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STATEMENT OF THE OFFICE OF INSPECTOR GENERAL REGARDING THE CITY OF CHICAGO'S SETTLEMENT WITH ALLIED WASTE TRANSPORTATION, INC.

Today, the City of Chicago settled civil claims with Allied Waste Transportation Inc. (Allied), a wholly-owned subsidiary of Republic Services, Inc. (Republic), related to Allied's long-running violations of Minority and Woman-owned Business Enterprise (MWBE) provisions in Allied's waste hauling contracts with the City. The IGO has committed significant resources to investigating and analyzing the MWBE program and has repeatedly found and reported persistent gaps between the program's intended goals and actual outcomes.¹ Allied's conduct illustrates many of the problems that have hampered the City's MWBE program for years, many of which the IGO detailed in its June 2011 *Follow Up Review of the MWBE Program*, which followed its May 2010 *Report of the Inspector General's Office: Review of the Minority and Women-Owned Business Enterprise Program*.² In this statement on the Allied settlement the IGO notes the MWBE program's still unresolved problems and the IGO's recommendations for how the City can address those problems.

Allied's violations were significant. Nearly all of Allied's mandated MWBE participation on City contracts was achieved through Allied's knowing use of hauling "pass-throughs." Specifically, Allied repeatedly claimed to the City that MWBE-certified hauling firms were performing on Allied's contracts, when in fact the certified hauling firms were doing almost no work other than providing documentation making it appear they were doing the hauling. Allied had arranged for the work purportedly done by the certified MWBE haulers to be done by non-certified hauling firms. Allied would then pay the certified firms, which would pass those payments on to the non-certified firms that actually performed the work – minus a cut for themselves. The MWBE certified firms were willing participants in Allied's scheme, accepting a small percentage of the subcontracts' value in return for essentially selling their certification. (That additional cost was passed on to the City and ultimately paid for by the taxpayers.) Allied placed a mid-level manager with no real experience in MWBE issues in charge of its MWBE compliance, and failed to have any sort of oversight or compliance program in place to monitor its MWBE participation and disclosures.

¹ Among other duties, the IGO is charged with the power and the responsibility "to investigate the performance of governmental ... programs ... in order to detect and prevent misconduct, inefficiency and waste within the programs and operations..." and "to promote economy, efficiency, effectiveness and integrity in the administration of the programs and operations of the city government by reviewing programs[.]" See Chicago Mun. Ord. 2-56-030(b) & (c).

² Reports available at the links below:

<http://chicagoinspectorgeneral.org/wp-content/uploads/2011/06/IGO-Follow-Up-Review-of-the-MWBE-Program-June-9-2011.pdf>

http://chicagoinspectorgeneral.org/wp-content/uploads/2011/03/Report_MWBE-ProgramReview.pdf

Estimates of the MWBE shortfall on the nine City contracts in question exceed \$38 million. The large shortfall reflects the fact that Allied admitted it had only a small fraction of legitimate MWBE compliance on more than \$460 million in City contracts that it was awarded dating back to 2001.

Without in any way condoning the underlying conduct of Allied, the IGO applauds Republic for having voluntarily stepped forward, disclosing possible violations and reforming its operations. The IGO expects all corporations to act in a similar fashion when potential compliance and contract violations arising from contracts and business with the City of Chicago are internally detected.

While Allied's conduct was egregious, the fact that such a significant fraudulent scheme could continue for such a long period of time points to the numerous serious deficiencies in the City's administration of the MWBE program. These deficiencies have been pointed out in detail by the IGO and others on numerous occasions, including in the IGO's June 2011 and May 2010 Reports. Despite those reports, and despite the fact that since 2005, the IGO has recommended that over 20 companies be decertified and over 65 companies or individuals be debarred for issues related to the MWBE program, the City has yet to make many of the basic structural changes that the IGO recommended as necessary to the effective administration of the MWBE program.³ Conduct such as Allied's is certain to continue on other contracts by other vendors until the City comprehensively changes the way it administers the program.

Chief among the changes that must occur for this program to finally function in a legal and effective manner is **Contract Specific Goal Setting**. Rather than analyzing each industry and prospective contract to learn what MWBE percentages are realistic before goals are set, the Department of Procurement Services (DPS) routinely inserts the highest amount authorized by law. By rarely setting contract-specific goals, the City has created situations where unrealistically high goals are applied to some contracts. The IGO has repeatedly recommended that DPS (1) determine what subcontracting opportunities exist on the contract, (2) verify how much MWBE capacity actually exists in those areas, and (3) tailor the MWBE participation goal to those determinations.

A second systemic flaw in the MWBE program is the **Lack of Coordination Between Certification and Contract Compliance**. The hauling companies co-opted by Allied all met the requirements to be certified as MWBEs. However, none had anywhere near the capacity to actually perform at the level claimed by Allied – a fact that could easily be identified through comparison of the City's certification records with Allied's claimed MWBE participation. In the IGO's experience, such cross-referencing is not done.

An example specific to Allied's City contracts is Brunt Brothers Transfer, Inc. (Brunt Bros.), owned by Jesse Brunt. Brunt was recently indicted on federal fraud charges related to a MBE fraud on a different City contract. From 2007-2009, Allied claimed over \$9 million worth of MBE participation for Brunt Bros., approximately 20-25 trucks a day. Yet, Brunt Bros. owned at most five trucks that could be used on Allied's contract, a fact that was known to the City because it was included in Brunt Bros.'s application to be MBE-certified.

³ IGO investigations have also led to five federal criminal prosecutions involving MWBE fraud. See *United States v. Ritter* (09-CR-00376); *United States v. Azteca Supply Co.* (10-CR-00080); *United States v. Brunt* (11-00017); *United States v. Moore* (11-CR-00313); and *United States v. Potter* (11-CR-00316).

A third deficiency highlighted by this settlement is the **Lack of Effective MWBE Compliance Monitoring**. Traditionally, the City has not performed field audits to determine if claimed MWBE participation was actually occurring on the job site. In Allied's case, an observer would have noticed that almost none of the trucks leaving Allied's transfer stations were from the MWBE companies for which Allied was claiming credit. In the press release announcing the settlement, DPS states that it now conducts unannounced site visits to ensure MWBE compliance. This is a positive and necessary step if the City commits sufficient resources to staff, manage and follow-up on the field audits. The IGO intends to evaluate the field audit program later in 2012 and will publically release its findings.

The City primarily monitors MWBE compliance by requiring contractors to submit documentation detailing the amount paid to MWBE-certified firms on each contract and then having the participating MWBE subcontractors verify that they have received those payments. Last year, the City implemented an on-line program called C2 to enable the electronic reporting of this information, which is highlighted in the City's press release announcing this settlement. While C2 is a useful program and a significant step forward for the City, Allied's scheme demonstrates the major deficiency in C2. C2 would not have uncovered Allied's fraud because it relies on the honesty of Allied's MWBE subcontractors, all of which were participating in the fraud. Not just in this case, but in various pass-throughs that the IGO has investigated over the last several years, the MWBE-certified firms have been willing participants and reported to the City the amount they were paid by the prime contractor without reporting the amount they immediately passed through to non-certified firms. C2 will not change that.

A final problem is the **City's Failure to Pursue and Collect Damages for MWBE Shortfalls**. With minor exceptions, the City has not pursued contract and ordinance damages against City vendors who fail to meet MWBE participation requirements. The settlement announced today is a meaningful step in redressing this critical component of effective enforcement, but only if damages against abusers of the program are pursued proactively, systemwide, and not merely in the instance of a corporate actor who self-reported and sought a resolution that included damages.

The IGO has repeatedly sought an explanation as to why the City does not pursue the contract damages to which it is entitled, particularly in this era of strained City budgets and cuts to core City functions. DPS, as well as a number of large infrastructure departments, have told the IGO that they collect information on MWBE shortfalls as part of the contract close-out process and pass that information along to the Law Department (Law). However, according to the departments contacted by the IGO, Law advises those departments against pursuing damages, and has not pursued damages itself. Under a prior administration, Law denied IGO requests relating to advice it provided to DPS not to collect damages, citing attorney-client privilege.⁴

In its May 2010 Report, the IGO concluded that there is no evidence that Law has ever pursued MWBE damages. After our report was released, at least one newspaper reported that the Corporation Counsel had taken exception with our findings regarding damages and stated that in fact, the City had collected

⁴ The IGO does not believe that the City can assert Attorney-Client privilege against IGO requests and has sued the Corporation Counsel for doing so in another investigation. That litigation is presently pending before the Illinois Supreme Court.

millions in damages from front companies.⁵ As detailed in the June 2011 Report, the IGO requested from Law any and all records showing any such settlements. In response, Law provided settlement agreements related to ten TIF-funded Redevelopment Agreements (RDAs), one of which had been cancelled. The other nine agreements showed that the City had settled \$1.197 million in claims related to not just MWBE but also Equal Employment Opportunity and Chicago Resident Ordinance provisions. Even crediting the entire amount of the settlements to MWBE damages (which the agreements themselves do not make clear), \$1.197 million is several orders of magnitude below the actual damages the City has suffered related to MWBE fraud. Moreover, none of the settlements related to core City contracts, only to RDAs.

In the IGO's experience, the vast majority of City vendors know that the City will not pursue MWBE damages. As a result, the only real consequence for vendors who defraud the City of monies intended for legitimate MWBEs is investigation by the IGO and possible decertification, debarment or prosecution. While the IGO has committed considerable resources to the MWBE program, even our most aggressive efforts can only detect a small fraction of the overall fraud. The City's recovery in this instance is a result of Republic self-reporting the violations and offering to pay some portion of the City's damages, not because the City pursued damages. As part of reforming the MWBE program, there must be consequences for those vendors who fail, without justification, to achieve the promised MWBE compliance. Therefore, the City must be willing to aggressively pursue damages where appropriate.

With today's settlement, the City and an important corporate vendor have demonstrated a path forward toward the still-needed comprehensive reform of the MWBE program. The effectiveness of the program-related measures announced today and the vigor with which they are implemented will be evaluated through a review and assessment that this office will make the subject of a future public report.

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⁵ See Fran Spielman, "Minorities Missed Out on \$19 Million in City Contracts in 08: Audit," *Chicago Sun-Times*, May 20, 2010.