



CITY OF ATLANTA

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TO: Honorable Mayor and Members of the City Council

FROM: Amanda Noble, City Auditor
Danielle Hampton, Audit Committee Chair

DATE: April 7, 2022

SUBJECT: #20.07 Follow-Up Review: Office of Contract Compliance Audit

The purpose of this memo is to communicate the results of our physical file review of the Office of Contract Compliance's (Contract Compliance) diversity program certification and contract files. Contract Compliance certification and contract monitoring processes support diversity and small business participation in city projects.

We were unable to review the hard copy files in our original performance audit of the office, released in June 2021, due to the closure of city facilities and mandatory telework for non-essential city employees.

For this review, our objectives were to answer the following questions:

- Does Contract Compliance follow its processes for certification approvals and denials?
- Does Contract Compliance maintain the records and documentation required for contract monitoring?

Contract Compliance needs complete and accurate contract and task order information to ensure the city is meeting its diversity goals. This follow-up review tests whether Contract Compliance's files contain the required documents to support certification decisions and subcontractor participation on contracts and task orders.

We appreciate the courtesy and cooperation of Contract Compliance staff throughout the audit and follow-up. The team for this project was Myra Hagley and Lindsay Kuhn.

Background

City Code Section 2-1447 sets out the duties of the Office of Contract Compliance. These duties ensure non-discrimination in city contracting. Two of Contract Compliance’s duties are:

- Certifying small, minority-owned, and female-owned businesses. Contract Compliance had 1,144 certified businesses in its vendor database as of February 2021.
- Monitoring contracts and task orders under the EBO (equal business opportunity) and SBO (small business opportunity) program. As of November 2020, the office had 679 active, non-concessions contracts and task orders awarded to 181 prime contractors. These contracts and task orders include 1,015 certified and non-certified subcontractors.

Contract Compliance’s mission is focused on non-discrimination. Contract Compliance’s stated mission and enabling legislation does not mention anti-corruption, and staff stated this is not in their scope; however, certifying businesses mitigates risk by ensuring that qualified small, minority and female-owned businesses have the opportunity to participate in city contracts. Monitoring contracts and task orders post-award mitigates risk of political interference in subcontractor selection.

During our original audit, we found that Contract Compliance has several controls in place. First, the office meets several best practices, including participating in the Unified Certification Program for DBE (disadvantaged business enterprise) and ACDBE (airport concessionaire disadvantaged business enterprise) certification, compiling a database of certified vendors and monitoring contracts with minority participation, and using software to track contractor and subcontractor payments. Contract Compliance also reports on minority and small business utilization and certifications annually in the city’s budget book and provides annual reports on DBE and ACDBE utilization to the Federal Aviation Administration. The office has also followed up on several of our initial recommendations, including automating the certification application. Contract Compliance told us that the online certification application launched on January 24, 2022.

We reviewed a sample of Contract Compliance’s contracts and task orders in our initial audit. We noted the subcontractors identified for each contract and task order in their contract monitoring software, PRiSM. We obtained the original subcontractor plans from the Department of Procurement and compared the subcontractors from the plans to those identified in PRiSM. Of 61 contract and task orders, 47 (77%) had different subcontractors

ACRONYMS	
FBE	Female-owned business enterprise
MBE	Minority-owned business enterprise
SBE	Small business enterprise
EBO	Equal business opportunity
SBO	Small business opportunity

identified in our initial test. Contract Compliance staff told us there are many reasons that subcontractors might change. For example, the original subcontractor may no longer be available or in business by the time the contract is awarded, or the prime may choose to add another small or minority- or female-owned business to the award. To change subcontractors after award, the prime must submit a letter to Contract Compliance's director requesting approval, according to City Code Section 2-1448(b)(3). This requirement only applies to contracts and task orders under the EBO program. There is one exception to this approval. Contract Compliance told us they do not need a Termination/ Substitution form if a subcontractor is added because a trade has been added to the contract. Contract Compliance stated that the purpose of the form is to prevent primes from dropping subcontractors, so the form is not necessary if a prime is adding another small, female- or minority-owned business. According to City Code, the Chief Procurement Officer can modify contracts without City Council and mayoral approval if it involves no additional cost to the city, or if all of the following conditions are met:

- the cumulative cost of modifications does not exceed ten percent of the total "not to exceed" amount in the original contract,
- the Chief Procurement Officer determines that the modification cannot be delayed for approval without significant cost to the city, and
- the Chief Financial Officer verifies the availability of funds for the modifications.

Contract Compliance also does not require prime contractors to replace subcontractors who are unable or unwilling to do the work after award. In this case, Contract Compliance documents the prime contractor as meeting "good faith non-discriminatory outreach efforts." In task order-based contracts, Contract Compliance measures whether the prime contractor is meeting subcontractor participation on the overall contract, and not by each individual task order.

Methodology

We conducted the follow-up testing in accordance with generally accepted government auditing standards. The scope of this audit includes samples of the Office of Contract Compliance's certification and contract monitoring files that were active as of November 2020.

Our audit methods included:

- reviewing a sample of 20 approved and 3 denied certification applications against the documents required by the Office of Contract Compliance's application forms
- reviewing hard-copy files to examine reasons for differences in subcontractors listed in PRiSM and the original subcontract plan in Procurement's files for 47 out of the 61 contracts and task orders we sampled in our June 2021 audit

Generally accepted government auditing 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.

Summary

The results of our physical file sample review are consistent with the findings in our original audit, reflecting Contract Compliance's challenges in receiving complete documentation for its certification and contract files.

Contract Compliance evaluates MBE, FBE, and SBE applicants against City Code criteria using information submitted by applicants. We tested a sample of 23 certification files against the required fields and attachments listed in the application forms. Although 12 applications were missing at least one document listed on the application as required, the office told us that they evaluated whether firms met City Code criteria using other documents that were included in the files. Contract Compliance automated the certification process after our initial recommendations, which should improve documentation.

Contract Compliance relies on the Department of Procurement and user departments for contract and task order information, including change orders, amendments, and renewals. Between our original audit in June 2021 and this physical file review, we found supporting documentation for subcontractors on 28 of the 61 contracts and task orders. Staff told us that prime contractors can submit informational forms to add (but not replace) subcontractors. Having the Contract Compliance director sign the subcontractor agreement for added subcontractors would improve the office's ability to monitor changes in diversity participation. We recommend that the Contract Compliance director document approval of changes (including additions) to the subcontractor plan, consistent with City Code requirements. We also recommend that the Office of the Inspector General periodically review post-award subcontractor usage to ensure fairness in subcontractor participation and to mitigate the risk of political involvement in subcontracting.

Contract Compliance Evaluates Applicants Against City Code Criteria

City Code Chapter 2, Article X in Division 9, Section 2-1357 and Division 12, Section 2-1453 lists and defines several traits that firms must demonstrate to qualify as a certified MBE, FBE, or SBE:

- must be an independent and continuing enterprise for profit
- must be located in the Atlanta region
- must be performing a commercially useful function
- must be owned and controlled by one or more people of the respective minority group, small business owner, and/or females
- (SBE only) must meet federal criteria for gross revenue and number of employees

Contract Compliance evaluates firms against these criteria using an application form. For example, Contract Compliance's application requires firms to submit their previous three years of federal tax returns as part of determining whether firms are an independent and continuing enterprise for profit.

We tested a random sample of 20 certification files for companies certified as a MBE, FBE, or SBE and three denied certification files chosen by Contract Compliance. Although 12 applications were missing at least one document listed on the application as required, the office told us the files contained other information to evaluate whether firms met the City Code criteria. The files contained information to address 369 of the 374 required attachments (99%) and 594 of the 609 questions (98%) that we reviewed.

The Contract Compliance director agreed with our previous recommendations to automate certification applications and work with the software vendor to track completed submission and decision dates in the contract monitoring software to comply with City Code. Since then, Contract Compliance automated the certification process. Using this software should improve record-keeping and require that companies fill out all application fields.

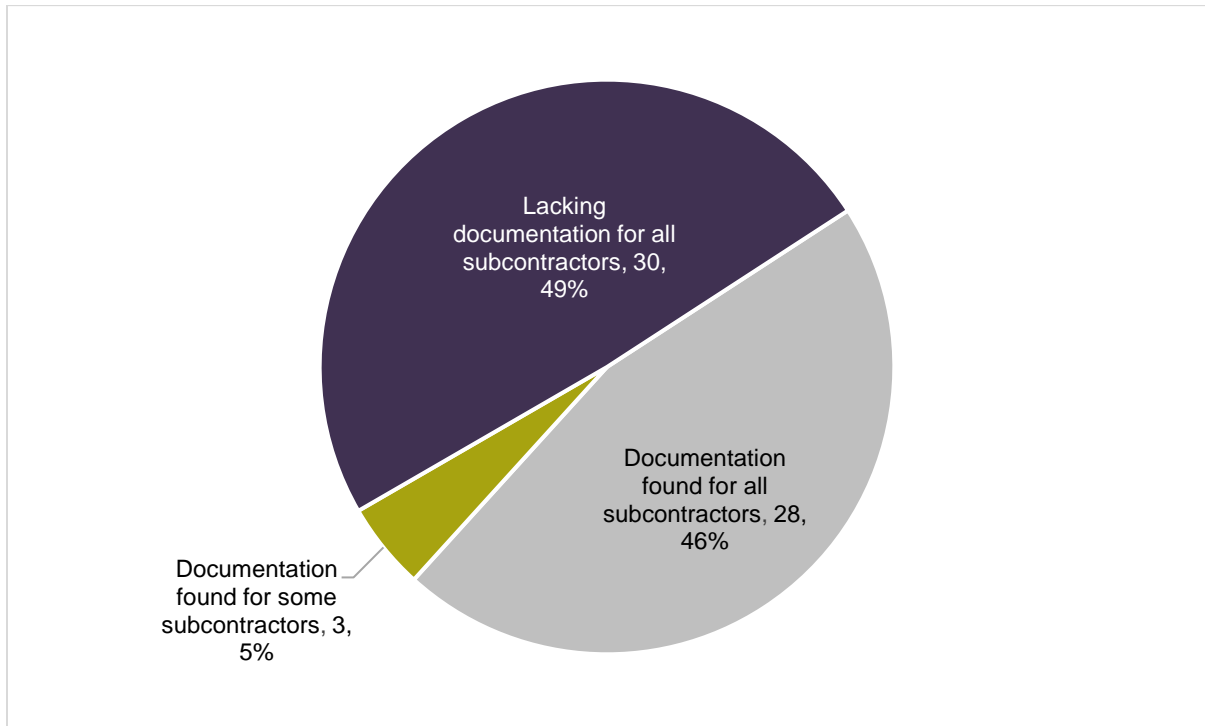
Additional Subcontractor Supporting Documentation Will Ensure Compliance with City Code

City Code Section 2-1448(b)(3) requires Contract Compliance to approve any changes to the original subcontractor plan in writing for EBO contracts and task orders. We found, however, that the office's contract and task order files often do not contain the original subcontractor plan. This could partly be due to the fact that Department of Procurement and other stakeholder departments do not consistently communicate information needed to monitor goals, as we found in our original audit. Procurement told us they have no formal mechanism to communicate contract updates, including subcontractor changes, to Contract Compliance. Having an up-to-date subcontractor plan can help Contract Compliance ensure that prime contractors adhere to commitments for subcontractor participation. Procurement and Contract Compliance agreed with our recommendation from the original audit that the contract compliance director work with the chief procurement officer to establish a process between contract compliance and the user departments to communicate updates and create a contract and task order repository, including original contracts and task orders, change orders, amendments, and renewals.

In October and November 2021, we conducted follow-up testing on 47 of the original 61 sampled contracts and task orders in Contract Compliance's hard copy files. Contract Compliance staff clarified that task orders have their own unique subcontractor plans, separate from those of the main agreement. Contract Compliance's hard copy files contained supporting subcontractor documentation for 14 of the 47 contracts and task orders. We could not find a subcontractor plan or a Diversity Program Substitution Form for 33 of our overall sample of 61 contracts and task orders; three of these have documentation for some, but not all, subcontractors. Of the 28 contracts and task orders

(from our original sample of 61) for which we found supporting documentation, most were subcontractor plans for task orders (see Exhibit 1).

Exhibit 1: About 46% of Files Contained Subcontractor Supporting Documentation



Source: Auditor analysis based on sample contract and task order files review

Contract Compliance told us it does not require a subcontractor change approval if the city adds a new trade to the existing award, which is considered an addition rather than a subcontractor change. Office staff told us that 31 of the 33 contracts and task orders missing documentation to support subcontractors differ because of trades added after award but did not provide supporting documentation.

Contract Compliance staff also said that primes can add subcontractors by emailing an information form in situations where the new company is not replacing previous subcontractors. We found several of these information forms (PRiSM set up form) in the files. These forms, however, did not include information on who submitted the request, who reviewed the form, approval from Contract Compliance, or any information supporting that this subcontractor would not replace or substitute an existing subcontractor. Contract Compliance told us that the office also reviews the subcontractor agreement when new subcontractors are added. City Code Section 2-1448(b)(3) states, “The subcontractor project plan shall not be changed or altered after approval of the plan and award of the contract without the written approval of the director of the office of contract compliance. A written letter to the director of the office of contract compliance requesting approval to change the subcontractor project plan must be submitted prior to any change in the plan or termination of an MFBE’s contract.” We

recommend that Contract Compliance's director document approval of changes (including additions) to the subcontractor plan, consistent with City Code requirements.

Submitting a subcontractor plan prior to award also helps to mitigate corruption. Lack of documentation for changes or additions to the subcontractor plan weakens the effectiveness of this anti-corruption control. We recommend that the Office of the Inspector General periodically review post-award subcontractor usage to ensure fairness in subcontractor participation and to mitigate the risk of political involvement in subcontracting.

The Contract Compliance Director agreed with our previous recommendations to work with AIM and the software vendor to integrate Oracle with contract monitoring software and to store all contract-and task order-related documents in their contract monitoring software to improve record retention and resolve discrepancies. These documents include the original contracts and task orders, final subcontractor utilization plans, change orders, amendments, renewals, and subcontractor substitution and removal forms.

Recommendations

In order to ensure accurate contract documentation of requested subcontractor participation additions and other changes, we recommend that the Contract Compliance Director:

1. document approval of changes (including additions) to the subcontractor plan, consistent with City Code requirements

In order to ensure fairness in subcontractor participation and to mitigate the risk of political involvement in subcontracting, we recommend that the Office of the Inspector General:

2. periodically review post-award subcontractor usage

Appendices

Appendix A: Management Review and Response to Audit Recommendations

Report # 20.07	Report Title: Follow-Up Review: Office of Contract Compliance Audit	Date: March 2022
<p>Recommendation 1: We recommend that the Contract Compliance Director document approval of changes (including additions) to the subcontractor plan, consistent with City Code requirements.</p>		
<p>Risk Category: Contract Management</p>		<p>Response: Agree</p>
<p>Related Findings: Sampled Contract Compliance files were missing documentation to support the subcontractor differences identified in its contract management database and Procurement files. City Code Section 2-1448(b)(3) states that the Contract Compliance's director must approve any change to the subcontractor plan in writing.</p>		
<p>Proposed Action: OCC will require each prime contractor to submit an updated Termination/Substitution Form when any change is made to their list of certified subcontractors (Subcontractor Utilization Plan - Form). Previously, prime contractors were required to submit the Termination/Substitution Form when they substituted or deleted a certified diversity subcontractor from their team.</p>		<p>Current Status: Partly Implemented</p>
<p>Business Owner: Bruce T. Bell, Interim Director Mayor's Office of Contract Compliance</p>		<p>Estimated Implementation Date (M/Y): 7/2022</p>
<p>Additional Comments: The proposed change to the existing reporting process is minor but will help with the accuracy of calculating minority, female, small, and disadvantaged business enterprise participation.</p>		
<p>Recommendation 2: We recommend that the Office of the Inspector General periodically review post-award subcontractor usage to ensure fairness in subcontractor participation and to mitigate the risk of political involvement in subcontracting.</p>		<p>Risk Category: Monitoring and Reporting</p>
		<p>Response: Agree</p>
<p>Related Findings: Sampled Contract Compliance files were missing documentation to support the subcontractor differences identified in its contract management database and Procurement files. City Code Section 2-1448(b)(3) states that the Contract Compliance's director must approve any change to the subcontractor plan in writing.</p>		
<p>Proposed Action: Review post-award subcontractor usage</p>		<p>Current Status: Not Started</p>
<p>Business Owner: Anthony Bennett, Deputy Inspector General for Compliance Compliance Division of the Office of the Inspector General</p>		<p>Estimated Implementation Date (M/Y): 3/2023</p>
<p>Additional Comments:</p>		