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## Temporary Contract Workers

Report No. 95-01 -- Report Summary

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### INTRODUCTION AND BACKGROUND

The management audit of temporary contract workers in the Department of Metropolitan Services (hereinafter referred to as "Metro") was authorized by the Metropolitan King County Council in the 1994 Auditor's Office work program. The audit was prompted by Council concerns regarding the amount of expenditures for temporary workers.

Metro contracted with vendors for temporary workers on an as-needed basis throughout the department. The vendors hired the temporary workers directly and assumed responsibility for payment of employee-related taxes and benefits. The contracts that audit staff reviewed were for temporary clerical, environmental planner, professional construction, professional management information systems, right-of-way agent, and technical support services.

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### OBJECTIVE AND SCOPE

The audit objectives were to determine whether Metro's expenditures for temporary contract workers were reasonable, and whether contracts were in compliance with existing policies,

procedures, and regulations.

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## SUMMARY STATEMENT OF FINDINGS

The general conclusions are that improvements are needed in the way that Metro manages its temporary workers and administers its temporary worker contracts. Improvements in the management of temporary workers are needed to ensure that the employer-employee relationship remains between the temporary workers and the vendors. Improvements in the way Metro administers the contracts through which temporary workers are hired are needed to ensure that the fair and open competition and equitable and economical award objectives of the public procurement process are achieved and to ensure that there is accountability and control over the usage of temporary workers.

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## MAJOR FINDINGS AND RECOMMENDATIONS

Finding A. Metro significantly and materially altered the scopes of most of the temporary worker contracts after they were awarded, thereby subverting the fair and open competition objective of the public procurement process.

Audit staff found that the estimated usage of temporary workers was understated in the solicitation documents by \$108,370 to \$3,485,914 or 203% to 4,518%, or an average of \$1,226,012 or 997%. These understatements were caused by Metro's failure to update solicitation documents to reflect current usage and by Metro adding numerous position classifications after the contracts were awarded, including many that were outside the original scopes of the contracts. In one instance, over 50 unsolicited position classifications were procured after the contract was awarded. The effects of these contract changes were that the increased scopes of work subverted the basic objectives of fair and open competition and equitable and economical contract awards of the public procurement process because vendors were able to provide workers for temporary service classifications that they did not bid on during the solicitation process, or they provided services although they were not the successful bidder for those services. Additionally, Metro's practice of significantly and materially increasing the scopes of the temporary services contracts resulted in the change order process overriding the basic procurement process.

This scope of work issue was also addressed as a finding by the State Auditor in its 1992 audit report of Metro based upon the State Auditor's discovery that Metro had awarded a contract for \$187,277 and subsequently increased that contract to \$897,000 without bidding the increases. Additionally, the consultant from KPMG Peat Marwick addressed the scope of work issue as a finding in its 1991 management audit of Metro procurement activities.

*The audit recommended* that Metro develop and implement procedures for reviewing previous contract usage for specific categories of temporary workers prior to resoliciting contracts, immediately discontinue the practice of issuing change orders to the temporary worker contracts when the changes are outside the scopes of the original contracts, develop and implement a policy outlining the conditions under which change orders may or may not be issued, and resolicit rather than exercise the option to extend the expiration dates of existing temporary worker contracts to achieve the objectives of fair and open competition and equitable and economical contract awards.

Finding B. Metro's treatment of temporary workers may give the appearance of an employer-employee relationship between Metro and the workers.

Metro managers and supervisors engaged in activities that could give the appearance of the employer-employee relationship being transferred between Metro and the temporary workers, rather than remaining between the vendors and the workers. These activities included recommending pay increases for the temporary workers, recommending reclassifications or promotions, conducting performance appraisals, using Metro position classifications and pay ranges for the temporary workers, allowing temporary workers to act as representatives of Metro, listing temporary workers in

the King County/Metro telephone directory, and referring to the temporary workers as temporary "employees."

*The audit recommended* that Metro revise its policy regarding usage of temporary contract workers to more clearly address the issues of responsibility for initiating pay increases, reclassifications and/or promotions, and performance appraisals; discontinue its practice of using Metro position classifications and pay ranges for temporary contract workers; review the tasks performed by temporary workers to ensure that temporary workers are not being allowed to act as representatives of Metro; and discontinue the practice of listing temporary workers in the King County/Metro telephone directory unless they are clearly identified as temporary or contract workers.

Finding C. Metro's use of temporary workers had the effect of providing more FTEs than authorized, and may have resulted in Metro bypassing its merit-based personnel system.

Metro's use of temporary workers increased from \$119,654 in 1985 to almost \$9.5 million in 1994, an increase of over 7800%. The usage was significantly greater beginning in 1989, which was the year work began on the West Point construction project, as well as the year that the Metro Council first imposed full-time equivalent (FTE) limitations to control staff growth. Metro's "Personnel Rules and Regulations" allowed Metro to hire "project-limited" employees for projects, such as the five-year West Point project, that were expected to last more than six months; however, such employees are counted as FTEs. Metro chose to hire temporary contract workers rather than "project-limited" employees and, in at least one instance, cited the FTE limitations as justification for recommending approval of a temporary services contract. Audit staff concluded that since the King County Code limits a Metro "temporary employee" to a six-month employment period, the five-year "temporary" nature of the West Point and other projects was inadequate justification for Metro's extensive use of temporary contract workers in lieu of hiring permanent or "project-limited" employees.

*The audit recommended* that Metro develop guidelines and criteria for analyzing positions to determine whether it is more practicable for a temporary worker or permanent Metro employee to provide the necessary services, and revise the King County Code and its policy regarding usage of temporary contract workers to add definitions of a "temporary worker" and "project-limited employee."

Finding D. Metro sometimes paid more than it should have paid for temporary contract workers.

Several of Metro's practices regarding temporary workers resulted in Metro paying more than it should have paid for temporary workers in many instances. These practices included consolidating previously awarded contracts into newer contracts with higher mark-up rates and paying higher hourly and mark-up rates than those specified in the contracts. Audit staff determined that these practices cost Metro a minimum of \$143,342 more in 1994 than what Metro would have otherwise paid for temporary workers. Additionally, Metro procured a significant percentage of temporary clerical worker services from other than the low bidder, despite the fact that the low bidder was a certified woman-owned business and had been designated as the primary vendor for temporary clerical services. Although the State Auditor included a finding in its 1992 audit report of Metro stating that Metro was paying higher hourly rates than provided for in contracts, Metro had not initiated action to discontinue this practice.

*The audit recommended* that Metro discontinue the practice of consolidating temporary worker contracts when previously-awarded contracts have lower mark-up rates than the contract with which they are being consolidated; establish procedures to verify that mark-up rates billed by vendors match the contract rates; establish guidelines regarding when temporary workers may be paid more than the contract rate, requiring approval of the higher rate from Purchasing, and requiring issuance of a change order prior to hiring workers at those rates; and establish procedures to monitor contract usage to ensure that the low bidder is used as the primary bidder most of the time.

Finding E. Budgetary controls and accountability over temporary contract workers were inadequate to ensure that expenditures for temporary workers were maintained at reasonable levels and that contract amounts were not exceeded prior to hiring temporary workers.

Metro's capital and operating budgets showed only the total amount of budgeted funds for each project or function and did not itemize how the money was appropriated. Since the budget did not provide for temporary workers as a separate line item, Metro could spend significant amounts for temporary workers with little concern for over-expenditure since the individual project and function budgets were generally quite substantial. Additionally, Metro's procedures for monitoring usage of temporary worker contracts were inadequate to ensure that the contract amounts were not exceeded prior to hiring temporary workers. Consequently, Metro's accounting system sometimes rejected invoices because payment would have caused the contract amount to be exceeded, resulting in a need to issue change orders to increase contract amounts after-the-fact so the invoices could be paid.

*The audit recommended* that Metro include sufficient detail in its budgets so high expenditure items, such as temporary workers, can be easily identified and to establish budgetary controls over such items; include the word "estimated" and a statement on blanket purchase orders for temporary workers indicating that the total amount of the contract may not be exceeded without written authorization; and develop procedures to improve Metro Purchasing's ability to monitor actual contract usage so change orders to increase contract amounts can be issued prior to the contract amounts being exceeded.

Finding F. Metro's bidding procedures for temporary services may not have ensured that the best price was obtained, although the contracts were awarded to the lowest responsive bidder.

Metro awarded contracts for nonclerical temporary services based solely on the vendors' mark-up rates. It estimated the total amount of a contract by multiplying the estimated annual usage by the midpoint of the pay range provided by Metro, and adding the vendor's mark-up rate. Audit staff found that requiring the vendor to bid the hourly rate has the potential to reduce the total cost to Metro for temporary workers. Because Metro provided pay ranges to the vendors and did not generally know at the time of contract award whether a vendor's average hourly rate was at the low, middle, or high end of that pay range, awarding a contract based upon a lower mark-up rate but higher average hourly rate sometimes resulted in higher costs than awarding a contract with a higher mark-up rate and lower average hourly rate. Although vendors sometimes provided quotes for hourly rates for position classifications to be added to a contract that were lower than Metro hourly pay ranges for the same classification, Metro incorporated its higher hourly pay range into the contracts. Additionally, a comparison of hourly rates provided by vendors for temporary clerical services indicated that in all instances, even the highest bid received was lower than the lowest hourly rate in the Metro pay range.

*The audit recommended* that Metro discontinue the practice of using Metro pay ranges as a basis for bid submittals and require vendors to include an hourly pay rate or range in their bids.

Finding G. Metro routinely extended blanket purchase orders for temporary workers beyond the initial contract period and sometimes beyond the option year periods.

The temporary worker contracts all contained provisions for extending the contracts for a specified number of option years beyond the initial contract period, and some of the contracts allowed extensions "through project completion" although the contracts did not identify a specific project for which the contract was awarded. However, Metro did not have a policy describing the conditions under which exercising the option year periods was appropriate. Consequently, Metro routinely extended the contracts for temporary workers beyond the initial contract period without evaluating the terms of the existing contracts and current market conditions to determine whether extending or resoliciting the temporary services contracts was most advantageous to Metro. Additionally, Metro sometimes extended the contracts beyond the final option year, especially when it was combining contracts due to expire into a current contract or when it was justifying the extension based upon the "through project completion" clause. Furthermore, in one instance, Metro extended a contract beyond the final option year although the temporary services in that contract had been resolicited and three new contracts had been awarded for those services. Although the consultant from KPMG Peat Marwick, in its management audit of Metro blanket purchase order contract activities in 1990, determined that Metro should perform a pricing analysis before exercising option year periods and adopt a policy regarding extension of blanket purchase order contracts, Metro continued to automatically extend the contracts without implementing the consultant's recommendations.

*The audit recommended* that Metro discontinue the practice of automatically extending temporary services contracts and begin performing an analysis of current market conditions to determine whether extending the contract is the most advantageous option available to Metro, discontinue the practice of extending temporary services contracts beyond their final option year, and terminate all contracts for a specific category of temporary worker services when a new contract for those services is awarded.

Finding H. Using temporary workers was not always more economical than using METRO employees.

In several instances, temporary workers were paid hourly rates that exceeded the maximum contract rate and that a Metro employee in the same classification would have been paid. In at least one instance, Metro justified the higher hourly rate to compensate the temporary worker for the benefits that a Metro employee in the same classification received but that the worker did not receive as an employee of the temporary services vendor. Audit staff could not determine the actual excess expenditures that Metro incurred as a result of this practice. However, we did determine that in one instance, paying a higher hourly rate than provided for in the contract resulted in approximately \$18,000 in excess costs to Metro.

*The audit recommended* recommended that Metro develop a policy that prohibits supervisors from paying hourly rates to temporary workers that exceed those allowed in the contract when the higher rate is to compensate the worker for the benefits that would be received if he or she were a Metro employee.

Finding I. Metro lost a prompt payment discount included in a vendor's bid by not incorporating it into the terms of the contract.

Audit staff identified one instance where a 1% prompt payment discount offered by a vendor for temporary services was not included in the terms of the contract awarded to that vendor. It is estimated that Metro lost \$3,515 during 1993 and 1994 as a result of not including this prompt payment discount into the contract. Although the consultant from KPMG Peat Marwick had stated in its 1990 management audit that Metro needed to assure that prompt payment discounts were included in contracts, Metro had not taken sufficient action to ensure that this always happened.

*The audit recommended* that Metro develop procedures to ensure that prompt payment discounts offered by vendors are incorporated into the terms of contracts awarded.

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