

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

**AUDIT OF THE
ANACOSTIA WATERFRONT
CORPORATION'S PROCUREMENT AND
CONTRACT ADMINISTRATION**



**CHARLES J. WILLOUGHBY
INSPECTOR GENERAL**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



July 31, 2008

Neil O. Albert
Deputy Mayor for Planning and Economic Development
John A. Wilson Building
1350 Pennsylvania Avenue, N.W., Suite 317
Washington, D.C. 20004

Lucille Dickinson
Chairman
Board of Review for Anti-Deficiency Violations
1275 K Street, N.W., Suite 500
Washington, D.C. 20005

Dear Mr. Albert and Ms. Dickinson:

Enclosed is our final report summarizing the results of the Office of the Inspector General's (OIG) Audit of the Anacostia Waterfront Corporation's (AWC) Procurement and Contract Administration (OIG No. 08-2-35EB). This audit was initiated at the request of DC Councilmember Kwame R. Brown, Chairperson of the Committee on Economic Development.

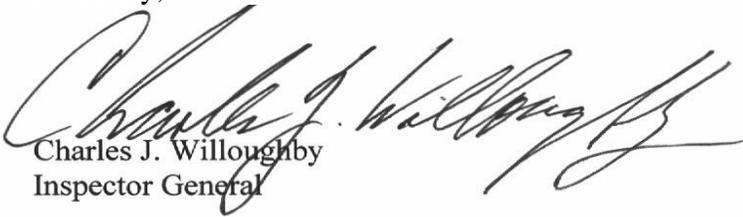
As a result of our audit, we directed eight recommendations to the Office of the Deputy Mayor for Planning and Economic Development (ODMPED), and one recommendation to the Board of Review for Anti-Deficiency Violations (BRADV) for necessary actions to correct reported deficiencies. We received a response to the draft audit report from ODMPED on June 27, 2008. ODMPED concurred with all the recommendations, and we consider ODMPED's action taken and/or planned to be responsive to the recommendations. However, we request that ODMPED provide actual and estimated completion dates for all recommendations within 60 days of the report date to properly establish accountability for the implementation of corrective actions. The full text of ODMPED's response is included at Exhibit B.

We also received a response to the draft audit report from the Chairman of the BRADV on May 23, 2008. We consider the BRADV's planned actions to be responsive to our recommendation. The full text of the BRADV's response is included at Exhibit C.

Mr. Albert and Ms. Dickinson
July 31, 2008
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We appreciate the cooperation extended to our staff during the audit. If you have questions, please contact William J. DiVello, Assistant Inspector General for Audits, at (202) 727-2540.

Sincerely,



Charles J. Willoughby
Inspector General

CJW/tc

Enclosure

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Mr. Albert and Ms. Dickinson

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**AUDIT OF THE ANACOSTIA WATERFRONT CORPORATION'S
PROCUREMENT AND CONTRACT ADMINISTRATION**

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EXECUTIVE DIGEST

OVERVIEW

The District of Columbia Office of the Inspector General (OIG) has completed an audit of the Anacostia Waterfront Corporation's (AWC) procurement and contract administration. This audit was initiated at the request of DC Councilmember Kwame R. Brown, Chairperson of the Committee on Economic Development.

The objectives of this audit were to determine whether AWC: (1) let and administered contracts in an efficient, effective, and economical manner; (2) complied with requirements and applicable laws, rules and regulations, and policies and procedures; and (3) implemented internal controls to safeguard against fraud, waste, and abuse.

CONCLUSIONS

Our audit identified conditions that were contrary to sound procurement practices. We found that: (1) AWC's Procurement Rules (Procurement Rules) were not comprehensive and could be waived at the discretion of the Chief Executive Officer; (2) senior management and the AWC Board of Directors provided insufficient oversight of the contracting office's activities; (3) the Procurement Rules were violated in the contract award process on several occasions, resulting in improper contracting practices; (4) analysis of one contract revealed several procurement rule violations and undesirable contract practices for AWC; and (5) adequate contract file documentation to support the history of the respective procurements was not maintained.

We believe that inadequate management scrutiny of the contracting office award process, the absence of written procurement policies and procedures implementing the Procurement Rules, and the lack of effective procurement internal controls led to the deficiencies identified throughout this report.

SUMMARY OF RECOMMENDATIONS

We directed eight (8) recommendations to the Office of the Deputy Mayor for Planning and Economic Development (ODMPED) that we believe are necessary to correct the deficiencies noted in this report, help promote procurement transparency and accountability, and eliminate or minimize undesirable contracting practices. We note that these weaknesses are applicable to the former AWC, whose operations were folded into the ODMPED. However, ODMPED's assurance that management controls are now in place should benefit ODMPED mission objectives. The recommendations center, in part, on:

EXECUTIVE DIGEST

- Developing internal guidelines and procedures that require ODMPED contracting officials to adhere to the requirements of Title 27 of the District of Columbia Municipal Regulations (DCMR) Contracts and Procurements for all contracting activities of the office.
- Establishing management oversight over the contracting function by periodically monitoring compliance with DCMR Title 27 requirements.
- Establishing written procedures for implementing a standard list of items that the contracting office must document and maintain in the contents of contract files.

Additionally, we recommend that the Chairperson, Board of Review for Anti-Deficiency Violations (BRADV), convene the Board and take appropriate action regarding contracts that were ratified and signed before certification of the availability of funding.

A summary of the potential benefits resulting from the audit is shown at Exhibit A.

MANAGEMENT ACTIONS

On June 27, 2008, ODMPED provided a detailed response to eight recommendations in our draft audit report. Management concurred with all the recommendations as directed. In all instances, the corrective actions taken and planned meet the intent of the recommendations. However, we request that management provide actual and estimated completion dates for all recommendations within 60 days of the report date to properly establish accountability for the implementation of corrective measures. The full text of ODMPED's response is included at Exhibit B.

On May 23, 2008, BRADV provided a detailed response indicating its agreement with Recommendation 7. The corrective actions taken and planned fully meet the intent of the recommendation. The full text of BRADV's response is included at Exhibit C.

INTRODUCTION

BACKGROUND

The Anacostia Waterfront Corporation (AWC) was created by the Council of the District of Columbia (Council) with the enactment of the Anacostia Waterfront Corporation Act of 2004. The AWC was a corporate body and an independent instrumentality of the government of the District of Columbia before it was dissolved and folded into the District of Columbia government. The AWC was formally abolished by the Council on March 26, 2008, in accordance with the National Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganization Act of 2008 (DC Law 17-138) (the Act).

The AWC, a quasi-public agency, was in charge of redevelopment along the Anacostia River waterfront. Under the Act, the mission of the entity was transferred to the Executive Office of the Mayor and merged into the Office of the Deputy Mayor for Planning and Economic Development (ODMPED). Also, the Act required all property, records, and unexpended balances of appropriations, allocations, income, and other funds available to AWC and any of its subsidiaries be transferred to the District government effective October 1, 2007. The AWC received appropriated funds for its operations from the District totaling \$5 million in fiscal year (FY) 2007 and \$8.2 million in FY 2006.

The AWC was originally established to lead the revitalization of property along the Anacostia River, promote initiatives to clean up the river, and foster public awareness and enjoyment of the river. Before its dissolution, the efforts of the AWC were also guided by the landmark 20-year master development plan entitled the "Anacostia Waterfront Initiative." With operations starting in January 2005, the following 10 specific projects named in the AWC Act of 2004 were considered key development projects for the AWC:

- Southwest Waterfront,
- South Capitol Waterfront and Ballpark District,
- Poplar Point,
- Anacostia Metro Station Redevelopment,
- Washington Canal Park,
- Hill East Waterfront,
- Anacostia Riverwalk,
- Kingman Island,
- Kenilworth/Parkside, and
- Marvin Gaye Park.

The AWC was governed by a 15-member AWC Board of Directors (AWC Board). The AWC Board was comprised of nine voting members who were appointed and served at the pleasure of the Mayor. Additionally, the Mayor and Chief Financial Officer (CFO) served as ex-officio voting members of the AWC Board. There were also four non-voting members: the Secretary, Department of Defense; the Deputy Commissioner of Public Buildings under

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the United States General Services Administration; the Deputy Assistant Secretary for Fish and Wildlife under the United States Department of Interior; and the Executive Director of the National Capital Planning Commission. All members of the AWC Board served without compensation and appointed a President to devise and implement strategies to achieve the goals and objectives of the AWC, as well as direct its day-to-day operations.

The AWC was exempt from the laws and regulations that normally apply to District government procurements. D.C. Code § 2-1223.26 (a) (2) (LEXIS through D.C. Law 16-188) provided:

No District laws, rules, or orders governing procurement or administrative procedures shall apply to the AWC, its activities, Board of Directors members, or officers or employees of the AWC, or any subsidiary thereof.

The above statutory provision granted the AWC the authority to adopt its own written guidelines, rules, and procedures that pertain to the procurement of goods and services. However, the guidelines, rules, and procedures were to be transmitted to the Council for review and approval. If the Council did not adopt a resolution to approve the written guidelines, rules, or procedures within the 45-day review period, then they were deemed disapproved.

This audit was performed at the request of Councilmember Kwame R. Brown, Chairperson of the Committee on Economic Development, to review development-related contracts awarded by the AWC. It should be noted that almost all future development project contracts awarded by the ODMPED will be subject to the approval of the Council.

OBJECTIVES, SCOPE, AND METHODOLOGY

The audit objectives were to determine whether the AWC: (1) let and administered contracts in an efficient, effective, and economical manner; (2) complied with requirements of applicable laws, rules and regulations, and policies and procedures; and (3) implemented internal controls to safeguard against fraud, waste, and abuse.

To accomplish our objectives, we interviewed the AWC contracting office employees, accounting personnel, and project managers for the development projects. We also selected a judgmental sample of contracts awarded in FY 2006 and FY 2007 to determine whether the contracts were awarded in accordance with the AWC's Procurement Rules (Procurement Rules). Further, we reviewed the contract files and documentation pertinent to the histories of awarded contracts.

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In addition, we reviewed the AWC's Procurement Rules, AWC Board minutes, and relevant laws and regulations pertaining to the establishment and operation of the AWC. Also, we assessed the adequacy of internal controls over AWC's contracting activities.

At the time of our review, 6 of the 30 former employees were retained when the AWC was dissolved and folded into the ODMPED. This affected our review because some of the former employees involved in awarding some of the contracts that we reviewed were not available to address certain contract issues; however, the current contracting officer provided answers to some of our questions to the best of his ability. Thus, some of our audit issues could not be explained.

We did not rely on computer-processed data during this audit and we did not conduct tests of the reliability of the data, nor of the controls over the computer-based system that produced the data. However, we determined that any use of this data would not materially affect the results of this audit.

We conducted this audit in accordance with generally accepted government auditing standards and included such tests as we considered necessary under the circumstances.

PRIOR REVIEWS

The Anacostia Waterfront Corporation Act of 2004 required an AWC annual report to be submitted no later than 180 days after the end of the fiscal year, with distribution to the Council, the Mayor, and the Chief Financial Officer. The annual report also included financial statements reviewed by an independent auditor. Thus far, annual reports were prepared for FYs 2005 and 2006, and the AWC's financial statements received unqualified opinions for both years. In November 2007, during the time of our review, the independent auditing firm Thompson, Cobb, Bazilio & Associates, PC (TCBA) had begun its review of AWC's FY 2007 financial statements and operations.

TCBA identified eight opportunities for strengthening internal controls in its FY 2006 Management Letter Report that required corrective action by AWC. Two of the report's findings related to AWC's contracting operations. The findings addressed the fact that the AWC Board's procurement resolutions were not supported by individual justifications for contracts awarded, and that controls over the awarding of contracts needed strengthening. TCBA made recommendations in its Management Letter Report to address the identified deficiencies.

FINDINGS AND RECOMMENDATIONS

FINDING 1: ANACOSTIA WATERFRONT CORPORATION'S PROCUREMENT RULES AND CONTRACT OVERSIGHT

SYNOPSIS

We found that the AWC's Procurement Rules were, in some instances, contrary to basic key contracting principles and allowed improper contracting practices to occur. Our discussion below focuses on how the shortcomings in AWC's Procurement Rules affected AWC's contracting operations and the need for the ODMPED to ensure that all future contracts are awarded in a manner consistent with District procurement laws and regulations.

Additionally, our audit revealed that the AWC Board of Directors (AWC Board) and senior management did not provide adequate oversight for the contracting function. Both groups were responsible for ensuring the effectiveness of contracting operations and compliance with applicable District laws, regulations, and the Procurement Rules. Specifically, we found that no standard operating procedures covering the contracting function were developed as required by AWC's Procurement Rule XII. In our opinion, written internal controls and procedures covering contractual activities - including requirements for justification, approval, review, reporting, and evaluation of contract results - are vital ingredients for an effective contracting office.

As a result, many contracts awarded by the AWC lacked satisfactory supporting documentation important to the history of the respective procurement action, and obvious Procurement Rules violations were allowed to occur without consequence.

DISCUSSION

AWC's written Procurement Rules were deficient and not comprehensive enough in providing specific guidance when compared to the guidelines provided in Title 27 of the District of Columbia Municipal Regulations (DCMR), Contracts and Procurements. The AWC Procurement Rules, which were approved by the Council on June 21, 2005, provided a considerable amount of flexibility to the AWC in awarding contracts. We believe this wide, discretionary authority resulted in some questionable contract practices. In addition, the Procurement Rules did not apply to the awarding of development contracts or exclusive right agreements by the AWC, which was the primary mission and major reason for its creation as a quasi-government agency.

Additionally, AWC's Procurement Rule XII required the Chief Contracting Officer to develop a procurement manual that provided specific guidance to implement the

FINDINGS AND RECOMMENDATIONS

Procurement Rules. The procurement manual was to address procedures for construction contracting, architecture/engineering services, bonding requirements, liquidated damages, insurance and other security requirements, information technology and telecommunications contracting, best value procurements, and debriefing procedures. However, AWC never finalized its procurement manual. We also found that the AWC Board's oversight of contracting activities was deficient. This lack of sound management practices became most evident in our review of one particular contract award.

Comparison of Procurement Rules. Our audit identified that the following key contract and procurement principles were not adequately covered in AWC's Procurement Rules:

1. Construction, architect/engineering, and emergency contracting; bonding requirements; liquidated damages; insurance; information technology and telecommunications contracting; best value procurements; and debriefing procedures;
2. Procedures for identifying debarred, suspended, and ineligible contractors;
3. Contracting Officer Technical Representative (COTR) responsibilities;
4. Procedures and clauses to be included in solicitations when options are applicable;
5. Special contracting methods such as utilization of existing federal government contracts;
6. Protests, disputes, and appeals;
7. Closeout of contract files and physically complete contracts;
8. Contracting officer's responsibilities for quality assurance;
9. Contract financing and funding, such as advance or progress payments; and
10. Inspection and acceptance of contract deliverables.

The absence of sufficient guidance in the above contracting areas may have resulted in the AWC employing inefficient and ineffective procurement practices. We believe that having adequate Procurement Rules or procedures are paramount to any government agency or private entity contracting function because rules and procedures assist in promoting transparency, accountability, and fair and open competition in contracting. They also help ensure effective management and oversight of the contract award process.

FINDINGS AND RECOMMENDATIONS

With the abolishment of the AWC and folding of its operations into the ODMPED, the contracting function became subject to Title 27 DMCR, Contracts and Procurements, effective October 1, 2007.¹

AWC Board and Management Oversight. We found that the administration of the contracting activities of the AWC by the AWC Board and Chief Executive Officer (CEO) was deficient. Additionally, the AWC was not in compliance with many of its own Procurement Rules. For example, there was no follow-up by the AWC Board or the CEO concerning the completion of the procurement manual and other important contracting related operating procedures and/or internal controls as required under Procurement Rule XII. Further, the CEO never formally issued a written delegation of procurement authority to any of the AWC contracting officers as required by Procurement Rule III. B. 1. As a result, the contracting officers were functioning without official authority from the AWC.

In addition, we were informed that the AWC Board and senior management did not perform any follow-up with the contracting office to ascertain whether a procurement manual or other comparable standard operating procurement procedures were prepared to guide this critical function. The purpose of the procurement manual was to provide specific guidance for implementing the Procurement Rules. The manual would have been an aggregation of policies and procedures consisting of internal control techniques used to prevent or detect undesirable contractual events. Therefore, we believe that the procurement manual was essential if the AWC was to adhere to sound and consistent procurement practices, especially in the awarding of any development contracts.

The absence of these important and necessary procedures fostered an organizational environment susceptible to questionable contract practices. We believe that the written contract procedures were never produced because no one on the AWC Board or in management followed up on the completion of the procedures or establishment of any related internal controls. Also, no explanation could be provided as to why the AWC procurement manual and other procurement procedures were never completed or written delegations of procurement authority issued as called for under the provisions of the AWC's Procurement Rules. In addition, a consultant was hired to produce these documents, but never completed the procurement-related documents.

Consultant Hired by AWC. A consultant hired on October 3, 2005, under a personal services contract with the AWC failed to fulfill one of its critical obligations - produce a procurement manual. The consultant was paid \$13,400 in 2006 and \$53,500 in 2005 by the

¹ D.C. Law 17-53 exempted contracts already in existence as of October 1, 2007, from Title 27 of the DCMR.

FINDINGS AND RECOMMENDATIONS

AWC for services rendered. Additionally, under the personal services contract, the consultant was to provide a variety of personal services related to the management and administration of the AWC that included senior-level consultant services in the areas of human resources, procurement and contracting, information technology, finance, program management, and overall operations for the purpose of building an administrative and programmatic infrastructure. Neither the AWC Board nor the CEO monitored the consultant's activities to determine whether the services in the contract were actually performed and completed. This ineffective management oversight put the achievement of AWC's mission at a significant risk.

Thus, the soundness of the AWC's contracting operations appeared questionable and susceptible to outside criticism regarding the transparency, accountability, and fairness in the award of contracts. This assumption about the reliability of the contracting function may have caused and still could negatively affect the award of contracts involving the District's redevelopment initiatives along the Anacostia waterfront area. The questionable soundness of AWC's contracting operations was also evident in the award of contract AWC-C-RFP-06-01.

Issues with Contract AWC-C-RFP-06-01. Our review of this contract revealed several questionable issues that violated AWC's Procurement Rules and proper contract practices. The purpose of the contract was to provide real estate advisory services to AWC in conjunction with development of the Baseball District. We believe that the issues cited below occurred primarily because of lax management oversight of the contracting function and lack of adherence to the AWC's established Procurement Rules. Discussion of the Procurement Rules violations we identified follows.

Conflict of Interest. We believe that an apparent conflict of interest occurred with the award of contract AWC-C-RFP-06-01 for two reasons: (1) the AWC's CEO was listed as a reference in the proposal of the winning contractor; and (2) the partner who signed the contract on behalf of the firm was a former subordinate of the CEO in the District's Office of Planning before the latter's appointment as CEO of the AWC. For these two reasons, the CEO should have recused himself from any involvement with the award process. We believe that this was an ethics violation and contrary to Procurement Rule IV. B.1, which prohibits the appearance of conflict of interest or impropriety in connection with the AWC's procurement activities.

Contract Deliverables. The contractor was paid \$199,500 for 3 months work on the initial contract awarded September 9, 2005, which we believe was problematic because there was no documentation in the file regarding the acceptance of contract deliverables. The period of performance was from September 9, 2005, through December 31, 2005. The specific deliverables were not identified in the contract but were to be identified throughout the

FINDINGS AND RECOMMENDATIONS

period of performance with assigned due dates. However, there was no information in the contract file pertaining to any due dates or deliverables, and the contracting officer and COTR are no longer employed at the ODMPED. We were unable to determine if the AWC received value for the paid services. In addition, there was no summary technical evaluation report in the contract file, which is essential to the history of this contract award.

Contract Payment. The invoices submitted for payment by the contractor did not provide a detailed breakdown of the costs and a description of the services rendered, contrary to Procurement Rule IX. B provisions. The hours billed to the contract were not included in the contractor's invoice. This was a fixed price labor hour contract and the hours billed should have been included in the invoice. Additionally, the contractor amended its bid proposal in a letter to the interim CEO dated August 31, 2005, and requested payment via three installments of \$50,000 payable on October 1, November 1, and December 1, 2005. The remaining \$49,500 was to be billed upon completion of the contractor's work. We confirmed that the AWC complied with the contractor's request and paid the three installments by the requested due dates. However, the contractor should not have been allowed to dictate the terms of the payment for services, which was even done before the contractor was awarded the contract. In our opinion, the contractor was paid by the AWC for services between September 9, 2005, and December 31, 2005, that could not be substantiated or were questionable at best.

Regarding unspent funds, we believe that the COTR for this award influenced the decision to give this contractor the unspent balance on contract modification number 1 instead of de-obligating the remaining balance. An e-mail dated March 27, 2006, from the contractor to the AWC's Deputy General Counsel (COTR for this award) indicated that contract modification number 1 had a \$51,600 remaining balance. However, the COTR did not inform the contracting officer or the accounting office that a balance remained on the original award, which could have been de-obligated and reverted back to the appropriation or account charged.

Further, we noted that the contractor suggested an approach to use the unspent balance remaining on the initial contract award in the e-mail that was discussed above. The e-mail recommended that contract modification number 3 include language such as, "AWC and contractor acknowledge that a deferred payment of \$51,600 from a prior contract period shall be payable from this contract within 30 days of receipt of an invoice for such payment " or instructing the contractor to invoice \$51,600 separately through a direct payment authorized by the AWC Board. The COTR, in an e-mail reply to the contractor the same day, acknowledged the points suggested regarding the \$51,600 balance and agreed to incorporate the contractor's suggestions in contract modification number 3. The contracting officer for contract modification number 3, which was effective March 29, 2006, changed the contract number from AWC-C-RFP-05-01 to AWC-C-RFP-06-01 and included a statement in the contract modification that the contractor could bill the AWC for costs incurred prior to

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February 1, 2006. We verified that contract modification number 3 had language inserted into the scope of work that acknowledges the \$51,600 as deferred costs as recommended by the contractor. In addition, the overall contract ceiling of \$400,000 for contract modification number 3 included the \$51,600 authorized by the AWC Board on February 21, 2006.

We noted that the deferred cost amount was billed by the contractor in an invoice dated April 5, 2006 (invoice #04052006). This payment of the deferred costs was a breach of the AWC's Procurement Rule IX. A. 3, which states:

No representative, including a Contracting Officer, shall: (1) act in a manner that misleads a contractor regarding the limits of their authority; or (2) direct or encourage a contractor to perform work that has not been properly authorized.

AWC Board Involvement. We noted that an AWC Board resolution dated February 21, 2006, stated that the contract value could not exceed \$600,000 in the aggregate; however, the total award value, including modifications, exceeded the AWC Board resolution by \$324,881 (\$924,881 – \$600,000). The total net disbursements to the contractor were \$777,386, or \$177,386 over the AWC Board's authorized amount.

The AWC Board did not have a procedure to follow-up on contract funding resolution approvals. As a result, the above mentioned Procurement Rules violations and improper contract practices persisted. These conditions were due to the ineffective supervision of the AWC's contracting activities by senior management and the AWC Board of Directors, as well as weak procurement controls and procedures.

RECOMMENDATIONS, MANAGEMENT RESPONSES, AND OIG COMMENTS

We recommend that the Deputy Mayor, Planning and Economic Development:

1. Develop internal guidelines and procedures that require ODMPED contracting officials to adhere to the requirements of Title 27 of the DCMR, Contracts and Procurements, for all contracting activities of the office.
2. Establish management oversight for the contracting function by periodically monitoring compliance with DCMR Title 27 requirements.

ODMPED RESPONSE

ODMPED agreed with the recommendations and provided detailed actions taken and planned to address the recommendations. ODMPED's full response is included in Exhibit B.

FINDINGS AND RECOMMENDATIONS

OIG COMMENT

We consider ODMPED's actions to be responsive to the recommendations. However, we request that actual and estimated completion dates for Recommendations 1 and 2 be provided to properly establish accountability for the implementation of corrective actions reflected in management response.

FINDINGS AND RECOMMENDATIONS

FINDING 2: CONTRACT AWARD PROCESS

SYNOPSIS

Our review of the contract award process identified instances where the AWC contracting office did not adhere to its own Procurement Rules in the award of some contracts. We found that certifications of funding and AWC Board funding approvals did not always occur before contract awards. We attributed this condition to the lack of effective senior management supervision of the contracting function. In addition, as of October 1, 2007, the ODMPED contracting function became subject to the requirements of Title 27 DCMR, Contracts and Procurements. Therefore, it becomes paramount for the ODMPED to ensure adherence to those requirements or face increased risks that improper contracting practices will continue to occur.

DISCUSSION

We identified incidents where the lack of adequate management attention to contracting activities allowed certain inconsistent and improper procurement practices to occur. We found that certification of available funding for solicitations was not timely sought; independent cost estimates for prospective contract work were not performed; and poor contract price negotiations were conducted with potential contractors. In our opinion, these conditions resulted from a lack of appropriate scrutiny of the contracting activities by senior management and may have led to the AWC not receiving the best value for some of its contracted services.

Certification of Contract Funding. During the review of 20 selected contracts, we identified two occurrences where the contracts were ratified and signed before certification of the availability of funding was approved. Under AWC's Procurement Rule III. A, the CFO must certify that sufficient funds are available to obligate or encumber prior to awarding any proposed contracts. Also, this was a violation of the D.C. Code § 47-355.02 (2)(Supp. 2007), which prohibits a District agency from making an obligation before certification of the availability of funds is made, unless authorized by law. The two awarded contracts that were noncompliant with the funding certification procedures were:

1. Contract AWC-RES-TO-05-02 awarded for \$920,190

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2. Contract AWC-C-RFP-06-01, awarded for \$924,882²

In the first case, the contract was signed by both the contracting officer and contractor on November 18, 2005, and the certification of funds availability was approved November 23, 2005. In the second case, the contractor started work in February 2006 on contract modification number 2 before the certification of funds was approved on March 29, 2006. The contractor signed contract modification number 2 on January 9, 2006, and the AWC CEO signed the modification on February 1, 2006. The untimely funding certifications breached the previously mentioned Procurement Rule and the D.C. Code and resulted in two potential anti-deficiency violations.

The individuals who committed the infractions are no longer employed by the ODMPED and existing employees could not explain why the obligated funds were not timely certified and approved. We believe that the breaches resulted from weak management oversight and/or disregard for the Procurement Rules and the D.C. Code requirements.

Contract Negotiations. In analyzing file documentation of the contracts selected for this review, we noted that the AWC could have done a better job in negotiating the final price paid for certain legal services on some contracts. In particular, the initial award price of \$400,000 for contract AWC-LS-Baseball-06-01 probably could have been negotiated for a lesser price according to the AWC's contract consultant. The consultant was hired by the AWC to provide a variety of expert personal services related to the AWC's procurement and contracting activities such as the solicitation, evaluation, and contract award phases. The consultant criticized the price negotiated for this contract and stated that a better effort should have been made to negotiate a lower total labor rate per hour with the winning bidder. However, the selected contractor submitted the highest aggregate labor hourly rate (\$3,571 per hour) and had the lowest technical score (see Table 1 on the next page). The contractor with the second lowest technical score proposed a cumulative labor hourly rate of \$2,810, which was \$761 lower than the highest bidder. Further, the selected contractor's aggregate labor hour rate was \$2,091 higher than the lowest bidder. In our opinion, the AWC paid an average \$1,483 more for the total labor rate per hour than was necessary for the procured services.

Table 1

² The originating number for this contract was AWC-C-RFP-05-01 in the amount of \$199,500; the contract number was changed after contract modification 3. There were a total of four contract modifications resulting in an ending contract amount of \$924,881.

FINDINGS AND RECOMMENDATIONS

Bidders Total Labor Rate Per Hour

Bidder	Technical Score ³	Total Labor Rate Per Hour Bid
1	21	\$3,571
2	35	\$2,810
3	38	\$1,480
4	44	\$1,974
<i>Average labor rate per hour overpaid = \$1,483⁴</i>		

As a result, the AWC may not have received the best value for this award because due diligence and care were not made priorities in the price discussions of the labor hour rate with the selected contractor.

In addition, there was neither a summary evaluation report of the bidders' price proposals nor an independent cost estimate (ICE) in the contract files for us to examine. Further, the contracting officer did not prepare a post negotiation memorandum (documentation explaining the basis for the contract award decision), which should have been in the file in accordance with Procurement Rule VIII. C. 8.

Independent Cost Estimates. We did not see documentation to support that an ICE had been prepared for any of the 20 contract files reviewed. The AWC was required under Procurement Rule VI. A to prepare an ICE for each proposed award, and failure to prepare an ICE may have negatively affected contract panel evaluators' review of potential bidders' price proposals and the panel's ensuing final decisions. The ICE is a realistic assessment of the cost of the proposed award requirements and includes (but is not limited to) labor, estimated labor hours, materials/supplies, and all other direct and indirect costs associated with the procurement. Absent documentation supporting the research of costs for planned awards, we were unable to confirm whether the AWC obtained the best value or competitive, fair, and reasonable prices for services procured under awarded contracts.

RECOMMENDATIONS

³ Bidder with the lowest score was the best rated proposal based on the point system used by panel evaluators.

⁴ The average per hour labor rate is derived from the sum of the per hour labor rates for bidders 2 through 4, divided by 3. We subtracted that amount from bidder 1's per hour rate; this represents the amount overpaid on a per-hour basis by AWC to the selected bidder (bidder 1).

FINDINGS AND RECOMMENDATIONS

We recommend that the Deputy Mayor, Planning and Economic Development:

3. Implement procedures to ensure that the availability of funds is certified and approved before the award of any contract in accordance with D.C. Code § 47-355.02 (2).
4. Establish an internal management approval process for contracts over a predetermined dollar threshold to review periodically for compliance with DCMR Title 27 requirements and other applicable District laws and regulations.
5. Establish written protocols that ensure contracting officers are the only employees authorized to lead contract price negotiation discussions with potential bidders. Periodically review contract actions to ensure contracting officers are preparing post-negotiation memorandums that document the basis for contract award decisions.
6. Establish a procedure that requires the contracting officer develop a written independent cost estimate of the proper price level for the value of any goods or services to be purchased before issuing a solicitation and include the cost estimate as part of the permanent contract file history.

ODMPED RESPONSE

ODMPED agreed with the recommendations and provided detailed actions taken and planned to address the recommendations. ODMPED's full response is included in Exhibit B.

OIG COMMENT

We consider ODMPED's actions to be responsive to the recommendations. However, we request that actual and estimated completion dates for Recommendations 3, 4, 5, and 6 be provided to properly establish accountability for the implementation of corrective actions reflected in management response.

We recommend that the Chairman, Board of Review for Anti-Deficiency Violations:

FINDINGS AND RECOMMENDATIONS

7. Convene the Board and take appropriate action regarding the two contracts that were ratified and signed before certification of the availability of funding was approved.

BRADV RESPONSE

BRADV agreed with the recommendation and indicated that it will review the matter to determine whether or not remedial actions are required by the District's Anti-Deficiency Law. BRADV's full response is included in Exhibit C.

OIG COMMENT

We consider BRADV's actions to be fully responsive to the recommendations.

FINDINGS AND RECOMMENDATIONS

FINDING 3: CONTRACT ADMINISTRATION

SYNOPSIS

Our review of 20 judgmentally selected contract files found that the AWC maintained insufficient file documentation to support underlying contract actions. Procurement Rule IX. F. 1 required the AWC to maintain in the contract file: (1) the solicitation and any amendments; (2) the contract and any modifications; (3) any type of documentation that is specifically required to be maintained in the contract file by other sections of the rules; and (4) any other documentation that may be necessary to memorialize important decisions or events relating to the procurement or the contract. We believe that the absence of a written procurement manual or other compensating procedures implementing the Procurement Rules was a contributing factor to this deficiency as well as inadequate management oversight of the contracting function. As a result, contract practices contrary to the Procurement Rules and proper contracting principles may have gone undetected and therefore not prevented.

DISCUSSION

We found that 15 of 20 contracts reviewed were missing supporting information necessary to memorialize the history of the awards. This occurred despite the existence of an AWC procurement rule covering the type of documents that must be maintained within contract files. The contract files generally lacked at least one supporting document that was vital to the contract history of events. In our opinion, these conditions existed because of poor management oversight and noncompliance with Procurement Rule IX. F. 1 requirements.

Contract File Documentation. We found contract file documentation to be inconsistent as to the type of documentation that was maintained by the contracting office. Examples of the type of required documents missing from the files included:

- AWC Board funding authorization approvals for six awards;
- Contracting Officer's basis for award assessment for six contracts;
- Summary technical evaluation report of rated proposals for six contracts;
- Solicitation for two contracts; and
- Statements certifying that the respective contracts had been completed and deliverables inspected and accepted for eight completed contracts.

FINDINGS AND RECOMMENDATIONS

Some awards reviewed lacked key data that is normally contained in the contents of contract files because the contracting office did not have written procedures for documenting the files. In this regard, contract files with missing summary evaluation reports could lead a reviewing official to question whether the award was properly evaluated and/or awarded. We believe the lack of standard and consistent documentation renders contract files unreliable for reviewing the contract's complete transaction history and is contrary to proper contracting principles. As a result, there was no assurance that the AWC received the services contracted for in the statements of work or that the contractor was compliant with the terms of the contract. Furthermore, adequate contract file documentation is essential in the event of a contract dispute and provides a basis for settling claims.

In addition, 27 DCMR §§ 1203.1 – 1203.8, which now govern the issuance of contracts by the ODMPED, require that files be maintained such that they contain the records of all contractual actions pertinent to the history of each contract. This office should also be mindful of the importance of supporting the contract actions for the Anacostia waterfront development initiatives currently underway.

RECOMMENDATIONS

We recommend that the Deputy Mayor, Planning and Economic Development:

8. Monitor compliance with 27 DCMR §§ 1203.1 – 1203.8, which require that sufficient documentation be maintained in contract files to record contractual actions for all awarded contracts, by implementing a standardized list of items that the contracting office within the agency must document and maintain in the contract files.
9. Direct the Chief Contracting Officer to monitor adherence to any contract file documentation procedures instituted.

ODMPED RESPONSE

ODMPED agreed with the recommendations and adopted the use of a *Contract File Checklist* to document and maintain contract files. Additionally, ODMPED has directed the ODMPED's contracting officer to monitor adherence to the internal documentation procedures and all requirements of Title 27 of the District of Columbia Municipal Regulations. ODMPED's full response is included in Exhibit B.

OIG COMMENT

We consider ODMPED's actions to be responsive, satisfying the intent of the recommendations. However, we request that actual and estimated completion dates for Recommendations 8 and 9 be provided to properly establish accountability for the implementation of corrective actions reflected in management response.

**EXHIBIT A. SUMMARY OF POTENTIAL BENEFITS
RESULTING FROM AUDIT**

Recommendation	Description of Benefit	Amount and Type of Benefit	Accountable Agency and Reported Estimated Completion Date	Status⁵
1	Internal Control. Develops internal guidelines and procedures that require ODMPED contracting officials to adhere to the requirements of Title 27 of the DCMR on Contracts and Procurements for all contracting activities of the office.	Non-Monetary	ODMPED 6/27/08	Closed
2	Compliance and Internal Control. Establishes management oversight for the contracting function by periodically monitoring compliance with DCMR Title 27 requirements.	Non-Monetary	ODMPED 6/27/08	Closed
3	Compliance and Internal Control. Implements procedures to ensure that the availability of funds is certified and approved before the award of any contract in accordance with D.C. Code § 47-355.02 (2).	Non-Monetary	ODMPED 6/27/08	Closed

⁵ This column provides the status of a recommendation as of the report date. For final reports, “Open” means management and the OIG are in agreement on the action to be taken, but action is not complete. “Closed” means management has advised that the action necessary to correct the condition is complete. If a completion date was not provided, the date of management’s response is used. “Unresolved” means that management has neither agreed to take the recommended action nor proposed satisfactory alternative actions to correct the condition.

**EXHIBIT A. SUMMARY OF POTENTIAL BENEFITS
RESULTING FROM AUDIT**

Recommendations	Description of Benefit	Amount and Type of Benefit	Accountable Agency and Reported Estimated Completion Date	Status
4	Internal Control. Establishes an internal management approval process for contracts over a predetermined dollar threshold to review periodically for compliance with DCMR Title 27 requirements and other applicable District laws and regulations.	Non-Monetary	ODMPED 6/27/08	Closed
5	Compliance and Internal Control. Establishes protocols that ensure contracting officers are the only employees authorized to lead contract price negotiation discussions with potential bidders. Ensures that contracting officers periodically review contract actions and prepare post-negotiation memorandums that document the basis for contract award decisions.	Non-Monetary	ODMPED 6/27/08	Closed
6	Compliance and Internal Control. Establishes a procedure that requires the contracting officer to develop a written independent cost estimate of the proper price level for the value of any services to be purchased before issuing a solicitation and include the cost estimate as part of permanent contract file history as supporting documentation.	Non-Monetary	ODMPED 6/27/08	Closed

**EXHIBIT A. SUMMARY OF POTENTIAL BENEFITS
 RESULTING FROM AUDIT**

Recommendations	Description of Benefit	Amount and Type of Benefit	Accountable Agency and Reported Estimated Completion Date	Status
7	Compliance. Requires the District's Anti-Deficiency Review Board to determine whether AWC violated the District's Anti-Deficiency Act.	Non-Monetary	BRADV 05/23/08	Closed
8	Internal Control. Establishes written procedures for implementing a standard list of items that the contracting office must document and maintain in the contract files.	Non-Monetary	ODMPED 6/27/08	Closed
9	Compliance and Internal Control. Directs the Chief Contracting Officer to monitor adherence to any contract file documentation procedures instituted.	Non-Monetary	ODMPED 6/27/08	Closed

EXHIBIT B. ODMPED MANAGEMENT RESPONSE



Government of the District of Columbia

Neil O. Albert
Deputy Mayor for Planning and
Economic Development

June 27, 2008

Charles Willoughby
Inspector General
Government of the District of Columbia
717 14th Street, NW
Washington, DC 20005

**Re: Response to OIG Draft Report on Audit of the Anacostia Waterfront
Corporation's Procurement and Contract Administration**

Dear Mr. Willoughby:

I am writing to respond to your letter of May 9, 2008, in which you provided a draft report summarizing the results of the Office of the Inspector General's audit of the Anacostia Waterfront Corporation's Procurement and Contract Administration (OIG No. 08-2-35EB).

As you are aware, during the period of time covered by OIG's audit, the Anacostia Waterfront Corporation ("AWC") operated as an independent instrumentality of the District of Columbia, governed by its own board of directors, and was not subject to the direct oversight or administration of either the Mayor or the Office of the Deputy Mayor for Planning and Economic Development ("ODMPED").

Under legislation approved last year by the Council and signed by the Mayor, however, ODMPED assumed the responsibilities of AWC on October 1, 2007, and OIG's audit will provide valuable information as ODMPED completes AWC's integration into ODMPED.

ODMPED has thoroughly reviewed the audit with respect to its applicability to the ongoing operations of ODMPED, and provides the responses below to the audit's recommendations.

1350 Pennsylvania Avenue, N.W., Suite 317 • Washington, D.C. 20004 • Tel. (202) 727-6365 • Fax (202) 727-6703

EXHIBIT B. ODMPED MANAGEMENT RESPONSE

OIG Audit Recommendation #1: ODMPED should develop internal guidelines and procedures that require ODMPED contracting officials to adhere to the requirements of Title 27 of the DCMR, Contracts and Procurements, for all contracting activities of the office.

DMPED Response: As a District agency, ODMPED has adopted and complies with the guidelines and procedures set forth in Title 27 of the District of Columbia Municipal Regulations for all contracting activities of the Office. Moreover, ODMPED has hired an agency-specific contracting officer and contracting staff to carry out the contracting activities of ODMPED. The Deputy Mayor has directed the contracting officer and staff to take all actions needed to ensure that ODMPED fully complies with Title 27.

OIG Audit Recommendation #2: ODMPED should establish management oversight for the contracting function by periodically monitoring compliance with DCMR Title 27 requirements.

DMPED Response: ODMPED's contracting officer and staff are responsible for ensuring compliance on a day-to-day basis with the requirements of Title 27 of the District of Columbia Municipal Regulations. As a condition of a contracting delegation agreement between ODMPED and the Office of Contracting and Procurement ("OCP"), ODMPED is subject to periodic audits to be performed by OCP to ensure compliance with Title 27. The OIG audit reviewed the contracting operations of the Anacostia Waterfront Corporation; as the OIG findings were not related to the contracting operations of ODMPED, ODMPED believes that ODMPED's compliance with Title 27, along with the authorized OCP audits, are adequate to address this recommendation.

OIG Audit Recommendation #3: ODMPED should implement procedures to ensure that the availability of funds is certified and approved before the award of any contract in accordance with D.C. Official Code § 47-355.02(2).

DMPED Response: ODMPED has adopted the District of Columbia Procurement Automated Support System ("PASS") as its official system of record. Under PASS, the availability of funds is certified and approved before the award of any contract.

OIG Audit Recommendation #4: ODMPED should establish an internal management approval process for contracts over a predetermined threshold to review periodically for compliance with DCMR Title 27 requirements and other applicable District laws and regulations.

DMPED Response: For any and all contract actions of ODMPED, ODMPED is subject to periodic audits to be performed by the OCP pursuant to a contracting delegation agreement with OCP. The OIG audit reviewed the contracting operations of the Anacostia Waterfront Corporation; as the OIG findings were not related to the contracting operations of ODMPED, ODMPED believes that ODMPED's compliance

EXHIBIT B. ODMPED MANAGEMENT RESPONSE

with Title 27, along with the authorized OCP audits, are adequate to address this recommendation.

OIG Audit Recommendation #5: ODMPED should establish written protocols that ensure that contracting officers are the only employees authorized to lead contract price negotiation discussions with potential bidders and should periodically review contract actions to ensure that contracting officers are preparing post-negotiation memorandums that document the basis for contract award decisions.

DMPED Response: ODMPED and its contracting staff are required to adhere to the procedures and protocols regarding the conduct of negotiations set forth in Title 27 of the District of Columbia Municipal Regulations, which require that only the contracting officer lead price negotiation discussions and that post-negotiation memoranda be included as part of the contract file. In addition, ODMPED has mandated that all project managers complete the District of Columbia Contracting Officer Technical Representative (“COTR”) training for the purpose of understanding the roles and responsibilities of procurement and procurement-related personnel. The OIG audit reviewed the contracting operations of the Anacostia Waterfront Corporation; as the OIG findings were not related to the contracting operations of ODMPED, ODMPED believes that ODMPED’s compliance with Title 27 and COTR training, along with the authorized OCP audits, are adequate to address this recommendation.

OIG Audit Recommendation #6: ODMPED should establish a procedure that requires the contracting officer to develop a written cost estimate of the proper price level for the value of any goods or services to be purchased before issuing a solicitation and include the cost estimate as part of the permanent contract file history.

DMPED Response: ODMPED and its contracting staff are required to adhere to the procedures and protocols regarding the development of independent cost estimates set forth in Title 27 of the District of Columbia Municipal Regulations, which require that the cost estimate be included in the contract file.

OIG Audit Recommendation #7: The Chairman of the Board of Review for Anti-Deficiency Violations should convene the Board and take appropriate action regarding the two contracts that were ratified and signed before certification of the availability of funding was approved.

DMPED Response: n/a

OIG Audit Recommendation #8: The Deputy Mayor should monitor compliance with 27 DCMR §§ 1203.1-1203.8, which require that sufficient documentation be maintained in contract files to record contractual actions for all awarded contracts, by implementing a standardized list of items that the contracting office within the agency must document and maintain in the contract files.

DMPED Response: ODMPED has developed and adopted the use of a Contract File

EXHIBIT B. ODMPED MANAGEMENT RESPONSE

Checklist for the purpose of documenting and maintaining contract files. See Exhibit 1. The contracting officer is responsible for monitoring compliance with this checklist. The OIG audit reviewed the contracting operations of the Anacostia Waterfront Corporation; as the OIG findings were not related to the contracting operations of ODMPED, ODMPED believes that ODMPED's development and adoption of this checklist and the requirement to comply with Title 27, along with the authorized OCP audits, are adequate to address this recommendation.

OIG Audit Recommendation #9: The Deputy Mayor should direct the Chief Contracting Officer to monitor adherence to any contract file documentation procedures instituted.

DMPED Response: The Deputy Mayor has directed ODMPED's contracting officer to monitor adherence to ODMPED's file documentation procedures and all requirements of Title 27 of the District of Columbia Municipal Regulations.

I appreciate the hard work your office has put into the review of the contracting practices of AWC. Please contact me at 202-727-6365 or at neil.albert@dc.gov if you would like any additional information or if I can be of any further assistance.

Sincerely,

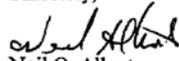

Neil O. Albert

EXHIBIT C. OCFO/BRADV MANAGEMENT RESPONSE

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Chief Financial Officer



Board of Review for Anti-Deficiency Violations

May 23, 2008

Charles J. Willoughby
Inspector General
Office of the Inspector General
717 14th Street, NW
Washington, DC 20005

Dear Mr. Willoughby:

Thank you for providing the Board of Review for Anti-Deficiency Violations (BRADV) with a copy of the draft report summarizing the results of the Office of the Inspector General's (OIG) Audit of the Anacostia Waterfront Corporation's (AWC) Procurement and Contract Administration (OIG No. 08-2-35EB).

This letter shall serve as the preliminary response of the BRADV. In the draft report you recommended at Finding No.2: Contract Award Process, that the BRADV convene and take appropriate action regarding the two contracts that you found were ratified and signed before certification of the availability of funding was approved.

I agree with this recommendation. Accordingly, the BRADV will begin to review this matter at its next scheduled meeting. Following our investigation process, the BRADV will take actions in accordance with the District's Anti-Deficiency Law, if appropriate.

If you have questions, please do not hesitate to contact me at 202-727-0490.

Sincerely,

A handwritten signature in cursive script that reads "Lucille Dickinson".

Lucille Dickinson,
Chief of Staff, OCFO and Chair of the BRADV

Cc: Mr. Daniel M. Tangherlini, City Administrator and Deputy Mayor
Mr. Neil Albert, Deputy Mayor for Planning and Economic Development

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