

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE INSPECTOR GENERAL**

**AUDIT OF
PROCUREMENT ACTIVITIES
OFFICE OF
CONTRACTING AND PROCUREMENT**

**CHARLES C. MADDOX, ESQ.
INSPECTOR GENERAL**

OIG-20-99PO

July 27, 2000

July 27, 2000

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Dear Messrs. Branch and Vance, Dr. Walks, and Mesdames Hotaling and Graham:

Enclosed is our final report summarizing the results of the Office of the Inspector General (OIG) Audit of District of Columbia Procurement Activities (OIG-20-99PO).

Specifically, our audit disclosed that the Office of Contracting and Procurement (OCP) had not complied with the Procurement Practices Act of 1985. OCP did not establish a fully-functioning, comprehensive management information system although it (and the former Department of Administrative Services) spent at least \$14 million in various attempts. OCP awarded over \$50 million in contracts that were not legally sufficient, did not seek price competition for these contracts, and, possibly, could have saved at least \$750,000 with price competition. For these same contracts, advance payments were made to contractors that should not have been made, interest of about \$100,000 was not collected on the advances, and the District will most likely lose approximately \$1,000,000 on unearned advances for which it will receive neither reimbursement nor deliverables.

Additionally, District of Columbia Public Schools (DCPS) officials paid \$500,000 more over a three-year period for a trash collection contract than it would have paid under a similar

citywide contract with the same vendor. Further, provisions in the contract that would have reduced costs to the District due to school closings and recycling efforts were not exercised. The audit also revealed that improvements were needed over processing contract modifications, complying with small purchase procedures, and monitoring of various contracting actions including the receipt of deliverables.

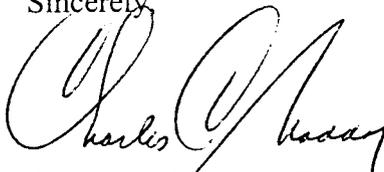
Factors causing these conditions include noncompliance with directives, internal control weaknesses, a need to train personnel, and a lack of management continuity. For example, over the last 14 years, the OCP turned over its top executives at least seven times. The last change occurred during the time of our audit fieldwork. Accordingly, this report contains recommendations that, collectively, represent actions considered necessary to correct the noted deficiencies. Specific recommendations were addressed to OCP, DCPS, and the Department of Human Services (DHS).

OCP's comments (Exhibit A) to the draft report are generally responsive to the intent of the recommendations. However, DCPS and DHS did not respond to the recommendations specifically addressed to them. Therefore, we consider these recommendations to be unresolved. Additionally, the D.C. Financial Responsibility and Management Assistance Authority (DCFRA) provided comments to the draft report. The full text of the responses for both OCP and the DCFRA are included at Exhibit A and Exhibit B, respectively.

Generally, audit recommendations should be resolved within six months of the date of the report. Accordingly, the DCPS should provide responses to recommendations 5, 9, and 11, and DHS should provide responses to recommendations 3 and 12. The responses should be provided as soon as possible so that we can include them as part of the permanent record.

We appreciate the cooperation and courtesies extended to our staff during the audit. If you have any questions, please feel free to call me at (202) 727-2540, or John N. Balakos, Deputy Inspector General for Operations and Administration, at (202) 727-8279.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles C. Maddox". The signature is stylized and cursive.

Charles C. Maddox, Esq.
Inspector General

Enclosure

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EXECUTIVE DIGEST

OVERVIEW

This report summarizes the results of the audit by the Office of the Inspector General (OIG) of procurement activities carried out by the Government of the District of Columbia. The audit was conducted in accordance with provisions of the Procurement Practices Act of 1985 (PPA).

CONCLUSIONS

Internal control weaknesses and instances of noncompliance with directives applicable to the areas audited substantially impaired the efficiency and effectiveness of procurement operations. This report contains twelve findings that include the details supporting the conditions we observed and documented. We believe improvements by management are needed to: implement a procurement management information system, ensure that legally deficient contracts are not executed, ensure that advance contract payments are appropriate, obtain the most fair and reasonable price for contract services, implement contract provisions designed to reduce costs, process timely contract modifications, and comply with small purchase procedures.

CORRECTIVE ACTIONS

We addressed recommendations to the Director, OCP, the Superintendent, District of Columbia Public Schools (DCPS), and the Director, Department of Human Services (DHS), that represent actions considered necessary to address the concerns described above. The recommendations, in part, center on:

- deploying a comprehensive procurement management information system as expeditiously as possible after consultation with the Office of the Chief Technology Officer;
- including a certification of legal sufficiency from the Office of the Corporation Counsel before forwarding contracts over \$1,000,000 to other oversight entities;
- ensuring contract personnel are knowledgeable on procurement regulations;
- determining outstanding advance payments, collecting excessive amounts, and collecting interest due on advance payments;
- executing contract provisions designed to reduce contract costs;

EXECUTIVE DIGEST

- analyzing contractor billings to determine whether payments were made for services not provided;
- processing contract modifications properly and timely; and
- monitoring of contractor performance.

OCP's responses to our draft report were generally adequate to correct the conditions noted. However, DCPS and DHS did not respond to the recommendations specifically addressed to them. Therefore, the recommendations remain unresolved.

Additionally, the D.C. Financial Responsibility and Management Assistance Authority (DCFRA) provided comments to a draft of this report.

The full text of the comments from both OCP and the DCFRA are included at Exhibits A and B, respectively.

INTRODUCTION

BACKGROUND

The Procurement Practices Act of 1985, D.C. Law 6-85, effective February 21, 1986 (D.C. Code §§ 1-1181 – 1-1192), as amended by the Procurement Reform Amendment Act of 1996, D.C. Law 11-259, effective April 12, 1997, governs the procurement and contracting activities of agencies subordinate to the Mayor, independent agencies, boards and commissions. The act excludes the Council of the District of Columbia, District of Columbia courts, and the District of Columbia Financial Responsibility and Management Assistance Authority (DCFRA). D.C. Code § 1-1182.8(a)(3)(E) requires the Office of the Inspector General (OIG) to conduct annually an operational audit of all procurement activities carried out pursuant to the act. Section 1-1182.8(d)(1) requires the OIG to compile at least once every fiscal year a report setting forth the scope of the audit and a summary of all findings and determinations. The report is to be submitted to the DCFRA or during a non-control year to the Mayor and the Council.

The Procurement Reform Act of 1996 reorganized procurement in the District by establishing the Office of Contracting and Procurement (OCP) to centralize procurement authority for the District under the Director, OCP. D.C. Code §1-1182.7 requires the transfer of employees performing procurement functions in agencies, boards, and commissions falling under this act to the OCP. Furthermore, part (c) of this section provides that:

On the 60th day following April 12, 1997, District agencies, boards, and commissions shall cease to have procurement authority except as otherwise provided by this act, including through delegation by the Director.

Mission and Structure of OCP

The mission of the OCP, as stated in the District's Fiscal Year (FY) 1999 operating budget manual, is to "surprise and delight its customers with breakthrough improvement in the cost, quality and timeliness of delivery of goods and services by the District's supplier base." The proposed FY 99 budget was \$18,804,000 and included the transfer of 213 full time equivalent positions from other District agencies to complete the centralization of procurement functions.

INTRODUCTION

The OCP represents a change from the agency-based or decentralized procurement system which existed prior to the Procurement Reform Act. The reform resulted from recommendations by the City Council, DCFRA, other District officials, and various studies “to centralize procurement under the strong leadership of the CPO [Chief Procurement Officer] in order to assure District-wide standards and accountability for all procurement actions from conception to completion.”

At the time of our audit, the management function of OCP was divided into three customer-driven procurement divisions: Health and Human Services; Public Education and Safety; and Public Management. Each division was responsible for designing new contracting mechanisms tailored to its customer base, which is different for each division. A June 2000 organization chart showed four divisions: Human Services and Education; Government Operations; Economic Development; and Public Safety and Justice.

OCP staffs and directs the activities of agency-based service bureaus which are responsible for unique mission-critical procurement transactions and small purchases. Agency-based service bureaus are operationally accountable to agency directors and functionally accountable to the Director, OCP.

The District spends between \$750 million and \$1 billion each year to buy a wide range of goods and services. Over the last 14 years the OCP had at least seven different top executives. During the time of our audit fieldwork, OCP’s top executive changed.

OBJECTIVES

The objectives of our audit were to determine whether: (1) OCP was in compliance with procurement regulations; (2) procurement processes were being carried out efficiently and effectively; and (3) contract monitoring was adequate.

INTRODUCTION

SCOPE AND METHODOLOGY

Our review covered procurement actions executed mainly between April 1998 and March 1999 for four agencies: the Department of Public Works (DPW); the Department of Health (DOH); DHS; and DCPS. We also reviewed operations of the headquarters of OCP. In a few cases, when necessary, we reviewed actions outside of this period. The agencies were chosen to get a cross-section of various functions of the District government. Individual transactions were randomly and judgmentally selected.

We accomplished our audit objectives as follows: (1) interviews with OCP management, administration, and staff to gain a general understanding and overview of the procurement function and operations; (2) interviews with the agencies' program personnel and other District officials; (3) review of procurement processes and systems; (4) sampling and testing procurement actions; and (5) review of contract monitoring procedures.

We conducted our audit in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

FINDING 1: A COMPREHENSIVE PROCUREMENT MANAGEMENT INFORMATION SYSTEM HAS NOT BEEN DEPLOYED

SYNOPSIS

For nearly 13 years, the OCP has failed to comply with the requirement set forth in the Procurement Practices Act of 1985 to develop and implement a comprehensive procurement management information system by February 21, 1987. As a result, OCP can not effectively: (1) produce accurate and timely procurement data; (2) track procurement requests from the requisition stage to completed procurement action; nor (3) meet other management requirements related to forecasting material needs, inventory control, and warehousing. Also, OCP has expended at least \$14.4 million developing systems that were never fully completed or deployed. Factors causing these conditions include a lack of management continuity and a need to establish accountability and standardization for system development projects. However, we noted that current management has initiated action to assess information needs so that a comprehensive management information system can be implemented.

AUDIT RESULTS

Section 202 of the Procurement Practices Act of 1985, as codified in D.C. Code § 1-1182.2(c), provides, in part, that:

- (1) Within 12 months of February 21, 1986, the Director shall develop and establish a comprehensive computer-based material management information system for collecting, organizing, disseminating, maintaining, and reporting procurement data which takes into account the needs of all branches of the District government, and the best interest of the District government.
- (2) The system shall be designed to permit measuring and assessing the impact of procurement activities on the economy of the District government, and the extent to which local, women-owned, and minority business concerns are sharing in District government contracts.
- (3) The system shall: (a) serve for policy and management control purposes, such as forecasting material requirements, inventory control, warehousing, accounting and purchasing, (b) reflect the state of the art in information systems technology, and (c) have the ability to accommodate future technical enhancements, including the use of bar coding.

FINDINGS AND RECOMMENDATIONS

Sequence of Events (1987-1996)

The District has been unsuccessful in several attempts to install an automated procurement system that meets the requirements specified in the D.C. Code. We reported this condition in previous annual procurement audit reports. The Department of Administrative Services (DAS) (the forerunner of OCP) initially hired a contractor prior to FY 1987 to develop and implement a document preparation and procurement tracking system. This initial effort was abandoned during FY 1987 due to numerous software and hardware problems. In FY 1988, DAS began work on a system known as the Procurement Management Information System (PMIS). PMIS did not capture data on all procurement actions, did not have on-line access, and was never fully developed.

In 1992, DAS began developing the District of Columbia Automated Procurement System (DCAPS). DCAPS was supposed to provide on-line access to vendor and commodity information and capture the purchasing cycle from requisition to final receipt and acceptance. This project was also abandoned.

In FY 1993, DAS employed another contractor to develop an automated system. This system development project was not implemented because of major modifications and changes needed to ensure that the system met the requirements of the District's procurement regulations and provided for centralized control of procurement data. Also, the system would not interface with the District's financial management system.

In September 1996, the DAS again expended funds on a centralized procurement test pilot system before abandoning this project. Total funds expended through FY 1996 totaled about \$600,000.

Sequence of Events (1997-1999)

During the period August 1998 through August 1999, the OCP expended about \$13,800,000 for software, hardware, and consulting services on the development and implementation of a project termed the Integrated Procurement Management Value Stream.¹ The procurement system, which OCP was attempting to implement as part of the project, is known as PRISM.² The OCP originally anticipated that PRISM would be

¹ OCP project for the reengineering of the procurement process and implementation of a centralized and automated procurement management system.

² PRISM is an automated commercial off-the-shelf procurement system that tracks and maintains small purchases and contracts records. PRISM has 3 modules: 1) OCP Express (small purchases), 2) planning, and 3) contracts. PRISM will allow District agencies to interface and automate all procurement activities from the requisition to the receipt of goods or services.

FINDINGS AND RECOMMENDATIONS

implemented by October 1999. However, the newly appointed Director of OCP halted the deployment of PRISM until an assessment by OCP of PRISM could be conducted.

Until PRISM or another procurement management information system becomes fully operational, the Procurement Action Tracking System³ (PATS) is the official system of record for tracking procurements greater than \$25,000. From April 1998 through December 1998, OCP used Microsoft Excel (Excel) spreadsheets to track procurements and contracts. An OCP employee converted the Excel spreadsheets into a single-table ACCESS database that tracked the contracts and procurements. In December 1998, the OCP hired a contractor to upgrade the single-table ACCESS database, resulting in the PATS.

Although PATS has substantially more functionality and reporting capabilities than the earlier ACCESS database procurement tracking system, it does not meet the requirements prescribed by D.C. Code § 1-1182.2(c). For example, PATS is not a comprehensive management information system that allows centralized management and administration of the District's procurement function. Additionally, the information systems used by OCP's agency-based service bureaus or by independent agencies do not connect or interface with PATS. PATS is a tracking system utilized by OCP management and staff exclusively. For most District agencies, procurement activities are primarily a manually driven process. As such, procurement data reported by OCP differs from procurement data reported by the agencies. This condition is attributable to agencies using different applications to track procurement data. Further, the OCP can not track and report on small purchases. OCP management stated that PATS is only a temporary solution and was never intended to satisfy the legal requirements.

The District also utilizes the Advanced Purchasing and Inventory Control System⁴ (ADPICS) to conduct procurements. However, PRISM and ADPICS do not interface with one another. An interface, costing more than \$400,000 was installed but it does not work, according to District officials. The Office of the Chief Financial Officer (OCFO) is responsible for ADPICS.

The City Council's Committee on Government Operations has expressed concern regarding the lack of a single, procurement management information system and the duplication of effort involved in maintaining two systems.

³ An ACCESS-based procurement system used by OCP to track the District's contracts and procurements. PATS is not a centralized procurement system.

⁴ Procurement module of SOAR, the District's Financial Management System.

FINDINGS AND RECOMMENDATIONS

Implications

Because OCP has not established a centralized automated procurement management system, the following exist:

- The District is using two distinctly different procurement systems to make procurements. PRISM is an OCP-supported procurement package. ADPICS, which is supported by the OCFO, is the procurement module of the new District financial management system - the System of Accounting and Reporting (SOAR). The two systems are not integrated nor do they interface. ADPICS and SOAR are integrated; however, PRISM has had problems interfacing with SOAR. As a result, District procurement data is maintained in two entirely different systems. Reports generated must be developed with the cooperation of both systems and the responsible agencies. We believe that the District's use of two procurement systems is neither efficient nor effective.
- Agencies were using various applications to track their procurement data. OCP has not developed any standards or requirements for the agencies to use to develop agency tracking and reporting systems. Additionally, OCP has not established any requirements in defining the data elements⁵ to be captured by each agency.
- DHS and DCPS were using Excel spreadsheets to capture procurement information. DPW and DOH were using ACCESS databases. Some of the procurement tracking systems captured data elements from the contract file. Other systems captured information contained on the purchase notification form. One Agency Chief Contracting Officer (ACCO) stated that his agency went approximately six months with no tracking system.
- PATS procurement data did not reconcile with the individual agency's procurement data. The process employed by OCP and agencies to coordinate the recording of procurements has resulted in a disparity in the information maintained by OCP and the agencies. We compared OCP procurement reports generated from PATS with DHS, DPW, DCPS, and DOH procurement reports generated from the agency's respective tracking systems for the period of April 1, 1998 to May 31, 1999. Our review determined that none of the reports provided by the agencies reconciled with contract procurement reports generated by OCP.
- OCP does not require agency-based service bureaus to reconcile or validate contract information contained in PATS. One DOH representative stated that when he was receiving reports from OCP, the reports "were not even close to reconciling." The

⁵ Information or data that has been determined as relevant and should be captured.

FINDINGS AND RECOMMENDATIONS

DOH representative further stated that he had not received an OCP procurement report since the fall of 1998. OCP management said no determination has been made on how the information will be validated before it is converted into PRISM. The opportunity to convert erroneous information into PRISM is greater because the official system of procurement record (PATS) has not been reconciled or validated with agencies' procurement records.

- The OCP can not track agency small purchases, i.e., purchases less than \$25,000. Each agency has its own small purchase authority and is responsible for maintaining its own small purchase records. OCP Express, a module of PRISM, allows small purchase requisitioning and tracking. However, OCP Express was not functioning District-wide. During our review, OCP reported that OCP Express had been implemented at 18 agencies. The number of procurement transactions processed by OCP Express ranged from 1442 by DCPS to 4 by the District of Columbia Office of Personnel (DCOP). The DCPS also executed approximately 2000 procurement actions using ADPICS. As a result, OCP can not assess the impact of District-wide small purchases, provide central administration and management of small purchases, and forecast service or material requirements for small purchases, which would thereby allow the District to take advantage of bulk buying.
- The contracting process is primarily a manually-driven process. ACCOs can not enter procurement data into PATS. DHS, DOH, and the DPW submitted small purchase requests and contracts, primarily, manually for approval. PATS does not allow for automated initiation and approval of contracts. OCP planners work with agency ACCOs to coordinate procurement activities and to facilitate data entry of an agency's procurement information into PATS.
- ACCOs and agency representatives informed us that OCP Express usage was problematic. The interface with SOAR, which alleviates many manual processes and automates the accounting and finance functions, was not allowing agencies to check for the pre-encumbrance of funds. DOH, DCPS, and DPW representatives stated that when procurement transactions were entered into OCP Express, the transactions either came back without the funds pre-encumbered or the transactions were completely lost. DCPS suspended its usage of OCP Express because OCP Express was losing and not pre-encumbering procurement transactions, resulting in critical delays in obtaining goods, services, and commodities for the schools. DOH and DCPS representatives said OCP Express was extremely slow and was not efficient to use for procurements.

FINDINGS AND RECOMMENDATIONS

RECOMMENDATION 1

We recommended that the Director, OCP, take action to ensure that a comprehensive procurement management system is implemented that meets the requirements of the Procurement Practices Act. Additionally, consultation with the Office of the Chief Technology Office (OCTO) should take place to ascertain that the system interfaces and is compatible with other District government management information systems and satisfies recognized system development documentation and implementation practices such as those contained in COBIT.⁶

OCP RESPONSE

OCP stated in its response that it has engaged a contractor to assess OCP Express, including the architectural integrity of OCP Express, its extensibility, its scalability, and the adequacy of the interface with SOAR. OCP is also consulting with OCTO. Based on the results of the contractor's effort and the consultation with OCTO, OCP will either re-initiate deployment of OCP Express as is; modify OCP Express to be compliant with the requirements of the Procurement Practices Act (PPA) and deploy the system throughout the District government; or seek an alternative. This decision should be made by September 1, 2000, and a plan should be developed by September 30, 2000.

OIG COMMENT

The actions taken and planned by OCP should correct the conditions noted.

⁶ COBIT is a group of generally applicable and accepted standards for good practices relative to Information Technology (IT) controls.

FINDINGS AND RECOMMENDATIONS

FINDING 2: CONTRACTS DEEMED NOT LEGALLY SUFFICIENT WERE EXECUTED

SYNOPSIS

OCP executed six contracts, totaling nearly \$50 million, which the Office of the Corporation Counsel (OCC) had disapproved for being legally insufficient. As a result, the OCP violated procurement regulations, did not necessarily receive the most economical price for the District, and put the District at risk for adverse legal action. Two factors that contributed to this condition were: (1) OCP's desire to award the contracts for fear of losing federal funds, and (2) insufficient management oversight.

AUDIT RESULTS

District of Columbia Municipal Regulations (DCMR), Title 27, § 8003.1 requires a determination of legal sufficiency by the OCC for proposed contracts over \$1,000,000. We examined two contracts, each over \$1,000,000, which had been awarded for the DHS's Temporary Assistance to Needy Families (TANF) program even though the OCC had disapproved the contracts for legal insufficiency. In total, OCP awarded six TANF contracts that had been disapproved by the OCC. The contracts were:

	Contract Number	Contract Amount
1	8083-AH-NS-4-WM	\$33,000,000
2	8083-AB-NS-4-WM	\$2,200,000
3	8083-AD-NS-4-WM	\$4,400,000
4	8083-AE-NS-4-WM	\$6,600,000
5	8083-AA-NS-4-WM	\$2,200,000
6	8083-AF-NS-4-WM	\$1,584,000

OCC disapproved the contracts due to: (1) the lack of price competition; (2) the lack of an evaluation factor for price; (3) the type of contract; (4) the method of making multiple awards; (5) provisions for advance payments; (6) the determination of the competitive range; (7) the term of the contracts; and (8) inadequate contract file documentation. According to OCC and OCP officials, the former Chief Procurement Officer made a business decision to award the contracts in order not to risk having the District lose millions in federal funds.

FINDINGS AND RECOMMENDATIONS

The contracts were awarded as a result of a solicitation which had been issued for competitive sealed proposals (CSP) to provide work and training related services for District residents in the TANF program. D.C. Code § 1-1183.4 requires CSPs to provide for price negotiation, except where the price is fixed by law. DCMR, Title 27, §1614.1 requires that contractor selection be based on price as well as other evaluation factors. Because OCP did not include price as an evaluation factor, the OCC wrote that the solicitation was rendered “fatally defective.”

OCP priced each contract based on the following: (1) a monetary ceiling for service of \$2,000 per customer; (2) the contractor’s maximum capacity; and (3) a monthly stipend or cost reimbursement component of \$200 per month per customer. The \$2,000 ceiling for service provided for each customer was recommended by a DHS consultant. For example, if a contractor had a capacity of 7,500 customers, the contract cost was calculated at \$15,000,000 (7,500 x \$2,000) plus \$18,000,000 (7,500 customers x \$200 per customer per month x 12 months), or a total of \$33,000,000.

However, by giving each contractor the same fee per customer, OCP does not know whether the contractors would have provided the services at less cost to the District if price had been a competitive factor, as required. For example, a contractor with a capacity to handle 7,500 customers could have incurred a lower cost per customer than a contractor with less capacity (economy of scale). For example, if the contractor’s fees had been \$1,900 per customer, instead of \$2,000, OCP could have awarded the contract for \$750,000 less.

The OCC stated that OCP specified the wrong type of contract in the solicitation and the contracts. The contracts had been designated as requirements contracts. However, because OCP intended to make multiple awards, it could not specify the contracts as requirements contracts. Also, the OCP had set forth different terms of the contracts. In one section, the term of the contracts was stated to be 12 months from the date of award and in another section, 13 months from the date of award. The OCP, in response to OCC’s concerns, amended the contract type to an indefinite quantity contract.

With regard to multiple awards, OCC faulted OCP for not specifying adequately how multiple awards would be made or the number of awards that would be made. Concerning competitive range determination, again the OCC stated that OCP did not cite adequate factors or provide adequate documentation as to its determination of the competitive range and the reasons five firms were not included. Contract file documentation was inadequate because Equal Employment Opportunity (EEO) approval and price analysis were not available for review by OCC.

FINDINGS AND RECOMMENDATIONS

OCC's concerns regarding advance payments resulted from the inclusion of a provision for advance payments in the contracts even though the solicitation had no such provision. OCC stated that this was a significant change from the solicitation. If advances were to be allowed, they should have been included in the solicitation in order that all potential offerors knew of the right to an advance.

The Mayor, City Council, and DCFRA also have oversight responsibility for contracts over \$1,000,000. These offices must review and approve such contracts before they are executed. Even though the TANF contracts were not legally sufficient, these offices still approved the contracts. We contacted officials from these agencies to determine why the legally deficient contracts were approved.

In each case, the officials told us that it was not the responsibility of their offices to determine legal sufficiency but that of the OCC. (The DCFRA clarified its position in this regard in the attached comments, Exhibit B.) The officials assumed that the contracts had been approved by OCC before being forwarded to their offices. A legal official for the City Council stated that the City Council's review of contracts is mostly of a political nature involving contracts or contractors that may be controversial in nature. Each TANF contract was "deemed approved by virtue of the Council having taken no action to disapprove it."

A contracting official for the DCFRA stated that their review is mostly financial and programmatic. They determine whether or not the funds are available and whether or not the contract fits within the programs of the agency.

Before issuing definitized contracts, OCP issued letter contracts. The letter contracts were executed prior to the current mayoral administration. An official in the current administration stated that it is the responsibility of the OCC to review for legal sufficiency.

However, officials in the DCFRA and current administration knew that the contracts were not legally sufficient. An OCC official informed us that representatives from the Office of the Mayor, the DCFRA, OCP, and OCC met in January 1999 to discuss the TANF contracts. However, the deficiencies regarding the contracts were not resolved to his knowledge. He further stated that he was surprised to hear that the contracts had been awarded. Letter contracts were awarded in October 1998. The definitized contracts were awarded in February 1999.

The OCC official added that prudent contracting practices dictate that contracts not legally sufficient not be awarded due to legal ramifications. He further stated that the Contract Appeals Board has found contracts which violate the Procurement Practices

FINDINGS AND RECOMMENDATIONS

Act to be void. The OCC, in its review of contracts for legal sufficiency, tries to determine whether the contracts are defensible if protests are filed or whether the contracts will hold up in court.

The legal review that OCC performs prior to executing a contract is prudent and intended to identify problems or potential problems the District may encounter for awarding legally flawed contracts. However, this process would be of little value unless the recommendations made by OCC are acted upon.

RECOMMENDATION 2

We recommended that the Director, OCP, take the following action to ensure that contracts over \$1,000,000 are approved for legal sufficiency before being awarded: include a certification as to legal sufficiency from the OCC with the transmittal of the contracts to all reviewing/oversight entities with an acknowledgement space for the reviewing/oversight entities.

OCP RESPONSE

The OCP concurred with the recommendation, stating that this was already standard practice, and that they would strengthen the procedure by having a single point of contact within OCP to process contracts over \$1 million. The point of contact would be responsible for ensuring that all necessary approvals are obtained.

OIG COMMENT

The OCP actions taken and planned should correct the noted condition.

DCFRA RESPONSE

The DCFRA stated in its response that the DCFRA does review contracts for legal sufficiency. The DCFRA further stated that its deputy general counsel recommended that the contracts be approved to avoid losing federal funds. The DCFRA added that the Deputy General Counsel recommended that the OCP should request that the City Council exempt the contracts from the PPA and prepare amendments to the contracts providing for advance payment concerns raised by OCC.

The DCFRA also stated that its contracts manager does not recall speaking to anyone from the OIG about the contracts.

FINDINGS AND RECOMMENDATIONS

OIG COMMENT

The OIG reviewed a February 3, 1999, memorandum in which the DCFRA Deputy General Counsel commented about the serious concerns about the TANF contracts raised by the OCC. The memorandum stated that the Office of the Mayor convened a meeting on February 1, 1999, to discuss the contracts where it was agreed that the CPO would prepare a memorandum addressing the issues and concerns raised by OCC.

The DCFRA memorandum further stated that the CPO's memorandum was reviewed by various stakeholders and that it was agreed to:

- (1) immediately request that the Council exempt the contracts from the Procurement Practices Act of 1985, as amended, and (2) prepare an amendment to the contracts providing for repayment of advance payments.

However, the CPO never sought and received from the City Council an exemption for these contracts from the PPA. Furthermore, the CPO, in his memorandum to the DCFRA, characterized the advance payments as progress payments.⁷ The OIG never saw any documents in the contract files in which the advance payments were referred to as progress payments. Also, the agency chief contracting officer assigned to DHS never represented the advances as progress payments when discussing them with the OIG.

The OCP did execute an amendment to the contracts regarding the District's rights to recoup unearned advance payments, but this was not done until nearly two months after the DCFRA had approved the contracts and the definitized contracts had been signed. At the time the amendment was added, one contractor, who had received \$1 million in advance payments, had earned less than three percent of the advance. However, OCP/DHS did not act to collect the excessive advance. The contractor later filed for bankruptcy, having earned less than 13 percent of the advance. (See Finding 3.)

Also, this amendment did not address the issue of collecting interest on the advances. (Again, see Finding 3.) One contractor, a multi-billion dollar corporation, received a \$1 million advance payment. This was tantamount to giving the corporation an interest-free, million-dollar loan.

⁷ Progress payments are partial payments of the total contract price, based on the percentage of work completed over a specified period of time.

FINDINGS AND RECOMMENDATIONS

Finally, the February 4, 1999, document which DCFRA prepared approving the contracts did not state that the contracts were approved conditionally upon being exempted by the Council from the PPA and upon an amendment being made regarding advance payments. The approving document read:

...the District of Columbia Financial Responsibility and Management Assistance Authority (“Authority”) has reviewed the contracts on the attached list. The Authority has found them to be consistent with the applicable financial plan and budget, and therefore approves their award.

(Note: The DCFRA in its response to the OIG draft report stated that the contracting manager at DCFRA did not recall speaking to OIG about the TANF contracts. The OIG supplied DCFRA with the official’s name as well as the dates of the relevant conversations.)

FINDINGS AND RECOMMENDATIONS

FINDING 3: ADVANCE PAYMENTS IMPROPERLY PROVIDED

SYNOPSIS

OCP improperly provided advance payments, totaling nearly \$4 million, to contractors. As a result: (1) OCP violated procurement regulations; (2) the District may lose at least \$1,000,000 in advance payments which contractors did not earn and may not be able to pay back; and (3) the District has not collected over \$100,000 in interest on unearned advance payment balances. These problems were caused by management's failure to emphasize compliance with procurement regulations and the need to train or apprise personnel concerning the governing directives.

AUDIT RESULTS

An advance payment is a payment that is made prior to the performance of services or delivery of supplies. D.C. Code § 1-1150 provides that the OCP may make advance payments under contracts for services or property "only upon adequate security and a determination by the Director of the Office of Contracting and Procurement, upon recommendation by the Commission, that to do so would be in the public interest." (Commission refers to the Minority Business Opportunity Commission which is now the Department of Human Rights and Local Business Development (DHRLBD)). The OCP Procurement Procedures Manual, § 15.12 states: "Contract financing, in the form of an advanced payment, will only be considered by the District to assist a contractor that is a certified minority business enterprise...."

Sections 3205 through 3208 of DCMR, Title 27, also regulate advance payments. Section 3205.6 provides that the contracting officer shall closely monitor the performance and financial condition of a contractor receiving advance payments. Section 3205.8 requires advance payments to be deposited into a special bank account. Section 3206.1 requires the contracting officer to charge interest at the prime rate on the daily, unliquidated balance of all advance payments. Section 3207.2 requires the contractor to submit an advance payment request.

The OCP made the following advance payments to TANF contractors even though it did not: (1) obtain adequate security; (2) determine that the advances were in the best interest of the District; (3) receive recommendations from the DHRLBD; (4) establish special bank accounts in which to deposit the payments; (5) arrange for interest to be charged on the unliquidated balances of the advance payments; or (6) require contractors to submit advance payment requests in accordance with the regulations.

FINDINGS AND RECOMMENDATIONS

SCHEDULE OF ADVANCE PAYMENTS

Contract Number	Amount
8083-AA-NS-4-WM	\$366,666
8083-AB-NS-4-WM	\$366,666
8083-AD-NS-4-WM	\$733,334
8083-AE-NS-4-WM	\$999,999
8083-AF-NS-4-WM	\$264,000
8083-AH-NS-4-WM	\$999,999
8083-AC-NS-4-WM	\$55,000
8083-AG-NS-4-WM	\$146,666

According to DCMR, Title 27, § 3207, an eligible contractor, who wants an advance, must submit to the contracting officer a request for advance payment which contains the following information: (1) a cash flow forecast; (2) the proposed amount of advance payments; (3) the name and address of the bank for the special depository account; (4) a description of efforts to obtain private financing; (5) the contractor's financial condition and need; (6) the contractor's ability to perform the contract without loss to the District; and (7) financial safeguards that will be used to protect the District's interests.

The contractors did not submit applications for advance payments containing the above information to the contracting officer. Instead, the Director, DHS, sent letters to the contractors asking them simply to submit requests for advance payments to the Administrator, Income Maintenance Administration, DHS. The letter stated that the advance payment would be one-twelfth of the contract price. A second request, in the same amount, could be made once the contracts were definitized. (Letter contracts were initially awarded.)

Furthermore, neither OCP, DHS, nor the DHS-based Office of the Chief Financial Officer could provide us with supporting documents showing approval for all of the advance payments. Seven of the contractors received two advance payments. The eighth contractor received one advance payment. The OIG was not provided with supporting documents for six advance payments totaling \$1.7 million, including the two advances totaling \$999,999 for contract #8083-AH-NS-WM. The documents which were provided indicated that the Acting Commissioner, Commission on Social Services, DHS, approved the payments.

FINDINGS AND RECOMMENDATIONS

OCP not only failed to require contractors to submit proper applications, but also erred in determining the amount of the advances. The advance payments were made based upon two months of maximum earnings of contract prices, not to exceed \$1,000,000 per contract. However, it was highly unlikely that a contractor could have achieved that level of earnings. For example, according to documents provided by DHS contract administrators, five months into the contracts, six of the contractors had earned less than 20 percent of their two-month advances, one had earned only approximately 36 percent, and the eighth about 41 percent. Furthermore, the advances were not determined based on need and cash flow analyses.

Additionally, the District should have been collecting interest on the unearned advance payment balances. We estimate the following interest should have been charged on the advance payments unliquidated balances after five months (based on a seven-percent, simple interest calculation):

INTEREST CALCULATION

Contract #	Advance Pay Date	Amount	Percent Earned	Amount Earned	Amount Unliquidated	Interest
8083-AH-NS	11/27/98	\$960,000	40.65%	\$390,240	\$569,760	\$16,618
	2/01/99	\$39,000	0%	\$0	\$39,000	\$1,138
8083-AB-NS	11/27/98	\$183,333	10.00%	\$18,333	\$165,000	\$4,813
	2/01/99	\$183,333	0%	\$0	\$183,333	\$5,347
8083-AD-NS	11/27/98	\$366,666	9.75%	\$35,750	\$330,916	\$9,652
	2/01/99	\$366,666	0%	\$0	\$366,666	\$10,694
8083-AE-NS	12/01/98	\$550,000	2.42%	\$13,310	\$536,690	\$15,653
	2/01/99	\$449,999	0%	\$0	\$449,999	\$13,125
8083-AA-NS	11/27/98	\$183,333	7.45%	\$13,658	\$169,675	\$4,949
	2/01/99	\$183,333	0%	\$0	\$183,333	\$5,347
8084-AF-NS	11/27/98	\$132,000	2.53%	\$3,340	\$128,660	\$3,753
	2/01/99	\$132,000	0%	\$0	\$132,000	\$3,850
8083-AC-NS	11/27/98	\$73,333	17.47%	\$12,811	\$60,522	\$1,765
	2/01/99	\$73,333	0%	\$0	\$73,333	\$2,139
8083-AG-NS	11/27/98	\$55,000	35.74%	\$19,657	\$35,343	\$1,031
Totals		\$3,931,329		\$507,099	\$3,424,230	\$99,874

FINDINGS AND RECOMMENDATIONS

Five months after the first advance payments were disbursed, the contractors had only earned \$507,099, leaving unearned advance payments of \$3,424,230. Nearly \$100,000 in interest on the unliquidated balance was due the District. Also, as the table indicates, DHS made second advance payments in February 1999 to seven of the contractors even though none of the contractors had earned 50 percent of the first advance payments.

For example, for contract 8083-AE-NS, DHS authorized a second advance payment of \$449,999 even though there was an unliquidated balance of \$536,690 from the first advance payment. In other words, the contractor requested a second advance payment of \$449,999 and DHS approved the request - even though the contractor had earned only \$13,310 of the initial \$550,0000 advance payment. OCP later terminated the contract and the District stands to lose nearly the entire \$999,999 advance.

The District could have mitigated its losses if it had not made the second advance, which should not have been approved, given that the first advance was excessive and had not been earned. If the District had required the contractors to set up special accounts for the advance payments as required and obtained adequate security, the District could have saved over \$1,100,00 by cutting its losses from advance payments it may not recoup and by earning interest on unliquidated balances.

As stated in a previous finding, the OCC had cited the inclusion of provisions for advance payments in the TANF contracts as one of the reasons it determined the contracts not to be legally sufficient. The OCC further noted that it was unclear whether or not the contractors had to be certified as a local, small, or disadvantaged business. One of the contractors, to whom OCP allowed for advance payments totaling \$999,999, is an international, multibillion-dollar enterprise.

The contracting officer informed us that he did not know that the DCMR regulated advance payments, covering issues such as special bank accounts, interest, application content, etc. He further stated that the decision to allow advance payments and to structure them as they were structured was made by the program administrator and the contract specialist who developed the solicitation. The District now employs none of these individuals.

FINDINGS AND RECOMMENDATIONS

RECOMMENDATION 3

We recommended that the Director, OCP:

- a. Ensure contracting personnel receive training on the regulations regarding advance payments.
- b. Include provisions for advance payments in contracts only when:
 - a contractor meets the eligibility requirements;
 - adequate security arrangements are included in the contracts;
 - a determination has been made by the Director, OCP, that to include the provisions would be in the best interest of the District;
 - the DHRLBD has recommended the advance payments;
 - the solicitation specifies advances;
 - the method for structuring advance payments is sound, reasonable and based on the cash flow needs of the contractor;
 - special bank accounts are established for the advance payments; and
 - the financial condition and performance of the contractor are adequately monitored.
- c. Determine outstanding advances for the TANF contracts and excessive amounts, if any, are returned to the District.
- d. Collect any interest due the District, based on the daily, unliquidated balances at the prime interest rates from the dates of the advances.

OCP RESPONSE

The OCP's response to Recommendation 3, parts (a) and (b) stated that OCP would re-institute the Procurement Review Committee to review advance payment requests and that it would provide training on the use of advance payments. However, OCP did not respond to parts (c) and (d) regarding outstanding excessive advances and the collection of interest. Therefore, Recommendation 3, parts (c) and (d) remain unresolved. Accordingly, we request OCP to provide comments to parts (c) and (d) of this recommendation.

OIG COMMENT

The OCP's response to Recommendation 3, parts (a) and (b) adequately addresses the conditions noted.

FINDINGS AND RECOMMENDATIONS

DHS RESPONSE

OIG notified DHS of the need to respond to this finding, but we received no response.

OIG COMMENT

DHS did not respond to Recommendation 3, parts (c) and (d); therefore, the OIG considers Recommendation 3, parts (c) and (d) unresolved.

FINDINGS AND RECOMMENDATIONS

FINDING 4: TRASH COLLECTION CONTRACT FOR DCPS CONTAINED HIGHER PRICES THAN THE CITYWIDE CONTRACT WITH THE SAME VENDOR
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SYNOPSIS

DCPS awarded a contract for trash collection services at higher prices than the prices in a citywide trash collection contract with the same vendor. As a result, DCPS paid an estimated \$586,000 more than it would have paid under the citywide contract. We could not determine nor could DCPS document or provide its rationale for not taking advantage of the more competitively priced contract. One possible cause could be a need to better apprise responsible DCPS contract officials on their responsibilities to obtain the most fair and reasonable prices for contracts entered into by the District.

AUDIT RESULTS

On March 20, 1995, DCPS competitively solicited bids for trash services (Solicitation No. 027-AA-51-0-5-MH). Only one contractor responded to the solicitation. The contractor was awarded Contract Number DCOS-C-95128-9511-XX, on May 1, 1995, for a three-year base period with two one-year options. The third year of the base period expired April 30, 1998. The base period contract price was \$3,517,254 or \$1,172,418 annually.

Contract clause 6.6, page 52, contains a price protection clause, which among other things provides:

The contractor covenants and warrants that the prices herein for all hardware, software, or services shall equal or be less than the most favored prices the contractor offers to any other customer. In the event that the Agency has reasonable cause to believe that the contractor is offering prices to any other comparably situated customer more favorable than those offered herein, the Agency may, on reasonable request make an inquiry to the contractor with regard to the verification of those most favored prices. Any such inquiry shall provide sufficient detail regarding the claim of a lower price, including, but not limited to, the source, character, system, and identity of the contractor's customer claimed to have received the better price(s). Any such inquiry may include an examination of contractor's published prices, as well as other books and records concerning the transaction(s) identified in the inquiry.

FINDINGS AND RECOMMENDATIONS

The contract price was determined based on the number of trash pick-ups at 183 school locations. The bid package listed the 183 school locations, the different sized containers at each location and the pickup schedule (once per week, three times per week or five times per week). For each sized container, the number of containers was multiplied by the number of pickups per week required for each school location and then converted to the number of annual pick-ups (multiplied by 52).

The contract is a “fixed rate” based on the price of the different container (\$20 for 4 cubic yards, \$22.50 for 6 cubic yards, and \$25.25 for 8 cubic yards) times an estimated 47,736 annual pick-ups from 183 school locations.

DCPS missed two significant opportunities to reduce the unit cost of trash collections.

- April 1995. On April 28th, the Office of Superintendent, Legal, Regulatory, and Legislative Services Branch, DCPS, conveyed its legal review of the proposed contract in a memorandum addressed to DCPS’s procurement officer. (DCPS operated independently of the District government during this time period and had its own procurement regulations.) That review provided the following comment:

A comparison of this contract with the Department of Public Works reveals that the contractor’s contract with the D.C. Department of Public Works contained lower unit prices for the same services offered to the DC Public Schools at higher prices. When DCPS inquired regarding the pricing differential, (the contractor) was unable to justify the cost difference. This was the primary objection raised by the Procurement Office in not exercising the previous solicitation. To my knowledge, (the contractor) has presented no reasonable basis to substantiate one branch of the District government paying more for the same services than another branch of the District government.

The contract file contained no response to the above legal review, and no actions were taken to reduce the cost of the contract.

FINDINGS AND RECOMMENDATIONS

- April 1998. The contract file contained a facsimile dated April 17, 1998, from DPW's Contract Support Division addressed to the DCPS Contracting Officer. The facsimile was apparently in response to a question (no documentation) raised by the DCPS's procurement division. DPW's response provided DCPS with a copy of: (1) DPW's recent modification of their trash contract and (2) DPW's contract price schedule for the trash contract. DPW's response indicated its trash contract could be modified to include DCPS.

We noted the price the contractor was charging on DPW's contract with 15 other participating District agencies for 8 cubic yard trash containers was \$23 vs the \$25.25 charged under the DCPS contract, or a difference of about 10 percent. The 5-year value of the contract was \$5,862,090. The 10 percent difference applied to the total 5-year value of the contract could have resulted in savings of about \$586,209.

There was no indication in the contract file as to why the DCPS contracting officer did not follow up on the contractor's lower unit priced contract with the DPW. In fact, a little over a month later, on May 21, 1998, DCPS accepted a \$1,172,418 modification to extend the contract at the original DCPS unit price. We could not find any justification for the contract to be continued at these prices, and the contract file did not contain the cost analysis required by DCMR, Title. 27, § 1626.1 for contract modifications in excess of \$500,000 to determine the reasonableness of the prices.

During the course of the audit, the OIG became aware that DPW's trash hauling contract was about to expire on December 31, 1999, and that a solicitation for a new contract had been issued. We brought this to the attention of OCP central management who obtained the cooperation of OCP personnel at DPW and DCPS to modify the solicitation to incorporate DCPS's trash hauling requirements.

RECOMMENDATION 4

We recommended that the Director, OCP:

- a. Effect the price protection provisions of Contract clause 6.6;
- b. Require the contractor to provide information on their most favored customer prices and to justify their affirmation that their DCPS prices were equal to or less than their most favored prices offered to any other customer; and
- c. Determine and make any adjustment in payments or bill for the difference in the prices charged to DCPS and the contractor's most favored customer prices.

FINDINGS AND RECOMMENDATIONS

OCP REPSONSE

The OCP will request assistance from the Defense Contract Audit Agency in determining whether the contractor has complied with the terms of the contract and will take appropriate action.

OIG COMMENT

The OIG believes that the action planned by OCP is adequate.

FINDINGS AND RECOMMENDATIONS

FINDING 5: PROVISIONS DESIGNED TO REDUCE THE COSTS OF TRASH COLLECTIONS WERE NOT EXERCISED

SYNOPSIS

DCPS procurement personnel and contract administrators did not adequately monitor the trash collection contract to ensure that contract provisions designed to reduce the contract costs were attained. As a consequence, DCPS did not receive cost savings as a result of school closings and recycling efforts. Factors which contributed to this condition were inadequate supervisory oversight and a lack of adherence to existing guidance.

AUDIT RESULTS

DCPS did not implement two major contract provisions designed to reduce contract costs. The trash collection contract, Contract Number DCOS-C-95128-9511-XX, provided for changes in the collection schedules as a result of either of the following:

- (1) Reduction in annual waste generation resulting from a recycling program, or
- (2) Adjustments due to school(s) closings.

Recycling Program

One of the reasons the contractor was awarded the trash collection contract was the contractor's successful recycling program under other contracts. However, the contract file contained no documentation on the status of the contractor's recycling program. There were no contract modifications to reduce the contract price attributable to the contractor's recycling efforts. In fact, there was no documentation to indicate whether the contractor ever initiated a recycling program or attempted to reduce the contract price through recycling efforts.

Adjustments for School Closures

In June 1999, DCPS issued unilateral Modification 5 that reduced the number of trash facilities to be serviced from 189 to 147. However, the contractor did not sign the modification, and agreement was never reached on the exact number of trash locations.

FINDINGS AND RECOMMENDATIONS

The modification contained several errors. First, there were 183 locations in the original contract and not the 189 as indicated in the modification. Second, the revised number of 147 locations was inaccurate. The list attached to the modification actually contained the 148 locations, but that list omitted at least 12 school locations. Based on available documents, we believe the number of locations to be 159, or a reduction of 24 (13%) from the original number of locations.

Reliable information was not readily available on the dates the schools were closed. However, we did note that at least three schools (Jackson, Edmonds, and Nichols Elementary) were supposedly closed in 1997 but as of June 1998 were still being billed by the contractor for trash collections. Facility personnel were currently reviewing contractor billings, but there were indications that the contractor had billed DCPS for schools that had been closed.

RECOMMENDATION 5

We recommended that the Superintendent, DCPS, take action to ensure that:

- a. All school closings subsequent to the trash collection contract award date are identified and that contractor billings are reviewed to ascertain whether DCPS paid for trash collection and hauling after schools were closed; and
- b. Recycling programs are reviewed to determine whether cost savings have been incurred and properly credited.

DCPS RESPONSE

DCPS did not provide a response.

OIG COMMENT

DCPS did not respond to Recommendation 5, parts (a) and (b); therefore, the OIG considers Recommendation 5, parts (a) and (b) unresolved.

FINDINGS AND RECOMMENDATIONS

FINDING 6: CONTRACT MODIFICATIONS WERE NOT TIMELY OR PROPERLY PROCESSED

SYNOPSIS

DCPS contract personnel did not properly process or process in a timely manner contract modifications, including the exercise of options. As a result, services were provided without a contract, sole source contracts were awarded, and required approvals were not obtained. The primary cause of this deficiency was weak administrative procedures over contract monitoring.

AUDIT RESULTS

Trash Service

Contract number DCOS-C-95128-9511-XX was awarded on May 1, 1995. The contract was awarded for a period of three years from the contract award date (May 1, 1995 to April 30, 1998.) An option provision of the contract allowed the contract to be extended two additional one-year periods.

Contract Provision 19.3, Option to Extend the Term of the Contract provided that:

The government may extend the term of this contract for a period of one (1) year, or a fraction thereof, or multiple successive fractions therefore, by written notice to the contractor before the expiration of the contract; provided that the government shall give the contractor a preliminary written notice of its intent at least thirty (30) days before the contract expires. The contractor may waive the thirty (30)- day preliminary notice requirement by providing a written waiver to the Districts [sic] contracting officer prior to the expiration of the contract.

Between May 1998 and July 1999, DCPS issued six modifications to the contract. Three of those modifications were not processed in a timely manner:

- Modification 001. The contractor signed Modification 001 on May 6, 1998, and a DCPS official signed it on May 21, 1998. However, under the terms of the basic contract, the contract had expired on April 30, 1998. Thus, the contract had expired 6 days before the date of the contractor's signature and 21 days before the DCPS official signed the contract.

FINDINGS AND RECOMMENDATIONS

Modification 001 also extended the contract by one year until April 30, 1999, for \$1,172,418.

- Modification 002. Modification 002 incrementally funded the contract for \$25,000 and extended the contract for a two-week period from May 1, 1999 to May 14, 1999. The modification was signed by the DCPS contracting officer on May 1, 1999. The contract had expired the previous day, April 30, 1999.
- Modification 003. Modification 003 incrementally funded the contract for \$36,569 and extended the contract for a two-week period from May 15, 1999 to May 28, 1999. The modification was signed by the DCPS contracting officer on May 15, 1999. The contract had expired the previous day, May 14, 1999.

Attached to Modification 003 was a waiver, which DCPS prepared and the contractor signed, extending the term of the contract. That waiver provided in part, “I hereby waive the sixty (60) days written notice....” However, the terms of the contract allowed only a thirty (30)-day written notice, and the waiver was also dated and signed May 15, 1999, again, one day after the contract had expired.

Security Services Contract

Several contract modifications for the DCPS security services contract were of concern to us because OCP had prepared them after the services were performed, without dating or signing the modifications or obtaining required approvals by the Mayor, the City Council, and the DCFRA. Also, contract modifications were not always prepared to reflect revisions in the contract provisions.

Contract Number C70008 was awarded August 22, 1996, for school security services. The contract objective was to privatize DCPS’s in-school security and protection services by eliminating 250 positions from DCPS’s payroll. Under the terms of the contract, the contractor was to provide 223 security personnel and the uniforms, materials, and equipment needed to ensure maximum security at all 164 schools and several administrative buildings. The contract was awarded as a firm fixed price contract for a three-year base period with two one-year options in the following amounts:

FINDINGS AND RECOMMENDATIONS

	Year 1:	\$6,333,566
	Year 2:	\$6,330,919
	Year 3:	<u>\$6,351,157</u>
Total three-year base period		<u>\$19,015,642</u>
Option Year One		\$6,298,445
Option Year Two		\$6,229,084
Total Contract Value		<u>\$31,543,171</u>

As of the date of our review, a series of contract modifications had increased the contract values as follows:

	Original	Current
Year 1:	\$6,333,566	\$6,333,566
Year 2:	\$6,330,919	\$8,614,013
Year 3:	\$6,351,157	\$10,279,838
Total Three Year	<u>\$19,015,642</u>	<u>\$25,227,417</u>
Option Year One	\$6,298,444	\$9,090,570*
Total	<u>\$25,314,086</u>	<u>\$34,317,987</u>

*Option Year one began 10/1/99.

OIG Analysis of Security Services Contract

We reviewed all of the contract modifications and DCPS's monitoring procedures to determine whether the modifications were timely and accurately processed in compliance with the provisions of DCMR, Title 27.

- Base Year One. The DCFRA approved base year one of the three-year base period in the amount of \$6,333,566 on August 23, 1996. There were no contract modifications during base year one.

FINDINGS AND RECOMMENDATIONS

- Base Year Two. Base year two valued at \$6,330,919, began August 22, 1997. However the contract was not submitted to nor approved by the Control Board.

Modification 001 (Base Year Two) was issued September 19, 1997 in the amount of \$34,916 for 33 additional security personnel for the period September 19, 1997 through September 30, 1997. The modification also described a different deployment of the original 223 security guards. The original contract placed 223 security personnel in 164 schools with 1 security officer at each elementary school and 2 security officers at each middle and high school. However, records indicated only 189 security officers had been located in those schools and that the additional 34 officers (223 less 189) were assigned to other details. The additional security guards ensured that one guard would be placed in each elementary school. School closures reduced the number of school sites from 164 to 152.

We could not find documentation in the contract file to indicate that DCPS personnel monitored the first year of the contract to determine whether security personnel were deployed in accordance with contract terms.

Modifications 002 and 003 extended the services of the 33 security guards and added eight additional positions through October 31, 1997.

Modification 004 was issued January 6, 1998, in the amount of \$188,945. The modification was issued two months retroactively and extended the above 41 positions for the period November 1, 1997 through December 23, 1997. The modification continued the total number of security personnel to 264. The contract file did not indicate the date DCPS requested approval from the DCFRA, but documentation in the contract indicated the DCFRA approved the modification on March 2, 1998, four months subsequent to when the work was initiated.

Modification 005 was signed on March 5, 1998, and extended the 41 positions through August 22, 1999. The modification increased the value of base year two of the contract by \$1,224,827 to \$7,713,243, and increased the value of base year three of the contract by \$1,508,613, to \$7,865,769.

DCPS/OCP did not submit the modification as required for approval of the Mayor, or the City Council, and did not prepare a Determination and Findings (D&F) as required for all modifications in excess of \$100,000. Documentation in the contract file indicated the modification was discussed with the DCFRA, but the DCFRA never approved the modification. In addition, even though the effective date was referred to as being the date of execution, it appears the effective date of the modification should have been December 24, 1997, the day following the expiration date of Modification 004 above.

FINDINGS AND RECOMMENDATIONS

Modifications 006 through 012 also increased the number of security guards on a temporary or permanent basis. Like the previous modifications, they were not properly processed: no D&Fs were prepared, required approvals were not obtained, and signatures were missing.

Modification 013, for option year one, in the amount of \$9,090,571, extended the contract period from October 1, 1999, through September 30, 2000. This modification, as amended, was reviewed and approved by the OCC. Suggestions made by the OCC included redefining the contract period from August 22, 1996, to October 1, 1996, to coincide with the beginning of the fiscal year.

The OCC approved, for legal sufficiency, DCPS's Modification 013 for option year one but in its review commented that OCP did not provide them with information regarding the procurement process. Accordingly, the OCC limited its legal review to the exercise of the first option year and the documents which OCP furnished.

The contract has undergone significant changes since it was awarded. Originally awarded as a fixed price contract for essentially \$6 million for each of the five years, the contract has now been converted to a time and materials contract that exceeds \$10 million in the third contract year. In addition, the contract modifications do not reconcile with the current contract value. In our opinion the entire contract administration process needs to be subjected to a thorough legal review.

RECOMMENDATION 6

We recommended that the Director, OCP:

- a. Implement the procedures necessary to ensure that all contract modifications are prepared in a timely manner, properly signed and submitted for review and approval, as required;
- b. Perform an extensive analysis of the security services contract to determine the security services—for example, the number of guards and locations—which are supposed to be provided;
- c. Prepare an independent government cost estimate for contract Modification 013; and
- d. Submit to OCC the entire security contract for legal review.

FINDINGS AND RECOMMENDATIONS

OCP RESPONSE

OCP concurred with parts (a) and (d) of this recommendation and has taken steps to implement necessary review procedures for contract modifications and will submit the security contract to OCC for review of any subsequent exercise of options.

OCP stated that it did not agree with part (c) because an independent estimate subsequent to the execution of the modification would serve no useful purpose. OCP also stated that part (b) was the responsibility of the Office of Property Management (OPM).

OIG COMMENT

OCP actions planned and taken regarding parts (a) and (d) of Recommendation 6 should be adequate to address the conditions noted. The OIG intended part (c) to serve as a lesson learned to ensure that the modification was in the best interest of the District. OIG will re-direct part (b) to either DCPS or OPM and, therefore, considers part (b) of Recommendation 6 unresolved.

FINDINGS AND RECOMMENDATIONS

FINDING 7: INEFFICIENT PROCESSING OF REQUESTS FOR GOODS/SERVICES

SYNOPSIS

OCP did not always process requests for goods or services in an efficient, timely, or sound manner. As a result, OCP took an inordinate amount of time, over two and one-half years, to award some contracts and took months to process some small purchase requests. Factors causing these problems include: (1) the need to develop and use acquisition plans to ensure the District meets its needs in the most economical and timely manner, and (2) the need to assign sufficient staff commensurate with work requirement.

AUDIT RESULTS

DHS

Sound contracting procedures require that an efficient process exist to manage requests for goods and services from the initial requisition to contract award. Solicitation JA-CS-70019-01 for community residential services was advertised on February 12, 1997 and was closed on May 20, 1997, after amendments and clarifications. The solicitation was composed of 58 components or customer service needs classifications with an expected 58 contracts to be awarded. As of July 1999, 29 months after advertising the solicitation, OCP still had not completed awards from the solicitation.

Nine contracts in our sample were awarded as a result of this solicitation. The award dates ranged from July 1998 through November 1998, from 17 months to 21 months after the solicitation was advertised.

The solicitation, which was issued for the Mentally Retarded and Developmental Disabilities Administration (MRDDA), DHS, was structured to address specific patients and their needs. This was a flawed approach since changes in the MRDDA population would have necessitated the issuance of new solicitations. In fact, the agency chief contracting officer stated that the solicitation was a “failed procurement” from the beginning.

FINDINGS AND RECOMMENDATIONS

In addition, there was insufficient staff assigned to the solicitation. Only one contract specialist had been assigned to the solicitation for the first 17 months. The contracting officer wrote that 11 specialists, including a project manager, should have been assigned to the solicitation to address awarding contracts in a timely manner.

Another cause of the lengthy time period to award contracts was an insufficient supply of evaluation committee members. The contracting officer stated that with 58 categories of award and three evaluators per category, 174 evaluators would be needed. He further stated: "Even with people doing multiple category evaluations, the time required to read and evaluate all categories is significant and unlikely to be performed in the targeted range of a 120-days to award."

Not only was the structure of the solicitation inefficient for OCP, but it was also inefficient for the contractors who sought an award for more than one category. Because a separate contract would be awarded for the 58 components, a contractor had to submit similar documents (proposals, tax certificates, best and final offers, etc.) for each component for which he sought an award.

Furthermore, the procurement process for a second solicitation, JA-SC-CS-70020-01, also took an inordinate amount of time. The solicitation was issued in February 1997. However, all contracts had not been awarded as of July 1999 - a period of nearly two and one-half years. This solicitation was structured in a manner similar to the previous one, resulted in multiple awards, and also had only one contract specialist assigned. Per the contracting officer, this solicitation also should have had a project manager with an appropriate number of specialists assigned.

According to the contracting officer, in order to continue to provide needed services while contracts were being awarded under these solicitations, sole source contracts were awarded to the incumbent contractors (of the prior contracts).

DCPS

OCP took from over two months to nearly six months to process five small purchases in the OIG sample as illustrated in the following table:

FINDINGS AND RECOMMENDATIONS

Document #	Description	Date of Requisition	Date of Award	Number of Months
56426	Athletic Equip Recondition	11/18/98	4/14/99	5.0
56429	Basketballs	11/18/98	5/05/99	5.5
56129	Tutorial Services	12/16/98	3/14/99	3.0
56300	Testing Material	1/05/99	3/23/99	2.5
143295	Tractor	2/10/99	7/12/99	5.0

Basketball season had ended before a requisition for basketballs had been processed by OCP. A requisition for tutoring services was not completed until three months after the date needed for the tutoring. OIG determined that the average time for completion of a small purchase procurement was 53 days after OCP received the requisition. We could not determine a justification for the lengthy process.

RECOMMENDATION 7

We recommended that the Director, OCP, take action to ensure that:

- a. Solicitations are structured so as to ensure an efficient and effective award process;
- b. Sufficient staff is assigned to handle solicitations and contract awards; and
- c. Acquisition strategies or plans are developed, as appropriate.

OCP RESPONSE

The OCP concurred with our recommendations and has taken steps to improve the solicitation review process and to increase personnel to insure that sufficient staff is assigned to handle solicitations and contract awards.

OIG COMMENT

The actions taken and planned by OCP will adequately address conditions noted.

FINDINGS AND RECOMMENDATIONS

FINDING 8: SPLITTING OR PARCELING OF CONTRACTS

SYNOPSIS

OCP split or parceled several contracts. As a result, OCP exceeded its authority to award contracts without the review and approval of the Mayor, the City Council, and the DCFRA. This condition occurred because managers did not emphasize adherence to existing guidance.

AUDIT RESULTS

DCMR, Title 27, § 8001 delegates contracting authority to specific employees of the District government. Section 8003.1 requires reviews and approvals of certain contracts, including contracts over \$1,000,000, by the Mayor, City Council, and the DCFRA before the contracts are executed. Our sample included nine contracts/purchase orders which individually were less than \$1,000,000 but, when grouped based on the solicitations from which they were made, total more than \$1,000,000.

Following are the related contracts/purchase orders which, when grouped together, total more than \$1,000,000:

Date	Contract	Description	Amount
10/15/98	JAOP900190	ACEDS Technical Support	\$282,971
12/4/98	JAOP900273	“	\$364,902
1/19/99	JAP9001148	“	\$851,437
		Total	\$1,499,310
11/18/98	JA-AC-CS-70019-29	Residential Services	\$315,975
“	JA-AC-CS-70019-31	“	\$118,447
9/14/98	JA-AC-CS-70019-19	“	\$458,975
10/9/98	JA-AC-CS-70019-18	“	\$228,265
		Total	\$1,121,662
8/28/98	JA-AC-CS-70019-25	Residential Services	\$166,860
7/30/98	JA-AC-CS-70019-26	“	\$221,227
7/30/98	JA-AC-CS-70019-04	“	\$259,011
10/29/98	JA-AC-CS-70019-27	“	\$204,357
8/26/98	JA-AC-CS-70019-10	“	\$170,155
		Total	\$1,021,610

FINDINGS AND RECOMMENDATIONS

Each contract in a set was awarded to the same vendor. With regard to the contracts for technical support services, the OCP informed us that the purchase orders were issued separately because the complete budget for the services had not yet been loaded into the financial management system. Regarding the two sets of contracts for community residential services for the mentally impaired, we were informed that the solicitation specified that a separate contract would be awarded for each of the components. (See Finding 7 on inefficient procurement process.) Also, we were informed that contract specialists were asked to avoid sending “bulky” contract files to the DCFRA. By splitting the contracts, the files would be less bulky. The contracting officer stated that the contracts were not awarded separately to circumvent regulations.

However, we note that the technical support services were recurring procurements for which OCP/DHS had prepared a D&F stating that the District had a minimum need to continue the services “without interruption, or reduction in either quantity or quality for any period of time.” In addition, DCMR, Title 27, Section 3204 states:

If the contract provides for expenditures in excess of the amount of unencumbered budget authority, the contracting officer shall not sign the contract unless the contract contains a provision, approved by the Director, which expressly provides that the portion of the contract requiring payment of any amount in excess of available budget authority is conditioned upon the appropriation or allocation of additional budget authority.

We also noted that for the contracts for residential services, the OCP did not always issue a separate contract for each component. For example, contract JA-AC-CS-70019-29 was composed of components 96AALU33ES and 96AALU34AES. Contract JA-AC-CS-70019-19 was composed of components 96OSA31ES and 96OSA32ES. Further, we observed that the contracts with more than one component were no more bulky than the ones with one component.

RECOMMENDATION 8

We recommended that the Director, OCP, take action to ensure that regulations requiring review and approval by other entities of contracts before execution are not circumvented through the splitting or parceling of contracts.

FINDINGS AND RECOMMENDATIONS

OCP RESPONSE

OCP has implemented procedures for review of all contractual documents at a level appropriate to the risk the transaction poses to the District. OCP also includes training on splitting procurements in its training courses.

OIG COMMENT

The actions taken and planned by OCP adequately address the conditions noted.

FINDINGS AND RECOMMENDATIONS

FINDING 9: SERVICES PROVIDED OUTSIDE THE SCOPE OF THE EXISTING CONTRACT

SYNOPSIS

The contractor providing security services for DCPS provided services greater than specified in the existing contract and contract modifications. DCPS contract personnel were not comparing contract billings for security services to the modified contract value. As a result, contract billings exceeded the amount of the contract by \$1,628,576.

AUDIT RESULTS

D.C. Code § 1-1181.5 states that no District employee shall authorize payment for the value of goods and services received without a valid written contract.

Contractor Billings for the Beginning Value of Contract Year Three, FY 1999, Exceeded the Contract Value by \$1,224,802

As part of our audit, we compared the contractor's contract billings with the contract value. The contractor began its FY 1999 billing by indicating that the beginning contract value for contract year three was \$9,090,571.

Our review of the contract file indicated the original contract value for contract year three was \$6,357,156. Our review of the contract modifications indicated that there was only one modification, Modification 005, at the beginning of the year, which affected contract year three. That modification added \$1,508,613 to the original contract value, bringing the new contract value for contract year three to \$7,865,769. The contractor's initial \$9,090,571 billing for contract year three exceeded the modified contract by \$1,244,802 (\$9,090,571-\$7,865,769). The contract file contained no modification to support the contractor's initial billing of \$9,090,571. The contractor billed and was paid \$9,090,571 for the beginning value of the contract year three.

The contractor also billed and was paid for unsupported contract modifications during contract year three of \$403,774. During FY 1999, the contractor billed \$1,189,267 for contract modifications. Our review of contract modifications for FY 1999 indicated contract modifications issued during the year were valued at only \$785,493, or a difference of \$403,774, as illustrated in the following chart:

FINDINGS AND RECOMMENDATIONS

Description	DCPS	Contractor	Difference
Modification 010 Saturday Officers	\$178,736	-0-	(\$178,736)
Modification 011 STARS and SEAS	\$606,756	\$666,267	\$59,511
SEAS		\$250,000	\$250,000
Security for Transportation (No Modification)		\$273,000	\$273,000
Total	\$ 785,493	\$1,189,267	\$403,774

The contractor's January 1999 billing document included two DCPS memoranda, both dated January 11, 1999 and addressed to the contractor. The memoranda requested temporary additional security service from November 1, 1998 through December 31, 1998 (a period two months prior) for security services on the 7th Floor (Contracting/Procurement area), Building 825 N. Capital Street, 24 hours per day, 7 days per week. We could not find any written documentation from Contracting/Procurement personnel requesting the security services.

Additionally, similar circumstances involving the authorization of security service at DCPS's 5th and L Street transportation location occurred. The contractor billed and was paid \$273,000 in FY 1999 for security services at the Transportation Division's 5th Street and L Street lots. Security was provided 24 hours per day, 7 days per week; however, the contract was never modified to include these security services, the work was not authorized in advance of the billings, and all billings were approved after the fact. DCPS routinely authorized security services the month after the services were performed. For example, on May 6, 1999, security services were authorized for the DCPS Transportation Division at the 5th Street and L Street lots for the prior month of April.

RECOMMENDATION 9

We recommended that the Director, OCP, and the Superintendent, DCPS, take action to ensure that:

- a. Security contract billings are reconciled with the modified contract; and
- b. Contract modifications are awarded prior to the performance of additional services.

FINDINGS AND RECOMMENDATIONS

OCP RESPONSE

OCP concurred with the recommendation and stated that training will be provided relative to this area.

OIG COMMENT

Action taken by OCP should adequately address the conditions noted.

DCPS RESPONSE

DCPS did not respond.

OIG COMMENT

Recommendation 9, part (a) is considered unresolved by OIG because we did not receive a response from DCPS.

FINDINGS AND RECOMMENDATIONS

FINDING 10: SMALL PURCHASE REGULATIONS NOT FOLLOWED
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SYNOPSIS

OCP did not always comply with regulations regarding small purchase procurement. As a result, OCP: (1) split small purchases; (2) exceeded the small purchase limitation; (3) used sole source procedures without justification; (4) obtained goods and services without an executed purchase order/contract; and (5) exceeded its contracting authority. Lack of familiarity on the part of contracting personnel with small purchase regulations and insufficient management oversight caused these problems.

AUDIT RESULTS

DCMR, Title 27, Chapter 18 regulates the use of small purchase procedures. Section 1800.1 states that small purchase procedures may not be used when the procurement exceeds \$25,000. Sections 1800.3 and 1800.4 state that a procurement over \$25,000 shall not be split into several purchases or split, parceled, divided or purchased over a period of time to avoid the \$25,000 limitation. Section 1802 denotes the required number of quotations for competitive small purchases and also specifies conditions for non-competitive purchases.

DHS

We tested 25 randomly selected small purchase actions, which had been executed by OCP on the behalf of DHS. OCP did not obtain the proper number of quotes for four of these actions. Five actions exceeded the \$25,000 small purchase limitation. Four small purchase actions were sole source actions from a federal schedule for which OCP did not prepare a determination and finding as required.

OCP did not obtain the proper number of quotations for the following small purchase actions:

Document #	Goods/ Services	Amount	Number of Quotes Solicited	Number of Quotes Required
9000157	Food	\$21,281	3	4
9000159	Food	\$29,686	3	4
9000456	Maintenance Agreement	\$19,000	3	4
9201064	Nurses	\$43,656	2	4

FINDINGS AND RECOMMENDATIONS

Section 1802.1(C) requires at least four written quotations for small purchase actions in the \$15,000 to \$25,000 range. OCP procurement analysts informed us that they did not obtain the required number of quotes because they were unaware of the requirements or simply overlooked the requirement.

The six small purchase actions which exceeded the \$25,000 small purchase limitation were as follows:

Document #	Goods/Services	Amount
862550	Printers	\$28,462
9000159	Food	\$29,686
862606	Fixtures	\$43,110
9201064	Temp Services	\$43,656
863151	Ed. Supplies	\$80,829
863054	Furniture	\$262,171

Again, OCP personnel did not seem fully aware of the regulations limiting small purchase procurement to \$25,000.

OCP procured four “small purchase procurements” off federal schedules. Because the amounts exceeded the small purchase limitation, OCP should have prepared a D&F for sole source procurement as required by section 305(a)(3) of the Procurement Practices Act.

Two small purchase actions in the DHS sample were split procurements. OCP executed purchase orders 9000157 and 9000159, in the amounts of \$21,281 and \$29,686 respectively, on October 27, 1998 to procure food supplies. The purchase orders total more than \$25,000 and were issued to the same vendor. DCMR, Title 27, Section 1800.5 states: “A contracting officer shall not split a procurement totaling more than the agency’s small purchase limitation into several purchases that are less than the limit in order to permit the use of the small purchase procedures.” OCP provided no explanation for the split procurement.

DCPS

OCP procured services without the benefit of executed purchase orders or contracts. OCP prepared two contracts for brokerage services for building appraisal but never awarded them. However, the services were still provided to DCPS. Furthermore, the purchase orders were modified to extend the period of deliverable services. The purchase orders were #OGAR956051 for \$20,000 and #OGAR956055 for \$26,000.

FINDINGS AND RECOMMENDATIONS

OCP used restrictive specifications for two purchase orders, thereby limiting competition. Both orders listed part numbers unique to a manufacturer's specific product. One purchase order #0GAR956404, in the amount of \$22,564, was for computerized engraving equipment. The other, #0GAR9141818, in the amount of \$18,066, was for a head end unit. Each procurement required OCP to solicit four quotations. Only two responses were received for the engraving equipment. Only one response for all items was received for the head end unit.

OCP also could not locate documentation for three small purchases to support the number of quotations solicited. These were purchase orders #0GAR956032, in the amount of \$16,025, for television maintenance services; #143383, totaling \$12,000, for automotive services; and #0GAR956035, totaling \$12,320, for emergency transportation services.

OCP also exceeded its contracting authority when it procured audit services for an economy and efficiency review of one DCPS division. At the time the contract was executed, the authority to procure auditing services for District agencies rested with the OIG.

RECOMMENDATION 10

We recommended that the Director, OCP, take action to ensure that:

- a. OCP personnel are informed of regulations regarding small purchase procurement; and
- b. Databases are maintained which correctly classify procurements in the small purchase category.

OCP RESPONSE

OCP has instituted training to address small purchase regulations and will establish a database to correctly classify small purchase procurement.

OIG COMMENT

Action planned and taken by OCP should adequately address conditions noted.

FINDINGS AND RECOMMENDATIONS

FINDING 11: IMPROVEMENT NEEDED IN CONTRACT MONITORING

SYNOPSIS

Agency program personnel did not adequately monitor contracts. As a result, the District does not know whether services were delivered in accordance with contract terms. This condition was caused by management not effectively implementing an oversight program ensuring contractor compliance with key contract provisions as provided by the DCMR, and contract terms and conditions.

AUDIT RESULTS

DCPS - Security Services Contract

We reviewed an internal audit report, dated August 21, 1997, of the security services contract. That report indicated there were no provisions in the contract for DCPS officials to monitor the activities of the contractor to verify the presence of security guards at the facilities. The report indicated none of the invoices contained detailed analysis of the services received. As a result of that report, the contract was modified through Modification 005 which provided that: "A report (original and two copies) summarizing labor categories and number of hours worked shall be submitted to the Contract Manager within two days at the end of each billing period." The modification also required the contractor to submit the name of the site and the type of service performed.

The contractor provides eight different labor categories at 153 locations. Separate labor rates are charged for the Project Manager (PM), Administrative Assistants, Assistant PM, Lead Supervisor, Supervisors, Senior School Resource Officer, and School Resource Officer. There is no contract modification that currently defines the number of assigned contract personnel, but correspondence in the contract file indicates there are 315 personnel included in the contract. At least one security guard is provided for each of the elementary schools. All junior high schools have at least two security officers. Fifteen locations, junior and senior high schools, have from 4 to 6 security officers, and about 80 security personnel are designated as support personnel (investigators, patrol officers, alarm monitors, dispatchers).

Our review of contractor billings indicates that the contractor has not complied with the reporting requirements of Modification 005. Monthly billings simply show "LABOR." Despite the array of labor categories, billings do not detail the number of

FINDINGS AND RECOMMENDATIONS

hours worked, the number of security personnel, the labor type or the school location. Furthermore, DCPS does not have the controls needed to identify the labor categories, the number of hours worked, or the number of security personnel at each school location.

The monthly billings were based on nine equal billings for the school year and three equal billings for the months of June, July and August. (Seventy percent of the total contract dollar was applied to the school year.) In other words, under existing billing procedures, the contractor always bills for the entire contract value and there is never a reduction for hours security officers or support personnel do not report for work or are absent from work. Similarly, there is never a reduction for support personnel who might be assigned to another of the contractor's contract.

DHS - Community Residential Services Contracts

DHS does not have an adequate number of personnel assigned to monitor community residential services contracts. The Program Operations Division, Bureau of Program Operations and Contracts, MRDDA, DHS, monitors facilities/environmental issues related to contracts providing residential services for mentally retarded District residents. The facilities/environmental issues cover matters such as sanitary conditions, food, records requirements (licenses, staff background checks, medication documentation, etc.).

According to the program chief, there are only seven residential resource specialists assigned to monitor approximately 200 community residential facilities. As a result, residential resource specialists visit each facility about once a year. Each specialist is responsible for between 20 to 30 homes.

We believe that because conditions in a facility can change, once a year is inadequate to determine whether a contractor is in compliance with regulations related to the safety of the facilities and the health of the residents. (We are currently performing an audit of the Mental Retardation Developmental Disability Program which will be the subject of a separate audit report.)

RECOMMENDATION 11

We recommended that the Director, OCP, and Superintendent, DCPS, take the necessary action to ensure that:

- a. Security services invoices contain necessary information, such as labor category, the number of hours worked, number of security personnel at each school location, etc., in order to properly review billings; and

FINDINGS AND RECOMMENDATIONS

- b. Policies and procedures are developed to document and measure the performance of the security services contractor.

OCP RESPONSE

OCP will review contractor billing instructions and is preparing a contractor compliance procedure.

OIG COMMENT

OCP's action planned should adequately address conditions noted.

DCPS REPSONSE

DCPS did not provide a response.

OIG COMMENT

DCPS did not respond to Recommendation 11; therefore, the OIG considers Recommendation 11 to be unresolved.

RECOMMENDATION 12

We recommended that the Director, DHS, take action to ensure that an adequate number of DHS personnel is assigned to monitor the community residential services contractor to determine whether services are being provided in accordance with contract terms.

DHS RESPONSE

DHS did not provide a response to Recommendation 12.

OIG COMMENT

DHS did not respond to Recommendation 12; therefore, the OIG considers Recommendation 12 to be unresolved.

FINDINGS AND RECOMMENDATIONS

OTHER ISSUES

While the audit was in progress, other issues related to procurement activities in the District were brought to our attention by a councilmember. The issues concerned: (1) agreements between the District and the United States Department of Health and Human Services, Program Support Center (PSC); (2) an agreement between the District and the Army Corps of Engineers; and (3) various other contracts. To the extent it was possible to address these concerns without unduly extending the completion date, we did so. The following are issues which we considered important but whose resolution were not possible given the audit time constraints.

1. Validity of Agreement Between the District and the Program Support Center

In February 1997, the Mayor of the District of Columbia signed an agreement with PSC to “allow the District to utilize the PSC to provide acquisition and grant award services for the District’s Department of Human Services as well as on-the-job training for acquisition and grants personnel.” In June 1999, the interim city administrator signed a modification to the agreement.

The general counsel for the Council of the District of Columbia has interpreted applicable law as authorizing only the Mayor to sign an agreement between the District and the federal government. Therefore, the general counsel has opined that the modification signed by the interim city administrator is not valid. Furthermore, the counsel could find no act by the Council approving the method/manner of payment.

There was also an agreement between DCPS and PSC for PSC to provide acquisition services. The copy of the agreement provided to us by the Council was signed by a DCPS official who lacked procurement authority.

2. The Need for PSC Services

During the course of the audit, we noted that a shortage of OCP personnel assigned to DCPS contributed to a backlog of unprocessed requisitions. Our observation was that PSC was handling approximately one third of the requisitions received by OCP. Without the services of PSC, the backlog of requisitions would have been greater.

FINDINGS AND RECOMMENDATIONS

3. The Army Corps of Engineers' Memorandum of Understanding

In April 1998, DCPS entered into an agreement with the U.S. Army Corps of Engineers (Corps) to provide assistance in implementing the FY 1998 capital improvements program. Amendments to the agreement expanded the Corp's role and extended the time period for services. The councilmember expressed concern about the expanded role of the Corps and the costs to the District of their expanded role.

We will seek a definitive legal opinion from the Office of the Corporation Counsel regarding the validity of the agreements between the District and PSC. Upcoming procurement audits will explore other concerns which we were not able to adequately cover in this audit.

ATTACHMENTS
(EXHIBITS A AND B)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Contracting and Procurement



Office of the Director

May 17, 2000

Mr. Charles C. Maddox, Esquire
Inspector General
Government of the District of Columbia
717 14th Street, N.W.
Washington, D.C. 20005

Re: OIG-20-99PO

Dear Mr. Maddox:

Enclosed you will find my comments on the draft report summarizing the results of the Office of the Inspector General audit of the District of Columbia Procurement Activities (OIG-20-99-PO). I have addressed those recommendations that pertain to the Office of Contracting and Procurement. Each recommendation is identified and the response is set forth immediately thereafter.

If you have any questions or need additional information, please do not hesitate to contact me at (202) 727-0252,

Sincerely,

A handwritten signature in cursive script that reads "Elliott B. Branch for".

Elliott B. Branch
Director

Enclosure

Recommendation 1: That the Director, OCP take action to ensure that a comprehensive procurement management system is implemented that meets the requirements of the Procurement Practices Act. Additionally consultation with the Office of the Chief Technology Officer [OCTO] should take place to ascertain that the system interfaces and is compatible with other District government management information systems and satisfies recognized system development documentation and implementation practices such as those contained in the COBIT.

Concur: OCP has contracted with the [REDACTED] to perform a complete assessment of OCP Express. Special interest items in the assessment will include: the architectural integrity of OCP Express; its extensibility; its scalability; and the adequacy of the interface with SOAR. [REDACTED] will deliver a report on or about June 19, 2000. Mr. [REDACTED] of OCTO is working with OCP to determine the proper next steps. Based on the results of the [REDACTED] effort and in consultation with OCTO, OCP will either re-initiate deployment of OCP Express as is; modify OCP Express to be compliant with the requirements of the Procurement Practices Act (PPA) and deploy the system throughout the District government; or seek an alternative. This decision should be made by September 1, 2000 and a plan should be developed by September 30, 2000.

Recommendation: 2 That the Director, OCP take the following action to ensure that contracts over \$1,000,000 are approved for legal sufficiency before being awarded: include a certification as to legal sufficiency from the OCC with the transmittal of the contracts to all reviewing/oversight entities with an acknowledgment space for the reviewing/oversight entities.

Concur: The recommendation made by the Inspector General is already standard operating procedure in OCP. This procedure has been strengthened by establishing a single point of contact within OCP to process all contracts over \$1 million. The single point of contact, who reports to agency counsel, is responsible for ensuring that the required components of contract packages that are sent forward to the Council of the District of Columbia and the Control Board for approval contain the required content.

- Recommendation 3:** That the Director, OCP:
- a) Ensure contracting personnel receive training on the regulations regarding advance payments
 - b) Include provisions for advance payments in contracts only when:
 - A contractor meets the eligibility requirements
 - Adequate security arrangements are included in the contracts
 - A determination has been made by the Director that to include the provisions would be in the best interests of the District
 - The DHRLBD has recommended the advance payments
 - The solicitation specifies advances
 - The method for structuring advance payments is sound, reasonable and based on the cash flow needs of the contractor;
 - Special bank accounts are established for the advance payments; and
 - The financial condition and performance of the contractor are adequately monitored.

Concur: The Director, OCP, has re-instituted the Procurement Review Committee (PRC) as outlined in Title 27, District of Columbia Municipal Regulations, Section 1000. The PRC now reviews all requests for advance payments as part of its quality review of the contracting officer's solicitation package, negotiation strategy and award decision. Training on the use of advance payments will begin in the fourth quarter of FY 2000 as part of OCP's course on contract administration.

- Recommendation 4:** That the Director, OCP:
- a) Effect the price protection provisions of Contract clause 6.6
 - b) Require the contractor to provide information on their most favored customer prices and to justify their affirmation that their DCPS prices were equal to or less than their most favored prices offered to any other customer; and
 - c) Determine and make any adjustment in payments or bill for the difference in the prices charged to DCPS and the contractor's most favored customer prices.

Concur: OCP will request assistance from the Defense Contract Audit Agency to determine whether the contractor has complied with the terms of the contract and take the appropriate action.

- Recommendation 6:** That the Director, OCP:
- a) Implement the procedures necessary to ensure that all contract modifications are prepared in a timely manner, properly signed and submitted for review and approval, as required;
 - b) Perform an extensive analysis of the security services contract to determine the security services—for example the number of guards and locations—which are supposed to be provided.
 - c) Prepare an independent government cost estimate for contract Modification 013.
 - d) Submit to OCC the entire security contract for legal review.

Partially concur: OCP concurs with sub-recommendation “a)”. Procedures have been implemented for review of all contractual documents at a level in the organization, consistent with the level of risk that the transaction poses to the District. OCP does not concur with sub-recommendation “b)”. This is the responsibility of the Office of Property Management as set forth in the Procurement Practices Act:

Except as otherwise provided in this chapter, no other department, agency, instrumentality, or employee subject to the provisions of this chapter [other than OCP] shall exercise procurement or contracting authority, except authority otherwise provided for receiving or making grants-in-aid or for federal financial assistance.
Departments, agencies, and entities subject to this chapter shall be responsible for determining their requirements for goods and services and for technical direction of awarded contracts. D.C. Code § 1-1181.5

OCP non-concurs with sub-recommendation “c)”. The preparation of an independent government estimate subsequent to execution of the contract modification would serve no useful purpose.

OCP concurs with sub-recommendation “d)”. OCP will submit the entire security contract to OCC for legal review in time to assure that any subsequent option exercise will not be precluded by a lack of legal sufficiency.

- Recommendation 7:** That the Director, OCP, take action to ensure that:
- a) Solicitations are structured so as to ensure an efficient and effective award process;
 - b) Sufficient staff is assigned to handle solicitation and contract awards; and
 - c) Acquisition strategies or plans are developed as appropriate.

Concur: The Director, OCP has re-instituted the Procurement Review Committee (PRC) as outlined in Title 27, District of Columbia Municipal Regulations, Section 1000. The PRC now reviews the contracting officer's solicitation package, negotiation strategy and award decision. OCP is obtaining additional support by contract to ensure FY 2000 workload requirements are met. The Director, OCP, has requested additional personnel in the FY 2001 budget to assure that sufficient staff are assigned to handle solicitations and contract awards. OCP has initiated a service level agreement planning process to ensure acquisition strategies and plans are developed as appropriate. The Director, OCP, is seeking a Mayor's Order to mandate this planning process in all city agencies.

- Recommendation 8:** That the Director, OCP, take action to ensure that regulations requiring review and approval by other entities of contracts before execution are not circumvented through the splitting or parceling of requirements.

Partially concur: D.C. Procurement Regulations adequately address defining requirements. Procedures have been implemented for review of all contractual documents at a level in the organization, consistent with the level of risk that the transaction poses to the District. Training on basic procurement in the District of Columbia was initiated in February 2000. The issue of splitting requirements to avoid thresholds that trigger statutory and regulatory requirements is addressed by the instructors. OCP will add written content to this training module to emphasize the point.

- Recommendation 9:** That the Director, OCP, and the Superintendent, DCPS, take action to ensure that:
- a) Security contract billings are reconciled with the modified contract; and
 - b) Contract modifications are awarded prior to the performance of additional services.

Concur Training on basic procurement in the District of Columbia was initiated in February 2000. The issue of a valid written contract being in place before supplies or services are provided to the District government is addressed by the instructors and in the written course material.

- Recommendation 10** That the Director, OCP, take action to ensure that:
- a) OCP personnel are informed of regulations regarding small purchase procurement; and
 - b) Databases are maintained which correctly classify procurements in the small purchase category.

Concur Training on basic procurement in the District of Columbia was initiated in February 2000. Small purchase regulations are addressed by the instructors and in the written course material. Establishment of a database that correctly classifies procurements in the small purchase category will be accomplished through the implementation of OCP Express or its successor system.

- Recommendation 11** That the Director, OCP, and Superintendent, DCPS, take the necessary action to ensure that:
- a) Security services invoices contain necessary information, such as labor category, the number of hours worked, number of security personnel at each school location, etc., in order to properly review billings; and
 - b) Policies and procedures are developed to document and measure the performance of the security services contractor.

Concur OCP will review the contract for the adequacy of billing instructions and attempt to negotiate a no-cost change to the contract, if current billing instructions are inadequate to properly determine the appropriate level of payment. OCP is currently preparing a contractor compliance procedure. The procedure should be issued to all city agencies by June 30, 2000.

District of Columbia Financial Responsibility
and Management Assistance Authority
Washington, D.C.

May 8, 2000

Mr. Charles C. Maddox
Inspector General
Office of the Inspector General
717 14th Street, N.W.
5th Floor
Washington, D.C. 20005

Re: Comments to the Office of the Inspector General's Draft Report on the
District of Columbia Procurement Activities

Dear Mr. Maddox:

The District of Columbia Financial Management and Responsibility Assistance Authority ("Authority") has reviewed the Office of the Inspector General's ("OIG") draft report on the District of Columbia Procurement Activities and offers the following comments to the draft:

1. Contrary to the Office of the Inspector General's contention that Mr. [REDACTED] stated that the Authority had not reviewed contracts for legal sufficiency, he does not recall talking with anyone from the OIG concerning the Authority's legal review of contracts. Also he does not recall discussing the six TANF contracts cited in the report with anyone from the OIG. The Authority approved the TANF contracts on February 4, 1999, which would have been two weeks prior to Mr. [REDACTED] joining the Authority. Therefore, it is highly unlikely that that Mr. [REDACTED] made these comments, since he would not have had any first hand knowledge of the TANF contracts.
2. The Authority does review contracts for legal sufficiency. The Authority has always had a staff attorney to review all contracts for legal sufficiency. Prior to her separation from the Authority, the Deputy General Counsel reviewed the TANF contracts. Our current attorneys work closely with Mr. [REDACTED] in reviewing contracts for legal sufficiency.
3. The Authority's file documentation for the TANF contracts indicates that a meeting was held between the Authority staff and District officials to discuss the concerns raised by the Office of the Corporation Counsel ("OCC"). The Office of the Inspector General did not examine the file documentation. Ms. [REDACTED] at the time the Authority's Deputy General Counsel, recommended that the contracts be approved so as to avoid the District losing TANF funding. Ms. [REDACTED] further recommended that Office of Contracting and Procurement ("OCP") should request the Council of the District of Columbia to exempt the TANF contracts from the Procurement Practices Act of 1985, as amended, prepare amendments to the contracts providing for the advance payment concerns raised by OCC, and then re-submit the

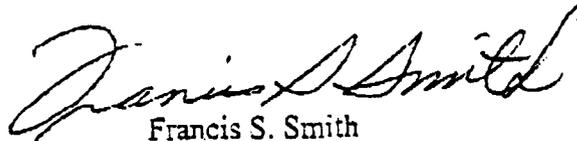
contracts to the Authority. These recommendations are documented in a memorandum in the contract files. The contracts were placed on the Authority's consent docket on February 4, 1999.

4. There is no record showing that the contracts were ever re-submitted to the Authority for review and approval. A re-submittal of the contracts may not have occurred because the Authority issued a letter on February 17, 1999 to District officials requiring that only contract for loans, financing agreements, investment, banking, financial services and the new Washington Convention Center project be submitted for approval.

The Authority trusts that the above information provides a record that the TANF contracts submitted to the Authority were in fact reviewed for legal sufficiency which is the case for all contracts submitted to the Authority for review and approval. The Authority therefore recommends that the OIG amend the subject report to reflect the facts and delete the language stating "that an Authority contracting official stated that the Authority does not review contracts for legal sufficiency."

Should you have any questions, you may contact me at (202) 504-3400.

Sincerely,



Francis S. Smith
Executive Director