



CITY OF CHICAGO
OFFICE OF INSPECTOR GENERAL

20
24

Advisory on the City's Monitoring of Concessionaire Agreements for Compliance with Minority- and Women- owned Business Enterprise Requirements

September 10, 2024

**PAY
BY
PLATE**

DEBORAH WITZBURG | INSPECTOR GENERAL FOR THE CITY OF CHICAGO



Deborah Witzburg | Inspector General
City of Chicago
Office of Inspector General
740 N. Sedgwick St., Ste 200
Chicago, IL 60654
Phone: (773) 478-7799

September 10, 2024

On June 21, 2024, the Office of Inspector General (OIG) notified the Mayor's Office of concerns regarding the City's monitoring of concessionaire agreements for compliance with minority- and women-owned business (M/WBE) participation requirements—and specifically with the M/WBE participation requirements set forth in the 2008 concessionaire agreement between the City and Chicago Parking Meters, LLC (CPM). Per the 2008 concessionaire agreement between the City and CPM (CPM Agreement), there are monetary participation goals contained within, requiring that CPM use M/WBE-certified vendors for a certain percentage of the annual operating expenses of the parking meter system. OIG found that the City has failed to ensure compliance with the M/WBE participation requirements.

In the course of its work, OIG determined that from 2011 to 2018, CPM improperly claimed MBE credit for a vendor that was not MBE-certified. CPM's non-compliance with the M/WBE requirements must be understood in the context of the scale and impact of the City's contract with CPM. OIG had previously found that the City, by entering into the CPM Agreement for \$1.157 billion, received about "\$974 million less for [the] 75-year lease than the City would have received from 75 years of parking-meter revenue had it retained the parking-meter system under the same terms that the City agreed to in the lease" (approximately \$2.13 billion, according to OIG's mid-range estimate).¹ Further, a 2022 KPMG audit of the parking meter revenues generated by the CPM Agreement revealed that CPM "recouped its entire \$1.16 billion investment and \$502.5 million more" with 61 years remaining on the lease.² The City's failure to realize even the benefit of appropriate MBE participation in the contract compounds the negative impact of the CPM Agreement.

OIG identified a lack of sufficient oversight processes or procedures to ensure that concessionaire agreements, such as and including the CPM Agreement, are compliant with the City's M/WBE requirements. As such, and in light of the important policy goals of the M/WBE program, OIG recommended that the Mayor's Office implement sufficient oversight processes or procedures to ensure compliance.

OIG's letter to the Mayor's Office is attached at Appendix A. In a written response, attached at Appendix B, the Mayor's Office agreed that "it is critical that concessionaires such as CPM comply with all of the requirements of their agreements, including and especially requirements related to M/WBE participation." The Mayor's Office stated that "going forward, the Financial Policy/CFO

¹ June 2, 2009 Report of Inspector General's Findings and Recommendations: An Analysis of the Lease of the City's Parking Meters, p. 24.

² Fran Spielman, *Parking meter deal gets even worse for Chicago taxpayers, annual audit shows*, Chicago Sun-Times, (May 26, 2022, 6:00pm CST), <https://chicago.suntimes.com/city-hall/2022/5/26/23143356/chicago-parking-meters-75-year-lease-daley-city-council-audit-skyway-loop-garages-krislov>.

Division of the Department of Finance will work with the Department of Procurement Services to cross check annual M/WBE compliance reports from concessionaires against the City's list of certified vendors," and that CPM was informed that their annual progress reports "will be considered an attestation that the M/WBEs identified in those reports have been certified as required under the agreement." OIG appreciates the Mayor's Office's response and looks forward to the City's ongoing commitment to "increase not only accountability and efficiency but also equity in all aspects of City government."

Appendix A | OIG Letter



Deborah Witzburg | Inspector General
City of Chicago
Office of Inspector General
740 N. Sedgwick St., Ste 200
Chicago, IL 60654
Phone: (773) 478-7799

Via Electronic Mail

June 21, 2024

Brandon Johnson
Mayor
City of Chicago
121 N. LaSalle St., Room 507
Chicago, IL 60602

RE: OIG File #C2022-000041812

Dear Mayor Johnson:

The City of Chicago Office of Inspector General (OIG) writes to bring to your attention concerns regarding the City's monitoring of concessionaire agreements for compliance with minority- and women-owned business (M/WBE) participation requirements—particularly the M/WBE participation requirements set forth in the 2008 concessionaire agreement between the City and Chicago Parking Meters, LLC (CPM).

In December 2008, the City leased its system of approximately 36,000 parking meters to CPM for 75 years in exchange for a payment of \$1.157 billion. At the time, the City identified a short-term budgetary need as the driving force behind the decision to lease the parking meters.¹ The concessionaire agreement was approved by City Council, with limited information provided, and with little opportunity for public input and reaction. In a June 2, 2009 report, OIG found that the City, by entering into the CPM agreement for \$1.157 billion, received about "\$974 million less for [the] 75-year lease than the City would have received from 75 years of parking-meter revenue had it retained the parking-meter system under the same terms that the City agreed to in the lease" (approximately \$2.13 billion, according to OIG's mid-range estimate).² A 2022 KPMG audit of the parking meter revenues generated by the CPM agreement revealed that CPM "recouped its entire \$1.16 billion investment and \$502.5 million more" with 61 years remaining on the lease.³

¹ Report of Inspector General's Findings and Recommendations: An Analysis of the Lease of the City's Parking Meters, p. 28, June 2, 2009, <https://igchicago.org/wp-content/uploads/2011/03/Parking-Meter-Report.pdf>.

² Report of Inspector General's Findings and Recommendations: An Analysis of the Lease of the City's Parking Meters, p. 24.

³ Fran Spielman, *Parking meter deal gets even worse for Chicago taxpayers, annual audit shows*, Chicago Sun-Times, (May 26, 2022, 6:00pm CST), <https://chicago.suntimes.com/city-hall/2022/5/26/23143356/chicago-parking-meters-75-year-lease-daley-city-council-audit-skyway-loop-garages-krislov>.

From an accountability and efficiency standpoint, it is vital that the City ensure that concessionaires comply with the requirements of their agreements with the City, including such agreements' M/WBE participation requirements. The City's bargaining for and inclusion of M/WBE participation requirements in concessionaire agreements is consistent with the City's effort to address "racial and sexual discrimination [that has] created substantial barriers to the creation and success of minority- and women-owned businesses."⁴ The purpose of M/WBE participation requirements is to remedy the effects of discrimination by establishing a level playing field in the awarding of government contracts to minority-owned business enterprises (MBE) and women-owned business enterprises (WBE).⁵ Chicago Mayor Harold Washington began the M/WBE program for City contracts by executive order in 1985, and the M/WBE program was codified into law by City ordinance in 1990.⁶

The parking meter lease agreement requires that CPM involve M/WBE-certified vendors in the operation of the parking meter system. The agreement sets monetary participation goals requiring that CPM utilize M/WBE-certified vendors for at least 25% of the annual operating expenses of the parking meter system, excluding construction contracts.⁷ The agreement defines operating expenses to include supplies, material and parts costs, equipment rental costs, repair and maintenance costs, and other expenses determined to be operating expenses in accordance with generally accepted accounting principles.

OIG has determined that from 2011 to 2018, CPM claimed MBE credit for a vendor that was not MBE-certified. The City's contract with CPM is hugely significant in its scale and impact on City operations and finances; this serves only to magnify the importance of its requirements being met. CPM contended that it still satisfied the M/WBE requirements of the concessionaire agreement during this time period, notwithstanding the fact that it appeared to improperly count the vendor toward its M/WBE percentage. OIG has concluded, however, that for at least the year of 2018, CPM fell short of the M/WBE requirement due to its claiming a vendor who was not actually MBE certified. Whether or not CPM satisfied its M/WBE requirements under the concessionaire agreement during the other years in which it improperly counted a non-MBE certified vendor, it is troubling that the City did not identify that CPM—for approximately seven years—had improperly counted the vendor as MBE certified.

OIG has not identified misconduct at the root of this shortfall, but rather inefficient or wasteful management. OIG was unable to conclude that misconduct had occurred, because evidence did not support that any intentionally false statements had been submitted to the City, and no City policies

⁴ Journal of the Proceedings of City Council, July 31, 1990, 19319. See also, Municipal Code of Chicago (MCC) § 2-92-420, *et seq.* (Minority Owned And Women-Owned Business Enterprise Procurement Program).

⁵ A company is eligible to be certified as a minority-owned business if it "is at least 51 percent owned by one or more members of one or more minority groups." MCC § 2-92-420(s). Similarly, a company is eligible to be certified as a women-owned business if it "is at least 51 percent owned by one or more women." MCC § 2-92-420(y). To become certified, a company must submit an application to the City of Chicago Department of Procurement Services. See Procurement Services, "Certification – M/WBE Program" https://www.chicago.gov/city/en/depts/dps/provdrs/cert/svcs/minority_and_womenownedbusinessenterprisecertificationmbewbe.html.

⁶ City of Chicago Executive Order 85-2 (April 3, 1985).

⁷ Amended and Restated Chicago Metered Parking System Concession Agreement, section 11.8(a)(iv), (June 5, 2013). The original 2008 Chicago Metered Parking System Concession Agreement included an identical 25% goal.

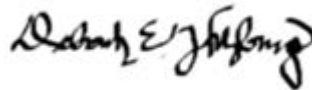
identified a specific party or entity as responsible for ensuring compliance with M/WBE requirements in concessionaire agreements. Both the Department of Finance (DOF) and Department of Law (DOL) were sent copies of the annual M/WBE progress reports pursuant to the CPM agreement. However, after communicating with DOF and DOL, it is OIG's understanding that neither department had any policies or procedures for monitoring and ensuring M/WBE compliance of companies operating under concessionaire agreements—even ones as large as CPM's.

OIG concluded in its 2009 report that the City made a "dubious financial deal" when it entered into the parking-meter lease. The failure to implement policies or procedures to ensure that the City realizes every benefit for which it bargained compounds the harm from the initial agreement and is inefficient and wasteful, lessening the value that the City realizes from the agreement. In light of this, the City must have sufficient oversight processes or procedures to ensure that concessionaire agreements are compliant with the City's M/WBE requirements. Had a policy or procedure been in place for monitoring the M/WBE compliance of companies operating under concessionaire agreements, such as by cross-referencing vendors counted toward concessionaire agreement's M/WBE requirements against the City's Certification and Compliance System (C2), it may have been earlier revealed and addressed that a non-MBE certified vendor had been counted toward the parking-meter lease M/WBE participation requirements.

Therefore, OIG recommends that the City implement sufficient oversight processes or procedures to ensure that concessionaires maintain compliance with the City's M/WBE requirements.

OIG invites the Mayor's Office to respond in writing before July 22, 2024. Any such response will be made public together with this advisory.⁸

Respectfully,



Deborah Witzburg
Inspector General
City of Chicago

cc: Nathaniel Wackman, General Counsel, OIG
Mary Richardson-Lowry, Corporation Counsel
Jessica Higgins, Assistant Deputy Mayor
John Roberson, Chief Operating Officer

⁸ MCC § 2-56-110(a)(b) authorizes the Inspector General to issue a public statement "if an investigation, audit or review concerns inefficient or wasteful management." As such, OIG intends to publish this letter as transmitted.

Appendix B | Mayor's Office Response



CITY OF CHICAGO • OFFICE OF THE MAYOR

MAYOR BRANDON JOHNSON

August 20, 2024

Deborah Witzburg
Inspector General
City of Chicago
Office of the Inspector General
740 N Sedgwick St., Ste. 200
Chicago, IL 60654

RE: OIG File #C2022-000041812

Dear Inspector General Witzburg:

Thank you for raising to our attention the previous reporting and compliance issues related to the minority- and women-owned business (M/WBE) participation requirements set forth in the concessionaire agreement between the City and Chicago Parking Meters, LLC (CPM). We agree that it is critical that concessionaires such as CPM comply with all of the requirements of their agreements, including and especially requirements related to M/WBE participation. M/WBE goals across City contracts are a vital tool in the effort to ensure that all of Chicago's residents have the opportunity to participate fully in the business of the City and to ensure that those working on behalf of the City represent the diversity of Chicago.

Going forward, the Financial Policy/CFO Division of the Department of Finance will work with the Department of Procurement Services to cross check annual M/WBE compliance reports from concessionaires against the City's list of certified vendors. In addition, a letter has been sent to CPM informing them that their annual progress reports will be considered an attestation that the M/WBEs identified in those reports have been certified as required under the agreement. The letter reinforces their M/WBE utilization obligations under the agreement and emphasizes the importance of self-monitoring throughout the year to confirm that they are on track to meet or exceed the M/WBE requirements.

These actions and oversight processes to ensure compliance with M/WBE requirements are aligned with the goals and values of this Administration, and we appreciate the work of the Office of the Inspector General to highlight this opportunity to increase not only accountability and efficiency but also equity in all aspects of City government.

Sincerely,

John Roberson
Chief Operating Officer