GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE INSPECTOR GENERAL

AUDIT OF THE PROCUREMENT ACTIVITIES AT THE OFFICE OF PUBLIC EDUCATION FACILITIES MODERNIZATION

CHARLES J. WILLOUGHBY
INSPECTOR GENERAL

OIG No. 09-2-28GM **June 29, 2011**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General

June 29, 2011

Ollie Harper
Acting Executive Director
Office of Public Education Facilities Modernization
2400 East Capitol Street, S.E.
Washington, D.C. 20003

James Staton
Acting Chief Procurement Officer
Office of Contracting and Procurement
441 4th Street, N.W., Suite 700 South
Washington, D.C. 20001

Dear Mr. Harper and Mr. Staton:

Enclosed is our final report summarizing the results of the Office of the Inspector General's (OIG) Audit of the Procurement Activities at the Office of Public Education Facilities Modernization (OIG No. 09-2-28GM).

As a result of our audit, we directed eight recommendations to the Office of Public Education Facilities Modernization (OPEFM) and one recommendation to the Office of Contracting and Procurement (OCP) for action we consider necessary to correct identified deficiencies. We received a response to the draft audit report from OPEFM on May 31, 2011. OPEFM agreed with our recommendations, with the exception of Recommendation 8. Therefore, we consider Recommendation 8 to be unresolved. We request that OPEFM reconsider its position taken on Recommendation 8 and provide an additional response to us by July 21, 2011.

We consider actions taken and/or planned by OPEFM to meet the intent of the remaining recommendations. However, OPEFM did not provide the target date for completing the planned action for Recommendation 4. Thus, we respectfully request that OPEFM provide the target date for taking corrective action within 60 days of the date of this report. The full text of the OPEFM response is included in Exhibit B.

We also received a response from OCP to a draft of this report on April 29, 2011. OCP agreed with our recommendations. We consider actions taken and/or planned by the OCP to meet the intent of the recommendation. The full text of the OCP response is included at Exhibit C.

We appreciate the cooperation and courtesies extended to our staff by OPEFM and OCP during this audit. If you have questions, please contact me or Ronald W. King, Assistant Inspector General for Audits, at (202) 727-2540.

Sincerely,

Charles J. Willoughby
Inspector General

Enclosure

CJW/kh

cc: See Distribution List

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ACRONYMS

CAB	Contract Appeals Board
CCO	Chief Contracting Officer
CO	Contracting Officer
DCPL	District of Columbia Public Library
DCPS	District of Columbia Public Schools
DCMR	District of Columbia Municipal Regulations
DCSS	District of Columbia Supply Schedule
D&F	Determination and Findings
DPM	District Personnel Manual
MFP	Master Facilities Plan
OAG	Office of the Attorney General
OCP	Office of Contracting and Procurement
OFM	Office of Facilities Management
OIG	Office of the Inspector General
OPEFM	Office of Public Education Facilities Modernization
PPA	Procurement Practices Act
RFQ	Request for Quotation
RFTOP	Request for Task Order Proposal
SOAR	System of Accounting and Reporting

AUDIT OF THE PROCUREMENT ACTIVITIES AT THE OFFICE OF PUBLIC EDUCATION FACILITIES MODERNIZATION

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EXECUTIVE DIGEST

OVERVIEW

This report summarizes the results of the Office of the Inspector General's (OIG) "Audit of Procurement Activities at the Office of Public Education Facilities Modernization" (OIG No. 09-2-28GM). Our audit objectives were to determine whether contracting actions at the Office of Public Education Facilities Modernization (OPEFM) were: (1) in compliance with requirements of applicable laws, rules and regulations, and policies and procedures; (2) awarded and administered in an efficient, effective, and economical manner; and (3) conducted in a manner where internal controls were in place to safeguard against fraud, waste, and abuse.

CONCLUSIONS

This report contains five findings that detail the conditions found during our audit. In our first finding, we disclose that OPEFM does not have finalized procurement rules. The Public Education Reform Amendment Act of 2007 granted OPEFM independent procurement authority, but required the agency to promulgate rules to implement its authority. The absence of finalized procurement rules increases the risk that operational practices will not be consistent with program objectives.

Our second finding reveals that the emergency procurement rules adopted by OPEFM on August 10, 2007, did not contain necessary provisions and contained provisions that were not consistent with existing procurement laws. For example, OPEFM's emergency procurement rules stated that the OPEFM Director makes the final decision for protests; however, the Contract Appeals Board is authorized to make the final decision. As a result, the District's interests may not be adequately protected and OPEFM's procurement rules could be misleading to contractors protesting contract awards made by OPEFM.

Our third finding addresses OPEFM's improper use of the District of Columbia Supply Schedule (DCSS). OPEFM did not obtain the required number of quotations prior to selecting a contractor on the DCSS to provide legal and procurement consulting services. In addition, OPEFM circumvented procurement laws by utilizing the services of the contractor after the DCSS contract expired and allowing the contractor to perform work without a written agreement. As a result, OPEFM may not have received the best value for legal and procurement consulting services.

In our fourth finding, we discuss the apparent conflict of interest for an attorney who is a partner at a law firm that drafts solicitations and contracts for OPEFM. This attorney is also the son-in law of an executive at one of the construction companies that is an OPEFM contractor. As a result, there is an appearance that this construction company has an unfair advantage over other construction companies and that there is not full and open competition.

EXECUTIVE DIGEST

Our last finding reveals that the Executive Director of OPEFM hired his Chief of Staff as a contractor instead of a government employee. We have four concerns with this arrangement. First, OPEFM allowed the Chief of Staff to provide services without a written contract. Secondly, the Chief of Staff - who was hired on a sole-source basis - performed an inherent government function. Further, the Chief of Staff supervised government employees, which is counter to normal District practices. Lastly, the Chief of Staff was eligible to receive bonuses at the time when the District government is faced with budget shortfalls and employees are prohibited from receiving bonuses.

SUMMARY OF RECOMMENDATIONS

We directed eight recommendations to the Executive Director for the Office of Public Education Facilities Modernization, and one recommendation to the Chief Procurement Officer, Office of Contracting and Procurement, that we believe are necessary to correct the deficiencies noted in this report. The recommendations, in part, center on:

- Finalizing procurement rules to ensure operational practices are consistent with program objectives.
- Amending OPEFM's procurement rules to ensure the District's interest is adequately protected and the rules are consistent with procurement laws.
- Requiring OPEFM procurement staff to take training courses to ensure full and open competition when contracts are awarded.
- Tracking contracts and agreements to ensure contractors do not perform work without written agreements once the contracts and agreements expire.
- Canceling the agreement with the law firm that provides legal and procurement consulting services to OPEFM, and executing a new agreement since OPEFM selected the contractor off of the DCSS and the DCSS contract has expired.

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

MANAGEMENT RESPONSES AND OIG COMMENTS

On May 31, 2011, OPEFM provided a written response to a draft of this report. OPEFM agreed with our recommendations, with the exception of Recommendation 8. Therefore, we consider Recommendation 8 to be unresolved. We request that OPEFM reconsider its position taken on Recommendation 8 and provide an additional response to us by July 21, 2011. We consider actions taken and/or planned by OPEFM to meet the intent of the remaining recommendations. However, OPEFM did not provide the target date for completing the planned action for Recommendation 4. Thus, we respectfully request that

EXECUTIVE DIGEST

OPEFM provide our Office with the target date for taking corrective action within 60 days of the date of this report. The full text of the OPEFM response is included in Exhibit B.

We also received a response from OCP to a draft of this report on April 29, 2011. OCP agreed with our recommendations. We consider actions taken and/or planned by the OCP to meet the intent of the recommendation. The full text of the OCP response is included at Exhibit C.

INTRODUCTION

BACKGROUND

The Office of Public Education Facilities Modernization (OPEFM) is responsible for modernizing existing public school facilities and constructing new schools to ensure students, principals, and teachers are housed in schools that are safe, secure, and conducive to learning. The agency was established in June 2007 by the Public Education Reform Amendment Act of 2007 (Education Reform Act) (D.C. Law 17-9) to construct and modernize public school facilities. However, subsequent to the Education Reform Act, the D.C. Council adopted the Public Education Personnel Reform Amendment Act of 2008 (Personnel Amendment Act) (D.C. Law 17-122), which made OPEFM also responsible for the maintenance of school facilities. Prior to these legislative changes, the District of Columbia Public Schools (DCPS) was responsible for modernizing and constructing school facilities and performing routine maintenance.

As a result, employees working for the DCPS Office of Facilities Management (OFM) were transferred to OPEFM and OPEFM assumed control of all DCPS construction projects. In conjunction with completing the projects transferred from DCPS, OPEFM completed numerous facility improvements in 2007 as part of its stabilization initiative. The 2007 stabilization initiative mainly focused on closing open work orders at the schools.[1] Some of the improvements included upgrading the air conditioning, electrical, and heating systems and modernizing fields and playgrounds.

In fiscal year (FY) 2008, OPEFM developed a master facilities plan (MFP) to serve as a guiding tool for implementing modernization projects. The 2008 MFP builds upon the 2006 MFP prepared by the former Superintendent of DCPS and the Board of Education. The 2008 MFP is driven by the "guiding principles" established by the DCPS Office of the Chancellor.[2] In 2010, OPEFM updated the MFP at the D.C. Council's request. The 2010 MFP describes the approach to project scoping, illustrates a framework for project budgeting, establishes parameters for scheduling projects, and includes a phased implementation schedule. According to the 2010 MFP, all of the public schools will be modernized by 2019.

OPEFM substantially relies on contractors to assist the agency in performing its responsibilities. In addition to awarding contracts to construction companies to complete construction and maintenance projects, OPEFM awarded contracts to several firms to assist OPEFM with preparing solicitations and contracts, providing oversight of construction projects, and performing quality assurance. For example, OPEFM awarded a contract to the D.C. Partners for the Revitalization of Educational Facilities to: (1) manage the day-to-day

[1] Work orders are requests from custodians, principals, etc. for unscheduled repairs and maintenance needed at their schools. When OPEFM was established, there were reportedly hundreds of open work orders.
[2] The "guiding principles" serve as a set of planning policies based on the needs and priorities of the school system. The principles include: (1) modernizing/enhancing classrooms; (2) ensuring buildings support programs; (3) accommodating emerging/existing feeder patterns, enrollment trends, and school clusters; and (4) leveraging the school as a community asset.

INTRODUCTION

oversight of construction projects; (2) advise OPEFM on the schedule, scope, and budget for projects and the quality of the work performed by the construction contractors; and (3) review change order requests submitted by the construction contractors and assist OPEFM in responding to the requests.

OBJECTIVES, SCOPE, AND METHODOLOGY

The audit objectives were to determine whether contracting actions at OPEFM were: (1) in compliance with requirements of applicable laws, rules and regulations, and policies and procedures; (2) awarded and administered in an efficient, effective, and economical manner; and (3) conducted in a manner where internal controls were in place to safeguard against fraud, waste, and abuse.

Our audit period primarily covered procurement operations from the inception of OPEFM (June 2007) through FY 2010. During this time period, OPEFM contracts were valued at $577 million.[3] To accomplish our objectives, we performed the following: (1) reviewed procurement regulations and procedures; (2) evaluated the procurement process; (3) reviewed seven construction contracts and three non-construction contracts valued at $34 million;[4] and (4) examined payment records. In addition, we toured five schools that were recently modernized to observe the quality and innovation of the improvements.[5] At each school, we also interviewed the principal and head custodian to determine whether any structural or maintenance problems existed and the process for reporting maintenance and facility problems.

Further, we interviewed several District officials. We interviewed OPEFM staff and contractors, including the Chief Procurement Officer, General Counsel, Program Estimator, Chief of Staff, Director of Operations, and program managers.[6] We also interviewed Office of Contracting and Procurement (OCP) staff, D.C. Council staff, and the Chief Financial Officer for OPEFM and his staff.

We relied on computer-processed data from the System of Accounting and Reporting (SOAR) to determine the amount paid to contractors. OPEFM provided us with SOAR documents; however, we abstracted data from SOAR ourselves and compared the data provided by OPEFM to validate the completeness of the data.

[3] This figure was taken from OPEFM's master file lists, dated December 2, 2009, March 16, 2010, and July 8, 2010. We did not verify the accuracy of the figures on the master file lists; however, we determined that the figures do not include the amounts for contract modifications or change orders.
[4] This figure was taken from the master file lists dated December 2, 2009, March 16, 2010, and July 8, 2010.
[5] The five schools were Brightwood Education Center, H.D. Cooke Elementary School, Phelps Senior High School, Wheatley Education Center, and Savoy Elementary School.
[6] The Program Estimator, Chief of Staff, and program managers are contractors.

INTRODUCTION

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

PRIOR REVIEWS

Our Office has not previously conducted a procurement audit at OPEFM. Our research also disclosed that neither the U.S. Government Accountability Office nor the Office of the District of Columbia Auditor has conducted a procurement audit at OPEFM.[7]

[7] Subsequent to the release of our draft report, the District of Columbia Auditor issued a report on May 11, 2011, on its review of the Operations and Administration of the OPEFM.

FINDINGS AND RECOMMENDATIONS

FINDING 1: FINALIZATION OF PROCUREMENT RULES

SYNOPSIS

The Education Reform Act granted OPEFM independent procurement authority and required OPEFM to promulgate rules to implement its authority. However, OPEFM has been operating for over 3 years without finalized procurement rules. OPEFM does not have finalized procurement rules because OPEFM management has not made finalizing the rules a priority. The absence of finalized procurement rules increases the risk that operational practices will not be consistent with program objectives.

DISCUSSION

Section 702 of the Education Reform Act provides:

> The OFM[8] shall have independent procurement and personnel authority. The OFM shall promulgate rules to implement this authority. The proposed rules for procurement and for personnel shall be submitted to the Council for a 45-day period of review. If the Council does not approve or disapprove the proposed rules by resolution, within the 45-day review period, the proposed rules shall be deemed approved.

(Codified at D.C. Code § 38-451(b) (Supp. 2009)). To comply with the Education Reform Act, OPEFM adopted emergency procurement rules on August 10, 2007, and published notice of its adoption of the rules in the D.C. Register on August 24, 2007. However, the rules were never finalized. The procurement rules were officially submitted to the D.C. Council during OPEFM's first year of operation, but they were subsequently withdrawn by the Mayor of the District of Columbia on December 7, 2007, and not officially resubmitted until recently, as discussed below.

Submission of Procurement Rules. On November 2, 2007, OPEFM's procurement rules were submitted to the D.C. Council for review under proposed resolution PR17-541.[9] On December 3, 2007, the D.C. Council held a roundtable discussion with OPEFM on the procurement rules and requested OPEFM to make changes. Subsequently, on December 7, 2007, the Mayor withdrew proposed resolution PR17-541. OPEFM officials stated that the rules were withdrawn to address the questions raised by the D.C. Council during its review.

[8] The acronym OFM is used in the Act instead of OPEFM.
[9] OPEFM actually submitted the rules to the D.C. Council through the Executive Office of the Mayor.

FINDINGS AND RECOMMENDATIONS

Resubmission of Procurement Rules. In April 2008, OPEFM's General Counsel "unofficially" submitted OPEFM's revised procurement rules to the D.C. Council's Deputy Budget Director.[10] The D.C. Council held a meeting with OPEFM in the summer of 2008 to discuss the revised procurement rules, and the D.C. Council requested that OPEFM make additional changes.

OPEFM did not submit the procurement rules back to the D.C. Council's Deputy Budget Director until December 2009. Our discussions with the D.C. Council and OPEFM disclosed that there was no communication between the two agencies for over a year (i.e., from the summer of 2008 through December 2009). In March 2010, the D.C. Council's Deputy Budget Director provided comments on the December 2009 revised rules to OPEFM's General Counsel.

Based on our review of the procurement rules and the subsequent revisions, there appears to be no reasonable explanation for the substantial amount of time OPEFM took to revise the rules and officially resubmit them back to the D.C. Council. OPEFM does not have finalized procurement rules because OPEFM management has not made finalizing the rules a priority. In January 2010, OPEFM's General Counsel stated that he planned to officially submit the revised procurement rules to the D.C. Council by February 2010; however, OPEFM did not do so until September 2010, or 6 months after the D.C. Council provided its March 2010 comments. The absence of finalized procurement rules increases the risk that procurement practices will not be consistent with program objectives.

RECOMMENDATION

We recommend that the Executive Director for the Office of Public Education Facilities Modernization:

1. Take the necessary measures to finalize OPEFM's procurement rules.

OPEFM RESPONSE

OPEFM concurred with the recommendation. In its response, OPEFM stated its procurement rules have been finalized and were submitted to the Council for the District of Columbia on September 27, 2010. Because the Council failed to take action on the rules within the 45-day review period, the rules were deemed approved on November 20, 2010.

[10] We use the term "unofficially" because the rules were submitted directly to the Deputy Budget Director for review instead of being submitted to the Secretary to the Council to be officially logged in as received and placed into the Legislative Information Management System.

FINDINGS AND RECOMMENDATIONS

OIG COMMENT

We consider OPEFM actions to be responsive to the recommendation.

FINDINGS AND RECOMMENDATIONS

FINDING 2: PROVISIONS IN PROCUREMENT RULES

SYNOPSIS

The procurement rules initially adopted and revised by OPEFM do not contain necessary provisions and contained provisions that were inconsistent with existing procurement laws. For example, the procurement rules do not require construction contractors to have insurance. In addition, OPEFM's rules do not set forth the entire appellate process. It appears that these conditions occurred due to management's oversight in procurement rules and misinterpretation of procurement laws. As a result, the District's interests may not be adequately protected in the event of a contract dispute and OPEFM's procurement rules could be misleading to contractors protesting contract awards made by OPEFM.

DISCUSSION

We compared OPEFM's procurement rules to those found in Title 27 of the District of Columbia Municipal Regulations (DCMR) and the procurement rules developed by the District of Columbia Public Library (DCPL).[11] Our review disclosed that OPEFM's procurement rules adopted on August 10, 2007, did not contain necessary provisions. Specifically, the rules did not require construction contractors to have insurance, discuss the procedures for issuing purchase orders, and include provisions for hiring on-site consultants as contractors. Further, OPEFM's procurement rules contained provisions that were not consistent with existing procurement laws. For example, OPEFM's rules do not set forth the entire appellate process, and incorrectly stated that OPEFM is exempt from the D.C. Procurement Practices Act (PPA).

Omissions in Procurement Rules

Insurance and Liability. OPEFM's procurement rules did not include provisions requiring construction contractors to be insured, although the risks associated with construction contracts are high. Title 27 DCMR § 2712 requires contractors to have employer's liability coverage, bodily injury liability insurance, and, in certain circumstances – as per the contracting officer, property damage liability insurance; however, OPEFM's procurement rules did not include these provisions. To ensure the District's interests are adequately protected in the event of a contract dispute or an accident during construction, OPEFM rules should include language to require contractors to have insurance and liability coverage.

[11] We reviewed DCPL's procurement rules because it has independent procurement authority and the D.C. Council recommended that OPEFM use the DCPL's rules as a guide for developing its rules.

FINDINGS AND RECOMMENDATIONS

Purchase Orders. Unlike Title 27 DCMR, OPEFM's procurement rules did not provide specific guidance on the use of purchase orders. OPEFM's procurement rules discussed simplified contracting procedures and provided that contract awards shall be set forth in a written contract or purchase order. However, the procurement rules did not discuss what information should be included on purchase orders, whether modifications can be made to the purchase orders, and the terms for terminating and cancelling purchase orders.[12] To ensure uniformity and consistency, OPEFM needs to develop additional procedures for issuing purchase orders.

On-Site Consultants. OPEFM's procurement rules did not discuss the rules for hiring on-site consultants as contractors. Section 3901.2 of OPEFM's procurement rules provides: "these rules do not apply to retaining individuals to serve as on-site consultants for specific, time-limited assignments." OPEFM officials identified the Chief of Staff as the only on-site consultant at OPEFM. The Chief of Staff was hired on a sole-source basis and, consequently, there is the appearance that OPEFM excluded on-site consultants from its procurement rules so this particular person could be hired in the absence of appropriate sole-source justification.[13]

Inconsistent Provisions Included in Procurement Rules

Protest Procedures. OPEFM procurement rules did not inform protestors that they can appeal protest decisions made by OPEFM's Director to the Contract Appeals Board (CAB). OPEFM's procurement rules do not set forth the entire appellate process. The rules stated that the OPEFM Director makes the final decision for the Office for contract award protests, which is the first step in the appellate process. Section 3934.1 of the proposed procurement rules provides:

> All protests to the award of a contract by the Office shall be resolved in accordance with this section. Any such protest shall be first made to the Contracting Officer in writing…. The Contracting Officer shall promptly issue a decision with regard to any such protest. If the Contracting Officer is other than the Director, the protestor may appeal the Contracting Officer's decision to the Director…. The decision of the Director shall be the Office's final decision with regard to the protest.

54 D.C. Register 8359, 8380 (August 24, 2007). This provision could be misleading to contractors protesting contract awards made by OPEFM. OPEFM mistakenly believed that protestors could not appeal to the CAB because OPEFM has independent procurement authority. However, when an agency is granted independent procurement authority, the agency is not automatically exempt from CAB's jurisdiction. D.C. Code § 2-309.03(a)

[12] *See* 27 DCMR §§ 1820, 1822, and 1823.
[13] The Chief of Staff position is discussed further in Finding 5.

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provides, in part, that the CAB has jurisdiction to review protests of solicitations or contract awards by actual or prospective bidders or offerors. Furthermore, D.C. Code § 2-309.03(b) states that the Board's jurisdiction extends to agencies covered by Chapter 3 of the D.C. Code (Procurement) and OPEFM is not exempted from Chapter 3 by either D.C. Code §2-301.04 or § 2-303.20. Thus, contractors can protest decisions made by OPEFM to the CAB and CAB has the authority to make the final decision.

Procurement Practices Act (PPA). OPEFM's procurement rules provide that OPEFM is exempt from the requirements of the District of Columbia Procurement Practices Act of 1985, but the D.C. Code does not provide for this exemption. *See* D.C. Code §§ 2-301.04 and 2-303.20 (2006). OPEFM mistakenly believed that it was exempt from the PPA because the agency has independent procurement authority. However, when an agency is granted independent procurement authority, the agency is not automatically exempt from the requirements in the PPA. *Id*.

After discussing OPEFM's authority with D.C. Council staff members, we determined that the intent of the Education Reform Act was to exclude OPEFM from certain provisions of the PPA. The D.C. Council's intent was addressed in the Office of Public Education Facilities Modernization Clarification Congressional Review Emergency Declaration Resolution of 2009, which provides:

> During Council discussions regarding the creation of [OPEFM], it was determined that this office was necessary to create an efficient public education system by relieving the Chancellor of capital project duties, and was also determined that [OPEFM] should be given independent contracting and procurement authority, excepting them from traditional bidding regulations, to increase efficiencies and costs by expedited school modernization. The Council made this exception for [OPEFM] after Executive testimony that public school facilities needed to be addressed immediately.

R18-39, Sec. 2(c), 56 D.C. Reg. 2098 (Mar. 13, 2009). Because the D.C. Council intended for OPEFM to be excluded from the procurement processes set forth in the PPA, D.C. Code § 2-303.20 needs to be amended to include OPEFM among the exempted agencies.

RECOMMENDATIONS

We recommend that the Executive Director for the Office of Public Education Facilities Modernization:

2. Include provisions in OPEFM's procurement rules for: (a) requiring construction contractors to maintain insurance; (b) using purchase orders; and (c) hiring on-site consultants as contractors.

FINDINGS AND RECOMMENDATIONS

OPEFM RESPONSE

OPEEFM concurred with the recommendation. OPEFM stated that all of its construction contracts include insurance provisions because the exact insurance requirements vary by project. In addition, OPEFM has developed a standard contract template to address purchase orders. The District of Columbia's Standard Contract provisions are incorporated into all purchase orders by reference.

OIG COMMENT

We consider OPEFM's actions to be responsive and meet the intent of the recommendation.

3. Acknowledge CAB's role in the contract dispute process in OPEFM's procurement rules and request the D.C. Council to amend D.C. Code § 2-303.20 to reflect its intention of exempting OPEFM from certain provisions of the PPA, but not the appeals process.

OPEFM RESPONSE

OPEFM concurred with the recommendation. OPEFM stated that it believed its implementing legislation exempted its agency from the Procurement Practices Act, including the jurisdiction of CAB. OPEFM worked with the D.C. Council in connection with the development of the Procurement Practices Reform Act of 2010 (PPRA), which exempts OPEFM from the PPRA (PPRA, D.C. Law 18-371, effective April 8, 2011,§105(c)(8)) and from CAB's jurisdiction (PPRA, D.C. Law 18-371, effective April 8, 2011, §1003(b)).

OIG COMMENT

We consider OPEFM's actions to be responsive and meet the intent of the recommendation.

FINDINGS AND RECOMMENDATIONS

FINDING 3: USE OF THE DISTRICT SUPPLY SCHEDULE

SYNOPSIS

OPEFM did not properly use the District of Columbia Supply Schedule (DCSS). Specifically, OPEFM did not obtain the required number of quotations when the agency selected a contractor on the DCSS to provide legal and procurement consulting services, and OPEFM continued to utilize the services of the contractor after the DCSS contract expired. In addition, OPEFM allowed the contractor to perform work without a written agreement. These conditions occurred because: (1) OPEFM officials were unaware of DCSS procedures; (2) OPEFM did not track when contracts and agreements expired; and (3) OPEFM had an immediate need to obtain legal and procurement consulting services. As a result, OPEFM may not have received the best value for legal and procurement consulting services. Further, OPEFM circumvented procurement laws aimed at protecting the District's interests and ensuring full and open competition.

DISCUSSION

On April 25, 2003, the Office of Contracting and Procurement (OCP) entered into a DCSS contract with Leftwich and Ludaway for the law firm to provide management, organizational, and business improvement services (Contract No. PODS-2003C-918-57 MOBIS). The contract provided for a 1-year base period and four, 1-year extensions through April 24, 2008. When OPEFM needed a contractor to provide legal and procurement consulting services, OPEFM utilized the DCSS instead of issuing its own solicitation. OPEFM selected Leftwich and Ludaway from the DCSS and entered into a written agreement (not to exceed $400,000) with the law firm on August 17, 2007. While reviewing the agreement and other documents, we identified three issues: (1) OPEFM did not solicit competition when it selected the law firm, as required by DCSS provisions; (2) OPEFM allowed the law firm to continue to provide services after the DCSS contract expired; and (3) OPEFM allowed the law firm to provide services prior to the August 17, 2007, agreement.

Obtaining Written Quotations. OPEFM did not obtain the required number of quotations prior to acquiring the services of Leftwich and Ludaway. OCP's DCSS Terms and Conditions, dated January 2006 Section 4c provides the procedures for contracting officers (COs) to follow in order to promote competition and ensure the District's best interests are met. The COs are required to solicit requests for quotations (RFQs) or requests for task order proposals (RFTOPs) as follows:

- The CO shall obtain at least three oral quotations from DCSS contractors for procurements greater than $10,000 and less than or equal to $25,000.

FINDINGS AND RECOMMENDATIONS

- The CO shall obtain at least three written quotations from DCSS contractors for procurements greater than $25,000.

- The CO must award the task order to the contractor providing the lowest priced quotation in response to the RFQ or RFTOP, except where the award considers factors other than price or price-related criteria. If price or price-related factors are not the sole basis for an award, the RFQ or RFTOP must specify this information.

Because OPEFM estimated that legal and procurement consulting services would exceed $25,000, OPEFM should have obtained written quotations from at least three contractors on the DCSS. OPEFM officials stated that they did not obtain written quotations from three contractors because they were unaware of the requirement. As a result, OPEFM circumvented procurement rules aimed at ensuring full and open competition, and OPEFM may not have received the best value for legal and procurement consulting services.

Acquiring Services on an Expired Contract. Although the DCSS contract expired on April 24, 2008, OPEFM continued to utilize the services of Leftwich and Ludaway. When OPEFM entered into its agreement with Leftwich and Ludaway on August 17, 2007, the DCSS contract was in its last option year, with only 8 months remaining. As of September 2010, OPEFM issued five change orders to extend the performance period beyond April 24, 2008 (see Table 1 below).

Table 1. Change Orders Issued on Expired DCSS Contract

Change Order Number	Change Order Date	Referenced Contract Number	Purpose of Change Order	Change Order Amount[14]
1	04/08/08	PODS-2003C-918-57 MOBIS	Extend contract period through 06/30/08 and increase funding	$270,000
2	10/09/08	PODS-2003C-918-57 MOBIS	Extend contract period through 10/31/08 and increase funding	$250,000
2[15]	10/31/08	PODS-2003C-918-57 MOBIS	Extend contract period through 09/30/09 and increase funding	$550,000
3	09/01/09	PODS-2003C-918-57 MOBIS	Increase funding	$175,000
4	09/28/09	PODS-2003C-918-57 MOBIS	Extend contract period through 09/30/10 and increase funding	$500,000
				$1,745,000

OPEFM officials stated that they were unaware that the DCSS contract expired on April 24, 2008, and that it was OCP's responsibility to notify OPEFM when the contract expired. We

[14] The change order amounts represent increases to the original not-to-exceed amount of $400,000.
[15] OPEFM mistakenly numbered the change order dated October 31, 2008, as change order 2 instead of change order 3. As a result of this mistake, the remaining change orders were also incorrectly numbered.

FINDINGS AND RECOMMENDATIONS

disagree that it was OCP's responsibility to notify OPEFM when the contract expired. When an agency notifies OCP of its decision to purchase goods or services from a contractor on the DCSS, OCP provides a copy of the vendor's DCSS contract to the agency. OPEFM, which had a copy of the DCSS contract in its contract files, should have noted when the DCSS contract expired and not relied on OCP to provide notification.

Although OPEFM officials stated they were unaware that the DCSS contract expired, Leftwich and Ludaway was aware because the law firm stopped remitting quarterly sales discount fees to the District after expiration. OCP's DCSS Terms and Conditions, Section 1 (Sales Discounts) provides, in part:

> The District of Columbia shall receive discounts based on the aggregate purchases made under this agreement. Contractors shall remit, as a discount on sales, one percent (1%) of all sales purchase orders, delivery orders, task orders, and purchase card transactions to the District of Columbia on a quarterly basis. The amount due shall be paid by check, made payable to the DC Treasurer and delivered with each quarterly sales report to the DCSS Contracting Officer.

Although the DCSS contract expired on April 24, 2008, OCP's DCSS Program Manager opined that Leftwich and Ludaway should have continued to remit the sales discount fee to the District because OPEFM continued to reference the DCSS contract. The OIG is unable to render legal opinions; however, OCP should request the Office of the Attorney General (OAG) to issue a ruling on this matter.[16] From May 1, 2008, through September 30, 2010, OPEFM paid Leftwich and Ludaway approximately $1.9 million. Thus, the law firm should have reimbursed the District approximately $19,000 in sales discount fees.

Providing Services Without a Written Agreement. OPEFM entered into a written agreement with Leftwich and Ludaway on August 17, 2007; however, the law firm began providing services on June 12, 2007. D.C. Code § 2-301.05(d)(2) provides that no District employee shall enter into an oral agreement with a vendor to provide goods or services to the District government without a valid written contract. The statute also states that any violation of the provision is cause for an employee's termination. D.C. Code §§2-301.05(d)(1) and (3) further provide that vendors who do not have a valid written contract may not be paid unless payment is required by a court order, a final decision of the Contract Appeals Board, or when approved by the Chief Procurement Officer in accordance with Sections 2-301.05(d)(4) or (5). Although OPEFM has independent procurement authority, the agency is not exempt from D.C. Code §§ 2-301.05(d)(1)-(3). For the 2-month period between June 12, 2007, and August 16, 2007, Leftwich and Ludaway provided services totaling approximately $96,000 without a written contract. On December 20, 2007, the Chief

[16] OCP has a vested interest in collecting the sales discount fees, as OCP maintains oversight for the DCSS.

FINDINGS AND RECOMMENDATIONS

Procurement Officer approved the payment for the services received without a valid written contract.

OPEFM entered into an oral agreement with Leftwich and Ludaway because the agency had just been established on June 12, 2007, and OPEFM needed a contractor to provide legal and procurement consulting services so the agency could immediately begin performing its responsibilities. OPEFM officials stated that the OPEFM Executive Director selected Leftwich and Ludaway to provide these services because he worked with the law firm when he was in charge of major construction projects at other District agencies. Although OPEFM had an immediate need, this does not justify violating provisions in the D.C. Code. Instead of allowing the contractor to perform services without a written agreement, the OPEFM Executive Director could have requested assistance from OCP to prepare a written agreement. A written agreement provides protection to the District in the event of a contract dispute. As a result of allowing Leftwich and Ludaway to provide services without a written contract, the District's interests would not have been adequately protected if a dispute had occurred, and there is a potential risk of violating the D.C. Anti-Deficiency Act because OPEFM obligated the District for the payment of money since the services had been rendered.

There was also another brief period where OPEFM did not have a written agreement, but Leftwich and Ludaway continued to provide services. When OPEFM issued change order 1 to its agreement with the law firm, OPEFM extended the performance period through June 30, 2008, and OPEFM did not issue the next change order (change order 2) until October 9, 2008 (see Table 1 on page 10). Thus, the law firm provided services for approximately 3 months without a written agreement in place. This oversight occurred because OPEFM did not track when the agreement expired.

RECOMMENDATIONS

We recommend that the Executive Director for the Office of Public Education Facilities Modernization:

4. Require OPEFM procurement staff to attend DCSS training offered by OCP.

OPEFM RESPONSE

OPEFM concurred with the recommendation. In its response, OPEFM stated it will implement this procedure. However, OPEFM did not provide estimated completion dates for taking corrective action.

FINDINGS AND RECOMMENDATIONS

OIG COMMENT

We consider OPEFM's action to be responsive to the recommendation and request OPEFM to provide an estimated completion date for the corrective action within 60 days of the date of this report.

5. Develop procedures for tracking contracts and agreements to ensure contractors do not perform work without written agreements once the contracts and agreements expire.

OPEFM RESPONSE

OPEFM concurred with the recommendation. In its response, OPEFM stated that it maintains a contract log of all contracts awarded through its formal procurement process; however, this process was not followed for supply schedule contracts. Going-forward, OPEFM will require it with regard to supply schedule contracts that have an estimated value of more than $500,000.

OIG COMMENT

We consider actions taken by OPEFM to be responsive and meet the intent of the recommendation.

6. Terminate OPEFM's agreement with Leftwich and Ludaway because the law firm's DCSS contract has expired, and if OPEFM needs a contractor to continue providing legal and procurement consulting services, issue a solicitation to acquire these services or use the DCSS.

OPEFM RESPONSE

OPEFM concurred with the recommendation. In its response, OPEFM stated that quotations were requested from four law firms with demonstrated experience in construction matters. Two firms submitted proposals, and a contract was awarded to Leftwich & Ludaway for the work.

OIG COMMENT

We consider actions taken by OPEFM to be responsive and meet the intent of the recommendation.

FINDINGS AND RECOMMENDATIONS

We recommend that the Chief Procurement Officer, Office of Contracting and Procurement:

7. Consult with the OAG to determine whether contractors are obligated to pay quarterly sales discount fees to the District if they continue to perform services on expired DCSS contracts, and, if so, recoup the approximate amount of $19,000 in sales discounts that would be owed to the District.

OCP RESPONSE

OCP concurred with the recommendation. In its response, OCP stated that it consulted with the OAG, which determined that Leftwich and Ludaway is liable for the 1% discount fee for all transactions made against contract PODS-2003C-918-57MOBIS from May 1, 2008, to September 30, 2010. Within 45 days of the date of this correspondence, OCP will issue a claim letter to the Contractor requesting reimbursement of $19,000.

OIG COMMENT

We consider actions taken by OCP to be responsive and meet the intent of the recommendation.

FINDINGS AND RECOMMENDATIONS

FINDING 4: APPARENT CONFLICT OF INTEREST

SYNOPSIS

An apparent conflict of interest exists for an attorney who is a partner with Leftwich and Ludaway (a contractor that provides procurement consultant services to OPEFM) because he writes solicitations for OPEFM and is related to a project executive at Turner Construction Company, one of OPEFM's contractors. After a local newspaper disclosed the relationship between these two individuals, the partner developed procedures to prevent a conflict of interest. However, the procedures are not adequate to prevent a conflict of interest, or the appearance thereof. As a result, there is an appearance that Turner Construction Company has an unfair advantage over other construction companies and that there is not full and open competition for OPEFM construction projects.

DISCUSSION

OPEFM's procurement rules, adopted on August 10, 2007, address conflicts of interest and disqualification. Section 3908.1 provides:

> The Office intends to avoid even the appearance of conflict of interest or impropriety in connection with its procurement activities. Thus, even if a prospective contractor is responsible, the CCO [Chief Contracting Officer] has the discretion to disqualify the contractor (or to take other appropriate measures) based on conflict of interest or other ethical considerations.

However, as noted in Finding 1, *supra*, OPEFM's procurement rules were never finalized and were withdrawn in December 2007. In addition, Section 10.2 of the original contract between OPEFM and Leftwich and Ludaway states that the consultants have no conflict of interest and if one arises during the performance period, that person shall not be employed. During our audit, we identified an apparent conflict of interest between these two contractors - Turner Construction Company and Leftwich and Ludaway. Under its agreement with OPEFM, Leftwich and Ludaway writes solicitations for OPEFM. There is an apparent conflict of interest because the partner at Leftwich and Ludaway who is assigned to write the solicitations is the son-in-law of a project executive at Turner Construction Company. While other partners and associates at Leftwich and Ludaway devote time to the OPEFM contract, this particular partner (Partner X) plays an integral part in performing services for OPEFM.[17]

[17] According to Partner X, he devotes 60 percent of his time to OPEFM and the remaining time is devoted to other clients. Based on invoices submitted by the law firm, other partners and associates generally devote 10 percent (or less) of their time to the OPEFM contract.

FINDINGS AND RECOMMENDATIONS

Since OPEFM became responsible for modernizing and constructing school facilities, the agency has awarded numerous contracts worth millions of dollars[18] to Turner Construction Company. Due to the relationship between Partner X and the project executive, at a minimum, there is an appearance not only of a lack of full and open competition, but also that Turner Construction Company has an unfair advantage over other construction companies.

In April 2008, a local newspaper publically disclosed the relationship between Partner X and the project executive at Turner Construction Company. After the article was published, OPEFM management attempted to address the conflict of interest issue by having Partner X develop "firewall" procedures.[19] These procedures are documented in a memorandum, dated April 29, 2008. The memorandum states that Partner X will not be involved with evaluating proposals when Turner Construction Company submits a bid or in negotiating contracts and change orders involving Turner Construction Company. However, the memorandum states that Partner X will continue to prepare solicitations for OPEFM.

While OPEFM has taken steps to address the conflict of interest issue, the procedures are not adequate to prevent a conflict of interest, or the appearance thereof. Theoretically, Partner X can prepare a solicitation and share the solicitation requirements with Turner Construction Company before OPEFM issues the solicitation, which would give the construction company an opportunity to decide whether it wants to submit a bid before the solicitation is issued, or give the company more time to prepare a bid. If OPEFM continues to rely on Leftwich and Ludaway to provide procurement consulting services, the law firm should remove Partner X from the OPEFM contract to avoid the appearance of a conflict of interest.

RECOMMENDATION

We recommend that the Executive Director for the Office of Public Education Facilities Modernization:

8. Require Leftwich and Ludaway to assign someone other than the partner at issue to the OPEFM contract if OPEFM continues to use the law firm, or alternatively, refrain from awarding an agreement or contract to the law firm.

OPEFM RESPONSE

[18] OPEFM's master file list, dated July 8, 2010, shows that Turner Construction received approximately $167 million in contract awards from June 2007 through April 2010.
[19] The article, "Company with family ties nets more than $30M in contracts," was published in the *Washington Examiner* on April 29, 2008.

FINDINGS AND RECOMMENDATIONS

OPEFM disagreed with Recommendation 8 and stated the partner in question recused himself from all matters relating to Turner Construction Company on April 29, 2008. The proposed firewall was put in place within the law firm and approved by OPEFM's general counsel. This firewall remains in place today.

OIG COMMENT

OIG disagrees with OPEFM. Although OPEFM has taken steps to address the conflict of interest issue, the firewall procedures are not adequate to prevent a conflict of interest, or the appearance thereof. Since OPEFM continues to use the law firm, we recommend that OPEFM require Leftwich and Ludaway to assign someone other than the partner at issue to the OPEFM contract. We request that OPEFM reconsider its position taken and provide an additional response to us by July 21, 2011.

FINDINGS AND RECOMMENDATIONS

FINDING 5: CONTRACT AWARDED TO CHIEF OF STAFF

SYNOPSIS

The Executive Director of OPEFM hired a Chief of Staff as a contractor instead of as a government employee. In addition, OPEFM allowed the contractor to perform work without a written agreement. Further, the Chief of Staff (who is performing an inherent government function) was hired on a sole-source basis and supervised government employees. Lastly, the Chief of Staff was eligible to receive bonuses at a time when the District government is faced with budget shortfalls and employees are prohibited from receiving bonuses.

DISCUSSION

On August 29, 2007, the OPEFM Executive Director awarded a sole source contract to the Chief of Staff.[20] The Chief of Staff, who is deemed an on-site consultant, is the second person in charge at OPEFM after the Executive Director. OPEFM has renewed the Chief of Staff's contract each year under different contract numbers (see Table 2 below). However, Title 27 DCMR § 1901.9 prohibits extending a contract for expert or consulting services by modification.

Table 2. Contracts Awarded to Chief of Staff

Year	Contract Number	Performance Period[21]	Contract Amount
1st	DCOFM-C-2007-0791	08/29/07 - 08/28/08	Not to Exceed $195,000
2nd	GM-08-SS-0829-FM	08/11/08 - 08/10/09	Not to Exceed $224,250 ($195,000 salary *plus* $29,250 bonus)
3rd	GM-09-SS-0818-FM	08/11/09 - 08/10/10	Not to Exceed $224,250 ($195,000 salary *plus* $29,250 bonus)

During our review, we determined that the Chief of Staff performed work without a written contract. In addition, the Chief of Staff performed an inherent government function and supervised government employees. Further, the Chief of Staff was eligible to receive bonuses, although the District is faced with budget shortfalls and government employees are prohibited from receiving bonuses.

Providing Services Without a Written Agreement. OPEFM's Executive Director entered into a written agreement with the Chief of Staff on August 29, 2007; however, the Chief of Staff began providing services on June 14, 2007. D.C. Code § 2-301.05(d)(2) provides that

[20] He started working for OPEFM on June 14, 2007.
[21] As of the end of our fieldwork, the Chief of Staff was still working at OPEFM as a contractor; however, we did not examine the contract for his 4th year.

FINDINGS AND RECOMMENDATIONS

no District employee shall enter into an oral agreement with a vendor to provide goods or services to the District government without a valid written contract. For over a 2-month period between June 14, 2007, and August 28, 2007, the Chief of Staff provided services totaling approximately $25,000 without a written contract. On December 21, 2007, the Chief Procurement Officer approved the payment for services received without a valid written contract.

Justification for Awarding Contract. OPEFM's contract with the Chief of Staff requires the Chief of Staff to: (1) assist the Executive Director with establishing and setting up OPEFM; (2) advise the Executive Director with developing and implementing organizational strategies to improve the effectiveness of OPEFM's operations; (3) coordinate government relations and external affairs; and (4) perform other tasks outlined in the contract.

Although OPEFM did not develop procurement rules to govern on-site consultants, OPEFM prepared a determination and findings (D&F) to justify awarding this sole-source procurement.[22] The D&F provides:

> The consultant is uniquely qualified with experience in the workings of legislative and executive branches of the District Government, as well as, economic development in the District of Columbia. By virtue of his extensive experience in the areas of marketing, management, public administration, media relations, public relations, economic development and inter-governmental relations, and having served as the Director of Governmental and External Affairs for the District of Columbia Sports and Entertainment Commission in connection with the design and construction of a new Baseball Stadium for the Washington Nationals, the consultant has had prior work experience with the Director of OFM, and hence is uniquely qualified to serve as a consultant to the Director.

Notwithstanding the justification in the D&F, the tasks outlined in the contract are normally performed by District government employees. For this reason, we consider the performance of these tasks collectively as an inherent government function. Also, in accordance with D.C. Code § 38-451(e)(2) the Executive Director should have followed the District Personnel Manual (DPM) when hiring OPEFM employees. Therefore, the Chief of Staff position should have been filled in accordance with D.C. personnel law, i.e., the DPM. In addition, our Office is not aware of any executive agency head in District government with a contracted Chief of Staff. During our audit, we contacted several District agencies to inquire whether their Chiefs of Staff are contractors or D.C. government employees and all the District agencies responded that their Chiefs of Staff are D.C. government employees. Further, when we met with D.C. Council staff members, they stated OPEFM is the only

[22] Only the contract file for the first contract contained a D&F statement. OPEFM did not prepare a D&F for the second and third contracts.

FINDINGS AND RECOMMENDATIONS

executive agency with this arrangement. The staff members knew that the Executive Director hired the Chief of Staff as a contractor soon after the Executive's appointment in June 2007. However, the staff members thought the Chief of Staff would eventually be hired as a District government employee after OPEFM was up and running.

Supervising Government Employees. The Chief of Staff supervises other contractors as well as government employees. It is not a normal practice for executive agencies to allow their contractors to supervise government employees. Title 27 DCMR § 1901.3 (Expert and Consulting Services) provides:

> Except as provided in Section 1901.4 below,[23] the contracting officer shall ensure that a contract for expert or consulting services does not establish or allow any of the following:
>
> (a) An employer-employee relationship between the District and the contractor;
>
> (b) Detailed control or supervision by District personnel of the contractor or its employees with respect to the day-to-day operations of the contractor or the methods of accomplishment of the services;
>
> (c) A regularly established tour of duty for the contractor; or
>
> (d) Supervision of District employees by the contractor.

Only one executive agency - the Office of the Chief Technology Officer (OCTO) - is exempt from this DCMR provision.[24] Although OPEFM is not required to adhere to Title 27 of the DCMR, there are no provisions in OPEFM's enabling legislation that specifically allow OPEFM contractors to supervise District government employees. When the D.C. Council passed the Education Reform Act and exempted OPEFM from Title 27, there is no indication that the D.C. Council intended for OPEFM to allow contractors to supervise District government employees. In fact, when we discussed this matter with the Chief of Staff, he stated the Executive Director is aware that the District prohibits contractors from supervising D.C. government employees. The Chief of Staff also stated that the Executive Director prepared a D&F statement authorizing the Chief of Staff to supervise D.C. government employees; however, OPEFM did not provide the D&F statement to us upon request.

Provision for Performance Bonus. All OPEFM contracts with the Chief of Staff generally contained the same language; however, the renewed contracts contained provisions for the Chief of Staff to receive a $29,250 performance bonus, whereas the initial contract did not. The bonus provisions in the second and third contracts are not specific. Section B.3 simply

[23] Section 1901.4 exempts contractors who are engaged by a court-appointed receiver or court order.
[24] OCTO is exempt pursuant to 27 DCMR § 1902.1.

FINDINGS AND RECOMMENDATIONS

states: "The Consultant shall be eligible to receive a performance bonus.… Any bonus awarded shall be based on the performance of OPEFM and its effectiveness in achieving the purposes of the [Education Reform] Act, as well as the Consultant's performance of his duties and his contribution to the overall performance of OPEFM[.]" This performance measure is not written so that someone else could agree or disagree with OPEFM's justification for granting a bonus. The contracts provided that OPEFM's Executive Director had sole discretion to award the Chief of Staff a performance bonus.

The District has been faced with budget shortfalls for the last 2 fiscal years. However, in January 2009, the Chief of Staff received a $29,250 bonus during the term of his second contract.[25] OPEFM's Executive Director prepared a memorandum justifying the bonus, which provides:

> [The Chief of Staff] has been with OPEFM from its inception and has been instrumental in managing the office from a start-up organization with a staff of four (4) to a fully functioning agency with a workforce that numbers more than four hundred (400). Based on his contributions to the growth and success of OPEFM and the manner in which he has represented the office to other agencies of the District government and to the Council…. [The Chief of Staff] deserves a performance bonus….

When the Chief of Staff received the bonus in January 2009, he had only worked 4 months of his contract period with 8 months still remaining. As of January 2009, the Chief of Staff had worked approximately thirty-three percent of his contract period, and received the entire performance bonus, which was fifteen percent of his specified contract compensation. Although the contract does not specify what percentage of the contract the contractor had to complete in order to receive a bonus, in our opinion, working 4 months does not provide adequate time to assess the contractor's performance or his contribution to the agency as its' Chief of Staff.[26]

RECOMMENDATION

We recommend that the Executive Director for the Office of Public Education Facilities Modernization:

9. Fill the Chief of Staff position according to the DPM's competitive staffing procedures once the current Chief of Staff's contract has expired.

[25] Based on our review of computer-processed data from SOAR, as of September 2010, the Chief of Staff had not received a bonus for his third contract.

[26] The Department of Human Resources issued two bulletins restricting agencies from granting bonuses to their employees for FY 2010. The memorandums, dated July 27, 2010, and October 8, 2010, provide for a few exceptions, which include existing contracts executed prior to March 3, 2010. Therefore, the Chief of Staff's January 2009 bonus did not violate the DPM.

FINDINGS AND RECOMMENDATIONS

OPEFM RESPONSE

OPEFM concurred with the recommendation. In its response, OPEFM stated that the individual who previously served as OPEFM's Chief of Staff no longer serves in that capacity. The current Chief of Staff was promoted from within and is a career service OPEFM employee.

OIG COMMENT

We consider the action taken by OPEFM to be responsive and meet the intent of the recommendation.

EXHIBIT A. SUMMARY OF POTENTIAL BENEFITS RESULTING FROM AUDIT

Recommendation	Description of Benefit	Amount and Type of Benefit	Agency Reported Estimated Completion Date	Status[27]
1	**Internal Control.** Ensures operational practices are consistent with program objectives.	Non-Monetary	May 31, 2011	Closed
2	**Internal Control.** Ensures the District's interests are adequately protected and there is uniformity and consistency in procurement procedures.	Non-Monetary	May 31, 2011	Closed
3	**Internal Control and Compliance.** Ensures OPEFM's procurement rules are consistent with current District procurement laws.	Non-Monetary	May 31, 2011	Closed
4	**Internal Control and Compliance.** Ensures OPEFM procurement staff is knowledgeable of the DCSS contracting procedures and there is full and open competition when contracts are awarded.	Non-Monetary	TBD	Open
5	**Internal Control and Compliance**. Ensures the District's interests are adequately protected in the event of a contract dispute.	Non-Monetary	May 31, 2011	Closed

[27] 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

Recommendation	Description of Benefit	Amount and Type of Benefit	Agency Reported Estimated Completion Date	Status
6	**Compliance.** Ensures services are not provided on an expired contract.	Non-Monetary	May 31, 2011	Closed
7	**Internal Control.** Ensures contractors on the DCSS provide funds owed to the District if the OAG determines that the contractor's obligation continues after contract expiration.	Potential Monetary ($19,000)	June 9, 2011	Closed
8	**Internal Control and Compliance.** Eliminates the potential conflict of interest and ensures there is full and open competition when contracts are awarded.	Non-Monetary	TBD	Unresolved
9	**Internal Control.** Ensures the Chief of Staff function is performed by a D.C. government employee.	Non-Monetary	May 31, 2011	Closed

EXHIBIT B. OPEFM's RESPONSE TO DRAFT AUDIT REPORT

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PUBLIC EDUCATION FACILITIES MODERNIZATION

Ollie Harper, Jr.
Acting Executive Director

2400 East Capitol Street, SE
Washington, D.C. 20003
Phone: (202) 698-7700

May 31, 2011

By Hand Delivery

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

Reference: Audit of Procurement Activities at the Office of Public Education Facilities Modernization

Dear Mr. Willoughby:

We are in receipt of your letter dated April 7, 2011 transmitting the draft audit report for the above referenced activity. At the outset, I would like to apologize for our delay in responding, however, your letter was inadvertently overlooked. We have carefully reviewed the findings and recommendations. Set forth below are our responses to the report's recommendations.

1. Finalization of Procurement Rules.

Recommendation 1 - OPEFM's procurement rules have been finalized and were submitted to the Council for the District of Columbia on September 27, 2010. The Education Reform Act of 2007 provides that such rules shall be deemed approved unless they are disapproved by the Council within forty five (45) days of their submission. The rules were not disapproved by the Council, and they thus became fully approved on November 20, 2010.

2. Provisions in Procurement Rules.

Recommendation 2(a) – Although OPEFM's procurement rules do not include requirements on insurance, all of OPEFM's construction contracts include insurance provisions. Given that the exact insurance requirements vary by project, these provisions are included in the contract. OPEFM's projects range from small tenant fit-out projects with construction values of less than

EXHIBIT B. OPEFM's RESPONSE TO DRAFT AUDIT REPORT

$100,000 to the construction of new high schools with construction values of $90 to $100 million.

Recommendation 2(b) – OPEFM has developed a standard contract template for purchase orders. A copy of this template is attached as **Tab 1**. The District of Columbia's Standard Contract provisions are incorporated into all purchase orders by reference. These provisions include the District's standard contract provisions relating to termination for default and convenience.

Recommendation 2(c) – This recommendation is addressed in connection with Finding #5 below.

Recommendation 3 – OPEFM was created with independent procurement authority; hence, its procurement rules were drafted with the intent of excluding contract disputes from the jurisdiction of the Contract Appeals Board ("CAB") because OPEFM believes that complex construction disputes are more appropriately resolved through commercial arbitration as is the case in the construction industry. OPEFM also believed that it's implementing legislation exempted it from the Procurement Practices Act, including the jurisdiction of CAB. In this regard, OPEFM worked with the D.C. Council in connection with the development of the Procurement Practices Reform Act 2010 ("PPRA"), which explicitly exempts OPEFM from the PPRA (PPRA, D.C. Law 18-371, effective April 8, 2011, §105(c)(8)) and from CAB's jurisdiction (PPRA, D.C. Law 18-371, effective April 8, 2011, §1003(b)).

3. Use of District Supply Schedule.

Recommendation 4 – OPEFM will implement this procedure.

Recommendation 5 – OPEFM maintains a contract log of all contracts awarded through its formal procurement process (i.e. those having a value in excess of $500,000). A copy of a sample log is attached at **Tab 2**. This process was not followed for supply schedule contracts, and OPEFM will require it on a going-forward basis with regard to supply schedule contracts that have an estimated value of more than $500,000.

Recommendation 6 –That contract expired on September 30, 2010 and was not extended. Instead, OPEFM ran a procurement under its small purchase procedures. Quotations were requested from 4 law firms with demonstrated experience in construction matters. These firms included Seyfarth & Shaw, Venable, Holland & Knight, and Leftwich & Ludaway. Two firms submitted proposals, and a contract was awarded to Leftwich & Ludaway for the work.

Recommendation 7 – This recommendation was made to the District's Chief Procurement Officer, and thus, a response is not necessary.

4. Apparent Conflict of Interest.

Recommendation 8 – The partner in question recused himself from all matters relating to Turner Construction Company on April 29, 2008. A proposed firewall was put in place within the law firm and approved by OPEFM's general counsel. This firewall remains in place today.

EXHIBIT B. OPEFM's RESPONSE TO DRAFT AUDIT REPORT

5. Contract Awarded to Chief of Staff.
Recommendation 9 – The individual who previously served as OPEFM's Chief of Staff no longer serves in that capacity. The current Chief of Staff was promoted from within and is a career service employee of OPEFM.

Should you have any questions, please feel free to contact me.

Sincerely,

Ollie Harper
Acting Executive Director

Attachments (3)

EXHIBIT C. OCPs RESPONSE TO DRAFT AUDIT REPORT

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Contracting and Procurement

OFFICE OF THE DIRECTOR

April 29, 2011

Charles Willoughby
Office of the Inspector General
717 14th St, N.W.
Washington, DC 20005

Re: **Audit of Procurement Activities at the Office of Public Education Facilities Modernization (OIG No. 09-2-28GM**

Dear Mr. Willoughby:

Thank you for providing the Office of Contracting and Procurement (OCP) the opportunity to comment on the Office of the Inspector General's (OIG) Draft report summarizing the results of the Audit of Procurement Activities at the Office of Public Education Facilities Modernization (OIG No. 09-2-28GM). My office has reviewed the draft report sent April 7, 2011, and is providing comment on Recommendation 7 (p.14), the only recommendation that was specifically directed at OCP. Please find OCP's comments, planned action, and completion date in response to Recommendation 7, below.

Recommendation 7: Consult with the Office of the Attorney General (OAG) to determine whether contractors are obligated to pay quarterly sales discount fees to the District if they continue to perform services on expired DCSS contracts, and, if so, recoup the approximate amount of $19,000 in sales discounts that would be owed to the District.

Following consultation with the OAG, my office has determined that Leftwich and Ludaway (the "Contractor") is liable for the 1% discount fee for all transactions made against contract PODS-2003C-918-57 MOBIS, from May 1, 2008 to Sept. 30, 2010. Accordingly, OCP will issue a claim letter to the Contractor within 45 days of the date of this correspondence, requesting reimbursement of $19,000 in discount fees which is 1% of approximately $1.9 million that OPEFM paid the Contractor during the stated time period.

One Judiciary Square, 441 4th Street N.W., Suite 700 South, Washington, D.C. 20001
(202) 727-0252 Fax: (202) 724-5673

EXHIBIT C. OCPs RESPONSE TO DRAFT AUDIT REPORT

If you have any immediate questions, please feel free to contact Jonathan Rifkin at 202-724-3676.

Sincerely,

James D. Staton, Jr.

James D. Staton, Jr.
Acting Chief Procurement Officer

CC:
Ollie Harper, Interim Executive Director, OPEFM
Ronald W. King, Assistant Inspector General For Audits, OIG