

# DISTRICT OF COLUMBIA OFFICE OF THE INSPECTOR GENERAL

OIG Project No. 19-I-01AM0

October 2018



## DEPARTMENT OF GENERAL SERVICES:

### Evaluation of the Buzzard Point and St. Elizabeths Solicitations



### *Guiding Principles*

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\* Accountability \* Professionalism \* Objectivity and Independence \* Communication \* Collaboration  
\* Diversity \* Measurement \* Continuous Improvement*

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- prevent and detect corruption, mismanagement, waste, fraud, and abuse;
- promote economy, efficiency, effectiveness, and accountability;
- inform stakeholders about issues relating to District programs and operations; and
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\* Transparency \* Empowerment \* Courage \* Passion  
\* Leadership



**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of the Inspector General**



**Inspector General**

October 24, 2018

Rashad M. Young  
City Administrator  
Office of the City Administrator  
1350 Pennsylvania Ave, NW, Suite 513  
Washington, D.C. 20004

Greer Johnson Gillis  
Director  
Department of General Services  
2000 14<sup>th</sup> Street N.W., 9<sup>th</sup> Floor  
Washington, D.C. 20009

Dear City Administrator Young and Director Gillis:

Enclosed is our final report entitled *District of Columbia Department of General Services (DGS): Evaluation of the Buzzard Point and St. Elizabeths Solicitations* (OIG Project No. 19-1-01AM0). The objectives of this evaluation were to: 1) review the solicitations, evaluation processes, and resulting contracts for vulnerabilities to corruption, fraud, mismanagement, waste, and abuse; 2) identify internal control weaknesses and recommend improve control deficiencies; and 3) provide analysis that informs DGS's processes and decision making. We conducted this evaluation under standards established by the Council of the Inspectors General on Integrity and Efficiency.

In this report we made two recommendations to the Executive Office of the Mayor (EOM) and five recommendations to DGS. We provided EOM and DGS our draft report on August 1, 2018. We received EOM's response on September 7, 2018 and DGS's response on September 25, 2018, included as Appendices C and D, respectively.

EOM agreed with one recommendation and noted that it did not believe that legislation to guide the process for awarding certified business enterprise (CBE) preference points was necessary because the issue had been addressed. In our comment to EOM's response, the OIG stands by its recommendation that EOM work with the Council of the District of Columbia to amend District law so it explains how CBE preferences should be awarded. Even if DGS is applying CBE preference points in a proportional manner, this change in law would ensure that EOM's and the Council's intent regarding CBE preferences are consistently followed by not only DGS but other District agencies.

DGS agreed with all five of our recommendations directed towards DGS; however, in its response, DGS cited the Contract Appeals Board's (CAB) determination that DGS properly awarded the St. Elizabeths contract. The OIG's analysis does not solely consider whether DGS awarded the contract properly under the solicitation's criteria, but also addresses the general fairness, transparency, and consistency of the solicitation process. This evaluation's objectives were to review DGS' contracting system and then offer recommendations to improve DGS' contracting processes. Overall, the OIG identified several process points where DGS could

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improve its procurement administration and oversight practices to increase fairness, transparency, and consistency.

If you have questions about this report, please contact me or Edward Farley, Assistant Inspector General for Inspections and Evaluations at (202) 727-2540.

Sincerely,



Daniel W. Lucas  
Inspector General

Enclosure

cc: See Distribution List

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## BACKGROUND

### Summary of the Buzzard Point Project

On January 21, 2016, DGS issued a Request for Proposals (RFP) for work at the Buzzard Point site. The RFP encompassed construction management work related to development of the D.C. United soccer stadium site. Two companies submitted proposals: 1) Fort Myer Construction Corporation (Fort Myer); and 2) W.M. Schlosser Co., Inc. (Schlosser). A Technical Evaluation Panel (TEP)<sup>1</sup> evaluated both proposals using a 212-point scoring scale, which included up to 12 Certified Business Enterprise (CBE) preference points,<sup>2</sup> and awarded Fort Myer's proposal more points. However, DGS did not award Fort Myer the contract because it found Fort Myer "non-responsible;"<sup>3</sup> instead, DGS awarded the contract to Schlosser. Fort Myer did not protest the contract award.

### Summary of the St. Elizabeths Project

On February 12, 2016, DGS issued an RFP for work to improve the St. Elizabeths East Campus and redevelop the site into an entertainment and sports facility.<sup>4</sup> Two companies submitted proposals: 1) Fort Myer; and 2) Gilbane Building Company (Gilbane). A TEP evaluated the proposals using a 200-point scoring scale, including up to 12 possible CBE preference points, and awarded more points to Gilbane's proposal. DGS then issued a request for Best and Final Offer (BAFO), and Gilbane and Fort Myer submitted revised proposals. Gilbane's proposal was valued at \$6,630,003, while Fort Myer's was valued at \$16,574,280. The TEP awarded Fort Myer's BAFO more points, but DGS awarded the contract to Gilbane because it found Gilbane's proposal of \$6,630,003 to be more "advantageous" to the District. Fort Myer filed a protest with the Contract Appeals Board (CAB),<sup>5</sup> which found that DGS properly awarded the contract to Gilbane and dismissed Fort Myer's protest.

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<sup>1</sup> A TEP is a "group of technical and subject matter experts appointed by the Contracting Officer to review proposals that are submitted in response to a RFP." D.C. DEPARTMENT OF GENERAL SERVICES, POLICIES AND PROCEDURES MANUAL § 8.14 (Apr. 2016).

<sup>2</sup> A CBE is "a business that is headquartered in the District of Columbia and has been certified by the Department of Small and Local Business Development (DSLBD). Businesses with CBE certification receive preferred procurement and contracting opportunities." <https://dslbd.dc.gov/page/certification-faqs> (last visited Feb. 14, 2018).

<sup>3</sup> For a contractor to win an award, they must be deemed responsible. This determination is made on a solicitation-by-solicitation basis and takes into account seven factors (e.g., obtaining necessary skills, being able to comply with the proposed schedule, having a satisfactory performance record and record of integrity, etc.). D.C. DEPARTMENT OF GENERAL SERVICES, POLICIES AND PROCEDURES MANUAL § 4.9.4 (Apr. 2016).

<sup>4</sup> Prior to DGS's February 2016 RFP, DDOT issued and later cancelled two solicitations for work at St. Elizabeths.

<sup>5</sup> "The Contract Appeals Board provides an impartial, expeditious, inexpensive, and knowledgeable forum for hearing and resolving contractual disputes and protests involving the District and its contracting communities." <https://cab.dc.gov/page/about-cab> (last visited May 2, 2018).

## OBSERVATIONS & RECOMMENDATIONS

The need for greater transparency and consistency in the District’s procurement system is central to the OIG’s observations regarding DGS’s administration of the Buzzard Point and St. Elizabeths solicitations. The D.C. Code,<sup>6</sup> District of Columbia Municipal Regulations (DCMR), and DGS’s Policies and Procedures Manual articulate similar statements regarding their overall purposes and intent, including that they are to be construed and applied to promote fairness and equitable treatment, increase public confidence in procurement procedures, promote uniform procedures, and improve the public’s understanding of procurement laws and policies.<sup>7</sup> The OIG identified several process points where DGS could improve its procurement administration and oversight practices to increase fairness, transparency, and consistency. This report presents 4 observations and 7 corresponding recommendations. Although the scope of this review was limited to the Buzzard Point and St. Elizabeths solicitations, these observations address issues with broader implications for DGS and other District agency procurements.

### **Buzzard Point and St. Elizabeths Contract Files Were Incomplete and Lacked Explanations for Important Decisions and Actions**

Title 27 DCMR § 4730.2 dictate that a contract file must include:

- (a) The solicitation and any amendments;
- (b) The contract and any modifications;
- (c) Any type of documentation that is specifically required to be maintained in the contract file by other sections of this chapter; and
- (d) Any other documentation that may be necessary to memorialize important decisions or events . . . .

Title 27 DCMR § 4721.13 further notes that the Contracting Officer (CO) must “prepare documentation explaining the basis for the contract award decision which shall be maintained in the contract file.” DGS’s Policies and Procedures Manual notes that the solicitation will dictate the information in the contract file, and contracts valued at more than \$100,000 must be maintained in a “Large Contract File.” DGS requires Large Contract Files to contain more information on the award than “Small Contract Files,” to include information on the award, evaluation/selection, compliance, review and approval, solicitation and amendments, and correspondence.<sup>8</sup>

After reviewing the contract files for DGS’s Buzzard Point and St. Elizabeths solicitations, the OIG observed that documents were incomplete, inconsistent, or unclear, including: TEP documentation, Buzzard Point’s change order documentation, and St. Elizabeths’ amendment and modification documentation.

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<sup>6</sup> D.C. Code § 2-352.01(b)(11) states that DGS is not subject to the authority of the Chief Procurement Officer at the Office of Contracting and Procurement (OCP), but must conduct procurements in accordance with the Procurement Practices Reform Act (PPRA).

<sup>7</sup> See, e.g., D.C. Code § 2-352.01(b); see also 27 DCMR § 4700.2 (noting that DGS’s procurement rules are intended to ensure that procurements are carried out in a fair and objective manner and DGS’s Contracting and Procurement Division core values include transparency, accountability, and fair competition).

<sup>8</sup> Amendment B of the Policies and Procedures Manual provides additional guidance on documentation requirements, but DGS did not provide the Amendment to the OIG.



## Required TEP Documentation Incomplete and Unsigned

TEP members evaluate proposals individually and then collectively discuss their respective scores to determine a consensus score and creating a consensus report with a contract award recommendation.<sup>9</sup> DGS's Policies and Procedures Manual does not dictate requirements regarding the substance or form of the TEP consensus report, and using outside parties and multiple rating methods is allowed;<sup>10</sup> however, the scoring method used to evaluate proposals should be delineated in the RFP.<sup>11</sup>

TEP members must execute a confidentiality agreement acknowledging that they will not disclose proposal-related information. DGS also requires TEP members, technical advisors, legal advisors, and procurement advisors to execute a disclosure form identifying whether they had a relationship with the bidders or the bidders' key personnel that could impair the objectivity of the procurement process.

The OIG identified three areas of concern regarding the documentation of TEP scoring. First, the TEP Consensus Memorandum for the St. Elizabeths solicitation was changed for reasons not documented. There were two versions of a TEP Consensus Memorandum in the St. Elizabeths contract file. Both versions recommended that DGS award the contract to Fort Myer, but the more recent version stated that "either company can perform" the work. We found no documentation in the contract file explaining why these memoranda contained different language. Second, the scoring method used and the role of an outside entity were not documented. Besides the TEP, DGS also appeared to consult with a law firm that, per its website, specializes in advising government clients on construction and development projects, but the firm's exact role was not documented.<sup>12</sup> Although the DCMR allows the CO to consult outside parties for score evaluations, the D.C. Code restricts evaluation of proposals to the methods in the RFP.<sup>13</sup> The St. Elizabeths RFP mentioned no non-DGS scoring method or the potential role of the law firm in evaluating proposals. Third, it was unclear how many individuals served on the St. Elizabeths TEP. In the St. Elizabeths contract file, five individual TEP evaluations were documented in Excel format (and unsigned); however, only four people signed the TEP Consensus Memorandum. And the contract file contained only two signed confidentiality agreements and disclosure forms. Changes to the TEP memorandum and using an outside party to evaluate proposals are permitted, but their use should have been documented in the file per 27 DCMR § 4730.2. Further, the contract file should clearly identify all TEP members.

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<sup>9</sup> D.C. DEPARTMENT OF GENERAL SERVICES, POLICIES AND PROCEDURES MANUAL §§ 8.14 and 8.21 (Apr. 2016).

<sup>10</sup> See 27 DCMR § 1629.4; see also D.C. DEPARTMENT OF GENERAL SERVICES, POLICIES AND PROCEDURES MANUAL § 8.13 (Apr. 2016).

<sup>11</sup> See D.C. Code § 2-354.03(g) (1); see also 27 DCMR § 1630.1; D.C. DEPARTMENT OF GENERAL SERVICES, POLICIES AND PROCEDURES MANUAL § 8.1 (Apr. 2016).

<sup>12</sup> In addition to a DGS scoring method used when there are less than five offerors, there was also a "Scoring Method" in the St. Elizabeths procurement file that noted the name of the law firm in its title. DGS also required offerors to disclose whether they had any relationships with the law firm as part of the procurement process. It was unclear whether law firm employees scored proposals, whether TEP members utilized a scoring method created by the law firm in making their calculations, or if law firm employees may have "tutored" TEP members.

<sup>13</sup> See D.C. Code § 2-354.03(g) (1).

## **Buzzard Point: Rationale for Some Change Orders Not Clearly Documented**

The value of the Buzzard Point contract with Schlosser incrementally increased through successive change orders over the three phases of the project.<sup>14</sup> Initially, the District executed a letter contract with Schlosser that governed the relationship until a final contract was executed, for an amount Not-to-Exceed (NTE) \$990,000. Two Basic Change Directives (BCD) and seven change orders were executed and increased the contract price from \$25,077,000 to \$33,662,849. Many but not the entire contract documents detailed why it was necessary to increase the contract price. For example, the complete rationale was not clear for BCD 2 or what \$100,000 allocated to “general conditions” in Change Order 6 was designated to achieve. Further, Change Order 7 was the most obscure, and was for the largest money.<sup>15</sup> This Change Order lacked the “Modification of Contract” cover sheet present on the other change orders, and therefore, the high-level description of this change order was not available for review. The reason for this Change Order, which increased the value of the contract by over \$6,000,000, was not clearly documented in the contract file. As this was the largest change order, its rationale should be articulated, especially if it is related to Schlosser’s subcontracting work to the losing bidder.<sup>16</sup>

## **St. Elizabeths: Rationale for Some Amendments and Modifications Not Clearly Documented**

### RFP Amendments

The RFP and any corresponding amendments to the RFP must “contain all information necessary to enable prospective contractors to prepare proposals properly [.]”<sup>17</sup> and must “set forth each evaluation factor and indicate the relative importance of each evaluation factor.”<sup>18</sup> Further, the CO must “include in the solicitation the evaluation factors, including price or cost, and any significant sub factors.”<sup>19</sup> Therefore, using pricing subcategories and the relative importance of each subcategory should be articulated in the RFP or subsequent amendments to the RFP.

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<sup>14</sup> The first phase included a Lump Sum Price for the Water Utility Construction Phase of \$16,252,000, later reduced to \$13,752,000 (the \$13,752,000 amount was then incrementally increased to \$15,637,849 through successive change orders). The second phase included a Management Fee for the Streetscape Coordinate Phase of \$325,000, and the third phase included a Guaranteed Maximum Price (GMP) for the Streetscape Work of \$11,000,000 (the \$11,000,000 GMP amount was increased to \$11,400,000, and again later to \$17,700,000), which included a Construction Management Fee for the Streetscape Work of \$2,300,000 (later increased to \$2,557,860). Councilmember Cheh’s report noted that there were only two phases. *See* FINDINGS AND RECOMMENDATIONS OF MARY M. CHEH ON THE DEPARTMENT OF GENERAL SERVICES CONTRACTING AND PERSONNEL MANAGEMENT at 4 (2017).

<sup>15</sup> This change order was implemented 1 month after Councilmember Cheh’s report on the two DGS contracts was published. *See id.*

<sup>16</sup> A new subcontracting plan was included in the Change Order 7 file. This subcontracting plan noted that Fort Myer was the intended subcontractor for \$10,608,292.

<sup>17</sup> 27 DCMR § 1604.2.

<sup>18</sup> D.C. Code § 2–354.03(d) (1); *see also* 27 DCMR § 1630.1; D.C. DEPARTMENT OF GENERAL SERVICES, POLICIES AND PROCEDURES MANUAL § 8.13 (Apr. 2016).

<sup>19</sup> 27 DCMR § 1613.2. (Emphasis added).

With Amendment 8, DGS amended the St. Elizabeths RFP, for reasons not clearly documented, 2 weeks before proposals were due.<sup>20</sup> The St. Elizabeths RFP required offerors to bid a lump sum price. Amendment 8 announced that the definitive lump sum price would be negotiated post award and that construction costs would be excluded from bid evaluations. This amendment was also the first time various pricing subcategories were given to bidders.<sup>21</sup> The price subcategories were not defined, and there was no documentation informing bidders that pricing subcategories would be individually assessed and overall price would not determine which bidder won the pricing component of the bid evaluation process (rather, each pricing category was evaluated independently and the bidder with the most category wins in price). As the pricing subcategories were not defined, bidders could incorrectly place costs in various subcategories or even potentially game the system to win pricing subcategories. The documented reason for this amendment was to “address certain risk issues inherent in the original approach.” No further explanation was provided. Title 27 DCMR § 1622.3 states that, “[i]f a change is so substantial that it warrants complete revision of a solicitation, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the state of the procurement.” The contracting officer did not cancel the solicitation. The stated reason for the amendment lacks specifics to provide context for the change, and, as the pricing subcategories were not defined, the amendment may have been so substantial that it should have warranted cancelling the solicitation.

### Contract Modifications

Gilbane’s proposal was for approximately \$6.6 million.<sup>22</sup> DGS justified awarding the contract to Gilbane, even though the TEP awarded the Fort Myer proposal more points, because there was a nearly \$10 million difference between the proposals and it was more “advantageous” to the District to award the contract to Gilbane. In July 2016, DGS entered into an Early Release Package with Gilbane for an amount NTE \$10 million, an amount higher than Gilbane’s original proposal. The Early Release Package partially paid the contract, and anticipated “the negotiation of a definitized contract and GMP . . . pursuant to which the Design-Builder will be authorized to proceed with certain preconstruction and construction services . . . .” After the Early Release Package, the GMP Amendment was issued as a \$37 million modification to the contract, which set the NTE amount at \$48,000,000 and set a target GMP of \$59,502,843,<sup>23</sup> and was approved by the D.C. Council. The distinction between these two terms and figures, and why both were needed, was not documented.

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<sup>20</sup> D.C. Code § 2–354.03(d) (1) specifies that the RFP must “set forth each evaluation factor and indicate the relative importance of each evaluation factor.” Further, Title 27 DCMR § 1623.3 states that the “contracting officer shall not award a contract unless all amendments made to the RFP have been issued in sufficient time to be considered by prospective offerors.”

<sup>21</sup> The St. Elizabeths RFP identified 6 categories for evaluation, totaling 188 points, with an additional 12 possible preference points available. The price category, worth 48 points plus an additional 12 possible preference points, was not broken into subcategories at this time.

<sup>22</sup> The award memorandum was issued with an “Impact of Budget” section totaling approximately \$6.2 million. The reason for the difference in the award memorandum’s “Impact of Budget” section and Gilbane’s proposal is unknown. Additionally, the CAB opinion noted that Gilbane’s original bid was \$8,053,523.

<sup>23</sup> There was also a draft document that noted the GMP was \$60,629,493; the reason for its change to \$59,502,843 was not documented in the relevant contract file.

The Council Summary document stated the modification would “authorize the Contractor to provide all remaining construction manager services to complete the Project” but it provided no rationale for the large increase in cost. The contract file contained a draft Determination and Findings (D&F) to justify the need for this modification, including citing the protest as a circumstance contributing to the modification, but it was only in draft format and predesignated sections of the D&F template contained blank lines. Considering Gilbane was awarded the contract because of its substantially lower priced proposal, it is not clear why DGS did not sufficiently document why the contract was later increased to such a large degree. And in July 2018, DGS sought approval to execute a proposed Modification No. 7 that would establish a final GMP of \$83,409,667 and an increase of \$23,906,824 to the target GMP. A new competitive procurement might have better served the District than these large modifications.<sup>24</sup>

The contract files contained multiple versions of documents apparently intended to be final, but the documents were not signed and dated, and the files lacked required subcontracting documents. Oversight entities such as the OIG should be able to review contract files and gain a general understanding of actions taken and their supporting justification.

## Recommendations

We recommend that DGS:

- (1) Issue a written directive reiterating (and revising, where necessary) contract file documentation requirements, including that all files must contain complete proposal scoring documentation and subcontract information, so individuals not directly involved in the procurement process can comprehend agency actions and decision making.

Agree \_\_\_\_\_ X \_\_\_\_\_ Disagree \_\_\_\_\_

***DGS’s September 2018 Response to Recommendation 1, As Received:***<sup>25</sup> *DGS will issue or update, as necessary, any existing administrative issuance and the Contracts and Procurement Division’s Policies and Procedures Manual to ensure that staff has the most recent guidance regarding contract file documentation.*

**OIG Comment:** The OIG requests that DGS provide a copy of all new and updated guidance regarding contract file documentation communicated to DGS staff in FY 2019.

- (2) Implement annual training for employees on contract file documentation requirements.

Agree \_\_\_\_\_ X \_\_\_\_\_ Disagree \_\_\_\_\_

***DGS’s September 2018 Response to Recommendation 2, As Received:*** *C&P staff has Contract File training scheduled for October 23, 2018 and training will be provided annually.*

<sup>24</sup> Title 27 DCMR § 4728.2 states, “[a] modification must be within the general scope of the original contract. Any requirement for extra work that goes beyond the contract’s general scope shall be the subject of a new procurement.”

<sup>25</sup> The full text of DGS’s September 2018 Response to the draft report is found in Appendix D.

**OIG Comment:** The OIG requests that DGS provide a copy of all materials distributed to “Contract File” training participants no later than November 23, 2018.

**DGS’s Scoring Scales Departed from Common Practice, and the Rationale was not Clearly Documented.**

The DCMR and D.C. Code should encourage and support CBE participation, with the DCMR stating that DGS’s “goals include expanding and retaining disadvantaged businesses located within the District.”<sup>26</sup> The D.C. Code and DGS’s Policies and Procedures Manual specify that only a maximum of 12 preference points are available for CBEs.<sup>27</sup> Although it is common practice for the OCP, DGS, and other District agencies to evaluate procurements using a 100-possible- points scoring scale, offering CBEs the possibility of earning 12 preference points (for 112 points), the D.C. Code does not require the use of a specific fixed (e.g., 100-point) scale to score procurements, nor does it require that CBEs receive preference points proportionate to the scale used.<sup>28</sup> Likewise, D.C. Code § 2–354.03 does not mandate use of a particular scale to evaluate proposals, but notes that each RFP response will be evaluated based on cost to the District, quality of the product or service through non-cost based evaluation factor(s), and past performance of the offeror.<sup>29</sup>

In early 2016, DGS desired to place greater emphasis on the technical aspects of proposals and increased the maximum number of points that could be awarded to a proposal, while keeping the maximum number of possible preference points the same. DGS appears to have implemented the higher point scale shortly before soliciting proposals for the Buzzard Point and St. Elizabeths projects. The proposals for the Buzzard Point and St. Elizabeths solicitations were evaluated on 200- and 188-point scales, respectively, with an additional 12 preference points available.<sup>30</sup> DGS did not proportionally increase the number of CBE preference points available,<sup>31</sup> and the scoring system used decreased the weight of the CBE preferences. Some DGS employees noted this new change in point scales did not decrease the comparative advantage of CBEs. However, the OIG disagrees with this assertion based on the mathematical impact of increasing the scoring scale without proportionally increasing the CBE preference points available. Employees from the Mayor’s Office of Legal Counsel (MOLC), the Executive Office of the Mayor (EOM), OCP,

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<sup>26</sup> 27 DCMR § 4700.3; *see also* D.C. Code § 2-351.01(b) (2).

<sup>27</sup> *See* D.C. Code § 2–218.43(b) (stating that “[a] certified business enterprise shall be entitled to any or all of the preference provided in this section, but in no case shall a certified business enterprise be entitled to a preference of more than 12 points or a reduction in price of more than 12 percent.”); *see also* D.C. DEPARTMENT OF GENERAL SERVICES, POLICIES AND PROCEDURES MANUAL § 6.4 (Apr. 2016).

<sup>28</sup> An Associate General Counsel at OCP explained that although the law did not explicitly require District procurements to be evaluated on a 100-point scale, it was understood at the time of the law’s drafting that CBE preference points would be awarded proportionally to the scale applied. Additionally, the previous version of the Department of Small and Local Business Development’s (DSLBD) regulation, 27 DCMR § 806, explicitly assumed a 100-point scale. *See*, FINDINGS AND RECOMMENDATIONS OF MARY M. CHEH ON THE DEPARTMENT OF GENERAL SERVICES CONTRACTING AND PERSONNEL MANAGEMENT 12 & 67 (2017).

<sup>29</sup> *See* D.C. Code § 2–354.03(d) (1).

<sup>30</sup> Additional DGS procurements were evaluated on a 200-point scale during this timeframe. The reason for using different scales, i.e. 200- and 188-point scales, for these 2 contracts was not documented.

<sup>31</sup> Currently, the D.C. Code does not allow CBEs to receive more than 12 preference points. *See* D.C. Code § 2–218.43(b).

the DSLBD, the Office of the City Administrator (CA), and DGS questioned DGS's 200-point scoring scale, either contemporaneously or retrospectively because of inquiries into the matter.<sup>32</sup>

At the time of our review, DGS had returned to using a 100-possible-points scoring scale to evaluate proposals; however, nothing appears to prevent DGS, or other District agencies, from using a 200-point (or higher) scale, which would reduce the impact of the 12 possible CBE preference points. The D.C. Code does not afford CBEs with consistent preference weighting because it only allows CBEs to receive a maximum of 12 preference points, but it does not require District agencies to use a fixed 100-point scoring scale. District agencies can alter point scales without proportionally altering the number of CBE points available and dilute the weight of CBE preference points.<sup>33</sup> If the District's goal is to maintain a consistent proportionality to the impact of CBE preference points,<sup>34</sup> it reasons that CBE preferences should be applied as a percentage of the total point scale, or, a fixed scale with the same number of preference points should always be used.

## Recommendations

We recommend that EOM:

- (3) Convene a meeting with MOLC, OCP, DSLBD, the CA, and DGS to determine whether changes are needed regarding how CBE preference points are awarded whether the number of preference points should be fixed or proportional to the scoring scale.

Agree \_\_\_\_\_ X \_\_\_\_\_ Disagree \_\_\_\_\_

***EOM's September 2018 Response to Recommendation 3, As Received:***<sup>35</sup> *We agree with Recommendation 3 and have addressed this issue. My office reviewed this issue because of the solicitations discussed in the draft evaluation report, and the Department of General Services will use a 100-point scoring scale, to ensure that the proportion of CBE preference points are consistent across agencies' solicitations. In addition, I transmitted a letter to the Council Chairman informing him that the Administration is consistently using the 100-point scoring scale.*

**OIG Comment:** The OIG reiterates our recommendation that EOM convene a meeting with MOLC, OCP, DSLBD, the CA, and DGS to collectively determine whether a 100-point scale should be exclusively used, so the collective intent on how CBE preference points should be applied will be used prospectively.

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<sup>32</sup> See, e.g., FINDINGS AND RECOMMENDATIONS OF MARY M. CHEH ON THE DEPARTMENT OF GENERAL SERVICES CONTRACTING AND PERSONNEL MANAGEMENT 10-12 (2017).

<sup>33</sup> Bill 21-0334, to amend the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, would have mandated that CBE preference points were awarded proportionally. However, this portion of the Bill was not signed into law.

<sup>34</sup> 27 DCMR § 4700.3 specifically state that "[t]hese rules are intended to encourage participation by Certified Business Enterprises (CBEs)... The Department's goals include expanding and retaining disadvantaged businesses located within the District."

<sup>35</sup> The full text of EOM's September 2018 Response to the draft report is found in Appendix C.

- (4) Work with the D.C. Council to amend the D.C. Code to ensure that statutory language accurately reflects any changes that result from these deliberations.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ X \_\_\_\_\_

*EOM's September 2018 Response to Recommendation 4, As Received: regarding Recommendation 4, because the scoring scale has been addressed by the Administration, legislation is unnecessary.*

**OIG Response:** The OIG stands by its recommendation that EOM work with the Council to amend District law so it includes how CBE preferences should be awarded. Even if DGS is utilizing a 100-point scoring scale and applying CBE preference points in a proportional manner, this change in law would ensure that EOM's and the Council's intent regarding CBE preferences are consistently followed by not only DGS but also other District agencies.

### **DGS's Responsibility Determination Methodology was Inconsistent, Resulted in Differing Conclusions.**

The D.C. Code and DCMR both state that to win a contract over \$100,000, the contractor must be "responsible."<sup>36</sup> The "responsible" determination is made on a solicitation-by-solicitation basis. To be considered responsible, a contractor must comply with 10 factors according to the D.C. Code or 9 factors according to the DCMR.<sup>37</sup> The DCMR dictates that when evaluating a prospective contractor's responsibility, a CO "may request information from the contractor and may also consider information available from other sources, including the general public."<sup>38</sup> The CO must make a written determination if the contractor is found non-responsible, and may make a written determination if a contractor is found responsible. Contractors, not District agencies, must ensure that subcontractors meet the criteria for responsibility. Determining non-responsibility is final and "shall not be overturned unless arbitrary or capricious."<sup>39</sup> A DGS Administrative Issuance (No. 2016-002) states that in making a responsibility determination, the CO will undertake a risk analysis of the offeror, but provides no instruction on how to conduct such analysis. DGS's Policies and Procedures Manual does not contain additional protocols for evaluating responsibility.

DGS issued the Buzzard Point and St. Elizabeths RFPs almost concurrently, but took inconsistent approaches in evaluating contractor responsibility. DGS deemed Fort Myer non-responsible during the Buzzard Point solicitation process, but responsible regarding St. Elizabeths.

### **DGS Finds Fort Myer Non-Responsible During Buzzard Point Proposal Evaluation**

<sup>36</sup> See D.C. Code §§ 2-353.01 & 2-353.02; see also 27 DCMR §§ 4705 & 4706.

<sup>37</sup> The DCMR is intended to implement the D.C. Code's statutory provisions, but these two legal authorities establish different, although some similar, factors to assess contractor responsibility. See D.C. Code § 2-353.01(a); see also 27 DCMR § 4706.1.

<sup>38</sup> 27 DCMR § 4706.5.

<sup>39</sup> D.C. Code § 2-353.02(d).

DGS’s contract file contained two award memoranda for the Buzzard Point project: both memoranda indicated that Fort Myer received 131.88 points and Schlosser received 91.27 points, but one memorandum found Fort Myer responsible while the other found Fort Myer non-responsible. The April 11, 2016, memorandum determined that 1) Fort Myer was a responsible contractor, 2) Fort Myer’s proposal price was fair and reasonable, and 3) Fort Myer should be awarded the Buzzard Point contract. This version, however, was “invalidated” and “overturned” for reasons not documented in the contract file.<sup>40</sup> The April 18, 2016, memorandum reached the opposite outcome and deemed Fort Myer a non-responsible contractor.<sup>41</sup> Supporting DGS’s non-responsible determination were three D&F documents that presented similar explanations. When the D&F documents are read collectively, DGS based its determination that Fort Myer was non-responsible on three general bases: 1) a “non-responsive” answer to two questions on a required Bidder-Offeror Form (BOF); 2) Fort Myer’s general risk rating, determined using a Comparative Risk Analysis (CRA); and 3) Fort Myer’s litigation risk.

- Non-responsive to Questions 1.4 and 1.5 on the BOF – In the RFP, DGS provided bidders with a BOF to submit with their proposals. DGS’s D&F of non-responsibility noted that Fort Myer deceived it by submitting a different version of a BOF to avoid answering two questions (Questions 1.4 and 1.5).<sup>42</sup> Fort Myer then submitted the correct BOF and replied “not applicable” to Questions 1.4 and 1.5. DGS researched Fort Myer’s company history<sup>43</sup> and found evidence contrary to Fort Myer’s “not applicable” responses. Based on this research, DGS considered Fort Myer’s response of “not applicable” to be a misrepresentation and deemed Fort Myer “non-responsive” to Questions 1.4 and 1.5. DGS’s claim that Fort Myer misrepresented itself by responding “not applicable” to Questions 1.4 and 1.5 could have been in error as the data that DGS relied upon may have been outdated and/or incorrect. DGS did not ask Fort Myer to verify information, although OCP and the District Office of the Attorney General (OAG) noted that it is practice to clarify responses on a BOF that appear potentially misleading or inaccurate.<sup>44</sup>
- High-risk factor – DGS used a CRA that evaluated the contractors against four categories then awarded each a numerical score. Schlosser’s CRA score of 6.93 points deemed it a “minimal risk,” while Fort Myer’s CRA score of 5.26 points deemed it a “moderate risk, approaching serious risk.” DGS’s CRA methodology was not documented in the contract file. And the OAG questioned the use of the CRA, and noted that the CRA calculation was not widely used in other solicitations.

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<sup>40</sup> The term “invalid” was watermarked on the document, and the term “overturned” was transcribed next to the initials of a DGS employee.

<sup>41</sup> The second award memorandum, dated April 18, 2016, appeared to be the final version among the two award memoranda because it was executed later in time with signatures from the appropriate parties. It made no reference to the first award memorandum, which was not signed.

<sup>42</sup> Question 1.4 asked bidders to disclose whether they held any interests or positions in other entities in the same or similar line of business. Question 1.5 asked bidders to disclose whether they maintained any relationship(s) with a District or DGS employee procuring the goods or services.

<sup>43</sup> DGS employees were concerned with how much research they were able to conduct in evaluating the BOF, and did not want to conduct too much research because it might be deemed investigational in nature.

<sup>44</sup> See FINDINGS AND RECOMMENDATIONS OF MARY M. CHEH ON THE DEPARTMENT OF GENERAL SERVICES CONTRACTING AND PERSONNEL MANAGEMENT 167 & 359 (2017).



- Litigation risk – At the time of DGS’s inquiry, the OAG cited that Fort Myer had 19 pending legal matters, and a Dun & Bradstreet report likewise identified 23 lawsuits involving Fort Myer. However, OCP’s General Counsel later noted in testimony provided to Councilmember Mary Cheh that some of the 19 pending legal matters cited in DGS’s D&F were not actual lawsuits, but simply contracts over \$1 million that required approval from the D.C. Council,<sup>45</sup> and that one of the legal matters cited by DGS was resolved at least 3 years earlier.<sup>46</sup>

Based on this, the OIG believes that DGS’s D&F lacked the persuasiveness and clarity for a reasonable outside observer to support a non-responsible determination.<sup>47</sup>

### **DGS Finds Fort Myer Responsible during St. Elizabeths Proposal Evaluation**

DGS determined that Fort Myer was non-responsible during the Buzzard Point solicitation process, but did not reach the same determination during the St. Elizabeths solicitation process. The two RFPs were issued 22 days apart; Fort Myer’s company history and relationships with other entities could not have materially changed within such a short time period. Its responses to the RFP could have been different; however, Fort Myer’s responses in the BOFs for both projects were not materially different.

Similar to the Buzzard Point solicitation, DGS required Fort Myer to respond to Questions 1.4 and 1.5 in the BOF for the St. Elizabeths project, but this time, Fort Myer responded with “not applicable” and elaborated through email that its company held no interest, financial or otherwise, in similar entities. DGS counseled Fort Myer on how to respond to the BOF for St. Elizabeths<sup>48</sup> and instructed Fort Myer to resubmit the BOF. Fort Myer changed its response to Questions 1.4 and 1.5 to “none.” Although the terms have different meanings, it is not clear why Fort Myer’s response on the BOF in Buzzard Point of “not applicable” was a basis for a non-responsibility determination, yet Fort Myer’s response on St. Elizabeths BOF of “none” was acceptable.

The St. Elizabeths contract file contained a draft D&F that concluded Fort Myer was not responsible based upon: 1) a CRA; 2) non-responsiveness to questions 1.4 and 1.5 of the BOF; 3) litigation exposure; and 4) other matters for consideration, but this finding of non-responsibility in a draft document was ultimately not used, for reasons not documented in the contract file.

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<sup>45</sup> Contracts in excess of \$1 million during a 12-month period require approval by the D.C. Council. *See* D.C. Code § 2-352.02(a) (1).

<sup>46</sup> An OCP employee testified whether Fort Myer was involved in 19 pending legal matters and 23 lawsuits, as claimed by DGS. *See* FINDINGS AND RECOMMENDATIONS OF MARY M. CHEH ON THE DEPARTMENT OF GENERAL SERVICES CONTRACTING AND PERSONNEL MANAGEMENT at 355 (2017).

<sup>47</sup> The OAG echoed similar sentiments of diffidence in DGS’s D&F and declined to grant DGS legal sufficiency ultimately. DGS purportedly relied on its own legal team to grant Buzzard Point legal sufficiency. It is not clear why DGS submitted the Buzzard Point contract to the OAG for legal sufficiency review as DGS was not required to obtain legal sufficiency approval from the OAG.

<sup>48</sup> Communications or discussions with offerors in an effort to clarify information are permitted, and DGS may allow offerors to correct mistakes on proposals if the corrections are determined to be in DGS’s best interests. *See* D.C. DEPARTMENT OF GENERAL SERVICES, POLICIES AND PROCEDURES MANUAL §§ 8.12 and 8.23.1 (Apr. 2016).

Fort Myer submitted a 21-page response to the issues that DGS raised and defended its answers on the BOF for the St. Elizabeths project, but was not provided this opportunity during the Buzzard Point solicitation process. Bidders should be given an opportunity to explain their answers on a BOF as a matter of fairness, even if it is not technically required by law. An OCP employee stated that even though not required, OCP holds discussions to obtain additional information or clarity when finding a bidder non-responsible.<sup>49</sup> DGS also allows the contracting officer to request information from the contractor to “gain a complete and informed picture as to whether the contractor would be deemed responsible for the project being solicited.”<sup>50</sup>

Ultimately, there were inconsistencies in DGS’s non-responsibility determinations, which suggest the process could be abused and manipulated.<sup>51</sup> The D.C. Code grants the Chief Procurement Officer (CPO) discretion in establishing “a process to certify, on a solicitation-by-solicitation basis, the responsibility of prospective contractors,”<sup>52</sup> but also promotes “development of uniform procurement procedures District government-wide.”<sup>53</sup> Further, the purpose of DGS’s Policies and Procedures Manual is to; ensure that all contractors receive fair and equitable treatment. Therefore, the OIG’s observations present DGS with an opportunity to increase the consistency of its contractor responsibility determinations.

## Recommendations

We recommend that DGS:

- (5) Implement more specific criteria for determining offeror responsibility through standardized research and evaluation methods, to include guidance on: a) agency research that should be conducted following agency receipt of a bidder-offeror form; b) the use of a comparative risk analysis; c) how DGS will evaluate an offeror’s litigation history; and d) meeting with an offeror prior to a non-responsibility determination to verify information that DGS may use to support its determination.

Agree \_\_\_\_\_ X \_\_\_\_\_ Disagree \_\_\_\_\_

***DGS’s September 2018 Response to Recommendation 5, As Received: C&P staff has Competitive Sealed Proposal/Negotiations training scheduled for January 22, 2019. The annual training will include instructions regarding issuance of requests for best and final offers, competitive range determination and responsibility determinations, including review of bidder certification forms.***

<sup>49</sup> This information was obtained from the testimony of an OCP employee who described these actions as a best practice. See FINDINGS AND RECOMMENDATIONS OF MARY M. CHEH ON THE DEPARTMENT OF GENERAL SERVICES CONTRACTING AND PERSONNEL MANAGEMENT at 356 (2017).

<sup>50</sup> D.C. DEPARTMENT OF GENERAL SERVICES, POLICIES AND PROCEDURES MANUAL § 4.9.4 (Apr. 2016).

<sup>51</sup> The United States Government Accountability Office defines abuse as the “behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary operational practice given the facts and circumstances.” UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, STANDARDS FOR INTERNAL CONTROL IN THE FEDERAL GOVERNMENT § 8.03 (Sept. 2014).

<sup>52</sup> D.C. Code § 2-353.01(a).

<sup>53</sup> D.C. Code § 2-351.01(b) (10).

**OIG Comment:** The OIG requests that DGS provide a copy of all materials distributed to “Competitive Sealed Proposal/Negotiations” training participants no later than February 22, 2019.

- (6) Require regular training for employees on responsibility determination criteria and procedures.

Agree \_\_\_\_\_  X  \_\_\_\_\_ Disagree \_\_\_\_\_

*DGS’s September 2018 Response to Recommendation 6, As Received: C&P staff has Award Memo and Award Documents training scheduled for November 27, 2018. This annual training will include instructions regarding file creation, contracting officer independent review, responsibility/responsiveness determination and review of the Technical Evaluation consensus report.*

**OIG Comment:** The OIG requests that DGS provide a copy of all materials distributed to “Award Memo and Award Documents” training participants no later than December 27, 2018.

### **Lack of Adequate Written Guidance on BAFO Requests**

BAFO requests are generally used to ensure that bidders similarly understand a project and its requirements. DGS’s Policies and Procedures Manual states:

The request of the BAFO acknowledges that both contractors have scored well enough on the technical rating that both would be the best qualified choice for the Department to complete the project. The Contracting Officer will ask each contractor to submit their best price point for completing the project. The Contracting Officer will then make the award based on best value for the Department. To be considered, all offers must be considered fair and reasonable.

More detailed criteria related to BAFOs do not seem to exist.<sup>54</sup>

DGS issued no BAFO request for Buzzard Point, but did during the St. Elizabeths solicitation. On April 26, 2016, Gilbane and Fort Myer submitted their initial bids in response to the St. Elizabeths RFP. A TEP awarded Gilbane more points but the contract was not immediately awarded to Gilbane. On May 24, 2016, DGS issued a request for BAFO to confirm that offerors knew proposals should include electrical re-routing for Building 129, and fees were based on achieving milestone dates and on DGS’s budget of \$45 million. Some District officials later questioned whether the BAFO request was necessary, required, or logical, while others thought it was appropriate. Such disagreement may indicate a lack of clear guidelines and understanding around appropriately using BAFO requests.

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<sup>54</sup> See 27 DCMR § 4721.11; see also 27 DCMR § 1639.

On May 31, 2016, Gilbane and Fort Myer submitted their responses to the BAFO request. Gilbane did not change its proposal; however, Fort Myer reallocated its prices across the pricing subcategories considerably, even though the BAFO instruction was unrelated to the various pricing subcategories.<sup>55</sup> The table in Appendix B further details both offerors’ initial pricing and post-BAFO pricing. Based on these new proposals, a TEP awarded Fort Myer more technical and total points than Gilbane, as detailed in Table 1 below:

Offeror	Technical Points	Price Points	CBE Points	Total Points
Gilbane	77.39	32	0	109.39
Fort Myer	79.32	26	11	116.32

**Table 1: St. Elizabeths BAFO Scoring**

DGS discussed the possibility of issuing another BAFO request. It appears the second BAFO was considered because some individuals at OCP and EOM believed that the first BAFO was “flawed.”<sup>56</sup> While there are valid reasons for issuing a BAFO request, issuing multiple BAFO requests within a single solicitation provides contractors with a second bite at the apple and may undermine the competitive solicitation process by allowing the administering agency to issue BAFO requests until a desired contractor wins.<sup>57</sup> Therefore, the OIG believes there should be clearer protocols at DGS regarding appropriately using BAFO requests.

**Recommendation**

We recommend that DGS:

- (7) Develop, implement, and regularly train employees on detailed criteria regarding BAFO requests.

Agree \_\_\_\_\_     X     \_\_\_\_\_ Disagree \_\_\_\_\_

***DGS’s September 2018 Response to Recommendation 7, As Received: C&P staff has Competitive Sealed Proposal/Negotiations training scheduled for January 22, 2019.***

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<sup>55</sup> Fort Myer stated that it used previously obtained knowledge about the scoring of pricing subcategories from its debriefing conference in the Buzzard Point procurement to strategically change its bid in the St. Elizabeths procurement. Gilbane did not participate in the Buzzard Point debrief as it did not bid on this project; therefore, Gilbane may have had less knowledge about the various pricing subcategories and how they were evaluated by DGS. Title 27 DCMR § 4704.2(e) states that a CO is responsible for “[e]nsuring that all offerors participating in a procurement receive fair and impartial treatment.” Likewise, DGS’s Policies and Procedures Manual § 1.3 states that a contractor can be disqualified from a project if it was “granted an unfair advantage over potential competitors.”<sup>55</sup> Fort Myer’s knowledge about how DGS would score the pricing subcategories may have been an unfair advantage.

<sup>56</sup> OCP and EOM officials considered DGS’s BAFO instructions “flawed” because it did not identify any deficiencies within the offerors’ proposals as commonly present in BAFO requests. See FINDINGS AND RECOMMENDATIONS OF MARY M. CHEH ON THE DEPARTMENT OF GENERAL SERVICES CONTRACTING AND PERSONNEL MANAGEMENT at 26 and 796 (2017).

<sup>57</sup> The General Counsel of OCP noted that second BAFOs can occur, but they are not regular occurrences. It appears as though there may have been a second BAFO process when St. Elizabeths was being procured by DDOT.

## **CONCLUSION**

The overarching themes of fairness, transparency, and consistency in the District's procurement system relate to many of the OIG's observations regarding DGS's procurements of the Buzzard Point and St. Elizabeths contracts. The contracting processes for Buzzard Point and St. Elizabeths demonstrated that DGS was not consistent in its responsibility determinations and that key decisions and justifications were not adequately documented. These inconsistencies question the integrity and independence of DGS's procurement processes. Likewise, the contract files for both procurements lacked clarity and completeness; for example, the scoring method employed was unclear and large contract modifications were not explained.

DGS, and other agencies, must embrace strengthened procurement protocols and oversight practices to instill fairness, transparency, and consistency. These central tenants to public contracting are not only in the best interests of the District, but also increase public trust in the system.

## **APPENDIX A: Objectives, Scope and Methodology**

The OIG conducted this evaluation in response to widespread public concern and complaints received by the OIG Hotline regarding the Buzzard Point and St. Elizabeths solicitations. The objectives of this evaluation were to: 1) review the solicitations, evaluation processes, and resulting contracts for vulnerabilities to corruption, fraud, mismanagement, waste, and abuse; 2) identify internal control weaknesses and recommend improve control deficiencies; and 3) provide analysis that informs DGS's processes and decision making. OIG evaluations are conducted under the standards established by the Council of the Inspectors General on Integrity and Efficiency.<sup>58</sup>

As part of this review, the OIG requested documentation from DGS, including the complete contract file for each solicitation; all DGS policies, procedures, and written directives pertaining to these solicitations; and any other documentation or information that DGS believed would assist the OIG.

On January 9, 2018, DGS provided the OIG with the Buzzard Point and St. Elizabeths contract files, and on January 10, 2018, DGS provided the OIG with DGS's *Contracts and Procurement Division Policies & Procedures Manual* (Policies and Procedure Manual), in effect when the solicitations were administered. The OIG also reviewed publicly-available information regarding the two solicitations.

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<sup>58</sup> Available at <https://www.ignet.gov/sites/default/files/files/iestds12.pdf>.

**APPENDIX B: Original and Post-BAFO Prices Submitted by Bidders in the St. Elizabeths Procurement**

	Preconstruction Fee	Pts	Design Fee <sup>59</sup>	Pts	Design Build Fee	Pts	Lump Sum Price General Conditions	Pts	Above Grade Demo	Pts	Total Price <sup>60</sup>	Total Pts
Gilbane Original Bid	\$97,380 <sup>61</sup>	2	\$1,423,540	10	\$2,250,000	12	\$3,771,762	14	\$510,861	10	\$6,630,003	48
Fort Myer Original Bid	\$218,000	0	\$2,390,000	0	\$6,750,000	0	\$8,706,280	0	\$1,340,000	0	\$17,014,680	0
Gilbane Post-BAFO	\$97,380	0	\$1,423,520	10	\$2,250,000	12	\$3,771,762	0	\$510,861	10	\$6,630,003	32
Fort Myer Post-BAFO	\$86,000	2	\$1,423,520	10	\$12,342,000	0	\$3,076,280	14	\$1,070,000	0	\$16,574,280	26

<sup>59</sup> This BAFO noted that the design fee would not be evaluated because it was a set amount.

<sup>60</sup> This total price does not include the design fee.

<sup>61</sup> When there were discrepancies regarding these numbers, the OIG cited to the original bid documentation and not the numbers cited in Councilmember Cheh’s report. *See, e.g., FINDINGS AND RECOMMENDATIONS OF MARY M. CHEH ON THE DEPARTMENT OF GENERAL SERVICES CONTRACTING AND PERSONNEL MANAGEMENT (2017)*

## APPENDIX C: EOM's Response to Draft Report

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of the City Administrator



September 7, 2018

Daniel W. Lucas  
Inspector General of the District of Columbia  
717 14<sup>th</sup> Street, NW  
Washington, DC 20005

Re: Office of the Inspector General's draft evaluation report entitled "Evaluation of the Buzzard Point and St. Elizabeths Solicitations"

Dear Mr. Lucas:

Thank you for the opportunity to review and provide comments on the Office of the Inspector General's draft evaluation report entitled "Evaluation of the Buzzard Point and St. Elizabeths Solicitations", dated August 1, 2018.

In that report, your office made two recommendations to the Executive Office of the Mayor (EOM): (3) that EOM convene a meeting with other agencies to determine whether changes are needed with respect to how certified business enterprise (CBE) preference points are awarded, in particular, whether the number of preference points should be fixed or proportional to the scoring scale; and (4) that EOM work with the Council to amend District law to ensure that statutory language accurately reflects any changes that result from these deliberations.<sup>1</sup>

We agree with Recommendation 3 and have addressed this issue. My office reviewed this issue as a result of the solicitations discussed in the draft evaluation report, and the Department of General Services was directed to use a 100-point scoring scale, in order to ensure that the proportion of CBE preference points are consistent across agencies' solicitations. In addition, I transmitted a letter to the Council Chairman informing him that the Administration is consistently using the 100-point scoring scale. With respect to Recommendation 4, because the scoring scale has already been addressed by the Administration, we do not believe legislation is necessary at this point.

Thank you again for providing the opportunity to review and comment on the draft report. If you have any questions, please do not hesitate to contact me, or have your staff contact [REDACTED] OCA General Counsel and Senior Policy Advisor, at [REDACTED]

Sincerely,

A handwritten signature in black ink, appearing to read "Rashad M. Young".

Rashad M. Young  
City Administrator

<sup>1</sup> The recommendation numbering used in this letter reflects the recommendation numbering in the draft evaluation report.





## APPENDIX D: DGS's Response to Draft Report

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES



**September 20, 2018**

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

**Re: Draft Report: Evaluation of The Buzzard Point and St. Elizabeths Solicitations**

Dear Inspector General Lucas:

We appreciate the opportunity to review the draft audit report and to provide our response. The Department of General Services (hereinafter referred to as “DGS” or “Department”) appreciates and supports the Office of the Inspector General’s (“OIG”) efforts to improve District government operations and to provide relevant guidance when necessary to improve the overall effectiveness of government operations.

DGS’ mission is to provide superior construction, first-rate maintenance and expert real estate management in the District. The Department’s Contracts and Procurement Division is a forward leaning, multi-faceted acquisitions operation, dedicated to advancing transparent, accountable, and efficient procurement practices in support of the Department’s mission.

We strongly believe that our agency has made significant improvements under my leadership and, in particular, the procurement process described in your report does not reflect the current state of the procurement process at the agency. As part of DGS’s ongoing efforts to improve our procurement process, we continue to stress accountability and transparency in all operations by increasing the training of our contract specialists as well as securing the services of an OAG Senior Procurement Attorney to assist with reviewing all agency procurement actions for legal sufficiency. Unfortunately, the draft report relied almost exclusively on contract files that are now more than two years old and its conclusions do not include any perspective from agency leadership or DGS’s current procurement staff.

Since becoming Director on August 16, 2016, I have mandated that the Department strive to improve in the following areas: procurement, customer service, performance management and project delivery.

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We respectfully disagree with your assessment of the procurement process relative to the St. Elizabeths Project solicitation reviewed by your office. As you are aware, the Contracts and Appeals Board (“CAB”) - which provides an impartial, expeditious, and knowledgeable forum for hearing and resolving contract disputes - reviewed the entire St. Elizabeths procurement file and concluded that the Department properly awarded the contract in accordance with the evaluation criteria outlined in the Solicitation documents. In its September 20, 2016 opinion, the *Protest of Fort Myer Construction Corporation* (P-1012), CAB determined that the DGS Chief Contracting Officer’s evaluation and award decision were proper. CAB also dismissed, as untimely, Fort Myer’s allegations that the solicitation selection criteria were unclear and that the 200 point scale adopted by DGS diluted the effect of CBE preference points.

Although OIG’s draft report notes that there may have been consideration of issuing a second Best and Final Offer (“BAFO”) in this solicitation, only one BAFO was issued and there was no confusion among the offerors or possibility of undermining the competitive solicitation process by the issuance of multiple BAFO requests. CAB found no error in the St. Elizabeths solicitation with regard to the request for BAFO and explicitly determined that “the [Chief Contracting Officer] scored the BAFO prices of the offerors based upon the pricing formula prescribed in the Solicitation” and that “[t]his was the very price scoring methodology required by the Solicitation’s terms.” Opinion, p. 12.

CAB did not specifically address any purported documentation issues with the Technical Evaluation Panel (“TEP”), but did give significant weight to the fact that the Chief Contracting Officer (“CCO”) “detailed the basis for his award decision in a 6-page memorandum outlining in depth the scope of the project, the evaluation process including the basis and methodology for the technical and price evaluation scores ascribed to both Gilbane and Fort Myer as part of his independent assessment of the proposals.” Opinion, p. 13. Further noting that “it is obvious that the CCO fully reviewed and considered the significance of the technical evaluation scores that each offeror had received, as he was legally required to do, and that this independent analysis of the proposals was proper.” Opinion, p. 13.

The TEP evaluated the proposals based upon the prescribed technical criteria, and the CCO adopted those findings and scored the BAFOs prices based upon the Solicitation’s price evaluation scheme. The Board found no impropriety in this scoring process based upon the evaluation record. Opinion, p. 12.

In conclusion, the current DGS’ Contracts and Procurement Division is managed by an Associate Director, who serves as the Chief Procurement Officer with independent professional responsibility to manage the Division and ensure that procurement actions are conducted in a fair, transparent and ethical manner.

We believe that improvements initiated within the last two years will continue to advance engagement and experience with our Department and lead to an open and transparent government that inspires confidence in our work and yields better decision-making.

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We respectfully submit the following responses to the report's findings and recommendations:

**OIG Recommendations:**

We recommend that DGS:

- (1) Issue a written directive reiterating (and revising, where necessary) contract file documentation requirements, including that all files must contain complete proposal scoring documentation and subcontract information, so that individuals not directly involved in the procurement process are able to fully comprehend agency actions and decision making.

Agree

DGS will issue or update, as necessary, any existing administrative issuance and the Contracts and Procurement Division's Policies and Procedures Manual to ensure that staff has the most recent guidance regarding contract file documentation.

- (2) Implement annual training for employees on contract file documentation requirements.

Agree

C&P staff has Contract File training scheduled for October 23, 2018 and training will be provided annually.

- (3) Implement more specific criteria for determining offeror responsibility through the use of standardized research and evaluation methods, to include guidance on: a) agency research that should be conducted following agency receipt of a bidder-offeror form; b) the use of a comparative risk analysis; c) how DGS will evaluate an offeror's litigation history; and d) holding a meeting with an offeror prior to a non-responsibility determination to verify information that DGS may use to support its determination.

Agree

C&P staff has Competitive Sealed Proposal/Negotiations training scheduled for January 22, 2019. The annual training will include instructions regarding issuance of requests for best and final offers, competitive range determination and responsibility determinations, including review of bidder certification forms.

- (4) Require regular training for employees on responsibility determination criteria and procedures.

Agree

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C&P staff has Award Memo and Award Documents training scheduled for November 27, 2018. This annual training will include instructions regarding file creation, contracting officer independent review, responsibility/responsiveness determination and review of the Technical Evaluation Panel consensus report.

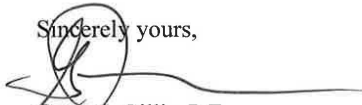
- (5) Develop, implement, and regularly train employees on detailed criteria regarding the use of BAFO requests.

Agree

C&P staff has Competitive Sealed Proposal/Negotiations training scheduled for January 22, 2019.

Thank you for the opportunity to provide the Department's response to this draft audit report. If you have any further questions, please do not hesitate to contact me.

Sincerely yours,



Greg J. Gillis, P.E.  
Director