although reviews have been conducted for non-construction contract award and contract management, a review of contract amendments had yet to be conducted. Therefore, Audit and division personnel identified non-construction contract amendment execution as a process requiring review.

## 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*.

## Scope

Council Procurement Procedure 3-4-3a (1-22-13) and Expenditure Policy 3-3 (10-28-13) provide detailed guidance on procuring goods and services for the Council, including amending existing contracts. This review was limited to reviewing Council compliance with that procedure and that policy relating to contract amendments executed through 53 judgmentally selected non-construction contracts between January 1, 2012 and June 30, 2014.

## Methodology

To review contract amendments except those associated with construction projects, the following methods of inquiry were used:

- Council personnel were interviewed.
- Council policies, procedures and work instructions were reviewed.
- Contract amendments were analyzed.

# OBSERVATIONS

## Sample Characteristics

The Council's Contracts and Procurement database was reviewed for all contracts entered into during the period January 1, 2012 through June 30, 2014. The 99 that were identified as having been amended were selected for the initial universe from which a sample would be selected. Construction and inter-agency contracts were removed resulting in a final universe of 53 contracts, valued at \$42,418,003. Rather than using such a small universe from which to obtain a sample, all 53 contracts were reviewed.

All Council divisions except Community Development were represented in this review (see below).

**Table 1: Number and Value of Contracts and Amendments by Division**

Division	Number of		Value of	
	Contracts	Amendments	Contracts	Amendments
Metro Transit	19	29	\$11,592,296	\$3,784,305
Regional Administration	15	19	5,380,841	1,836,684
Environmental Services	11	17	20,717,252	5,232,364
Metropolitan Transportation Services	8	10	4,727,614	376,694
Community Development	0	0	0	0
Total	53	75	\$42,418,003	\$11,230,047

The 53 contracts contained 75 amendments. Thirty-eight contracts contained a single amendment, 12 contained two amendments, 2 contained four, and 1 contract contained five amendments. Extending the contract duration was the most common reason for executing an amendment; 23 (31%) of the 75 contract actions were executed solely to extend the time of performance. An additional 10 (13%) actions were executed for time extension plus an increase in the dollar value of the contract and 5 (7%) more were for reasons of time, dollar value and adjusting the contract's scope. See Exhibit I for additional details.

When using individual contracts as the variable, extending the time of performance (15 contracts -28%) was again the single most common reason for amending the contract, although 22 contracts (42%) were amended for multiple reasons. See Exhibit II for additional details.

Seventy-three of the 75 (97%) amendments were authorized by the appropriate person according to the guidance provided in Procedure 3-4-3a; documentation for the other two could not be located. One amendment was administered by an employee no longer with the Council, the files of which were incomplete. The other amendment was executed in 2013, prior to the implementation of the current electronic signature authority process that requires proper authorization prior to routing for signature.

Expenditure Policy 3-3 (10-28-2013) requires Council approval for any amendment that would increase the price for any non-construction contract with an original price of \$500,000 or less to an aggregate of over \$550,000. For similar type contracts with an original price of more than \$500,000, Council approval is required for an amendment that increases the original price more than 10%. Nine amendments required Council authorization; eight obtained it, one did not (an old Metro Transit store lease).

## High Risk Amendments

### *Amendments Extending the Contract Period of Performance (see Exhibit I)*

Procedure 3-4-3a states that “typically an expired contract cannot be amended. Any request to amend an expired contract must be approved by the Regional Administrator.” Of the 38 amendments that extended the time of the contract, 35 were signed prior to contract expiration; three were not, two of which were executed prior to centralizing Council contract procurement processing in a single Regional Administration department. The other amendment was processed in 1993 and the documentation could not be located. Documentation of Regional Administrator approval was not located for these three amendments.

### *Amendments Increasing the Contract Dollar Value (see Exhibit I)*

Audit reviewed all amendments entered into that increased the dollar amount of the contract to determine if sufficient justification was provided for the increase. Of the 35 amendments that added dollars to the contract, 34 also increased the scope; sufficient documentation could not be found for the other one which was administered by an employee no longer with the Council. During discussions, procurement personnel stated that the only documentation that is required is the authorization form and that form does not require a reason for an increase. It would be the responsibility of the requesting party to state a reason for the increase in that or any other document generated for processing the amendment.

## Council-Wide Results

- Amendments were located for 73 of the 75 actions, all 73 of which were signed by a person with the correct level of authority to do so. The other amendments were a 1993 transit store lease amendment (subsequent lease amendments were located and verified) and a 2012 action that was cancelled (Exhibit IV).
- Of the 75 amendments reviewed, 12 were sole sourced, 11 of which included the required justification, the other being a small dollar amendment to an investigative contract that, due to its nature, would not have been awarded to any other firm (Exhibit IV).

## Divisional Results

A detailed comparison of contract amendment attributes by division is at Exhibits III and IV. Highlights follow:

- Metro Transit
  - Increasing the contract amount was the most common reason for executing an amendment. Nineteen of the 29 amendments that were executed included an increase in the contract amount.
  - Had the most (6) sole source amendments, all of which included proper justification documentation.
  - Had the highest number (7) of amendments requiring Council approval, documentation of which was reviewed for six of the seven actions; the other being an old transit store lease amendment.

- Had the highest number (19) of amendments that increased the contract amount, only one of which did not provide sufficient documentation for the increase.
- Metropolitan Transportation Services
  - A change in scope was the most common reason for executing an amendment. Eight of the 10 executed amendments included a change in contract scope.
- Environmental Services
  - Extending the contract duration was the most common reason for executing an amendment. Twelve of the 17 contract actions were executed solely to extend the time of performance, all of which were executed prior to the expiration of the underlying contract.
- Regional Administration
  - Extending the contract duration was the most common reason for executing an amendment. Twelve of the 19 amendments executed extended the contract time of performance.
  - Sole source documentation was missing for 1 of the 2 amendments requiring sole source justification.

## CONCLUSIONS

Regardless of the division represented, personnel complied with Council policy regarding procurement signature authority. In each of the 73 amendments reviewed for which documentation was available, the person signing the amendment had the proper authority to do so. In addition, except for two amendments for which recent internal controls would have identified and corrections made, all amendments were authorized by the appropriate person. However, starting amendment actions soon enough to effect execution prior to the expiration of the base contract can provide additional assurance that procurement activity is conducted safely and Council resources protected.

# 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. (Consideration) – The Council should consider providing periodic training to Council employees for processing non-construction contract amendments.**

Although Council personnel generally abide by procedures regarding contract amendments, there have been instances of contract amendment actions not beginning in a timely manner to ensure execution of the amendment prior to the expiration of the contract.

**2. (Consideration) The Council’s Contracts and Procurement Department should consider revising procedures to require that Council personnel provide a written explanation for an increase in contract funds.**

The contract/amendment authorization form includes a check box to indicate the reason for the amendment; however, this does not provide sufficient information regarding the need for increasing contract dollar values.

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**Exhibit I: Type of Amendment**

Reason for Individual Amendment	Number of Contracts	Percent	Note
Time Extension Only	23	31%	<b>2</b>
Dollar Increase Only	10	13%	<b>1</b>
Scope Change Only	9	12%	
Time Extension & Dollar Increase	10	13%	<b>1,2</b>
Scope Change & Dollar Increase	10	13%	<b>1</b>
Scope Change, Time Extension & Dollar Increase	5	7%	<b>1,2</b>
Terms & Conditions Change	5	7%	
Miscellaneous	3	4%	
	<b>75</b>	<b>100%</b>	

- Note:** **1.** The 35 amendments that increased contract dollar value were considered high risk and reviewed in detail. See body of report.
- 2.** The 38 amendments that extended the contract time of performance were considered high risk and reviewed in detail. See body of report

**Exhibit II: All Amendments Executed for a Specific Contract**

All Contract Amendments	Number of Contracts	Percent
Time extension only	15	28%
Dollar increase only	6	11%
Scope change only	6	11%
Combination - Time/Dollar/Scope	22	42%
Terms & Conditions	1	2%
Miscellaneous	3	6%
<b>Total</b>	<b>53</b>	<b>100%</b>



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**Exhibit III: Type of Amendment by Division**

Reason for Individual Amendment	Metro Transit		MTS		MCES		Regional Administration		Total	
	#	%	#	%	#	%	#	%	#	%
Time Extension Only	2	7%	1	10%	<b>12</b>	<b>70%</b>	<b>8</b>	<b>42%</b>	23	31%
Dollar Increase Only	<b>7</b>	<b>25%</b>	0	0%	2	12%	1	5%	10	13%
Scope Change Only	1	3%	<b>5</b>	<b>50%</b>	1	6%	2	11%	9	12%
Time & Dollar	6	21%	1	10%	0	0%	3	16%	10	13%
Scope & Dollar	3	10%	2	20%	2	12%	3	16%	10	13%
Scope, Time & Dollar	3	10%	1	10%	0	0%	1	5%	5	7%
Terms & Conditions	5	17%	0	0%	0	0%	0	0%	5	7%
Miscellaneous	2	7%	0	0%	0	0%	1	5%	3	4%
	<b>29</b>	<b>100%</b>	<b>10</b>	<b>100%</b>	<b>17</b>	<b>100%</b>	<b>19</b>	<b>100%</b>	<b>75</b>	<b>100%</b>
Includes Time	11	38%	3	30%	12	71%	12	63%	38	51%
Includes Dollar	19	66%	4	40%	4	24%	8	42%	35	47%
Includes Scope	7	24%	8	80%	3	18%	6	32%	24	32%

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**Exhibit IV: Amendment Attributes by Division**

Attribute	Metro Transit	MTS	MCES	RA	Total
Included sole source justification	6	1	2	2	11
Did not include sole source justification	0	0	0	1	1
Authorized by appropriate person	28	10	17	18	73
Not authorized by appropriate person	0	0	0	0	0
Authorization not in AX	1	0	0	1	2
Signed by authorized person	27	10	17	19	73
Not Signed by authorized person	0	0	0	0	0
No copy of amendment in AX	2	0	0	0	2
Authorized/Signed by the same person	3	1	3	4	11
> 10% & approved by Council	6	1	1	0	8
> 10% & not approved by Council	1	0	0	0	1
Time extension prior to expiration	9	3	12	11	35
Time extension after contract expired	2	0	0	1	3
Added dollars & increased scope	18	4	4	8	34
Added dollars & no rationale provided	1	0	0	0	1



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