



Memorandum



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To: Marcos José Lapciuc, Chairman
and Members, Public Health Trust Financial Recovery Board
Carlos A. Migoya, President and CEO, Jackson Health System

From:  Christopher Mazzella, Inspector General

Date: October 14, 2011

Subject: *OIG Final Report Re: Review of CT Mechanical Company Obtaining Bid Waivers and Emergency Awards at Jackson Memorial Hospital* Ref. IG10-63

Attached please find the above-captioned final report. This review involved examining 30 purchase orders, amounting to \$1.73 million in HVAC repair and installation services, that were issued to CT Mechanical Company (CT) through the use of bid waivers and emergency awards. During this time, CT did not hold a pre-existing contract with the Public Health Trust (PHT), but it was awarded the work nonetheless. The work was awarded to CT even though the PHT had two Community Small Business Enterprise (CSBE) firms on contract to provide HVAC work—one of the two contracts was specifically for providing emergency HVAC services. The \$1.73 million in work orders issued to CT represented 79% of all HVAC work awarded during that period. Clearly, the OIG questioned these awards, and the attached report details the purported explanations for why CT was chosen over the firms that held contracts with the PHT.

A copy of this report was provided, as a draft, to the Jackson Health System (JHS) President & CEO for a management response, and to the President/Owner of CT for his discretionary comment. A response was received from the JHS Corporate Director of Internal Audit on behalf of management. A similar response was received by CT. The two responses are included with the final report as Appendix A and B, respectively. Notably, both responses contend that the reason why work was given to CT instead of the other two contracted firms was because the contracted firms had put “credit holds” on JHS.¹ This explanation had already been examined and dismissed as invalid in the draft version of the report—a point missed by both JHS and CT.

¹ The OIG review determined that for one of the JHS-contracted firms, there was never a credit hold. The other contracted firm had placed a credit hold for five weeks. Moreover, in all the procurement paperwork reviewed by the OIG, notably the *Emergency Procurement Determination Form*, not once was a “credit hold” stated as the reason why JHS chose to use CT Mechanical over the other two firms.

The OIG review also determined that work was not properly permitted. Further, the review also found that required paperwork was often submitted late—sometimes very late—and on a few occasions, not submitted at all. Lastly, due to the price format in which CT’s work was approved (i.e., lump-sum work orders), comparisons could not be made against established contract pricing in order to determine the reasonableness of CT’s price.

In sum, JHS agreed with our findings and recommendations, except that it provided the “credit hold” explanation for why \$1.73 million in HVAC work was diverted to a non-CSBE, non-contracted firm. Because these findings concern the CSBE program, the OIG is forwarding a copy of this report to the appropriate County officials for any comments deemed warranted. For tracking purposes, should follow-up action be contemplated due to these findings, the OIG would appreciate being copied on any said correspondence.

As it relates to the initial complaint and disposition of the review, the OIG considers this matter closed and, as such, no follow-up response is requested from JHS management at this time. However, because JHS Internal Audit has planned to audit the successor HVAC rotational contract in the near future, the OIG will continue to monitor the situation and, when completed, request a copy of JHS Internal Audit’s results.

Attachment

cc: Jack Osterholt, Deputy Mayor and Interim Director, Sustainability, Planning and Economic Enhancement Department, Miami-Dade County
Don Steigman, Chief Operating Officer, JHS
Reginald Jordan, Corporate Director, Support Services Division, JHS
Rosa Costanzo, Vice President & Chief Procurement Officer, JHS
Stephen J. Weimer, Corporate Director, Internal Audit, JHS
Charles Anderson, Commission Auditor, Miami-Dade County
Ricardo Villaverde, CT Mechanical Company (under separate cover)

MIAMI-DADE COUNTY OFFICE OF THE INSPECTOR GENERAL



FINAL REPORT

*Review of CT Mechanical Company Obtaining
Bid Waivers and Emergency Awards
at Jackson Memorial Hospital*

IG10-63

October 14, 2011

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I. INTRODUCTION

In December 2010, the Miami-Dade County Office of the Inspector General (OIG) began an investigation into several allegations involving CT Mechanical Company (CT), a heating, ventilation, and air conditioning (HVAC) firm providing services to Jackson Health System (JHS). The complaints alleged that CT was not applying for building permits, as required by the Florida Building Code, and that the JHS Support Services Division (Support Services) was using CT to perform a significant amount of work, under bid waivers and emergency awards, although there were firms already under contract and available to perform the work. An additional allegation was that Mr. Ricardo Villaverde, the owner of CT, was a relative of Mr. Oscar Villaverde, a former Support Services employee.

In light of early investigative findings, OIG Auditors began a more expansive review of the activities and documentation supporting the work that was non-competitively awarded to CT. We focused on CT projects completed at the Jackson Memorial Hospital (JMH) Main Campus. The OIG's investigation and review sustained the allegation that CT did not obtain the required permits for some of the work that it completed, as required by the Florida Building Code. Our investigation and review also sustained the allegation that Support Services gave a significant amount of work to CT using noncompetitive procurements, i.e., bid waivers and emergency awards, when there were other qualified HVAC firms already under contract with JHS. In fact, one such firm was specifically under contract to provide emergency HVAC work; however, the work was still awarded to CT. The last allegation that CT's owner, Mr. Ricardo Villaverde, was related to a former Support Services employee, Mr. Oscar Villaverde, could not be substantiated.

II. TERMS USED IN THIS REPORT

Building Department	City of Miami Building Department
CSBE	Community Small Business Enterprise
CT	CT Mechanical Company
Comfort Tech Air	Comfort Tech Air Conditioning, Inc.
Form K	<i>Emergency Procurement Determination and Approval Form</i> (Public Health Trust Procurement Regulations)
HVAC	Heating, Ventilation, and Air Conditioning
JHS	Jackson Health System
JMH	Jackson Memorial Hospital
JOC	Job Order Contract
OIG	Office of the Inspector General (Miami-Dade County)
PHT	Public Health Trust of Miami-Dade County
Premier	Premier Air Conditioning & Refrigeration, Inc.
Procurement	Procurement Management Department (JHS)
PO	Purchase Order
Support Services	Support Services Division (JHS)

III. RESULTS SUMMARY

We identified, with the assistance of the City of Miami Building Department (Building Department), 15 projects completed by CT between March 2009 and December 2010 where CT did not obtain the required permits. We notified the Building Department about our concern that CT had not pulled the required permits and presented to the Building Department invoices submitted by CT for its work on these projects. Because of the Building Department's review, CT had to pull seven permits and pay \$6,476 for permit costs and associated penalty fees. For the remaining eight projects that required permits, the Building Department has yet to determine permit costs and penalty fees due from CT. Delays in obtaining these permits ranged between 8 to 31 months. The cost of these 15 jobs amounted to \$500,380.

As of the date of this report, the Building Department is also evaluating four other CT projects, totaling \$111,000, to determine whether permits were needed and, if so, it will then determine permit costs and penalty fees. In addition, the Building Department identified three projects that had already been permitted and five projects that did not require permits.

In total, CT was issued 30 POs, amounting to \$1.73 million, during our audit period. These POs were issued using non-competitive procurement processes, i.e., bid waivers and emergency awards. The \$1.73 million equates to 79% of all the HVAC work issued by Support Services during that period. In contrast, during most of this period, the two other HVAC companies under contract with JHS¹ only received 21% of the work issued (\$469,000 via 23 POs).

These two HVAC companies received their contracts with JHS by having competed in competitive procurement processes that were designated for Community Small Business Enterprise (CSBE) firms. Both of these companies are certified CSBE firms, while CT was not. In other words, \$1.73 million in HVAC work designated for CSBE firms was non-competitively awarded to a non-CSBE firm.

Additionally, we found that JHS Support Services frequently did not timely complete or submit to the JHS Procurement Department (Procurement) the required *Emergency Procurement Determination and Approval Form* (Form K), as required by Public Health Trust (PHT) Procurement Regulations.

Furthermore, because CT's proposals and invoices were shown as lump-sum amounts rather than itemized amounts, we could not determine CT's unit prices for labor, materials, and markups. Thus, we could not determine the reasonableness of CT's non-competitive pricing compared to the pricing established under JHS' competitively procured HVAC repair contracts.

¹ Comfort Tech Air Conditioning, Inc. and Premier Air Conditioning & Refrigeration, Inc. were the two firms that had existing HVAC contracts with JHS, while CT was receiving bid waivers and emergency awards.

Collectively, the actions described in this report increase the reputational risk to JHS that support an appearance of favoritism and climate of bid steering within Support Services towards CT. The awarding of work to CT, as JHS' preferred contractor, comes at the expense of other contractors that had participated in competitive procurement actions.

IV. RESPONSES TO OIG DRAFT REPORT AND OIG REJOINDER

We provided a copy of this report, as a draft, to Jackson Health System and to CT Mechanical Company for their responses. Their responses are attached to this report as Appendix A and Appendix B, respectively.

Jackson Health System Response

JHS agrees with Finding No. 1 that CT did not obtain building permits for all of its work at JHS; with Finding No. 3 that documentation supporting emergency work was not timely submitted or not submitted at all; and with Finding No. 4 that there was insufficient documentation to determine whether CT's prices were reasonable. JHS also states that it has taken steps to implement the OIG's recommendations that accompany these findings.

With respect to Finding No. 2, JHS acknowledges that it awarded \$1.7 million of work to CT but disagrees that the work was diverted to a non-CSBE contractor—CT. JHS argues, in effect, that JHS had no choice but to use CT:

The situation [use of CT] occurred, beginning in 2009, as JHS dealt with fiscal challenges; some contracted vendors placed JHS on credit hold and refused to service JHS until their respective accounts were brought current. The use of this particular vendor [CT] was due to the emergency situations involved and in the light of the fiscal issues noted.

As discussed in Finding No. 2, at the time of our review, JHS personnel raised the "credit hold" issue as the reason why work was given to CT, but our analysis of circumstances showed this is to be a specious argument. In the finding, we acknowledged that one of the two HVAC contractors already under contract had placed a credit hold on JHS for about five weeks in mid-2010 but this hardly explains the totality of \$1.7 million awarded to CT during the 22-month audit period (March 2009 through December 2010). In fact, JHS awarded only four purchase orders, totaling \$114,600, to CT during this brief "credit hold" period and approximately \$1.6 million of awards during the remaining months.

Thus, it is of concern to the OIG that in its response JHS again raises this issue in its attempt to justify what we believe to be a clearly unjustifiable practice. In all the records we reviewed, including purchase orders, purchase requisitions, emergency award justifications (Form K), and contract award justifications, we note that ***not once*** did JHS project

management or procurement personnel ever mention, in their written documents, that another contractor's credit hold was the reason for awarding the work to CT.

CT Mechanical Company Response

CT's response, submitted via its legal counsel, addresses each of the four findings separately. Regarding Finding No. 1, CT states that it "has obtained all necessary permits (some were late, and in being paid later were paid for double plus the penalty for being late)." Regarding Finding No. 2, CT mentions that it extended credit to JHS when other vendors refused to provide services. As noted in our report and in our rejoinder to JHS' response, this issue was unsubstantiated by our review of the records. Finding No. 3 relates to JHS record keeping and does not pertain to CT. CT, about Finding No. 4, essentially discounts the issue raised by the OIG, which was that we were unable to determine whether CT's prices were reasonable, in comparison to prices obtainable through other JHS contracts. CT states that JHS has had CT's labor rate and material profit on record since 2002 and that its last bid "was half the rate for labor and material than the other company's submitted bids ..." However, we note during our review, JHS did not bring this to our attention. Nor did CT provide the OIG (either during Mr. Villaverde's interview or attached to the responses) with a copy of these labor rates.

Notwithstanding, we reaffirm our finding. CT's prevalent use of lump-sum proposals and invoices would have precluded JHS personnel from being able to determine the actual labor rates and material profits that CT was proposing or being paid; thereby diminishing, if not eliminating, the value of any knowledge JHS may have had of CT's rates. CT's practice made it impossible for JHS, or anyone else (e.g., OIG Auditors) to compare CT's rates to competing rates offered by other JHS contractors.

V. OIG JURISDICTIONAL AUTHORITY

In accordance with Section 2-1076 of the Code of Miami-Dade County, the Inspector General has the authority to make investigations of County affairs and the power to review past, present and proposed County and Public Health Trust programs, accounts, records, contracts, and transactions. The Inspector General is authorized to conduct any reviews, audits, inspections, investigations, or analyses relating to departments, offices, boards, activities, programs, and agencies of the County and the Public Health Trust. The Inspector General shall have the power to review and investigate any citizen's complaints regarding County or Public Health Trust projects, programs, contracts, or transactions. The Inspector General may also investigate alleged violations of the Conflict of Interest and Code of Ethics Ordinance, and may either file a complaint directly with or refer the matter to the Ethics Commission. The Inspector General may exercise any of the powers contained in Section 2-1076, upon his or her own initiative.

The Inspector General shall have the power to require reports from the Mayor, County Commissioners, County Manager, County agencies and instrumentalities, County officers and employees and the Public Health Trust and its officers and employees regarding any matter within the jurisdiction of the Inspector General.

VI. RELEVANT GOVERNING AND ADMINISTRATIVE AUTHORITIES

2007 Florida Building Code

Chapter 1 - Administration, Section 105 – *Permits*, states:

Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure...or covert or replace any required ... electrical, gas, mechanical or plumbing system, ...shall first make application to the building official and obtain the required permits.

Chapter 1 Sec. 105.2.1 – *Emergency Repairs*, further states:

Where equipment replacements and repairs must be performed in an emergency situation, the permit application shall be submitted within the next working business day to the building official.

Public Health Trust Procurement Regulations (Amended January 25, 2010)

Subsection IV.E.1(a) – *Waiver of Formal Competition, Non-Competitive Procurement, Condition for Use*, states:

A contract may be awarded without competitive bids or proposals when the Chief Procurement Officer, after conducting a good faith review of available sources, determines in writing, pursuant to a written request from a Senior Vice President or Vice President providing reasons why the contract is not suitable for competitive bids or proposals. The Chief Procurement Officer, with the assistance of affected departments, shall conduct negotiations, as appropriate, as to price, delivery and terms.

Section IV.E.2 – *Waiver of Formal Competition, Emergency Procurement*, states:

...the Chief Procurement Officer may delegate limited authority to a Senior Vice President or Vice President of the Trust to make or authorize others to make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods.

The official responsible for the procurement shall complete the "Emergency Procurement Determination and Approval Form," issued by the Chief Procurement Officer as Form K, stating the basis for the emergency procurement and the selection of the particular contractor. When the procurement has been made by a Senior Vice President or Vice President, the written explanation shall be submitted to the Chief Procurement Officer within three (3) business days of the initial action. Provided the notice as required in Paragraph (ii) (Notice) has been submitted, the Chief Procurement Officer may authorize a delay in submission of the written determination until the total cost of the emergency procurement has been determined.

VII. OBJECTIVE, SCOPE, AND METHODOLOGY

This investigation was predicated on allegations received by the OIG that the work performed by CT lacked the proper building permits; that CT received a significant amount of work through bid waivers and emergency awards, while there were other firms available with existing contracts; and that the owner of CT may be a relative of a former Support Services employee. In light of the investigative findings and as a subsequent objective, OIG Auditors conducted a review of documentation supporting work issued to CT at the JHS Main Campus.

The scope of our review encompassed the period of March 2009 through December 2010, although when we deemed it necessary, we reviewed records and activities outside of our scope period.

OIG Special Agents and Auditors reviewed documents including, but not limited to, invoices, proposals, purchase orders, contracts, and JHS procurement regulations. In addition, we reviewed Florida Statutes regarding the requirements for obtaining building permits. OIG Special Agents and Auditors also interviewed JHS Accounts Payable Department, Support Services, and Procurement employees; as well as the owners of CT, Comfort Tech Air Conditioning Inc., (Comfort Tech Air) and Premier Air Conditioning & Refrigeration, Inc., (Premier). We also met with the Building Department's chief mechanical inspector and other Building Department officials to determine whether CT should have pulled permits for work completed.

This review was conducted in accordance with the *Principles and Standards for Offices of Inspector General, Quality Standards for Investigations* as promulgated by the Association of Inspectors General.

VIII. BACKGROUND

Mr. Ricardo Villaverde, CT's owner, first began providing HVAC mechanical services to JHS in 1997 as an employee of Comfort Tech Air. In 2002, Mr. Villaverde formed his own company, Comfort Tech Mechanical Company, and began providing services at JHS under his company's name. He later changed his company's name to CT Mechanical Company, due to the similarity in name to Comfort Tech Air. According to Mr. Villaverde, over 90% of his company's work comes from JHS.

According to Procurement staff, Support Services previously had the authority to award contracts without going through Procurement.² In July 2007, Procurement took over contracting functions but gave Support Services limited approval for bid waivers and sole source contracts under \$10,000.³ Procurement staff also told the OIG that shortly thereafter, they realized that Support Services continued to directly award work to CT using emergency awards and bid waivers rather than awarding work through competitive bids.

In 2009, Procurement took the first step to address this problem by initiating two separate competitive solicitations that were to result in two contracts for mechanical (HVAC) repair and maintenance services for Support Services use. The first step was to award a Job Order Contract (JOC). This is a firm fixed-price, indefinite quantity contract. The JOC lists a collection of tasks and related work specifications, each with its own pre-established unit price. All unit prices are based on local labor, material, and equipment costs and are intended to reflect the direct cost of construction or repair.⁴ JHS awarded the JOC mechanical contract to Comfort Tech Air. This contract was executed on June 10, 2009, for a minimum of \$20,000 per year.⁵ Procurement envisioned that HVAC projects would be given to the JOC contractor. However, Support Services continued to steer most HVAC projects to CT throughout 2009 and

² The Procurement Management Department is within JHS Strategic Sourcing Division. JHS' Support Services Division consists of five departments, which are Capital Projects, Environmental Services, Nutrition Services, Engineering Services, and Real Estate & Property Management. The Engineering Department, previously called Plant Operations/Facilities, oversees all repair and maintenance activities at the JHS Main Campus.

³ PHT Procurement Regulations, Section IV(E)1b, *Waiver of Formal Competition, Non-Competitive Procurement*, dictates that a sole-source/bid waiver procurement in excess of \$10,000 requires additional documentation and approval from the Chief Procurement Officer (amended January 25, 2010).

⁴ The JOC includes a Construction Task Catalog containing construction tasks with pre-established unit prices. Additionally, adjustment factors based on dollar amounts and normal working hours versus overtime working hours are also used to determine a project's cost.

⁵ The overall JOC (ITB 08-6060) includes services for miscellaneous general, electrical, mechanical, and roofing construction. It has a one-year base period with potentially four additional years, not to exceed five years. The mechanical portion of JOC (M-01) has a guaranteed minimum value of \$20,000 for the base period and a maximum not-to-exceed value of \$10,000,000 for the five-year period.

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into 2010. (Subsequent to our audit period ending in December 2010, JHS has issued two POs to the JOC contractor, Comfort Tech Air, amounting to \$128,763.)

Procurement's second contract was awarded after a competitive request for quote (RFQ) solicitation seeking a contractor to perform emergency mechanical repair services (RFQ 09-5251-AA). The resultant contract was specifically intended to provide Support Services with the ability to obtain emergency HVAC repair services when the JOC could not be used. Premier was awarded the contract on December 7, 2009, for \$50,000 per year, with a contract period of three years. This contract has a pre-set labor rate of \$65/hour for regular time and \$97.50/hour for overtime work, with material billed at cost.

Both contracts (the JOC and the one for emergency work) required that the winning contractor be a CSBE firm. CT is not a certified CSBE contractor and, thus, it did not participate in either of these two procurements.

Although both contracts were available as a means to obtain HVAC repair and maintenance services, on either an emergency or a non-emergency basis, Support Services continued to use CT as its main HVAC contractor. Support Services claimed that the JOC was not suitable for most of its HVAC work, which were mostly emergencies. According to Mr. Roy Gallegos, the prior Director of Engineering,⁶ the JOC is not designed for repair and maintenance work. For its emergency work, Support Services claimed that CT was reliable and readily available 24-hours-a-day to provide services.

To further assist Support Services with its HVAC issues, Procurement implemented a third competitively bid contract in early 2011. This contract (ITB 10-6083), *Prequalification of Mechanical Contractors for Urgent and Emergent Projects*, is specifically for HVAC emergency repair and maintenance.⁷ The contract amount is valued at \$500,000 for one year, with an option to renew for one year for an additional \$500,000. This contract was awarded on February 17, 2011 to three responsive bidders: CT, Comfort Tech Air, and Premier.⁸ Each contractor received a separate PO

⁶ Mr. Gallegos was the Director of Engineering for Jackson's Main Campus from October 2002 until April 2011, when he was transferred to Jackson South Community Hospital due to the departure of its prior director.

⁷ Each individual contractor has approved pre-set hourly rates for both regular time and overtime, with materials billed at cost.

⁸ Bid documents stated that it was PHT's intent to recommend the contract award to as many as five pre-qualified mechanical contractors, of which a minimum of one should be a certified CSBE mechanical contractor, if the CSBE contractor meets the minimum requirements of the solicitation. The contract award letter stated that seven bids were received, of which three firms were deemed pre-qualified: CT, Comfort Tech Air, and Premier.

for \$50,000.⁹ Work is supposed to be issued on a rotational basis. As of August 15, 2011, JHS has made no payments under this contract.

IX. FINDINGS AND RECOMMENDATIONS

FINDING No. 1 CT did not obtain building permits for 15 HVAC projects completed at JHS.

OIG Special Agents obtained 31 invoices from JHS for work performed by CT from March 2009 through December 2010. These invoices represent billings from 27 projects. The OIG met with the City of Miami's chief mechanical inspector and other Building Department officials to review the invoices. The purpose of the meeting was to determine whether permits were required for the work noted on the invoices and whether CT had obtained the necessary permits.

After reviewing the scope of work noted on the invoices and, when necessary, meeting with CT, Building Department officials informed OIG Special Agents that 15 projects completed by CT between March 2009 and December 2010 that were not permitted in fact required permits. For seven of the projects that should have been permitted (project costs totaling \$271,400) the Building Department determined that CT now had to pay \$6,476 in permit costs and associated penalty fees. Delays in obtaining these permits ranged between 8 to 31 months.¹⁰ The Building Department has yet to determine permit costs and penalty fees due from CT for the remaining eight projects that should have been permitted (project costs totaling \$228,980). As of the date of this report, the Building Department is also evaluating four other CT projects (projects costs totaling \$111,000) to determine whether permits were needed; and, if so, CT will have to apply for additional permits and will be liable for the permit costs and penalty fees.¹¹

According to the Chapter 1 Section 105 of the Florida Building Code, any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or convert or replace any required electrical, gas, mechanical, or plumbing system, shall first make application to the building official and obtain the required permits. Additionally, Chapter 1 Section 105.2.1 states that for emergency repairs "the permit application shall be submitted within the next working business day to the building

⁹ According to Procurement, repair services for individual projects estimated to cost above \$50,000 will be authorized through Procurement.

¹⁰ Since the documentation provided to us did not state a date when work on these projects was actually performed, we used either the PO date or the invoice date, whichever was the earliest, to calculate the delay period for obtaining permits.

¹¹ In addition to the 19 projects discussed, Building Department officials informed the OIG that there were three other projects requiring permits that CT had already permitted and that there were another five projects that did not require permits.

official.” Neither CT nor Support Services took the initiative to apply for the required permits.

The OIG questioned Mr. Villaverde, the owner of CT, in reference to the non-permitted work performed at JHS. Mr. Villaverde admitted that he was at fault and that he has taken steps to correct the problem by meeting with Building Department officials and obtain the required permits. The OIG also questioned Support Services Corporate Director, Mr. Regginald Jordan, on why permits were not pulled for the projects. Mr. Jordan told the OIG that it is the responsibility of the Support Services team assigned to the specific project to ensure that permits are pulled. He also stated that the Engineering Department projects are normally repairs and repairs usually do not require permits. Lastly, the OIG met with Mr. Gallegos, the prior Director of Engineering, to talk about CT’s failure to obtain permits. The OIG informed him that we had met with the Building Department to discuss the issue. Mr. Gallegos explained that he never pulled a permit because he had been told that a permit was not necessary for HVAC repair and maintenance. Mr. Gallegos acknowledged what the OIG was telling him and advised that he would meet with the Building Department to gain a better understanding of the permit requirements.

The Florida Building Code clearly states that repairs are one of the types of work that requires a permit. Interviews with Support Services and Engineering Department personnel showed that they are apparently unaware of Florida Building Code requirements or they chose to ignore the requirements by not requiring their contractor—CT Mechanical—to comply with the Florida Building Code.

Recommendation 1: Because Support Services has the responsibility to ensure that the required permits are obtained timely (either by its own staff or by the contractor) in accordance with the Florida Building Code, it should ensure that it has competent personnel on staff and contracts only with qualified contractors aware of these Code requirements.

FINDING No. 2 JHS diverted \$1.73 million of HVAC work to a non-CSBE contractor using non-competitive bid waivers and emergency awards.

From March 2009 through December 2010, Support Services used non-competitive processes—bid waivers and emergency awards—to issue CT 30 POs for HVAC projects amounting to \$1,727,680. This amount represents 79% of all HVAC work issued during this period.¹² Support Services, by awarding such a disproportionate amount of work to CT using non-competitive awards when there were

¹² PO history reports provided by Procurement showed that for work performed at the JMH Main Campus, CT received 88 POs amounting to approximately \$3.6 million from January 2007 through December 2010. We also noted that for Jackson South Community Hospital (JSCH), CT was issued nine POs amounting to approximately \$394,000 from March 2009 through December 2010. We did not examine projects, which were outside of our review period or for work performed by CT at JSCH.

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two other competitively obtained contractors available, showed a blatant disregard for fair and open public procurement practices. The favoritism shown by Support Services to CT fuels perceptions suggesting improper motives and puts JHS' reputation as a public institution adhering to open and fair procurement practices at risk. Moreover, because the two established HVAC contracts were designated as being set-aside for CSBE firms, the steering of the HVAC work to CT diverted \$1.73 million of work that should have gone to CSBE firms.

In contrast, during the same period, the two existing CSBE HVAC firms, under the JOC and the emergency repair contract, received only 21% of the work issued (23 POs amounting to \$469,213). Specifically, the JOC contractor, Comfort Tech Air, received 22 POs amounting to \$419,213. The emergency work contractor, Premier, received one PO amounting to \$50,000. These amounts represent 19% and 2%, respectively, of the amount of work issued during the period of March 2009 to December 2010 (Table 1).

Table 1 Comparison of PO Amounts for Mechanical Work at the JMH Main Campus Between March 2009 – December 2010

Company Name	Contract During Period	Contract Awarded Date	No. of POs	Total PO Amounts	% of POs Issued
CT Mechanical	None	NA	30	\$1,727,680	79%
Comfort Tech Air	JOC	June 2009	22	\$419,213	19%
Premier Air	Emergency	Dec. 2009	1	\$50,000	2%
Totals			43	\$2,196,893	100%

The OIG reviewed Form Ks, POs, proposals, invoices, and other supporting documents for work performed at the JMH Main Campus. (We did not review work performed by CT and the other contractors at other JMH locations.) Form K and PO justifications for using CT often noted that CT was familiar with the hospital's HVAC system, that it has been working for Jackson for many years, or that it was readily available to provide services. These records, in particular the Form Ks, were completed either by the user department or by the Support Services Engineering Department. A majority of the forms were certified by the then Director of the Engineering, Mr. Roy Gallegos,¹³ and were approved by the Corporate Director (position previously titled Vice-President) of Support Services, Mr. Regginald Jordan.

A noteworthy observation is that on two Form Ks (dated June 2, 2010 and June 18, 2010, for the replacement of exhaust fans) Support Services officials stated that the reason why it was not possible to use an existing PHT contract was that "None Exist."

¹³ Mr. Gallegos, the prior Director of Engineering, signed-off on all purchase requisitions and many of the invoices, as well as a majority of the Form Ks. His department was also responsible for overseeing the work completed by CT.

They made this statement even though there were two existing contracts—the JOC (awarded June 2009) and the emergency contract (awarded December 2009)—that had contractors who were capable and available to perform the work. Mr. Gallegos, the prior Director of Engineering, who submitted the Form Ks, certified “[t]hat the above [emergency] Determination is accurate and complete to the best of my knowledge and belief” and Mr. Regginald Jordan, Support Services Corporate Director, approved “[t]he above Determination and emergency procurement.” We also observed that there were other Form Ks completed by these individuals both before and after the dates noted above; however, such statements that other JHS contracts did not exist were not made in those Form Ks. It is incomprehensible why two JHS senior staff would either certify or approve such a statement when, in fact, there were other known and available alternatives.

The OIG directly questioned Support Services as to why it continually used CT when there were two competitively selected firms available. The Support Services Corporate Director told the OIG that both Comfort Tech Air and Premier had placed JHS on a “credit hold” due to lack of payment by JHS and had refused to perform work at the hospital until outstanding balances were resolved. The Corporate Director explained that CT was willing to work and wait for payment. The owner of Premier confirmed that he had put a credit hold on JHS, but only for approximately five weeks during June 2010 and August 2010. Comfort Tech Air advised the OIG that it never placed JHS on a credit hold. Support Services was able to provide documents supporting Premier’s credit hold. Neither Procurement, nor Support Services, nor the JHS Accounts Payable Department, however, could provide any document to substantiate that Comfort Tech had placed JHS on a credit hold. Moreover, in all the records that we reviewed, including purchase orders, purchase requisitions, Form Ks, and contract award justifications, ***not once*** did JHS project management or procurement personnel ever mention, in their written documents, that another contractor’s credit hold was the reason for awarding the work to CT.

Another example of Support Services questionable procurement practices occurred in 2009 when it attempted to issue to CT a bid waiver, for the replacement of West Wing fan coils at a cost of \$630,000. Procurement told the OIG that CT had previously completed emergency work, i.e., a non-competitive award, for similar repairs on other fan coils at the same location and that Support Services wanted to award the rest of the project to CT, also by a non-competitive award.¹⁴ Procurement, however, after learning of the proposed Support Services bid waiver for CT, went to the JOC

¹⁴ Previously, CT had been awarded two emergency POs for the replacement of fan coils in the West Wing Building and throughout the hospital. JHS issued the first PO (409000341) on October 23, 2008, for \$300,000. This PO was supported with a purchase requisition dated August 7, 2008. According to Procurement, Support Services presented the request after the work was already completed; given that it was emergency work. JHS issued the second PO (409002075) on March 13, 2009, for \$400,000. This PO was supported with a purchase requisition dated October 28, 2008. Documentation provided by Procurement cites Support Services’ justification for the award as that the work had to be completed due to state requirements and patient safety.

contractor to obtain a proposal for the work. This contractor proposed costs totaled approximately \$600,000, or \$30,000 less than CT's proposed costs. According to Procurement staff, Support Services was adamant on having CT complete the work.

Ultimately, CT received the work but not until after Procurement negotiated with CT to reduce its proposed \$630,000 price to \$600,000. The PHT Board, in 2010, approved this award. Payment records show that CT has been paid \$500,000 for work completed to date. As of July 2011, \$100,000 remains and, according to the Support Services Corporate Director, another ten fan coils need to be replaced for the project to be completed.

The noted examples show that Support Services openly and blatantly favored CT over pre-qualified CSBE contracted firms. Work issued to CT as bid waivers and emergency awards is not only questionable on its face but should also be scrutinized because it diverted work away from CSBE firms. Although CT was never a competitively procured firm before 2011, it, nonetheless, continually received non-competitively awarded work at JHS, at a rate and with dollar amounts far and above the amounts awarded to JHS' two competitively solicited CSBE HVAC contractors.

Lastly, we note that while Support Services steered the work to CT, Procurement endorsed Support Services' non-competitive selection. Even though POs were often generated after the work had already initiated—or even, after the project had been completed—Procurement's justification in the contract award letter echoed Support Services declaration that CT was its "preferred" contractor. Procurement's failure to openly question Support Services awarding of work to CT, we believe, only bolstered Support Services audaciousness in steering more work to CT. Collectively, JHS actions support an appearance of favoritism within Support Services towards CT, at the expense of other contractors—in this case, at the expense of CSBE contractors—that had participated in competitive procurement actions.

Recommendation 2: Support Services should be required to comply with established procurement regulations and utilize existing contracts for awarding repair and maintenance work, including emergency work when emergency designated contracts exist. Deviations should be scrutinized. Consistent failure to abide by the procurement regulations should result in some consequence.

FINDING No. 3 Documentation supporting the need for emergency work was not timely prepared and, at times, not provided at all to Procurement.

Support Services did not always complete and forward to Procurement—and at times did not provide at all—the *Emergency Procurement Determination and Approval Form* (Form K) within the required three-day period. According to PHT Procurement Regulations, the Chief Procurement Officer may delegate limited authority to a Senior Vice President or Vice President to make or authorize others to make emergency procurements. Section IV(E)2c(ii), *Notice*, of the Procurement Regulations further states that:

... the Department of Procurement Management shall be notified of the emergency in writing as soon as possible, but no more than three (3) business days after the initial action.

Additionally, Section IV(E)2c(v), *Determination*, of the regulation states that:

The official responsible for the procurement shall complete the [Form K], stating the basis for the emergency procurement and the selection of the particular contractor. When the procurement has been made by a Senior Vice President or Vice President, the written explanation shall be submitted to the Chief Procurement Officer within three (3) business days of the initial action. Provided the notice as required in Paragraph (ii) (Notice) has been submitted, the Chief Procurement Officer may authorize a delay in submission of the written determination until the total cost of the emergency has been determined.

We found that for the 23 emergency projects completed by CT from March 2009 through December 2010, only 17 projects had a Form K attached. Our analysis of the 23 projects and 17 forms shows:

- 11 projects had approved Form Ks showing delays ranging from 5 to 149 days;
- 1 project had an approved Form K showing a delay of 445 days but noted as a “redo of lost paperwork”;
- 3 projects had approved Form Ks processed within the 3-day requirement;
- 1 project had an approved Form K processed within 3 days but noted as a “redo of lost paper work”; approved Form K was dated 74 days before PO date, however, it was dated 680 days after contractor invoice date;
- 1 project had a unapproved Form K; and
- 6 projects had no Form K.

We understand that when an emergency arises, the user department may be more concerned with getting the repair completed than in ensuring procedural compliance. This, however, does not explain why Support Services did not follow-up on an emergency by preparing the required records documenting the need for emergency services. We believe that the three days allowed by PHT Procurement Regulations is adequate time for Support Services to assure that a Form K is completed, signed, and forwarded to Procurement.

We also note that the lack of timely prepared Form Ks is not the only example where Support Services was not timely preparing required records. For 17 projects, CT invoices for work completed were dated anywhere from 24 to 674 days before the corresponding PO was prepared. In other words, the work was initiated, the work was performed, the work was invoiced, and only then was the PO for the services prepared. It is only at this last step—PO preparation—in conjunction with its receiving a Form K, that Procurement is placed on notice that Support Services had, on its own, “contracted” for HVAC work outside of the two established contracts. However, as previously noted, we often found that Procurement, in its processing of the PO and contract award paperwork, effectively endorsed Support Services selection of CT as its “preferred” contractor. Again, we emphasize that this tacit approval only reinforces Support Services audacity that it can delay providing the required documents without consequence.

Recommendation 3: Support Services should be required to comply with established procurement regulations and ensure that the required forms are completed and forwarded to Procurement timely. Consistent failure to abide by the procurement regulations should result in some consequence.

FINDING No. 4 **There was insufficient documentation to determine whether CT’s prices for services performed were reasonable in comparison to prices obtainable from other existing JHS HVAC contracts.**

We were unable to determine whether CT’s prices, as either proposed or incurred costs, for performing noncompetitively awarded work, were comparable to those that JHS could have obtained under its competitively awarded HVAC contracts. Our analysis was incomplete because CT’s proposal prices and invoiced amounts were almost always shown as lump-sum amounts, i.e., without a breakdown showing labor; materials; and markup as individual amounts, and thus we had no basis for comparing CT’s costs to those available under the other two contracts.

For the 21 POs issued to CT, from March 2009 through December 2010, only 12 were supported with proposals. The remaining nine POs did not have proposals attached, which may have been provided by CT but were not attached to the documents provided to the OIG. Of the 12 proposals provided, only one had hourly rates listed,

while the remaining eleven were lump-sum amounts. Although that one proposal had hourly rates listed, the eight individual invoices paid under that PO were all billed at lump-sum costs; therefore, the actual numbers of hours worked, the actual hourly rates, and the cost for materials could not be determined. Additionally, all other CT invoices were billed at lump-sum amounts.

We acknowledge that using lump-sum pricing is an acceptable practice but, under the given circumstances, it is one more indicator that Support Services was showing favoritism to CT. It is a questionable practice to consistently use noncompetitive awards when competitive contracting alternatives are available. It makes the awards even more questionable when only lump-sum prices are obtained when competitive pricing alternatives are also available.

We also acknowledge that “emergency” and “bid waver” work typically signifies that exceptional conditions exist that likely will cost more to remedy. At issue is how much more should such work cost. Support Services, we believe, had an affirmative obligation to make reasonable efforts to obtain cost data that would provide it with assurance that it was paying a fair, reasonable price and premium for performing the work. Then, notwithstanding how CT was awarded the work, Support Services, at least, could show that the amounts paid to CT were appropriate to the work performed when compared to other available options.

Investigative Note: Allegation that CT Mechanical Company’s owner is related to a former JHS Support Service employee was unsubstantiated.

To investigate the allegation that Mr. Ricardo Villaverde, owner of CT, and Mr. Oscar Villaverde, Engineer 4, former employee of the JHS Capital Projects Department were related, OIG Special Agents conducted a search of various public records databases, and questioned both individuals on the subject matter. No connections linking the two men were uncovered and they both denied any family relationship. This allegation was unsubstantiated.

X. CONCLUSION

The OIG’s investigation sustained the allegation that CT did not obtain permits for much of the work it performed at JMH Main Campus during 2009 and 2010. More significantly, our review sustained the allegation that Support Services awarded work to CT, through bid waivers and emergency awards, when CT did not have a pre-existing contract with JHS. CT received this work at the expense of two CSBE contractors—two contractors who went through a competitive procurement process in order to be awarded the contracts that they held.

The OIG, throughout this report, uses the terms “diverted” and “steered.” No other words can adequately describe how 79% of the HVAC work was given to the

MIAMI-DADE COUNTY OFFICE OF THE INSPECTOR GENERAL
OIG Final Report Re: Review of CT Mechanical Company Obtaining
Bid Waivers and Emergency Awards at Jackson Memorial Hospital

non-contracted firm over two contracted firms. JHS personnel have explained that the other two contractors put a “credit hold” on JHS, but, as rebutted throughout this report, that explanation does not hold water. Not once was the term “credit hold” used on the 30 POs issued and not once was the term “credit hold” used on the 17 Form Ks that we were able to review (6 Form Ks could not be found). Instead, explanations such as no contract exists, the work was needed because of an emergency, or CT was familiar with the Jackson facilities were made. We understand that emergencies exist, especially in a hospital environment; however, one of the two CSBE contractors held a contract to specifically provide emergency work. That the JHS management response continues the “credit hold” rationalization is disconcerting. The diversion of the HVAC work to CT has broader implications than just undermining accountability in public procurement. In this case, the diversion of work has a direct impact on the laudable policies and goals of the CSBE program.

MIAMI-DADE COUNTY OFFICE OF THE INSPECTOR GENERAL



OIG APPENDIX A

Jackson Health System Response

IG10-63



INTERNAL AUDIT
Jackson Medical Towers, Suite #102
305-585-2901
1500 NW 12 Ave
Miami, Florida 33136-1094

September 21, 2011

Christopher Mazzella
Inspector General
Miami-Dade County Office of the Inspector General
19 West Flagler Street
Suite 220
Miami, Florida 33130

Re: OIG Draft Report, IG10-63, dated September 7, 2011

Dear Chris:

Pursuant to the Office of the Inspector General's (OIG) Report IG10-63 - Review of the JHS Support Services Division's award of Bid Waivers and Emergency Work to CT Mechanical Company (dated September 7, 2011), listed below is management's response to the findings noted in the report -

OIG Finding #1 – CT did not obtain building permits for (15) HVAC projects completed at JHS.

Management's Response: Management agrees. JHS has improved its processes and controls to ensure that all qualified contractors obtain required permits to complete all necessary and emergency repairs. The Capital Construction Team is now responsible for ensuring that all required permits are received prior to job closeout.

OIG Finding #2 – JHS diverted \$1.7 million of HVAC work to a non-CSBE contractor using non-competitive bid waivers and emergency awards.

Management's Response: Management agrees that JHS awarded \$1.7M of work to CT Mechanical, however, we disagree that work was "diverted" from other vendors to this specific vendor. The situation occurred, beginning in 2009, as JHS dealt with fiscal challenges; some contracted vendors placed JHS on credit hold and refused to service JHS until their respective accounts were brought current. The use of this particular vendor was due to the emergency situations involved and in light of the fiscal issues noted.

Effective February, 2011, JHS competitively awarded an Invitation to Bid (ITB) for three pre-qualified mechanical contractor for emergency work to be utilized on a rotational basis.

Page Two
Christopher Mazzella
September 19, 2011

OIG Finding #3 – Documentation supporting the need for emergency work was not timely prepared and at times, not provided at all to Procurement.

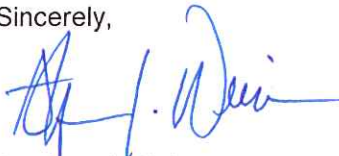
Management's Response: Management agrees. Procedures have been updated to ensure that required emergency/conflict of interest forms are prepared and submitted in a timely manner.

OIG Finding #4 – There was insufficient documentation to determine whether CT's prices for services performed were reasonable in comparison to prices obtainable from other existing JHS contracts.

Management's Response: Management Agrees. Procurement Department will no longer accept lump sum proposals from contractors/vendors. Moreover, the new competitive Invitation to Bid (ITB) with three pre-qualified mechanical contractors for emergency work is based on fair and reasonable hourly rates and materials at cost for awarded repairs/projects.

If you have any questions or comments, please let me know. Thank you.

Sincerely,



Stephen J. Weimer
Corporate Director – Internal Audit

MIAMI-DADE COUNTY OFFICE OF THE INSPECTOR GENERAL



OIG APPENDIX B

CT Mechanical Company Response

IG10-63

LAW OFFICES
NEWMAN AND TEMPKINS, P.A. 2011 OCT -4 PM 1:32

MDC-OFFICE OF THE
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Joel P. Newman, 1916-1989
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September 28, 2011

Christopher R. Mazzella, Inspector General
Miami Dade County
Office of the Inspector General
19 W. Flagler Street, Suite 220
Miami, FL 33130

2011
MDC-OFFICE OF THE
INSPECTOR GENERAL

RE: CT MECHANICAL COMPANY

Dear Mr. Mazzella:

We have just received a copy of your OIG Draft Report – 1G10-63. Please be advised that my client has already given a personal interview and statement to the OIG approximately three months ago.

My client, pursuant to your finding under findings paragraph #1, has obtained all necessary permits (some were late, and in being later were paid for double plus the penalty for being late).

As to the findings in paragraph #2, my client extended credit to JHS when the other companies had placed a credit hold on JHS and refuse services. These services were emergency services, where my client went above and beyond in order to service JHS on an emergency basis, knowing full well that other vendors refused to do so base on non-payment by JHS.


As to the findings in paragraph #3, this paragraph does not pertain to my client.

As to the findings in paragraph #4, this paragraph can not be responded to except to say that the comparison bids were for a different scope of work, and therefore, the amounts would differ due to the different work my client would have bid on.

The procurement department since 2002 has had my client's labor rate and material profit on record. As an aside, the last bid my client place on emergency work was half the rate for labor and material than the other company's submitted bids for.

Please do not hesitate to contact my office for any further questions or comments.

Very truly yours,


Harry Tempkins, Esq.
HT/jm
cc: client