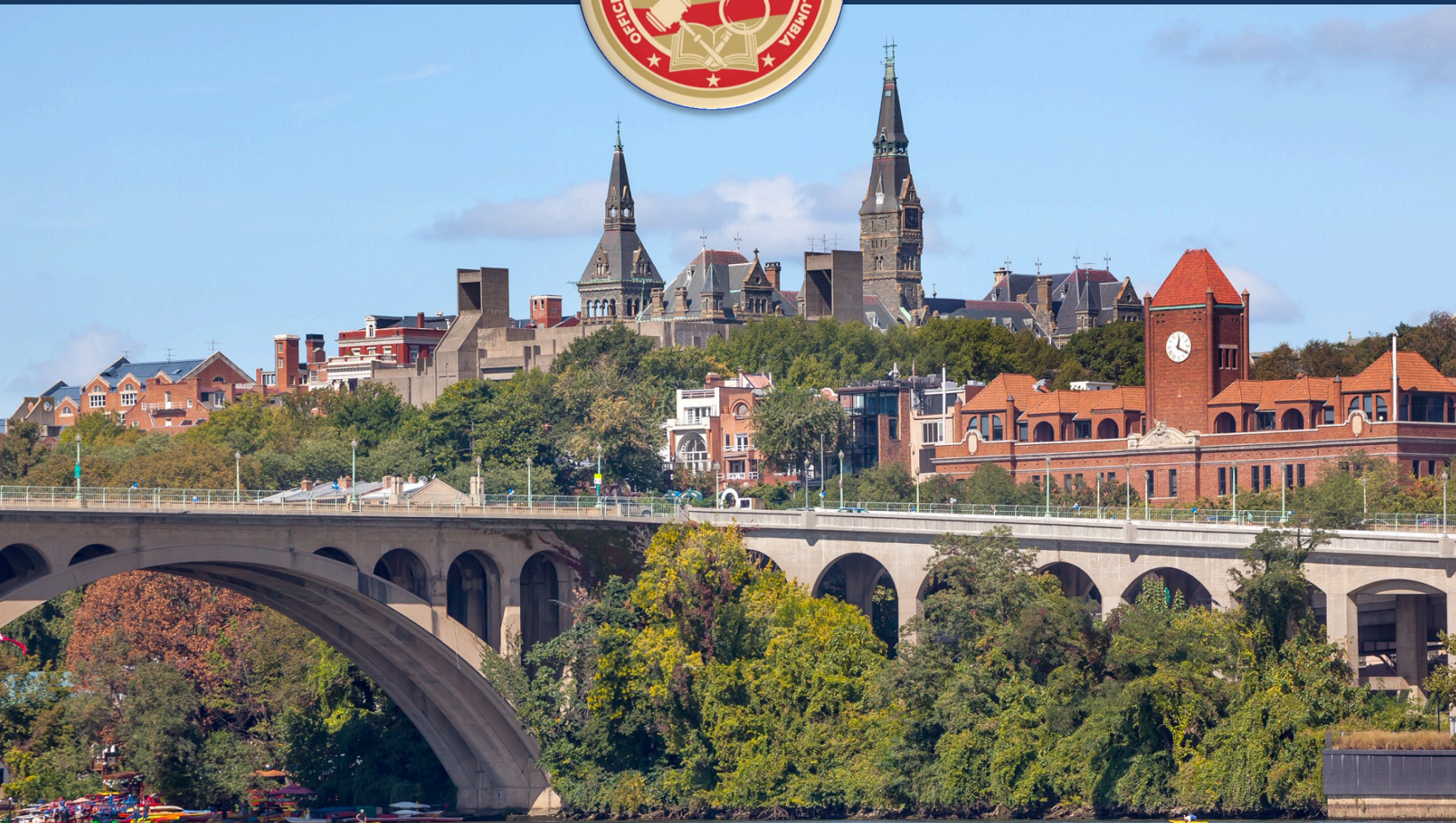


DISTRICT OF COLUMBIA OFFICE OF THE INSPECTOR GENERAL

OIG Project No. 19-1-02AM

May 2020



DEPARTMENT OF GENERAL SERVICES

Oversight of Contracts for District Facilities Modernization and New Construction
Projects Needs Improvement

Guiding Principles

*Workforce Engagement * Stakeholders Engagement * Process-oriented * Innovation
* Accountability * Professionalism * Objectivity and Independence * Communication * Collaboration
* Diversity * Measurement * Continuous Improvement*

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Our mission is to independently audit, inspect, and investigate matters pertaining to the District of Columbia government in order to:

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- promote economy, efficiency, effectiveness, and accountability;
- inform stakeholders about issues relating to District programs and operations; and
- recommend and track the implementation of corrective actions.

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* Transparency * Empowerment * Courage * Passion
* Leadership



Oversight of Contracts for District Facilities Modernization and New Construction Projects Needs Improvement

EXECUTIVE SUMMARY

WHY WE DID THIS AUDIT

The Department of General Services (DGS) manages the capital improvement and construction program for District government facilities, including modernization or new construction of District facilities. DGS authorizes planning, design, procurement, and construction in accordance with the approved \$1.089 billion Capital Improvement Plan.



The Office of the Inspector General's report *Government of the District of Columbia Fiscal Year 2017 Procurement Practices Risk Assessment* identified lack of competition, document management, and vendor oversight in the District's contracting environment as risk areas. The report identified DGS as one of the 13 District agencies independent from the District's Chief Procurement Officer but still subject to the District's Procurement Practices Reform Act (PPRA). The report also identified DGS as a high risk agency and a high priority for additional work based on the high rate of non-personnel spending compared to the other 13 agencies and other risk factors. Assessing the effectiveness of contract modification practices in DGS's contract award and administration procedures allows the District to assess those risks to ensure the District obtains the best value for residents.

OBJECTIVES

OIG conducted this audit to assess the effectiveness of contract modification practices at the Department of General Services.

WHAT WE FOUND

We reviewed a sample of 15 contracts for modernization of District facilities and new construction projects¹ and found that the District used contract modification procedures to increase the original award amounts for these projects from \$125 million to \$183 million — a 46 percent increase (\$58 million) as of September 30, 2018. We assessed the justification and support for the cost increases and determined that 38 percent (\$22) million of cost increases in construction services may have resulted from incomplete plans, design errors, or poor construction management services. For example, as part of its contract administration function, DGS did not assess the quality of services it originally received for architectural and engineering (A/E) services and construction management (CM) services before approving the

¹ We selected 15 of 58 contracts with approved contract modifications in Fiscal Year (FY) 2018. Thirteen of 15 sampled contracts were facilities modernization or new construction projects, while the remaining 2 were related to hiring project management experts and are not discussed in this report.

EXECUTIVE SUMMARY

additional \$22 million in contract modification. District regulations² require that DGS assess the quality of services it receives under these contracts and determine if vendors are accountable for design errors and failure to manage the construction work, given the original reason for hiring the vendors was to design and manage the projects. We noted that District agencies spent \$13.7 million for CM services and \$4.5 million for A/E services for the sampled projects.

We also found that DGS did not develop Independent Government Estimates (IGE) before soliciting proposals for 9 of the 15 projects, which contributed to the need to modify the contracts. A reliable IGE is needed to establish a fair and reasonable price when there is limited vendor participation. Further, neither District agencies (project owners) nor DGS conducted market research in the initial contract award process, or before approving subsequent contract modifications, which would have helped to evaluate whether the proposed costs were fair and reasonable. Conducting market research helps familiarize contracting officials “with both the goods and services being solicited,”³ as well as the universe of potential contractors with the ability to complete the terms of the project before a solicitation is issued.

In addition, we found that DGS awarded sole-source contracts to vendors in 4 of the 15 projects reviewed. DGS determined that each vendor was the only one qualified to provide the services, but did not document attempts to obtain more than one qualified vendor or proffer an explanation of why the selected vendor was the only one that could do the work, as required by District regulations.⁴

WHAT WE RECOMMEND

The OIG made 13 recommendations for DGS to enhance competition, monitor vendor performance, use appropriate procurement methods, conduct independent government estimates and market research, and justify modifications.

MANAGEMENT RESPONSE

DGS concurred with 10 recommendations and partially agreed with the remaining 3 recommendations.

² See 27 DCMR §§ 2632 and 4000.2(d).

³ D.C. DEPARTMENT OF GENERAL SERVICES, POLICIES AND PROCEDURES MANUAL, § 4.3 (Apr. 2016).

⁴ Title 27 DCMR § 4718.1

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Office of the Inspector General



Inspector General

May 13, 2020

Keith Anderson
Director
Department of General Services
2000 14th Street, N.W., 8th Floor,
Washington, D.C. 20009

Dear Director Anderson:

Enclosed is our final report, *Oversight of Contracts for District Facilities Modernization and New Construction Projects Needs Improvement* (OIG No. 19-1-02AM). We conducted this audit in accordance with generally accepted government auditing standards (GAGAS). Our audit objective was to assess the effectiveness of contract modification practices at the Department of General Services. The audit was included in our *Fiscal Year 2019 Audit and Inspection Plan*.

We provided DGS with our draft report on February 14, 2020, and received its response on April 27, 2020, which is included as Appendix E to this report. We appreciate that DGS officials began addressing some of the findings immediately upon notification during the audit.

In total, we made 13 Recommendations to DGS for actions deemed necessary to correct the identified deficiencies. DGS concurred with Recommendations 2, 3, 5, 6, and 8-13. DGS' actions taken and/or planned are responsive and meet the intent of the recommendations. Therefore, we consider these recommendations resolved but open pending evidence of stated actions. Although DGS did not fully agree with Recommendations 1, 4, and 7, DGS's actions taken and/or planned are responsive and meet the intent of the recommendations. Therefore, we consider these recommendations resolved but open pending evidence of stated actions.

We appreciate the cooperation and courtesies extended to our staff during this audit. If you have any questions concerning this report, please contact me or Benjamin Huddle, Assistant Inspector General for Audits, at (202) 727-2540.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D W Lucas', with a stylized flourish at the end.

Daniel W. Lucas
Inspector General

DWL/ir

Enclosure

cc: See Distribution List

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BACKGROUND

The Department of General Services (DGS) is responsible for managing the capital improvement and construction program for District government facilities, including modernization and new construction of District facilities. For FYs 2019-2023, DGS is authorized to spend \$1.089 billion on these programs. The Contracts and Procurement Division within DGS is responsible for awarding and administering capital improvement and construction contracts. DGS is required to perform these functions in accordance with the Procurement Practices Reform Act (PPRA) of 2010. To implement the requirements of the PPRA, DGS issued regulations found in chapter 47 of Title 27 of the District of Columbia Municipal Regulations (DCMR). The DGS Contracts and Procurement Division also issued a *Policies and Procedures Manual* (PPM)⁵ to standardize its contract award and administration processes.

Contract Solicitation/Award Process

To initiate a contract solicitation/award process, the PPM requires that DGS receive a procurement request from District agencies. The request should include the following items:

- statement of work;
- any required justifications for the proposed work;
- proof of funding;
- recommended vendors to complete the project;
- an independent government estimate;⁶ and
- a point of contact within the requesting agency or department.

The solicitation process begins after DGS receives the complete procurement request package. Typically, DGS uses a three-stage solicitation process for construction contracts. First, DGS issues a solicitation to engage a professional architectural and engineering (A/E) firm to design and develop the specifications and provide a cost estimate to construct the building. Second, DGS uses the firm's design and specifications to issue a solicitation to obtain a general contractor. The general contractor provides construction management (CM) services by helping DGS award and manage the construction work. Finally, the general contractor, on behalf of DGS, issues invitations for bids to select a construction company.

Contract Administration Process

This audit focused on the contract modification aspects of the contract administration process. Contract modifications, if used appropriately, can help achieve the desired outcome for District taxpayers.

⁵ We note that DGS' Policy & Procedures Manual dated October 2018 and marked DRAFT is outside of our audit period, which covers fiscal year 2018 (i.e., October 2017 – September 2018). We also note that DGS' Policies & Procedure Manual dated April 2016, predates our audit period and, therefore, we used the 2016 manual as guidance for purposes of our audit.

⁶ According to DGS' Policy & Procedures Manual, an independent government estimate is an important tool in the procurement process used to evaluate proposals and determine reasonable costs. It is an estimate of the resources required during performance of a contract.

According to the PPRA:

“Contract modification” means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract.⁷

A contract may be modified during the project, and the Contracting Officer Technical Representative (COTR) is responsible for justifying any need for modification to the scope of work or the contract. DGS sends a request for modification to the Office of the Chief Financial Officer to ensure requested additional funds are available for spending. DGS executes the modification if the additional requested funds are less than \$1 million and the funds are available for spending. If the requested amount is greater than or equal to \$1 million, DGS sends the agency request and the certification of available funds to the Council of the District of Columbia for its review pursuant to D.C. Code § 2-352.02(a), which requires that Council review all contracts in excess of \$1M during a 12-month period.

The objective of this audit was to assess the effectiveness of contract modification practices at DGS. The audit was included in the Office of the Inspector General’s (OIG) *Fiscal Year 2019 Audit and Inspection Plan* and resulted from issues identified in the OIG’s report entitled *Government of the District of Columbia Fiscal Year 2017 Procurement Practices Risk Assessment* (OIG Project No. 16-1-17MA).

We conducted this audit in accordance with generally accepted government auditing standards (GAGAS).

⁷ PPRA 2010 Sec. 104, as codified at D.C. Code § 2-351.04(15).

FINDINGS

DGS DID NOT EFFECTIVELY PROCURE ARCHITECTURE, ENGINEERING, AND MANAGEMENT SERVICES WHEN AUTHORIZING FACILITIES MODERNIZATION AND NEW CONSTRUCTION PROJECTS

We reviewed a sample of 15 contracts⁸ for District facilities modernization and new construction projects and found that the District used contract modification procedures to increase the original award amounts from \$125 million to \$183 million — a 46 percent increase (\$58 million) as of September 30, 2018. We assessed the justification and support for the cost increases and noted that 38 percent (\$22 million) of cost increases in construction services may have resulted from incomplete plans, design errors, or poor CM services.

DGS procures project plans and designs by engaging architectural and engineering firms. DGS procures construction management services by engaging construction management firms. DGS is responsible for overseeing the performances of these contractors to ensure projects are completed within scope, on schedule, and within budget. A/E firms are responsible for developing project plans and designs that are complete and accurate. CM firms are responsible for completing projects within scope, on schedule, and within budget, as provided in the project plans and designs. In this report we discuss examples where DGS could enhance its oversight of contractors' performances to ensure projects are completed within scope, on schedule, and within budget constraints to avoid unwarranted contract modifications.

DGS did not Monitor the Performance of CM and A/E Contractors

DGS contracted for A/E⁹ services to design and develop specifications and CM¹⁰ services to manage construction projects but failed to monitor the CM and A/E services contractors' performance, resulting in capital improvement and construction projects that were not completed within scope, on schedule, and within budget. To address scope and schedule changes, DGS approved contract modifications, at an additional cost of \$22 million, thereby increasing the initial cost to complete projects.

Without assessing whether design errors by A/E contractors caused scope changes and whether the CM contractors' failure to properly manage the project schedule caused delays and cost overrun, DGS cannot ensure that contractors will deliver capital improvement and new construction projects within scope, and in a timely and cost-effective manner. For example, a contract for the construction management of a short-term family housing facility in Ward 7 originally cost \$1.1 million. At the end of the project, the CM services costs had increased to \$2.2 million. The cost increase, which the CM contractor claimed were necessary to complete the project, included a design team fee, early mobilization of resources, travel cost to project site,

⁸ Thirteen of 15 sampled contracts were capital improvement and construction projects, while the remaining 2 were related to hiring project management experts and are not discussed in this report.

⁹ DGS spent \$4.5 million for A/E services. A/E services are separate contracts, and we did not include their cost in the original and ending contract amounts of the 15 construction contracts we reviewed.

¹⁰ DGS spent \$13.7 million for CM services, and the cost was included in the original and ending contract amounts of the 15 construction contracts we reviewed.

construction contingencies, and the cost of insurance. DGS had no documentation in the contract file of its assessment to support the increase.

In another example, the District increased the firm-fixed-price of a contract without determining whether the District would receive additional services for the extra costs. Title 27 DCMR § 4712.3 states that a firm-fixed-price contract can only be adjusted when there is a change to the contract work. The District determined that it would cost \$984,481 for an A/E firm to provide the drawings and specification for a short-term family housing facility in Ward 6, and awarded a firm-fixed-price contract for that amount. Although the contract was negotiated as a firm-fixed-price, the District executed a contract modification that increased the cost by \$161,200. In this case, DGS indicated that the increased costs were for additional work related to A/E design services and utility-related works. However, DGS did not assess whether design errors by A/E contractors caused changes in the project scope for additional design work and utilities-related work.

Without a written determination of the A/E firm's and CM company's responsibilities for design or construction errors, DGS was unable to justify why the District absorbed the modification cost.

Recommendations

1. Establish written procedures to determine if the architectural/engineering firm and the construction management company are responsible for the additional cost prior to executing contract modifications.
2. Establish procedures to document and justify all contract award values that differ from the vendors' proposed amount.

DGS did not Always Monitor Contractor's Progress toward Meeting Project Deadlines

Inadequate vendor monitoring resulted in DGS and District agencies modifying contracts close to the project completion deadlines without justification. Monitoring a contractor's progress facilitates early detection of potential issues that could trigger contract modifications and increase project cost. For Example, DGS modified the completion dates for 6 of 15 contracts reviewed. According to the DGS PPM § 3.6, the COTR has "contracting authority to perform administrative functions and day-to-day monitoring and supervision of the contract to ensure that work conforms to the requirements set forth in the contract," including informing the "contracting officer of any contractual difficulties." Inadequate vendor monitoring can lead to missed opportunities to control costs and hold vendors accountable for lack of performance.

For example, on March 16, 2018, the District awarded a \$2.6 million contract to demolish and abate the Dorothea Dix Building by May 25, 2018. On May 17, 2018, less than 10 days before the project was to be completed, DGS modified the contract to extend the completion date to June 15, 2018 (a deadline the contractor also failed to meet). Although the COTR should have assessed the vendor's performance and detected problems before May 17, 2018, the District issued the contractor a termination letter for default on July 20, 2018, after extending the period

for contract performance once and paying \$2.3 million of the \$2.6 million total contract value. DGS contracted with another vendor to complete the construction project for \$837,000.

Recommendations

3. Implement procedures to hold the COTR accountable for monitoring vendor performance to ensure vendors are on track to meet contract requirements.
4. Determine and hold contractors responsible for errors in design and specifications, and for poor performance before approving contract modifications.

DGS DID NOT ADEQUATELY PLAN ITS PROJECT REQUIREMENTS PRIOR TO AUTHORIZING PROCUREMENT FOR PROJECT PLANS, DESIGNS, AND MANAGEMENT SERVICES

Conducting market research and preparing an independent government estimate (IGE) are steps in the DGS's contract solicitation/award process. Neither DGS nor District agency-project owners conducted market research or prepared IGEs during the initial contract solicitation/award process and before approving subsequent contract modifications. In addition, DGS relied on sole-source contracting in the initial award of contracts, stating a particular vendor was the only one qualified to perform the required tasks. However, contrary to DGS's justification, DGS used the contract modification process to overcome the sole source vendors' performance deficiencies, including engaging another vendor to complete the project requirements.

DGS did not Always Conduct Market Research, Which led to Contract Modifications and Cost Increases

During the initial contracting process for construction of the Ward 4 Short-Term Family Housing Facility, DGS issued a determination and findings (D&F)¹¹ on November 30, 2016, stating that only one contractor was qualified to develop and construct the facility at the cost of \$12.3 million. DGS made this determination without following initial steps for awarding a contract, including completing design drawings and specifications for the construction, conducting a market study, and developing an IGE for the cost of the project.

According to 27 DCMR §§ 4708.1 and 4708.2:

Before issuing a solicitation or making a purchase, the Department shall: (a) Estimate the likely cost of the proposed procurement; and (b) Conduct appropriate market research.

Market research is designed primarily to familiarize the Department with the market for the goods or services it seeks to acquire in order to develop an

¹¹ According to 27 DCMR § 1299.1, "the ['] determination['] is a conclusion or decision supported by the [']findings.['] The [']findings['] are statements of fact or the rationale essential to support the determination and cover each applicable requirement of the statute or regulation."

appropriate strategy for conducting a prompt and efficient procurement that promotes reasonable competition between qualified firms.

Further, 27 DCMR § 4718.2 states:

Prior to entering into a sole-source contract, the Contracting Officer shall first make a determination and finding justifying the sole source procurement If the Contracting Officer makes a determination pursuant to subsection 4718.1 that a sole source procurement is necessary to meet an essential requirement of the Office, the Contracting Officer shall document such determination in writing and may procure goods, services or construction [without following competitive procurement procedures].

Additionally, DGS PPM Section 4.4 states that an “Independent Government Estimate (IGE) is an estimate of the resources required and the cost of those resources that would be incurred during the performance of a contract.”

DGS awarded the \$12.3 million sole-source contract for renovation of the Ward 4 short-term family housing facility. According to DGS, the sole source contract was awarded to the vendor because the vendor owns the property. At a minimum, DGS could have conducted market research to develop an IGE for the project prior to entering into the contractual agreement, and determined whether the vendor was the only one qualified to complete the renovation. However, the District had to modify the contract five times because the contractor could not meet contract requirements. The contract modifications increased the cost of building the short-term family housing facility by \$1.6 million, \$615,000 of which was used to hire another sole-source contractor to help the original contractor meet the contract requirements.

Recommendation

5. Develop a mechanism to ensure project requirements are identified, market studies are conducted, independent government estimates are developed, and design drawings and specifications are developed prior to awarding sole-source contracts.

Sole Source Contracts Led to Contract Modifications

In 4 of the 15 contract modification actions we reviewed, DGS awarded contracts to vendors that District agency project owners determined were the only firm qualified to provide the services. DGS, however, did not document the rationale for awarding the sole-source contract or that it attempted to obtain more than one qualified vendor before making the award.

For example, DGS could not justify the sole-source selection of a contractor to repair floors of the John A. Wilson Building. The District determined that only one contractor demonstrated “vast knowledge and experience” in specialized concrete repairs and upgrades. DGS did not maintain the basis or support for its conclusion that only one contractor could perform the repairs. According to 27 DCMR § 4718.1, “[t]he Contracting Officer may award contracts on a

sole-source basis only if the goods or services sought by the Department are available from only one (1) source.”

DGS did not document its review of other vendors with similar background and experience as part of the process of determining if this contract should be sole-sourced. Although DGS estimated that the reasonable price for these repairs was \$3.1 million, it did not conduct market research or develop an IGE to support the \$3.1 million price estimate. Further, DGS did not conduct market research or develop an IGE to determine if the additional \$1 million in contract modifications it approved were supported. Ultimately, the District spent \$4.1 million to complete the project, an increase of 32 percent of the initial contract award.

In another example, the District disqualified the lowest of two bidders that submitted proposals to provide construction management services for the D.C. United Soccer Stadium for \$27.82 million, and determined that a \$29.9 million proposal from the second contractor was the best value. In the absence of an IGE, the District’s decision not to seek additional competition after disqualifying one of two vendors effectively made the award a sole-source contract. On April 18, 2016, the District negotiated a price of \$25.1 million with the remaining vendor, without conducting market research or developing an IGE to determine whether the \$25.1 million was reasonable. Subsequently, DGS approved contract modifications that increased the total contract value from \$25.1 million to \$34.6 million, a 38 percent (or \$9.5 million) increase. DGS could not support how increasing the contract cost was in the best interest of the District.

Recommendations

6. Implement procedures to ensure that the Determination & Findings in support of a sole-source award includes detailed analysis of the determination that only one qualified vendor is available.
7. Improve procedures to ensure that contractors’ past performance is obtained and reviewed prior to awarding sole-source contracts.
8. Document the research and review conducted on other contractors with similar knowledge and experience to ensure the District receives a fair and reasonable price prior to awarding contracts.

DGS Selected the Lowest Bid but Approved Contract Modifications that Increased Costs

DGS contracted with an architecture/engineering firm that estimated a construction cost of \$7.1 million for the Wilson Building exterior restoration. DGS selected a contractor to complete construction for \$5.0 million while rejecting a bid of \$8.1 million for the project. DGS later modified the contract, which increased the value by \$2.9 million to \$7.9 million, a 58 percent increase over the original award but only \$200,000 less than the \$8.1 million bid. DGS should have rejected the modification and held the contractor to its original negotiated price as the District did not receive additional services.

In another example, the District received three bids (Vendor - A \$4.3 million, Vendor B -

\$1.4, and Vendor C - \$2.57 million) for an HVAC upgrade. DGS established in its D&F that the estimated fair and reasonable price for the HVAC upgrade was \$2.3 million. However, the District selected the lowest bid of \$1.4 million only to later modify the contract by adding \$850,000 of work, which increased the project cost to \$2.25 million.

The D&F did not explain why the lowest proposal was the best value for the District as the DGS PPM required.¹² Vendor B later requested and DGS approved contract modifications that added \$850,000 to the cost. DGS should have rejected the requests for modification because the scope of work did not change, and the District was not getting additional services for the additional costs.

In a third example, the District received two price proposals from construction management firms to manage transportation and infrastructure improvements at the St. Elizabeths campus. DGS determined that the \$6.1 million bid was the best value to complete the work. The District did not establish a competitive range, as required by District regulations,¹³ and selected a contractor who underbid, only to later seek a modification to the contract, which the District approved, to increase the cost to \$10.3 million. DGS PPM Section 8.16 states:

The Contracting Officer shall establish a competitive range composed of the highly rated proposals based on the rating of each proposal against the evaluation criteria. If a proposal does not fall within the competitive range, then that proposal shall be eliminated from consideration for the award. Discussions will be conducted only with offerors whose proposals are in the competitive range.

The contractor submitted the increased amount as part of the contract closeout agreement at the end of the project. There was no evidence that DGS authorized the additional work prior to the contractor's request. Because the contract modification request came at the end of the project after the contractor performed the additional work, DGS should have rejected the contract modification and held the vendor responsible for the extra cost as 27 DCMR § 3602.3 requires.

DGS did not Follow D.C. Regulations and DGS Policy When Executing Letter Contracts

For 11 of the 15 contracts we reviewed, DGS executed letter contracts instead of issuing full contracts for the entire amount necessary to complete the work. In all 11 cases, DGS negotiated the full contracts for values greater than \$1 million but awarded the letter contracts for less than or equal to \$999,999. Before the award of a contract in excess of \$1 million during a 12-month period, D.C. Code § 2-352.02(a)(1) requires District agencies to submit the proposed contract to the D.C. Council for review and approval. However, District regulations permit agencies to use letter contracts in certain circumstances. Title 27 DCMR § 2425 states:

¹² DGS PPM § 11.3.2 states that “[n]egotiations for a sole source contract award may commence without providing for full and open competition only after the Contracting Officer prepares a Determination and Findings report (D&F) justifying the use of a sole source procurement.”

¹³ According to 27 DCMR § 4721.9: “After initial proposals are evaluated, the Contracting Officer may: (a) Make an award based on initial proposals; or (b) Establish a competitive range consisting of those proposals that remain under consideration, or a single proposal that remains under consideration, and initiate discussions with competitive range offerors. A competitive range shall include all proposals that, in the Contracting Officer’s judgment, erring on the side of the offeror, could be awarded the procurement.”

The contracting officer may use a letter contract when the District's interests require that the contractor be given a binding commitment so that *work can start immediately, and executing a definitive contract is not possible in sufficient time to meet the requirement*. Each letter contract shall be as complete and definite as possible under the circumstances.

As explained in DGS PPM § 16.3.6:

A letter contract authorizes the contractor to begin immediately performing or providing services. This is a vehicle allowing the contractor to begin work prior to Council approval of the contract. A letter contract may be used only after the Contracting Officer determines:

1. It is in the Department's best interests that the Contractor be able to start work immediately; and
2. Negotiating any other type of contract is not possible in sufficient time to meet the requirements of the project.

We note that in 6 of the 11 cases, 18 days or more elapsed before the vendors began work under the contracts (see Table 1 below for details). In the remaining five cases, vendors began work the day the letter contract was executed.

Table 1: Analysis of Days Lapsed

Item	Date Letter Contract Executed	Date Work Started ¹⁴	Days Lapsed
1	11/30/2016	10/1/2017	305
2	6/17/2016	1/1/2017	198
3	11/30/2016	2/1/2017	63
4	4/11/2018	6/1/2018	51
5	7/28/2015	9/1/2015	35
6	9/15/2017	10/3/2017	18
7	6/14/2017	6/14/2017	0
8	6/27/2017	6/27/2017	0
9	1/16/2018	1/16/2018	0
10	10/3/2016	10/3/2016	0
11	4/27/2016	4/27/2016	0

Source: OIG analysis of DGS procurement data.

¹⁴ The dates were taken directly from the vendor's initial invoice.

Recommendations

9. Establish procedures to detect cost overruns and hold contractors accountable for the original contract terms.
10. Implement procedures to detect potential underbidding to avoid gradual price increases.
11. Implement procedures to establish a competitive range and reject proposals outside the competitive range.
12. Implement procedures to ensure DGS contracting personnel follow the requirements of D.C. regulations and DGS CPDPM when executing letter contracts.

DGS did not Maintain all Contract Files

DGS did not maintain all files to justify the initial award and subsequent contract modifications. According to 27 DCMR § 4730.2(d), the contract file shall include “documentation that may be necessary to memorialize important decisions or events relating to the procurement or the contract.” Furthermore, DGS PPM 17.1 requires that a “record of the solicitation, award, and contract shall be kept on file with the Department. . . . All contracts valued at over one hundred thousand dollars (\$100,000) are maintained in a Large Contract File.”

When we requested contract files for the contractor hired to upgrade and provide general interior and exterior renovations for eight District Senior Wellness Centers, DGS officials stated they did not have the files. In the absence of the contract files, we used contract documentation in the Procurement Automated Support System (PASS) to complete our review of the contract and subsequent modifications. From the basic information in PASS, we found that the contract for renovations to the eight District Wellness Centers was a sole-source contract and that there were contract modifications for A/E services. DGS did not maintain documentation to justify the decision to make this a sole source contract or to justify extra money paid for A&E services; we could not determine if these modifications were justified based on the information available.

Recommendation

13. Improve procedures to obtain and store contract files for all contracts.

CONCLUSION

Effective procurement and contract management are important to achieving good contracting outcomes, including controlling cost increases resulting from contract modifications. DGS would benefit from ensuring that project plans, designs, and construction management services are effectively procured when authorizing District facilities modernization and new projects. In addition, DGS should develop independent government estimates and conduct market research prior to soliciting proposals. DGS should also monitor contractors’ performance and assess the quality of services received to ensure contract modification requests are not the result of poor performance and errors that the contractor is responsible for addressing at its own cost. Further,

DGS should document and maintain all contract award decisions, including a justification for sole source awards and the underlying reasons for contract modifications in the contract files.

AGENCY RESPONSES AND OFFICE OF THE INSPECTOR GENERAL COMMENTS

We provided DGS with our draft report on February 14, 2020, and received its responses on April 27, 2020, which are included as Appendix E to this report. We appreciate that DGS officials began addressing some of the findings immediately upon notification during the audit.

In total, we made 13 Recommendations to DGS for actions deemed necessary to correct the identified deficiencies. DGS concurred with Recommendations 2, 3, 5, 6, and 8-13. DGS's actions taken and/or planned are responsive and meet the intent of the recommendations. Therefore, we consider these recommendations resolved but open pending evidence of stated actions. Although DGS did not fully agree with Recommendations 1, 4, and 7, DGS's actions taken and/or planned are responsive and meet the intent of the recommendations. Therefore, we consider these recommendations resolved but open pending evidence of stated actions.

APPENDIX A. OBJECTIVES, SCOPE, AND METHODOLOGY

We conducted our audit work from November 2018 to November 2019 in accordance with generally accepted government auditing standards (GAGAS). Those 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.

The audit objective was to assess the effectiveness of contract modification practices at DGS. The audit was included in the Office of the Inspector General's (OIG) *Fiscal Year 2019 Audit and Inspection Plan*. The audit period of review was from October 2017 to September 2018.

To accomplish the objective, we reviewed and assessed compliance with applicable laws, rules, and regulations governing the District's procurement process, including the PPRA, 27 DCMR 47, DGS Contract and Procurement Policy and Procedure Manual, and OIG's *Procurement Practices Risk Assessment* report that identified key procurement risk areas. We interviewed DGS officials involved in the procurement process to gain a detailed understanding of the contract modifications practices. We also reviewed contracts and related documentation to evaluate justifications for contract modifications.

To assess the reliability of DGS's data, we: (1) performed testing for accuracy and completeness; (2) independently generated procurement and contract data from PASS and compared to contract expenditures in SOAR; and (3) interviewed agency officials knowledgeable about the data. We determined that the data were sufficiently reliable for the purposes of our audit.

We reviewed 15 of 58 contracts¹⁵ with modifications that DGS executed in FY 2018. To select our sample, we grouped all contracts with modifications into two groups – modifications greater than \$800,000 and modifications valued at or less than \$800,000. We tested all 10 contracts with modifications valued over \$800,000 and statistically sampled 5 additional contracts with modifications from the remaining 48 contracts. Overall, we reviewed 15 contracts valued at \$125 million in final expenditures.

We interviewed DGS contract specialists, and DGS contract and procurement management to gain an understanding of the contract award and modification process. We interviewed COTRs to obtain an understanding of the daily monitoring of each contract and to request contract files. We reviewed architectural and engineering contracts for the selected sample to determine the fair and reasonable cost. We then reviewed and assessed proposals from construction vendors to ensure the District selected the most advantageous offer and reviewed a vendor's past performance to ensure DGS justified the use of sole-source contracting.

¹⁵ Contracts for District facilities modernization and new construction projects.

APPENDIX B. ACRONYMS AND ABBREVIATIONS

A/E	Architectural and Engineering
CA	Contract Administrator
CCO	Chief Contracting Officer
CM	Construction Management
CO	Contracting Officer
COTR	Contracting Officer Technical Representative
DCMR	District of Columbia Municipal Regulations
DGS	Department of General Services
D&F	Determination and Finding
FY	Fiscal Year
GAGAS	Generally Accepted Government Auditing Standards
OIG	Office of the Inspector General
PASS	Procurement Automated Support System
PPM	Policies and Procedures Manual
PPRA	Procurement Practices Reform Act

APPENDIX C. RECOMMENDATIONS

1. Establish written procedures to determine if the architectural/engineering firm and the construction management company are responsible for the additional cost prior to executing contract modifications.
2. Establish procedures to document and justify all contract award values that differ from the vendors' proposed amount.
3. Implement procedures to hold the COTR accountable for monitoring vendor performance to ensure vendors are on track to meet contract requirements.
4. Determine and hold contractors responsible for errors in design and specifications, and for poor performance before approving contract modifications.
5. Develop a mechanism to ensure project requirements are identified, market studies are conducted, independent government estimates are developed, and design drawings and specifications are developed prior to awarding sole-source contracts.
6. Implement procedures to ensure that the Determination & Findings in support of a sole-source award includes detailed analysis of the determination that only one qualified vendor is available.
7. Improve procedures to ensure that contractors' past performance is obtained and reviewed prior to awarding sole-source contracts.
8. Document the research and review conducted on other contractors with similar knowledge and experience to ensure the District receives a fair and reasonable price prior to awarding contracts.
9. Establish procedures to detect cost overruns and hold contractors accountable for the original contract terms.
10. Implement procedures to detect potential underbidding to avoid gradual price increases.
11. Implement procedures to establish a competitive range and reject proposals outside the competitive range.
12. Implement procedures to ensure DGS contracting personnel follow the requirements of D.C. regulations and DGS CPDPM when executing letter contracts.
13. Improve procedures to obtain and store contract files for all contracts.

**APPENDIX D. OIG PRIOR YEAR RISK ASSESSMENT AND
CURRENT AUDIT ISSUES**

Risk Area Identified by KPMG	OIG’s Current Assessment at DGS
<p>Document Management – Inconsistent document management practices may increase the likelihood of noncompliance with established procurement procedures, resulting in an inability to validate decisions, including sole source and emergency awards, change orders, and changes to standard terms and conditions.</p>	<p>DGS did not maintain contract files to memorialize important contract decisions or events. Multiple DGS files did not contain supporting documentation, such as determination and finding (D&F) documents and independent government estimates for conducting market research and reviewing contract modification requests.</p>
<p>Sourcing Practices – Current forecasting practices across the District may result in lost opportunities for more competitive sourcing and, ultimately, pricing, which potentially increases the District’s total non-personnel spend.</p>	<p>DGS did not competitively select vendors, which resulted in contract modifications. We noted instances where the District relied on sole-source contracts but did not always justify why the contractor was qualified to perform the work. The sole-sourced vendor then requested and DGS approved contract modifications.</p> <p>We also noted instances where the District selected the lowest bid but later made contract modifications to increase the cost. It was unclear how the District assessed whether the lower bids were within the competitive range for the services the contractor would provide.</p>
<p>Vendor Oversight – Meaningful oversight of District vendors and their delivery of goods and services may not be consistent across District agencies.</p>	<p>The Contract Administrator did not monitor and supervise contracts, which led to contract modifications resulting from poor vendor performance.</p> <p>We also found examples where contract modifications resulted from the vendor’s inability to meet project deadlines, which is something the CA should have caught early if the CA was continuously monitoring the project’s progress.</p> <p>In another example, the District terminated the contractor for poor performance and contracted with another vendor to complete the construction project.</p>

APPENDIX E. DGS'S RESPONSE TO THE DRAFT REPORT



April 27, 2020

(Sent via E-Mail)

Daniel W. Lucas
Inspector General
Office of the Inspector General
717 14th Street, N.W.
Washington, DC 20005

Re: Response to Draft Report titled "Oversight of Contracts for District Facilities Modernization and new Construction Projects needs Improvement (OIG No. 19-1-02AM)" ("Report")

Dear Inspector General Lucas:

The Department of General Services ("DGS" or "Agency") is in receipt of the above-referenced Report, and we appreciate the opportunity to provide our responses to the report. DGS also appreciates your observations and welcomes the opportunity to constructively review your feedback on these critical District functions, as DGS continues our ongoing focus and efforts to improve and enhance the administration of our facilities modernization and new construction projects. DGS has prepared a response, to address each of the OIG's findings and recommendations. We appreciate you including this response with the final Report.

OIG made the following 13 recommendations in the draft report:

1. *Establish written procedures to determine if the architectural/engineering firm and the construction management company are responsible for any additional cost before executing contract modifications.*

DGS Response:

Agree in part. The Agency's Divisions work in tandem to ensure the right means and methods are employed to achieve the goals of projects as outlined in the four corners of the contract documents (including but not limited to drawings, schedule, budget, etc.). However, contract modifications can occur due to numerous justifiable reasons, including but not limited to, unforeseen site conditions, programming changes, agency requests, community engagement, and value engineering efforts. It is standard practice for DGS to thoroughly review all change order requests for entitlement prior to approval.

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The nature of DGS projects requires management of a very delicate balance of competing interests and limited resources. For context, DGS completed a total of eighty-six (86) projects during Fiscal Year 2019 which totaled approximately \$400 million in contracting dollars. While there is always room for improvement, the Agency strongly believes the referenced audit findings could have also represented a larger sample set of projects for an otherwise, and overall, successful year.

To further improve the Agency's performance, the Capital Construction Division ("CCD") is currently implementing a new project management technology platform, ProjectTeam, which incorporates work-flows designed to facilitate DGS standard procedures. Additionally, the Agency recently hired a full-time scheduler within CCD's division to analyze change order requests and claims. This in-house technical expertise has resulted in approximately \$7.7 million in cost savings related to change order requests and delay claims on seven (7) large projects. Note, this does not include the savings to taxpayers realized by preventing claims ahead of submission as a result of this added level of due diligence. The Agency expects that these savings will steadily increase as this increased level of technical review is implemented on all projects.

Moreover, DGS agrees that careful review of contract modifications is crucial and consistent with best practices for contracts that are executed through the Agency and has established written procedures in its current "Contracts and Procurement Division Procedures Manual ("CPDPM") completed in March 2019, and will work to refine the current procedures to hold firms accountable for any additional cost before executing contract modifications. This helps ensure that District receives the true benefit of the bargain and the Agency holds vendors accountable for any deficient performances; and that underlying cost increases are not improperly shifted to District taxpayers.

By fall 2020, DGS plans to incorporate a new annual performance evaluation plan into the manual for contracts having a value above \$100,000.00. That plan will include a requirement that our subject matter experts for A/E contracts review, assess, and update performance requirements, measures, and metrics.

The CPDPM is intended to be utilized as a guide to new and current DGS employees involved in the procurement process. It helps Agency procurement personnel navigate the District's procurement process, while adhering to the highest ethical and professional standards. The CPDPM currently covers the following topics:

- Laws and Regulations - Summarizes and explains the laws and regulations governing the procurement practices of DGS.

APPENDIX E. DGS'S RESPONSE TO THE DRAFT REPORT



- Certified Business Enterprise Participation - Fosters effective and equitably broad-based competition, by leveraging opportunities for small businesses through the certified business enterprise program.
- Full and Open Competition – Supports broad-based competition while creating opportunities for both large and small businesses.
- Fair and Equitable Treatment - Helps ensure contracting with DGS is open, fair, and transparent, while fostering public confidence in how the Agency conducts its mission and operations.

The written procedures within the CPDPM assist our Agency contracting personnel to identify situations where our vendors, including the architect/engineer (“A/E”) firms, may be providing substandard services, supplies, or other non-compliant deliverables. In such instances, our Agency contracting personnel are trained to engage in communications, discussions, and negotiations with underlying vendors with the goal of achieving full performance of the contract or just compensation through retainage or otherwise. Additionally, the CPDMP provides for formally documenting when a vendor performed deficiently or poorly under the contract, so that information can be considered as part of past performance evaluations, when that vendor seeks future business with DGS.

2. *Establish procedures to document and justify all contract award values that differ from the vendors’ proposed amount.*

DGS Response:

Agree. DGS is currently implementing a new project management technology platform, ProjectTeam, which will serve as the central repository for all project related documentation. By fall 2020, DGS will incorporate enhanced internal controls into the CPDPM, to ensure that DGS documents and justifies vendor requests through standardized Determination and Findings (“D&F”) and relevant memoranda for contract values and amounts, which differ from vendors’ proposed amounts. These D&Fs and memoranda will include a description confirming that the agreed-upon values between DGS and each underlying vendor are fair and reasonable.

It is worth noting that the D.C. Official Code includes several established evaluation factors for evaluating and awarding contracts to A/E firms including technical qualification and CBE points—but price is not listed as one of those evaluation factors. As mandated by the D.C. Code, DGS does enter into a price negotiation with the highest ranked offeror with the highest technical score and CBE preference points. The price negotiation occurs after the technical evaluation is fully completed and before the contract award as mandated by D.C. Code. Therefore, a final negotiated price is based upon a comparison with Independent Government Estimates (“IGE”)

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APPENDIX E. DGS'S RESPONSE TO THE DRAFT REPORT



and the market response. In contrast, as mandated by D.C. Code, unlike an A/E RFP, the evaluation and awarding of contracts with general contractors under a request for proposals procurement, include technical factors, CBE preference points, and price points.

3. Implement procedures to hold the COTR accountable for monitoring vendor performance to ensure vendors are on track to meet contract requirements.

DGS Response:

Agreed. Since November 2018, DGS has held various trainings for Contracting Officer Technical Representatives (“COTRs”) to ensure that each COTR understands the scopes of work and deliverables required under each contract. Since that time, approximately six (6) training sessions have been conducted, two every year and DGS is planning to increase the number of trainings every year. Additionally, a requirement that each COTR monitors vendor performance has been added to each COTR’s mid-year review and the annual performance plan.¹ This helps ensure that COTRs understand the importance of the obligation and their role in the overall success of DGS’ capital projects, and are held accountable as appropriate under applicable laws, regulations, and procedures.

4. Determine and hold contractors responsible for errors in design and specifications, and for poor performance, before approving contract modifications.

DGS Response:

Agree in part. When potential errors or omissions arise in connection with the A/E contracts, the Contracting Officer (“CO”) obtains from the project teams all information and facts relative to the underlying contract requirements and assess the extent to which the contractor has failed to deliver and what recourse is appropriate under the contract to protect and enforce DGS’ rights and remedies. The determination is a very fact specific and nuanced analysis that varies, and due consideration is given to factors such as timing around formation of the contract. DGS’ A/E contracts typically include various levels of design review, and to the extent errors are identified during the design process, A/Es are required to redesign at no additional cost to District. Similarly, DGS’ A/E contracts contain design-to-budget obligations that require A/Es to redesign at no additional cost to the District in the event the design exceeds the established budget.

¹ Note this would only apply to government FTEs. CCD will likewise implement performance evaluations of contract project managers and full-time project managers to ensure alignment with the goal of monitoring vendor performance. CCD has over the course of the fiscal year had direct conversations with principals of firms who have had poor performance on projects to ensure that they’re aware of the improvements expected.

APPENDIX E. DGS'S RESPONSE TO THE DRAFT REPORT



Nonetheless, when necessary, the DGS contracts and procurement team engages and consults with OGC for guidance with regard to the enforcement of DGS' legal rights and remedies.

Additionally, DGS is seeking to proactively avoid the necessity for contract modifications by improving the contracting process on the front end. DGS is exploring a "Design Excellence Platform" within CCD modeled after programs at the U.S. General Services Administration and the New York City Department of Design and Construction. The intent of this initiative is to develop truly integrated designs that balance aesthetics, functionality, cost, constructability, durability, and reliability. Getting the design right initially is one of the most effective tools to preventing errors in the design and specifications and poor performance. CCD currently anticipates presenting the Agency's leadership with a proposed model by fall 2020. Additionally, there is already on-going activity within CCD to determine Errors & Omissions on active construction projects where concerns exist. DGS anticipates continuing to move forward with these efforts when the need arises.

5. Develop a mechanism to ensure project requirements are identified, market studies are conducted, independent government estimates are developed, and design drawings and specifications are developed prior to awarding sole-source contracts.

DGS Response:

Agreed. DGS recognizes the importance of complying with applicable laws, regulations, and policy when pursuing sole source contracts, including the mandates of Chapter 27-17 of the "DC Management Regulations" titled "Sole Source and Emergency Contracts." That Chapter in part limits sole source contracts to circumstances where there is only one available vendor. The DGS CPDPM contains guidance that comports with that structure, and requires the development of market studies, independent government estimates, and design drawings and specifications, before DGS awards sole source contracts. This upfront due diligence represents a critical base of information that DGS uses to confirm price reasonableness.

About or around fall, 2019, DGS' contracts and procurement team began utilizing a state-of-the-art tracking software called Salesforce, which serves as the intake system for new DGS procurement actions. This software helps ensure that our Agency's proposed contract scopes are properly vetted before approval; and once approved, follow an appropriate path to execution. DGS also implemented a stricter process whereby approval for sole source and emergency procurements requires a comprehensive and a detailed justification and the background of the request. Senior contracting officers review this documentation and approve or reject the request. If the justification is not in line with the requirements of the code, the request for sole source will be rejected.

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APPENDIX E. DGS'S RESPONSE TO THE DRAFT REPORT



6. Implement procedures to ensure that the D&F in support of a sole-source award includes detailed analysis of the determination that only one qualified vendor is available.

DGS Response:

Agreed. By fall 2020, DGS plans to incorporate enhancements to our CPDPM, to buttress our existing policies, processes and controls for contemplated sole source awards. This will include a requirement for DGS contracting personnel to include more robust background, analysis, and explanation of why only one vendor is available to perform the underlying contract. Likewise, as noted in the response to Question #5, DGS has implemented a new process whereby there is a detailed review of each sole source request from the program or client agency to ensure that there is clear evidence that there is justification as mandated by the Code that only one qualified vendor is available to perform the services.

7. Improve procedures to ensure that contractors' past performance is obtained and reviewed prior to awarding sole-source contracts.

DGS Response:

Agree in part. The law is strict when it comes to past performance and some SBE/CBE firms have little or no record of past performance. Given the District's mandate to spend at least 50% of each agency's budget with those SBE/CBE firms, excluding those companies could be difficult and could result in various protests with the Contract Appeals Board which could further delay critical projects. By fall 2020, DGS plans to implement a new annual vendor performance plan for contracts having a value above \$100,000.00, and update pertinent sections of the CPDPM, to enhance our internal controls and ensure that our contracting personnel obtain and review the District's documented past performance information on vendors that are seeking new contracts with DGS.

8. Document the research and review conducted on other contractors with similar knowledge and experience to ensure the District receives a fair and reasonable price prior to awarding contracts.

DGS Response:

Agreed. DGS mandates that IGE's are a part of all contract actions and due diligence/research is conducted before awarding all contracts. The Contracting Officer then reviews all the documents and information and determines if the price is fair and reasonable for the award.

DGS will continue to incorporate enhancements into the CPDPM, to reemphasize required due diligence before awarding contracts, such as the D&F memoranda, IGEs, adequate market

APPENDIX E. DGS'S RESPONSE TO THE DRAFT REPORT



research and analysis of other contractors that are qualified and experienced in performing the same or similar types and scopes of work.

9. Establish procedures to detect cost overruns and hold contractors accountable for the original contract terms.

DGS Response:

Agreed. As noted in the response to Question # 1, DGS will continue to hold vendors accountable when they fail to meet contractual requirements and seeks ways to improve our processes by adopting best practices and lessons learned. Additionally, by fall 2020, DGS plans to incorporate enhancements into the CPDPM to help prevent, detect, and address cost overruns when they occur. This will include: (a) post close-out reviews of our contracts to find ways to ensure that our initial project estimates and costs can be made to equate more closely to vendor actuals; (b) more robust analysis and documentation before approving change orders; and (c) increasing the level of communication and coordination between senior contracting officers and technical representatives on one hand, and project teams and program offices on the other hand. These measures will make DGS a more agile and proactive organization that can more readily and quickly identify potential cost overruns and performance deficiencies, and take prompt action when such issues arise.

10. Implement procedures to detect potential underbidding to avoid gradual price increases.

DGS Response:

Agreed. By fall 2020, DGS plans to incorporate enhancements into its existing CPDPM including due diligence requirements aimed at detecting and addressing potential underbidding during the solicitation and award stages of DGS procurements. DGS will require any proposed vendor price increases above the 12% threshold to include a detailed cost analysis, price comparisons available via market research and IGE. DGS will also require proper considerations where proposed vendor prices might be higher due to important District mandated socio-economic policies, such as those applicable to CBEs. DGS' contracting officers will continue to request justifications from the program office when vendors' proposed prices fall way below the IGE in addition to a clarification from vendors to confirm the basis of the low prices to ensure that the vendors have a full understanding of the scope of work and to prevent a later request for modifications during the implementation of the project.

Additionally, DGS has implemented the usage of Project Information Request Forms (PIRFs) that are developed with the client agencies or by using historical data as a part of the capital budget request process. The PIRFs are subsequently used to inform the IGE.

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APPENDIX E. DGS'S RESPONSE TO THE DRAFT REPORT



11. Implement procedures to establish a competitive range and reject proposals outside the competitive range.

DGS Response:

Agreed. The requirements for establishing a competitive range is determined by the D.C. Code and based on the aforementioned, DGS establishes competitive ranges for its procurements and open discussions with relevant vendors of A/E firms and general contractors. By fall 2020, DGS plans to incorporate enhancements into its CPDPM, providing further guidance to contracting employees in order to emphasize the establishment of a competitive range for all applicable procurements and to promote and support robust competition; eliminate vendors falling outside the competitive range; engage in discussions with vendors that are deemed to be within the competitive range; and seek and receive best and final offers from vendors.

12. Implement procedures to ensure DGS contracting personnel follow the requirements of D.C. regulations and DGS CPDPM when executing letter contracts.

DGS Response:

Agreed. DGS ensures that its staff is equipped with the complex and nuanced tools of understanding the laws, regulations, policies, and procedures that affect how a procurement and/or construction contract is awarded and administered. DGS also follows all applicable laws and regulations including but not limited to D.C. Official Code § 2-351.01 et seq., and Title 27 DCMR and Section 47.

By fall 2020, DGS intends to provide a training on contracts to encompass letter contracts (and the appropriateness of their usage); the training will discuss the importance of conducting needs assessments as a tool to reduce the usage of the aforementioned letter contracts.

In addition, DGS will update its CPDPM to reflect the permitted usage of letter contracts under 27 DCMR-2425, which authorizes a Contracting Officer to issue letter contracts so that it is memorialized as a reference for staff.

13. Improve procedures to obtain and store contract files for all contracts.

DGS Response:

Agreed. DGS agrees that contract files must at all times be stored in safe, secure, and dedicated locations, and maintained in accordance with the District's record retention policies. DGS has staff Procurement Analysts who are tasked with working with the Contract team to ensure hard

APPENDIX E. DGS'S RESPONSE TO THE DRAFT REPORT



copy files are maintained for all projects and all current DGS contracts are entered into the Salesforce platform.

C&P managers were directed to ensure that hard files are obtained and maintained for all contracts to include all associated documents. DGS is also working to maintain sufficient locked space areas within our buildings to properly maintain contract files. This requirement is also being incorporated into our design plans for the new consolidated space that DGS is currently scheduled to occupy in 2023.

DGS' responses to Appendix C of the OIG Report:

1. DGS failed to memorialize important contract decisions or events, and the Agency's files did not contain supporting documents like D&F memos and IGEs to conduct market research and contract modification requests.

DGS Response:

Disagree in part. DGS has improved its file management by utilizing the Salesforce platform to manage each procurement action from start to finish. The Salesforce platform has increased the Agency's transparency efforts and enabled DGS leadership to hold staff accountable for each project solicited and contract awarded. Further, consistent with the Agency's policies and procedures, DGS will continue to conduct regular internal audits of all files, to ensure that contracts files are being maintained and updated properly, with the types and levels of information befitting an agency that recognizes the importance of DGS' mission and operations.

2. DGS did not competitively select vendors, which resulted in contract modifications; entered into sole source contracts without justifying why that contractor was selected; and selected the lowest priced offeror, but then approved contract modifications that increased the costs; and it was unclear how DGS assessed whether the lower bids were in the competitive range for the services they would provide.

DGS Response:

Disagree in part. Modifications are not always the result of lack of competition or due to DGS awarding a contract to an unrealistically low-priced offer. DGS follows the applicable codes in selecting vendors. In accordance with the D.C. Official Code, price is not the only factor in evaluating and selecting vendors in a Request for Proposal ("RFP"), which is the commonly used procurement method for construction projects. In RFPs, technical qualifications and CBE preference points are weighted more heavily than price as the focus on the Vendor's technical ability to perform the services.

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Conversely, in A/E RFPs, price is not one of the evaluation factors as mandated by the Code and as noted in DGS' Response to Audit Finding No.2. DGS will conduct a price negotiation to ensure that the proposed price is fair and reasonable *only after* the completion of the technical evaluation and before the contract award. Furthermore, in construction projects, the vendors will bid the projects based on fee and general condition cost as the drawings and/or the design do not exist at the early stage of the project which does not provide an ability to determine the final construction cost for the project. That will require a modification to the contract to be called a Guaranteed Maximum Price ("GMP") amendment and this is commonly known in the industry. Modifications might also occur due to unforeseen conditions in construction projects, a change in the projection for school enrollment, budget adjustments, a cut in the budget which will impact the scope, schedule, and the design, new regulations, delays due to protests, or community-driven modifications.

3. DGS failed to monitor contract performance, which led to contract modifications resulting from poor vendor performance; contract modifications resulted from the vendor's inability to meet project deadlines; and terminated a contract for poor performance, and contracted with another vendor to complete the construction project.

DGS Response:

DGS remains committed to identifying, pursuing, and incorporating industry best practices and lessons learned into its procurement and contracting processes and procedures. In that regard, by fall 2020, we plan to incorporate enhancements into our CPDPM, to reflect our current practice and strengthen our review of contract modifications and vendor's past performance. We regret any incidents described above, but do not believe that such incidents represent the ways in which DGS ordinarily performs. DGS is working hard to ensure that we monitor our contracts well, select vendors carefully based on the established codes, and hold vendors to high standards both for quality and timely delivery.

Lastly, we thank you for your efforts and looking forward to work with you and to answer all of your questions.

Keith A. Anderson

Keith Anderson, Director
D.C. Department of General Services