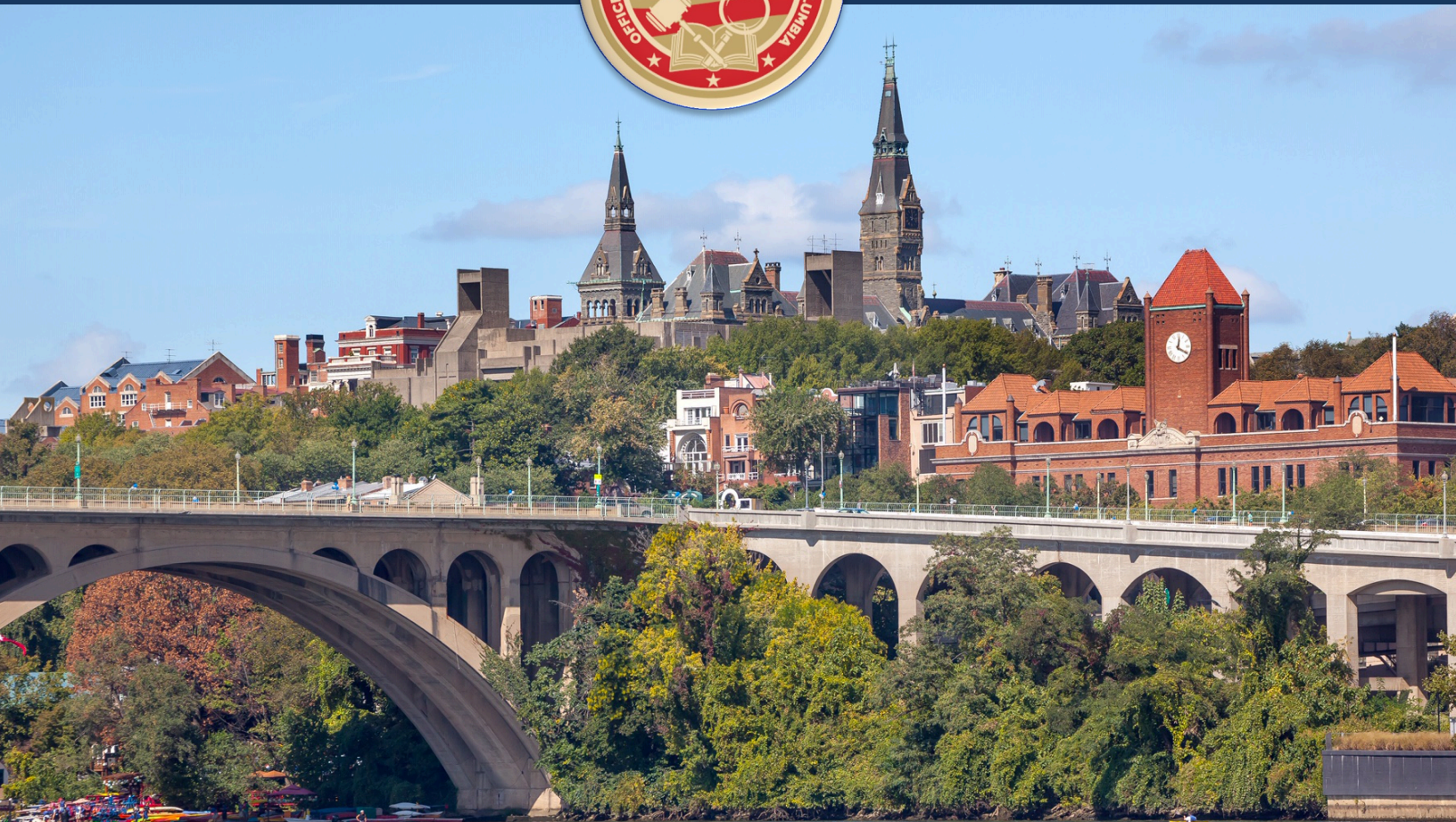


DISTRICT OF COLUMBIA OFFICE OF THE INSPECTOR GENERAL

OIG Project No. 20-I-02DY

June 2020



DISTRICT OF COLUMBIA RETIREMENT BOARD

Evaluation of Procurement Processes and Selected Contracts

Guiding Principles

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

Mission

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

- 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
- recommend and track the implementation of corrective actions.

Vision

Our vision is to be a world-class Office of the Inspector General that is customer-focused, and sets the standard for oversight excellence!

Core Values

Excellence * Integrity * Respect * Creativity * Ownership
* Transparency * Empowerment * Courage * Passion
* Leadership



EXECUTIVE SUMMARY

WHY WE DID THIS EVALUATION

This evaluation was a continuance of an ongoing Office of the Inspector General (OIG) initiative to review District procurement processes and contracts for vulnerabilities to fraud, mismanagement, waste, and abuse. DCRB procurements carry heightened risk because DCRB is an independent agency that is not subject to District procurement laws or the Office of Contracting and Procurement (OCP) authority.



OBJECTIVES

The OIG conducted this project to:

1. evaluate DCRB's procurement processes to determine whether adequate internal controls are in place; and
2. assess DCRB's compliance with regulations and policies during the solicitation, award, and administration of sampled procurements.

WHAT WE FOUND

DCRB had not established effective internal controls over its procurement processes. Deficiencies in the organizational structure (including unfilled positions), procurement policies and procedures, and information technology prevent DCRB from sufficiently guarding against fraud, waste, and abuse, fully complying with procurement regulations, and achieving agency goals. Although the agency had taken steps to identify deficiencies requiring corrective actions, it had not implemented necessary remedial actions. The deficiencies in DCRB policies and procedures manifested as problems with procurements, including overuse of sole source procurements, insufficient contract administration, and an unreported potential ethics violation.

WHAT WE RECOMMEND

To correct the deficiencies evident in the processes and procurements we examined, the OIG makes 18 recommendations, the implementation of which will both correct problems that occurred in the past and created a stronger control environment. The recommendations will establish an organizational structure that makes it easier to develop and maintain adequate controls, provide a better framework to standardize procurement processes, both pre-and post-award. Aligning DCRB's Procurement Manual with the PPRA and OCP's guidance and help to prevent mistakes and contract lapses by implementing IT capabilities that enable stronger management oversight.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



June 10, 2020

Sheila Morgan-Johnson
Executive Director
District of Columbia Retirement Board
900 7th Street, N.W.
Washington, D.C. 20001

Dear Executive Director Morgan-Johnson:

Enclosed is our final report, *District of Columbia Retirement Board: Evaluation of Procurement Processes and Selected Contracts* (OIG Project No. 20-I-02DY). This evaluation was conducted as part of our ongoing initiative to review District government procurement processes and contracts for vulnerabilities to corruption, fraud, mismanagement, waste, and abuse.¹ We conducted this evaluation under standards established by the Council of the Inspectors General on Integrity and Efficiency (CIGIE) and assessed DCRB's internal controls using the Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government*.²

The OIG sent a draft report to DCRB for comment on April 23, 2020, and received its response on May 22, 2020. DCRB's comments are quoted in the body of the final report and presented in their entirety in Appendix G. In total, OIG made 18 recommendations to DCRB for actions deemed necessary to correct the identified deficiencies in its procurement processes. DCRB did not indicate whether it agreed or disagreed with recommendations 5, 6, 7, and 18, but agreed with all other recommendations. We provided several additional comments following DCRB's responses to our recommendations.

If you have any questions about this report, please contact me or Edward Farley, Assistant Inspector General for Inspections and Evaluations, at (202) 727-2540 or at edward.farley@dc.gov. The OIG will follow up on the implementation status of each recommendation next fiscal year.

Sincerely,

A handwritten signature in blue ink, appearing to read "DWL", with a horizontal line extending to the right from the end of the signature.

Daniel W. Lucas
Inspector General

DWL/ef

Enclosure

cc: See Distribution List

¹ For more information, see my Office's *Fiscal Year 2019 Audit and Inspection Plan*, <https://oig.dc.gov/>

² U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-14-704G, STANDARDS FOR INTERNAL CONTROL IN THE FEDERAL GOVERNMENT (Sept. 2014), <https://www.gao.gov/products/GAO-14-704G> (last visited Jan. 8, 2019).

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TABLE OF CONTENTS

	Page
BACKGROUND	1
FINDINGS	3
DCRB’s organizational structure, including current vacancies, prevented it from establishing an effective Procurement Control environment.	3
DCRB’s Procurement Manual did not contain sufficient control activities for some aspects of its procurement processes.	8
DCRB had open recommendations from recent audits and consulting agreements.	12
Not posting relevant procurement information publicly diminishes the transparency of DCRB’s procurement processes and hinders open competition.	15
DCRB did not have a process for bidders to challenge or appeal contract award decisions.....	17
DCRB did not have an effective process to track payments against contracts or monitor contract option deadlines.....	18
DCRB relied on sole-source procurements to compensate for its lack of advance planning.	20
DCRB advertised for one type of IT contract then, in effect, changed the type of contract after making the award.....	22
DCRB did not report a potential conflict of interest to the Board of Ethics and Government Accountability (BEGA).	23
Conclusion	26
Appendices	28
Appendix A. Objectives, Scope, and Methodology.....	28
Appendix B. Acronyms and Abbreviations	29
Appendix C. List of Recommendations.....	30
Appendix D. Comparison of DCRB and District Procurement Policies	32
Appendix E. Summary of Recommendations from External Audit Report.....	42
Appendix F. Summary of Recommendations from Strategic Planning Report.....	47

TABLE OF CONTENTS

Appendix G. DCRB's Response to Draft Report	50
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BACKGROUND

The District of Columbia Retirement Board (DCRB) administers investments and benefits under the District of Columbia Police Officers and Firefighters' Retirement Plan and the District of Columbia Teachers' Retirement Plan (collectively referred to as the Plans). The Plans' fund assets are pooled into a single investment portfolio. DCRB then uses the returns from its investments to cover member benefits and operating expenses, like information technology (IT) systems and special projects. DCRB strives to be "the leading pension system in the U.S., by prudent investing and excelling in the member service experience"³ and aims to meet or exceed an investment return target that will sustain the Plans' viability in the long-term. As of fall 2019, DCRB reported fund assets from the Plans were worth \$8.5 billion.⁴

DCRB operates under the leadership of its Executive Director, who reports directly to a 12-member Board of Trustees (Board). The Board is composed of six members elected by active and retired police officers, firefighters, and teachers; three members appointed by the D.C. Council; and three members appointed by the Mayor.⁵ Of the 12 trustees, only three are required to have professional experience in banking, insurance, or the investment industry – the Council appoints 2 of which are appointed by the Mayor and one.⁶ DCRB also has an *ex officio* representative from the Office of the Chief Financial Officer (OCFO) who attends regular Board meetings but cannot vote.⁷

DCRB is an independent agency,⁸ and therefore has the autonomy and statutory authority to manage its operations. For example, DCRB's Executive Director has direct and exclusive hiring authority to fill vacancies and create staff positions.⁹ DCRB is also exempt from following the Procurement Practices Reform Act of 2010 (PPRA) and is not subject to the Office of Contracting and Procurement's (OCP) authority.¹⁰ Instead, DCRB establishes its procurement policies and may decide whether to comply with the Mayor's regulations and procedures. The Executive Director, who also serves as DCRB's Chief Contracting Officer (CCO), and the Board¹¹ share contracting authority. The Board has granted the Executive Director, as CCO, the authority to approve certain procurements valued up to \$100,000. Procurements over \$100,000 require Board approval.¹²

³ *From the Chair of the Board*, DCRB REPORT (D.C. Ret. Bd., Wash., D.C.) Fall 2019, at 3, <https://dcrb.dc.gov/sites/default/files/dc/sites/dcrb/publication/attachments/Newsletter%20-%20Fall%202019%20-%20Final.pdf> (last visited Dec. 23, 2019).

⁴ *Id.* at 1.

⁵ See D.C. Code § 1-711(b) (1) (A) (Lexis current through Jan. 28, 2020).

⁶ See D.C. Code § 1-711(b) (8).

⁷ See D.C. Code § 1-711(b) (11).

⁸ "The term 'independent agency' means any board or commission of the District of Columbia government not subject to the administrative control of the Mayor, including, ... the District of Columbia Retirement Board" D.C. Code § 1-603.01(13).

⁹ See 7 DCMR § 1502.1.

¹⁰ See D.C. Code § 1-711(i) and 7 DCMR § 1600.2.

¹¹ See 7 DCMR § 1600.1.

¹² As set forth in 7 DCMR § 1605.2, the "Executive Director is authorized to enter into, administer, terminate and otherwise manage contracts subject to any threshold amounts established by the Board." The Board established the applicable threshold amounts in the DCRB Procurement Manual.

The OIG evaluated DCRB's procurement processes and selected contracts as part of our ongoing initiative to review District government procurement processes and contracts for vulnerabilities to corruption, fraud, mismanagement, waste, and abuse.

The objectives of the evaluation, as well as the scope and methodology the OIG used, are provided in Appendix A. We conducted this evaluation under standards established by the Council of the Inspectors General on Integrity and Efficiency (CIGIE). To assess DCRB's procurement processes, the OIG used the Government Accountability Office (GAO) *Standards for Internal Control in the Federal Government* (GAO-14-704G, the Green Book).¹³ The Green Book sets internal control standards for federal entities and may be adopted by state and local entities as a framework for an internal control system.¹⁴

Internal control is "a process used by management to help an entity achieve its objectives."¹⁵ Further, internal control helps assure accurate financial reporting and helps to prevent fraud, waste, and abuse. The Green Book explains that "[m]anagement is directly responsible for all activities of an entity, including the design, implementation, and operating effectiveness of an entity's internal control system."¹⁶ The internal control system is comprised of five components that "must be effectively designed, implemented, and operating, and operating together in an integrated manner, for an internal control system to be effective."¹⁷

Three matters limited our fieldwork. First, DCRB's procurement files were frequently disorganized and incomplete. Although the organization and completeness of more recent files seemed to be improved from that of prior years' procurements, the absence of some documents and incompleteness of others impacted our ability to understand what occurred during each pre-award and post-award process.

Second, vacancies in DCRB's Procurement Department required us to rely heavily on interviews with senior-level management. Frontline employees are an important voice in assessing the efficiency and effectiveness of processes they apply daily. When those frontline positions are vacant, our ability to evaluate processes is diminished.

Finally, OCP began a review of DCRB's files, unrelated to our evaluation, at about the same time that we began our fieldwork. Although the OCP employees we encountered were cooperative and respectful of our need to work independently, our overlapping efforts to organize and review the same contract files concurrently made it difficult for us to determine whether we had a complete view of all active contracts.

¹³ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-14-704G, STANDARDS FOR INTERNAL CONTROL IN THE FEDERAL GOVERNMENT (Sept. 2014), *available at*, <https://www.gao.gov/products/GAO-14-704G> (last visited Jan. 8, 2019).

¹⁴ "Internal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of [an] entity. Internal control serves as the first line of defense in safeguarding assets. In short, internal control helps managers achieve desired results through effective stewardship of public resources." *Id.* § OV1.03 at 5.

¹⁵ *Id.* TITLE Page.

¹⁶ *Id.* § OV2.14 at 12.

¹⁷ *Id.* § OV2.04 at 7.

FINDINGS

DCRB'S ORGANIZATIONAL STRUCTURE, INCLUDING CURRENT VACANCIES, PREVENTED IT FROM ESTABLISHING AN EFFECTIVE PROCUREMENT CONTROL ENVIRONMENT.

The Green Book highlights the importance of establishing an adequate organizational structure, assigning responsibility, delegating authority, and segregating duties as methods to create a strong control environment and prevent fraud, waste, and abuse.¹⁸ It also emphasizes recruitment, development, and retention of competent individuals to achieve the organization's objectives.¹⁹

The OIG team identified several weaknesses within DCRB's organizational structure that substantially hinder it from establishing an effective control environment to achieve operational goals related to procurements. Although these weaknesses are specifically identified and discussed in further detail below, the team wants to emphasize that it was not a single deficiency, but the aggregation of *all* the identified weaknesses that contributed to the overall ineffective control environment.

DCRB's Procurement Department was unstaffed.

DCRB's Procurement Department is responsible for overseeing and managing the solicitation, award, and administration of all contracts. According to an organizational chart the agency provided (last revised in April 2019), the Executive Director directly oversees the Department, which consists of a Procurement Manager, a Senior Contract Specialist, and a support position.

After experiencing substantial turnover in these positions during prior years, DCRB's Procurement Department was vacant in the fall of 2018. The positions remained vacant throughout our evaluation. As of the conclusion of our fieldwork, DCRB did not have plans to fill these vacancies, and the future of DCRB's Procurement Department remained uncertain.

DCRB had other vacancies, including senior-level positions.

Vacancies at DCRB were not limited to the Procurement Department. DCRB's Organizational Chart listed 17 vacancies out of 67 full-time equivalents (FTEs).²⁰ Many of the 17 vacancies were senior-level positions, including that of Finance Controller, Director of Investment Compliance and Risk Management, and IT Director. Other vacancies included the Projects Coordinator and Budget Manager, Legal Assistant, and IT Specialist.

¹⁸ See GREEN BOOK §10.13 at 51.

¹⁹ *Id.* § 4.05 at 31.

²⁰ These figures reflect the information provided in DCRB's Organizational Chart and do not match the number of FTEs reported in DCRB's Proposed Budget Plan for the FY 2019. DCRB may have filled some of these vacancies since its Organizational Chart was last revised.

DCRB’s structure did not adequately segregate duties.

DCRB’s organizational structure did not include a Chief Operations Officer (COO) who, according to DCRB’s Procurement Manual, would be “responsible for oversight of the Procurement Office who conduct[s] and manage[s] all procurements [.]”²¹ The Procurement Manual also provides that the Procurement Office “reviews solicitations, conducts procurements and prepares and submits contract award recommendations *through the COO to the CCO for approval*” (emphasis added).²² Because DCRB lacked a COO, the Executive Director assumed these duties, in addition to overseeing the Human Resources Department, employees tasked with communications (the Director of Stakeholder Communication and Outreach, and a Communications Specialist), and the Office Support department.

DCRB enlisted OCP’s assistance, but the objectives of the assistance were unclear.

DCRB executed an MOU to have two OCP employees provide DCRB with regular onsite support on procurement matters. Some of the matters identified in the MOU include:

- 1) “[a]ssisting DCRB staff in the planning and preparation of procurement-related documents.”
- 2) “[a]dvising DCRB staff on appropriate procurement methodology and solicitation management.”
- 3) “[p]roviding additional procurement support as necessary.”²³

DCRB and OCP agreed the duration of the MOU would be from March 1, 2019, through September 30, 2020, with four 1-year option extensions.

In August 2019, a Contract Specialist from OCP started working onsite at DCRB. DCRB and OCP seemed to have different understandings of the objectives of OCP’s involvement under the MOU. OCP expected to rebuild DCRB’s procurement processes and assist DCRB with adopting best practices but found that DCRB seemed to be less sure of what it expected from OCP. The MOU is not specific enough to provide sufficient clarity on OCP’s role and what it is to accomplish while working with DCRB. Additionally, DCRB did not establish a clear reporting structure outlining who the OCP employee would report to in the absence of an operating Procurement Department.

DCRB employees involved in procurement and Board Members were unfamiliar with the intricacies of procurement rules and did not appreciate the importance of effective internal controls.

²¹ D.C. RET. BD., PROCUREMENT MANUAL § 3.8 (Rev.1 Mar. 2017) (DCRB Procurement Manual).

²² *Id.*

²³ Memorandum of Understanding between the Office of Contracting and Procurement and the District of Columbia Retirement Board, § V(A) (Mar. 26, 2019) (DCRB/OCP MOU).

The CCO and Board Members are authorized to approve DCRB contracts.²⁴ However, the CCO and Board Members were unfamiliar with or unsure about procurement rules and processes, which the OIG believes carries additional risk when an agency lacks an operating Procurement Department to inform and guide decision-makers.

During interviews, the OIG did not perceive a sense of need or urgency to reform DCRB's procurement processes. The Executive Director's time and attention seemed to be fully consumed by the demands of other operational duties, leaving little capacity to focus on procurement reforms. Our concern is that if DCRB leadership and Board members do not recognize and appreciate the potential risks posed by an ineffective system of internal control for procurement, and Executive Director remains responsible for a multitude of operational duties and contracting decisions, the implementation of necessary procurement reforms will continue to go unaddressed.

An example of the risk posed by ineffective internal controls, including the need for segregation of duties, was the Executive Director's dual role as both the CCO and the acting COO. DCRB had assigned individual conflicting duties – a duty to oversee the preparation of contract award recommendations and the authority to approve certain contract awards up to \$100,000. This specific combination of incompatible roles, coupled with unclear duties, exposes DCRB to an increased risk of fraud, waste, abuse, and mismanagement. Although DCRB has started to address these deficiencies through its MOU with OCP, the lack of clarity concerning OCP personnel's actual roles and responsibilities could limit the efficacy of the assistance.

We recommend the Executive Director, DCRB:

1. In cooperation with the Board, assess personnel needs, prioritize which vacancies in senior-level leadership must be filled, and create a plan of action to fill the vacancies.

Agree _____ X _____ Disagree _____

DCRB's May 2020 Response to Recommendation 1:

Since 2018, members of DCRB mid-level management have served in an interim capacity in the absence of senior-level leadership. DCRB's Human Resources Department is expending a significant portion of its time and resources, including the use of an executive search firm, locating qualified, full-time and permanent candidates for each of the current senior-level leadership vacancies within the agency. DCRB anticipates having all current senior-level vacancies, as of the date of this response; filled on or before the end of the calendar year. In some instances, however, the agency anticipates it could encounter difficulty in recruiting and/or retaining senior-level talent, given the District's current pay maximums and residency requirements.

Before the completion of the OIG's investigation and report, the positions were filled at DCRB: Controller, IT Director, IT Specialist, and Director of Risk and Investment

²⁴ See 7 DCMR § 1600.1. See also DCRB Procurement Manual, *supra* note 21, § 3.2.

Compliance. Finally, through its MOU with the District’s Office of Contracts and Procurement (“OCP”), DCRB also has been assigned a full-time Contract Specialist, who is focused solely on administering DCRB’s procurements.

Based in part on the 2018 IT audit findings, DCRB’s IT Department determined it would be unnecessary to backfill the vacated position of IT Projects Coordinator and Budget Manager. Funds allocated for administrative expenses such as payroll that are not expended for the designated purpose are returned to the fund’s corpus and ultimately inured to the benefit of the plan members.

There is no vacancy for a legal assistant, as DCRB’s Legal & Compliance Department has not requested nor has any budget been allocated for a legal assistant.

OIG Comment: DCRB’s response refers to this OIG project as an “investigation.” This report is the product of an evaluation conducted by the OIG’s Inspections and Evaluations Unit. In conducting evaluations, the OIG uses Quality Standards promulgated by the Council of the Inspectors General on Integrity and Efficiency, which are designed to assess the design, implementation and results of an agency’s operation, programs, and policies. DCRB emailed the OIG an organization chart on April 11, 2019. The chart, which states it was last revised that day, noted a vacancy in DCRB’s legal department. The review for this evaluation was June 2019 through November 2019, and the OIG acknowledged in the draft report that “DCRB may have filled some of these vacancies since its Organizational Chart was last revised.” After its initial response to the draft report, DCRB provided additional information regarding personnel hires made after the OIG completed its fieldwork: the position of Director of Risk and Investment Compliance was filled on April 29, 2019; the position of Controller was filled on October 7, 2019; and the position of IT Director was filled on October 15, 2019. DCRB also stated that the position of IT Projects Coordinator and Budget Manager was vacated on April 5, 2019, and that DCRB deemed it unnecessary to backfill this position.

2. Create a Chief Operations Officer role to assume the Executive Director’s current operational duties, including oversight of the DCRB Procurement Department.

Agree _____ X _____ Disagree _____

DCRB’s May 2020 Response to Recommendation 2:

Over the past several months, DCRB has had several internal discussions regarding a COO and is working with an executive search firm to conduct a national search slated to begin in June 2020. Again, we are anticipating challenges around compensation, benefits, and to some extent, residency requirements, given the cost of living in the District of Columbia. We will endeavor to identify and hire a COO before the end of the calendar year.

3. Revise DCRB's MOU with OCP to specify principal duties, a reporting chain, and contracting authorities.

Agree _____ X _____ Disagree _____

DCRB's May 2020 Response to Recommendation 3:

Before receipt of the OIG's Report & Recommendations, DCRB and OCP were in the process of modifying a memorandum of understanding for procurement-related services and personnel ("MOU") for the fiscal year 2021. DCRB and OCP will use this opportunity to delineate, within the MOU, each party's roles and responsibilities, reporting structure, and governing contracting authorities.

Currently, DCRB's primary procurement functions are performed by a Contract Specialist assigned to DCRB but managed by OCP. DCRB's MOU with OCP states that its purpose is to "support procurement reform and provide procurement expertise for the District of Columbia Retirement Board." In this context, OCP maintains managerial oversight of the Contract Specialist, while DCRB accesses and leverages OCP's systems, processes, and expertise.

DCRB anticipates negotiating and executing a revised MOU with OCP for the fiscal year 2021, on or before the end of this fiscal year. Looking ahead, DCRB will assess its projected, longer-term procurement needs, and will determine the best approach for meeting those needs. This may result in a determination to hire experienced staff to bring procurement services back "in-house."

4. Implement annual training for Board Members to familiarize them with procurement rules and processes.

Agree _____ X _____ Disagree _____

DCRB's May 2020 Response to Recommendation 4:

At the July 2019 DCRB Board of Trustees Operations Committee Meeting, OCP's Chief Contracting Officer and DCRB's General Counsel presented an overview of DCRB's new procurement operations to Trustees. Further, OCP's Senior Contract Specialist also attended Board committee meetings, upon request, to present on specific procurement matters and answer other general and procurement-specific questions posed by Trustees.

DCRB will continue to coordinate with OCP to make training available, at least annually, to Trustees, and at least quarterly to all DCRB personnel, on procurement best practices for District and Federal government entities. DCRB will request that an annual procurement training calendar be incorporated into its MOU with OCP, along with an annual report to the Board's Audit Committee on procurement activities for the fiscal year. DCRB anticipates negotiating and executing a revised

MOU with OCP for fiscal year 2021, on or before the end of this fiscal year. DCRB will coordinate training for Trustees and staff, based on OCP's availability and recommended subject matter.

DCRB'S PROCUREMENT MANUAL DID NOT CONTAIN SUFFICIENT CONTROL ACTIVITIES FOR SOME ASPECTS OF ITS PROCUREMENT PROCESSES.

To establish sufficient control activities, the Green Book states that “[m]anagement should implement control activities through policies.”²⁵ Implementation should include documentation of responsibilities and a periodic review of control activities.²⁶ Each unit within an organization should document policies “in the appropriate level of detail to allow management to monitor the control activity effectively.”²⁷ These policies should be further enumerated in day-to-day procedures to guide a control activity.²⁸

To establish an effective control environment, the Green Book states that management should “develop [] and maintain [] documentation of its internal control system”²⁹ and “document [] internal control to meet operational needs.”³⁰ Documentation “provides a means to retain organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel, as well as a means to communicate that knowledge as needed to external parties, such as external auditors.”³¹

According to markings on DCRB's Procurement Manual, DCRB revised the manual in March 2017. In addition to the Procurement Manual, DCRB personnel should be guided by the regulations related to its procurement located in Title 7, Chapter 16 of D.C. Municipal Regulations (DCMR).

DCRB's Procurement Manual and regulations differ in significant ways from the statute and regulations that guide most of the District government: the PPRA, codified in Title 2, Chapter 3A of the D.C. Code, and Title 27 of the DCMR, respectively. A full detailed accounting of the differences is included in Appendix D; however, highlights of the distinctions are listed below.

Unlike the PPRA or Title 27 of the DCMR, DCRB policies and regulations did not:

- prohibit the use of the sole source or emergency contracts due to “lack of planning” or “pending expiration of budget authority;”
- restrict the length of emergency contracts;
- require listing the “minimum evaluation factors” for competitive proposals or how an agency will weigh those factors in the evaluation;

²⁵ GREEN BOOK § 12.01 at 56.

²⁶ *Id.* § 12.05 at 56.

²⁷ *Id.* § 12.03 at 56.

²⁸ *Id.* § 12.04 at 56.

²⁹ *Id.* § 3.09 at 29.

³⁰ *Id.* § 3.11 at 29.

³¹ *Id.* § 3.10 at 29.

- contain provisions requiring contracting officers to furnish identical information to all prospective contractors or prohibiting contracting officers from conducting discussions with offerors that would help them improve their bids;
- prohibit increasing the funding level of the contract without having first obtained certification for the availability of funds, or
- require the time of delivery or performance to be stated clearly in each solicitation and contract.

The PPRA’s purpose is to, among other things, “simplify, clarify, and modernize the law” governing procurement, “promote full and open competition,” “increase public confidence in the procedures followed in public procurement,” “eliminate duplication in the District government procurement organization and operation” and “promote the development of uniform procurement procedures District government-wide.”³²

Compared to what guides District agencies that are subject to the PPRA and OCP’s authority, DCRB procurement policies did not contain the level of detail necessary to establish effective control activities or control environment. The lack of details may have resulted from insufficient technical expertise among those who originally drafted the Procurement Manual. Because DCRB is not subject to OCP’s authority, it created its procurement framework and drafted its policies and procedures independent of OCP’s expertise, and instead relied mostly upon its legal department to draft procurement policies. The manual was not comprehensive, and DCRB had not regularly reviewed and revised these policies using people knowledgeable in procurement.

We recommend the Executive Director, DCRB:

5. Promulgate a regulation subjecting DCRB to the PPRA and OCP’s regulations in Title 27 DCMR while maintaining independence from OCP’s authority.

Agree _____ Disagree _____

DCRB’s May 2020 Response to Recommendation 5: (OIG Note: DCRB did not indicate whether it agreed or disagreed with this recommendation.)

DCRB’s Legal & Compliance Department Presented Substantive Changes to the Procurement Regulations in 2017

On September 28, 2017—before the start of the OIG’s investigation —DCRB’s Legal & Compliance Department presented its recommended substantive changes to DCRB’s procurement regulations (“Draft Regulations”) to the Board for approval. These changes were equivalent to a complete overhaul of DCRB’s procurement regulations to more closely align with Title 27 of the District’s Municipal Regulations, which were used as a template.

An excerpt from September 28, 2017, Board meeting minutes states that the recommended revisions to the Draft Regulations were to: “[1)] prepare for the

³² PPRA §§ 101(b), codified at D.C. Code § 2-351.01(b) (Lexis current through Jan. 31, 2020).

release of the Pension Information Management System RFP; [(2)] to provide the District's Contract Appeals Board with jurisdiction to adjudicate appeals of contract disputes; [(3)] to align DCRB's Procurement Rules more closely with those of the District; and [(4)] to increase the transparency of DCRB's Procurement Rules for reference by vendors/contractors. These changes will facilitate standardized procurement training, support the use of standard contract terms and conditions, and streamline recordkeeping and processes to simplify audits. To avoid any confusion, the Rules clarify that DCRB retains contracting authority that is independent of the District's procurement provisions and general oversight."

As noted, the Draft Regulations were one component of an overarching initiative focused on procurement reform, which included updating DCRB's procurement regulations and accompanying procurement manual, policies and procedures; establishing an MOU with OCP for onsite procurement support, guidance and training; establishing an impartial dispute resolution process, under which an MOU with the District's Contract Appeals Board was a primary option; and exploring alternatives to replace DCRB's current purchasing system with a full-service acquisition system that would track a procurement action—from requisition to contract-award, and through to contract-closeout.

The Board Approved the Draft Regulations and Leadership Began Executing on Implementation

After receiving unanimous Board approval of the Draft Regulations, DCRB's Legal & Compliance Department continued through the first half of 2018 to regularly meet with key Procurement stakeholders. The primary objective of these meetings was to solicit input to refine the contents of the Draft Regulations for publication and to identify key provisions with procedural requirements for Procurement personnel to further develop in DCRB's internal operations procurement manual. DCRB wanted to ensure that the Draft Regulations could be effectively implemented immediately after codification.

During this time, subject matter experts from the Information Technology (IT), Procurement, and Legal & Compliance Departments also were deeply engaged in finalizing a request for proposal for a multi-million-dollar Pension Information Management System ("PIMS RFP"). DCRB applied the procurement concepts outlined in the Draft Regulations to structure the PIMS RFP requirements, deliverables, and contract administration. DCRB's Legal & Compliance Department engaged the Commercial Procurement Division of the District's Office of the Attorney General to ensure that DCRB was properly structuring the PIMS RFP and accompanying contract clauses. DCRB found that the Draft Regulations application to the PIMS RFP process required a greater amount of time and specificity than previously allotted to the effort.

Transitions in Staff Complicated Implementation Leading to Engagement with OCP

At that point, as noted in the OIG Report & Recommendations, DCRB began experiencing a significant turnover in key personnel in both the Procurement and IT Departments. This ultimately resulted in the suspension of the PIMS RFP release, while DCRB conducted an audit of its IT Department (“IT Audit”). From May 2018 to October 2018, DCRB’s Legal & Compliance Department oversees the conduct of the IT Audit, which, as referenced in the OIG Report & Recommendations, included an audit of DCRB’s IT-related procurements. By September 2018, DCRB had lost two senior managers in the IT Department and all full-time and contractual employees in its Procurement Department.

In October 2018, DCRB’s Legal & Compliance Department reached out to OCP for procurement support and personnel. OCP management and DCRB’s Legal & Compliance Department met extensively through the end of 2018 and into early-2019 to structure a relationship that adequately reflected the needs and resources of both parties. In March 2019, DCRB’s Executive Director executed DCRB’s current MOU with OCP and, once an OCP Senior Contract Specialist was detailed to DCRB, met with the specialist to outline the expectations for the Procurement Department. DCRB’s Legal & Compliance Department continued to work closely with OCP to support the Senior Contract Specialist in her transition. They were slated to reactivate the finalization and publication of the Draft Regulations in early 2020. Unfortunately, due to a rotation in the OCP Contract Specialist detailed to DCRB and the sudden impact of COVID-19, focus on the Draft Regulations has been delayed.

Draft Regulation Will be Subject to Codification, and Systems Integration Achieved

Upon further refinement with OCP, DCRB executive leadership, and Trustees, DCRB will publish the Draft Regulations in the District of Columbia Register for the requisite public comment period on or before June 1, 2021. The draft and final published regulations will outline the impartial dispute-resolution process agreed upon for DCRB procurements and will serve as the foundation for the accompanying procurement manual. DCRB anticipates negotiating and executing a revised MOU with OCP for the fiscal year 2021, on or before the end of this fiscal year. DCRB will continue to work with OCP, the District’s Office of the Chief Technology Officer (“OCTO”), and the District’s Office of the Chief Financial Officer (“OCFO”) on the integration of the PASS system (subject to expenditure-approval by the Board), on or before end of fiscal year 2021 (or, in lieu of integration, procure and implement an alternative acquisition system comparable to PASS).

OIG Comment: The OIG appreciates DCRB providing greater insight into the history and background of its initiative to align its procurement policies closer to the PPRA. The OIG looks forward to seeing DCRB’s final regulations and anticipates it will address the discrepancies identified in our comparison of DCRB’s Procurement Manual and the PPRA in Appendix D.

6. Review and revise the Procurement Manual to better align it with the PPRA and OCP's regulations in Title 27 DCMR.

Agree _____ Disagree _____

DCRB's May 2020 Response to Recommendation 6: (OIG Note: DCRB did not indicate whether it agreed or disagreed with this recommendation.)

Please see our response above to Recommendation #5. Please note the Procurement Manual was intended to serve as an internal standard operating procedural document; as such, it was drafted by the previous DCRB Procurement personnel. DCRB's Legal & Compliance Department provided advice, as necessary, on the Procurement use, reliance, and application of the DCRB Procurement Manual to DCRB procurements.

DCRB HAD OPEN RECOMMENDATIONS FROM RECENT AUDITS AND CONSULTING AGREEMENTS.

The Green Book states that effective monitoring of an internal control system requires management to “remediate identified internal control deficiencies on a timely basis.”³³

In the past two years, DCRB has undertaken several examinations of its procurement system as a part of broader audits/consulting reviews. In May 2018, DCRB entered into an \$189,000 contract with a technology consultant to conduct an audit that focused on, among other issues, IT procurement. The consultant's report, delivered to DCRB on October 23, 2018, presented multiple findings and over 40 recommendations related to procurement. The report also included an implementation plan with milestone dates. See Appendix E for a summary of the report's findings and recommendations.

In July 2018, DCRB entered into a \$107,205 contract with a consultant to “facilitate the development of a strategic plan.” The report, delivered to DCRB in March 2019, repeatedly noted deficiencies³⁴ in DCRB's procurement system and made “improv[ing the] procurement process” one of its “Priority One Initiatives,” meaning it was “deemed critical to success.” The

³³ GREEN BOOK § 17.01 at 67.

³⁴ Through a SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis, the following procurement related concerns were raised:

- “Procurement process is inefficient and bureaucratic, and we compound difficulties with lack of planning and unrealistic deadlines;”
- “Procurement process has grown more complex and become unmanaged over time”
- “Procurement process is informal and undocumented -- breeds variation;”
- “High turnover in procurement department breeds variation/inconsistency;” and
- “Abrupt resignation of procurement expert is forcing us to rely on contractors.”

Consultant's Report, p B-6.

report listed a series of targets and goals for the procurement processes, which are included in Appendix F to this report.³⁵

DCRB expended almost \$300,000 on the two external reviews, yet, when we concluded fieldwork, DCRB had not yet begun to implement the recommendations from either of these reviews.

Although problems with DCRB's procurement processes persist, DCRB has taken steps to identify problems by obtaining the two reviews. Between the two sets of consultants' recommendations, the agency has an adequate "blueprint" for what it must do to establish sufficient internal controls within its procurement operations.

Finally, conducting repeated reviews without affecting changes can hurt employee morale. During the OIG's evaluation, an interviewee conveyed declining morale at the agency and expressed doubts about the impact of the OIG's evaluation, noting that other entities had already conducted reviews, but nothing had changed.

We recommend the Executive Director, DCRB:

7. Create a procurement-specific action plan that aggregates and prioritizes recommendations from the consultants' reviews, identifies which recommendations DCRB will implement, and establishes a timetable for implementing each.

Agree _____ Disagree _____

DCRB's May 2020 Response to Recommendation 7: (OIG Note: DCRB did not indicate whether it agreed or disagreed with this recommendation.)

DCRB continues to implement the recommendations from the IT and Procurement external audits performed in FY 2018 to ensure that the agency's IT footprint is consistent with the Agency needs. DCRB continues to reduce the IT footprint complexity and has transitioned its critical systems to OCTO's data center. As part of this transition, DCRB's hardware and software footprint have been thoroughly analyzed, and unused hardware/software has been decommissioned. Following prudent contract procedures, DCRB has worked with the Procurement Officer to terminate several contracts related to the data center and data communication lines. These activities were completed before the data center's contract expiration on March 31, 2020.

Over the past year, the agency has taken a comprehensive approach to control IT costs and streamline IT procurements. As mentioned previously, in May 2019, all DCRB acquisition stakeholders (including staff and leadership) participated in mandatory two-day Contract Administrator training covering various topics,

³⁵ In addition to these two external reviews, DCRB has had two OCP employees recently review its procurement operations. Each of those employees wrote a memorandum detailing their findings and recommending improvements to DCRB's procurement processes. DCRB received both of these memoranda in November 2019.

including contracts, responsibilities of the Contract Administrator, and the Contracting Officer authority. A more recent Procurement meeting in November 2019 discussed the vendor process workflow.

In anticipation of the migration mentioned above to OCTO's data center, all non-essential IT services, and product renewals were placed on hold in the FY2019-FY2020 timeframe. The 23 items included in the IT Acquisition Planning list (which also listed current renewal status and final expiration dates) have been prioritized to move forward with only nine (9) critical initiatives; the other 14 items were placed on hold. With the new IT Director hired in November 2019, DCRB has further reviewed the IT contracts and renewals over the past three years and has developed a comprehensive, current-state acquisition process map. Several contracts related to the data center have been converted to monthly terms at the time of renewal, to avoid Early Termination fees on contract termination. In leveraging the partnership with OCTO for IT services, and with Treasury for jointly developing the self-service applications, DCRB has eliminated several IT contracts and contract staff positions.

DCRB agrees to develop a comprehensive action plan, following the recommendations from the two audits mentioned in this report. Working with assigned staff from OCP, DCRB will implement the recommendations in both the short term as well as the long term.

- a) Policy and Guidance—DCRB will update the DCRB Procurement Manual with current DCMR rules and as amended by DCRB. DCRB will publish the revised manual and arrange with OCP to train of all relevant staff on DCRB procurement rules.*
- b) Tools and Templates—DCRB agrees that automation and the use of standard templates is key to simplifying and streamlining the acquisition process.*
- c) Contract Formation—DCRB will review the District's Standard Contract Provisions and amend, as appropriate and necessary, to make compatible with DCRB's unique procurement acquisitions.*
- d) Contract Deliverables—Deliverables are established on a case-by-case basis, as part of the SOW/Requirements-development process.*
- e) Contract Duplication—With guidance and support from the OCP Contract Specialist, DCRB has begun to review its IT contracts and the renewals for commonly used goods and services. To get the best value for these services, DCRB is considering contracts with base-and multiple option periods.*
- f) Contract Performance Accountability—DCRB will coordinate with the Contract Specialist to implement In-Progress Reviews (IPRs) quarterly. This process includes a review of contract performance, schedules, and costs.*

- g) *Staff Training—DCRB, in coordination with OCP, will further review and update its COR training process (the most recent training was offered in May 2019). The agency will provide refresher training to staff, at least twice yearly.*
- h) *Communication—The Contract Specialist position presently reports to the Executive Director and briefs the Executive Leadership Team on DCRB procurement activities. DCRB will coordinate with Procurement to conduct these meetings on at least a monthly basis, and with business operations and Finance functions on at least a bi-weekly basis (to determine procurement priorities and requisition status).*

OIG Comment: DCRB did not explicitly indicate whether it agreed or disagreed with this recommendation, but did state that it “agrees to develop a comprehensive action plan, following the recommendations from the two audits mentioned in this report.” The OIG views this as an agreement with the recommendation.

- 8. Present the action plan to the Board’s Audit Committee for review, approval, and monitoring.³⁶

Agree X Disagree _____

DCRB’s May 2020 Response to Recommendation 8:

Once the initial action plan is completed, it will be presented to the Board’s Audit Committee for review and feedback. Based on the feedback, the plan then will be finalized, and DCRB’s goal is to have an initial action plan ready for presentation by the end of the calendar year 2020

NOT POSTING RELEVANT PROCUREMENT INFORMATION PUBLICLY DIMINISHES THE TRANSPARENCY OF DCRB’S PROCUREMENT PROCESSES AND HINDERS OPEN COMPETITION.

DCRB’s procurement rules state that procurement “shall be conducted using full and open competition, except as otherwise provided for”³⁷ in the regulations. Its Procurement Manual asserts that while limited competition “may be used when there are a limited number of sources that can fulfill the Board’s need [,]” the number of potential offerors “should be as large as practicable” and procurement should be conducted “to maximize the available competition in a manner that is practical and most advantageous for the Board.”³⁸

³⁶ Pursuant to 7 DCMR § 1503.1, the Audit Committee of DCRB’s Board of Trustees was created to manage risks of irregularities and fraud across DCRB’s operations.

³⁷ 7 DCMR 1601.2.

³⁸ DCRB Procurement Manual, § 10.1.

DCRB's Procurement Manual only requires the agency to publicize an Invitation for Bid (IFB) on the Board's website,³⁹ unless otherwise determined by the contracting officer.⁴⁰ DCRB *may* publicize other aspects of its procurement processes (*i.e.*, a notice of award, contract), but the Procurement Manual does not require them to be.⁴¹

For an entity to have an effective internal control system, the Green Book recommends that "management . . . externally communicate the necessary quality information to achieve the entity's objectives."⁴² Although not controlling for DCRB, relevant provisions in the PPRA and DCMR require publishing sole source and emergency contracts, as well as notices of intent and cancellations to strengthen transparency and improve information tracking with stakeholders, the general public, and potential contractors.⁴³ For example, OCP's website offers public access to a database of active, completed, open, and pending procurements. Additionally, in Virginia, the Virginia Retirement System publicizes the following different types of procurements: future; open; awarded; closed; bids opened; intent posted; no award; and canceled.⁴⁴

DCRB's website has a section where it posts *ongoing* procurement opportunities; however, DCRB did not have procurements posted during our fieldwork. Additionally, DCRB did not maintain a publicly-available online archive of its past procurements. Making documentation relevant to DCRB's procurement activities publicly accessible online helps strengthen public trust in government by providing transparency in DCRB operations. As a result, DCRB stakeholders, Plan members, and the general public can hold DCRB accountable for the expenditure of funds and, thus, potentially reduce opportunities for waste or abuse. Additionally, greater visibility into both DCRB's procurement history and current opportunities will likely attract more vendors and increase competition, so that DCRB can obtain maximum value for its expenditures.

We recommend the Executive Director, DCRB:

9. Revise the Procurement Manual to require the public posting of all available procurement information.

Agree _____ X _____ Disagree _____

DCRB's May 2020 Response to Recommendation 9:

As noted in our response above to Recommendation #5, the finalization and adoption of the Draft Regulations will serve as the foundation for DCRB's accompanying procurement manual. The Draft Regulations will require public posting of certain procurement actions to DCRB and/or OCP's website within a specified timeframe.

³⁹ In regard to a Request for Proposal (RFP), DCRB Procurement Manual, §7.3 states: "[t]he RFP shall be publicized for 30 days, unless the contracting officer determines otherwise." However, the manual does not indicate where DCRB must publicize the RFP for 30 days.

⁴⁰ DCRB Procurement Manual, *supra* note 21, § 6.2.2.

⁴¹ *Id.*

⁴² GREEN BOOK § 15.01 at 62.

⁴³ See PPRA § 1104, codified at D.C. Code § 2-361.04.

⁴⁴ See <http://www.eva.virginia.gov> (last visited Dec. 23, 2019).

In the interim, OCP posts — and has confirmed that it will continue to post — certain DCRB procurement actions on its website in accordance with OCP’s standard policies and procedures. DCRB is further exploring whether a link or additional information can be included on DCRB’s website directing interested parties to OCP for procurement information.

DCRB DID NOT HAVE A PROCESS FOR BIDDERS TO CHALLENGE OR APPEAL CONTRACT AWARD DECISIONS.

Title X of the PPRA and Title 27 DCMR, Chapter 2 specify that bidders may appeal a contracting officer’s decision by filing a complaint⁴⁵ with the District of Columbia Contract Appeals Board (CAB),⁴⁶ which is vested with exclusive jurisdiction to hear and decide various contract issues (*i.e.*, “protests of District contract solicitations and awards and appeals by contractors of District contracting officer final decisions”).⁴⁷ Any contracting agency exempt from the PPRA may have the CAB process contract appeals or protests under a written agreement with the agency.⁴⁸

DCRB’s Procurement Manual did not contain guidance related to bid protests, and interviews with senior-level DCRB employees confirmed the agency did not have a procedure in place to address them.⁴⁹

Without an appeal process, there is no adequate forum to address grievances and challenge contracting decisions and awards. The public is left without any assurance that a public entity is acting in good faith. DCRB has, in effect, fostering an environment that empowers contracting officers with broad and final decision-making authority that is not subject to objective review to ensure equity and integrity in the process.

We recommend the Executive Director, DCRB:

10. Document, implement, and publicize a bid/contract protest procedure.

Agree _____ X _____ Disagree _____

DCRB’s May 2020 Response to Recommendation 10:

Please see our response above to Recommendation #5.

⁴⁵ See Title X PPRA § 1004(a), codified at D.C. Code § 2-360.04(a) (Lexis current through Jan. 31, 2020) and Title 27 DCMR § 200.1.

⁴⁶ The CAB is an independent agency statutorily created pursuant to the PPRA that hears and resolves contractual disputes. See D.C. Code §§ 2-360.01 - .08.

⁴⁷ CAB website, <https://cab.dc.gov/page/about-cab> (last visited Dec. 19, 2019).

⁴⁸ D.C. Code § 2-360.03(b). Additionally, the cost for processing complaints by the CAB shall be on a reimbursable basis agreed to by the CAB and the agency. See CAB Board Rules § 101.8.

⁴⁹ The CAB defines “protest” as “a written objection by an aggrieved party to a solicitation for bids or proposals or a written objection to a proposed or actual contract award.” *Id.* § 100.2(n).

DCRB DID NOT HAVE AN EFFECTIVE PROCESS TO TRACK PAYMENTS AGAINST CONTRACTS OR MONITOR CONTRACT OPTION DEADLINES.

DCRB's Procurement Manual § 20.10 requires contract files to contain sufficient documentation of the procurement's history.

The Green Book recommends that “[m]anagement should design the entity’s information system and related control activities to achieve the objectives and respond to risks.”⁵⁰ This information system should “support the completeness, accuracy, and validity of information processing by information technology[,]” which “requires an infrastructure in which to operate, including communication networks for linking information technologies [and] computing resources for applications to operate[.]”⁵¹ The Green Book also emphasizes that an agency should document its internal control system because it provides “a means to retain organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel, as well as a means to communicate that knowledge as needed to external parties, such as external auditors.”⁵²

DCRB stored its contract documentation (*i.e.*, solicitation, contract, amendments, and modifications) in hardcopy files managed by the Procurement Department. Simultaneously, the Finance Department managed financial documentation related to the respective contracts (*i.e.*, invoices, requisitions, purchase orders). The contract files did not indicate that DCRB had stored financial documentation in a different department.

Interviewees indicated that DCRB's current IT system was not designed to allow for necessary interaction between the Procurement and Finance Departments. Consequently, each department worked separately to execute contract administration tasks, such as calculating the remaining expendable balance on a contract award amount after DCRB made payments to contractors, and monitoring deadlines for exercising or denying options. Further, employees from the Procurement and Finance Departments did not regularly coordinate with one another regarding contract administration or exercising contract options.

DCRB relied on the Contract Officer's Representative (COR)⁵³ to manually calculate the remaining balance on contract award after payments were made to contractors during the performance period by gathering invoices and subtracting the payments from the current remaining balance. The relationship between DCRB's financial and procurement departments, *i.e.*, employees' duties and responsibilities with regard to contract administration, was not documented.

The absence of an effective IT system increases the risk of overspending contract limits, waste and mismanagement. The following events demonstrate the potential adverse effects of an inadequate IT system and DCRB's reliance on personnel to complete tasks manually:

⁵⁰ GREEN BOOK § 11.01 at 51.

⁵¹ *Id.* § 11.09 at 53.

⁵² *Id.* § 3.10 at 27.

⁵³ Contracting Officers, Contracting Officer's Technical Representatives (COTR), CORs, and department personnel are *all* responsible for “monitor[ing] contractor performance and ensur[ing] contractor compliance with contractual commitments and obligations.” DCRB's Procurement Manual § 20.2.

- A contract’s terms required DCRB to object to exercising an option period within a certain number of days; otherwise, the contractor would deem DCRB’s silence as an assent to exercise the option period. DCRB experienced internal disputes over the meaning of the contract terms and the method of calculation used to determine the exact deadline to object to exercising the option. DCRB did not resolve the disputes insufficient to object before any of the disputed deadlines expired, and the option period was deemed renewed per the contract terms.
- DCRB funded an option on a contract *before* it exercised the option. A procurement employee at DCRB caught the mistake by chance, in time to make the necessary corrections.

Regarding the first scenario, DCRB should be exercising option periods because it is satisfied with the contractor’s performance *and* determined the sufficiency of its funds to extend the contract – not because it defaulted into extending the contract because of a missed deadline. In some cases, exercising an option by default could trigger a penalty, which would cost DCRB additional funds; in others, DCRB may end up exercising an option on a contract it intended to close because of poor performance. In the second scenario, control within the IT system should have blocked a requestor from funding an option year before exercising it. Both scenarios placed DCRB at risk of obligating funds before determining whether DCRB has the funds available to exercise the option period.

Two DCRB departments are involved with monitoring contract administration; therefore, documenting processes and responsibilities is vital to ensure clarity and understanding of individual roles. Lacking proper documentation of and visibility into contract administration decisions (e.g., the exercise of an option year) and actions (e.g., the issuance of task orders, payments against a contract) puts DCRB at risk of limiting expertise and knowledge to a select number of “siloes” employees, information that could be lost when those employees separate from the agency. DCRB’s Procurement Department has previously experienced high turnover and is currently vacant. Thus, it is critical that the agency document and monitor its procurement and contract administration actions. Furthermore, without IT capabilities that enable efficient contract administration, DCRB will continue to rely on manual processes that are more susceptible to inefficiencies, inaccuracies, and mishaps like the two scenarios identified above.

We recommend the Executive Director, DCRB:

11. Improve DCRB’s capability to track spending on active contracts against budget and contract ceilings and include automated notifications to both the Procurement and Finance Departments if a requisition will approach or exceed the authorized value of the contract.

Agree _____ X _____ Disagree _____

DCRB’s May 2020 Response to Recommendation 11:

Since June 2019, DCRB, OCP, OCTO, OCFO have taken steps to integrate DCRB's current financial management system with the District's PASS system. Completing this complex integration would afford DCRB even greater access to the controls already built into PASS.

12. Create a mechanism whereby the Procurement Department, Finance Department, and the Contract Officer's Representative assigned to a contract are automatically informed of key events, such as payments to contractors and approaching contract option deadlines.

Agree _____ X _____ Disagree _____

DCRB's May 2020 Response to Recommendation 12:

Please see our response above to Recommendation #11 regarding efforts to begin physically integrating DCRB's financial management system with PASS.

13. Update DCRB's Procurement Manual to include all new processes and related duties and responsibilities of those involved in the contract administration process.

Agree _____ X _____ Disagree _____

DCRB's May 2020 Response to Recommendation 13:

Please see our response above to Recommendation #5 regarding efforts to finalize and adopt the Draft Regulations on or before June 1, 2021.

DCRB RELIED ON SOLE-SOURCE PROCUREMENTS TO COMPENSATE FOR ITS LACK OF PLANNING.

A sole-source contract is awarded directly to a vendor or contractor without full and open competition. DCRB policies and regulations permit sole-source procurements when goods or services are available from only one vendor or contractor or when one of a series of specific exceptions occurs.⁵⁴ These exceptions do not include a lack of planning or administrative errors

⁵⁴ DCRB Policies list the following as exceptions that would allow the use of sole source contracts:

- Specific replacement parts or components for equipment where there is no alternative supplier or where the use of an alternative would void a warranty;
- Equipment upgrade and repair, repair services, or parts unavailable from any other source except the original equipment manufacturer or its designated service representative;
- Upgrade to existing software, available only from the producer of the software who sells only on a direct basis and where alternatives to the proprietary solution are not feasible;
- When there is a need to standardize equipment or to facilitate the interoperability of equipment or systems which is greater in value than costs that could be recovered through competition and the maintenance of alternative sources of supply;
- When substantial cost duplication in selecting an alternative source is not expected to be recovered through competition;

as acceptable justifications. Additionally, Title 27 of the DCMR expressly forbids using a “lack of adequate planning,” or delays “caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures” as justifications for sole source or emergency procurements.⁵⁵

The OIG found three instances where DCRB justified using a sole-source contract by citing a lack of adequate time to compete the contract. Although DCRB’s policies state that the agency should only use sole-source procurements when other methods are not practicable and do not include a lack of planning as an acceptable reason, neither DCRB’s Procurement Manual nor its regulations expressly prohibit such a justification. Allowing inadequate planning as justification for sole-source procurements could result in an inappropriate reliance on sole-source procurements, limiting open competition. In addition, allowing this justification for non-competitive procurements creates an environment where it is acceptable to “forget” to plan appropriately, which opens the door to steering a contract to a preferred vendor. This sort of malfeasance is difficult to detect and prevent without an effective internal control system.

We recommend the Executive Director, DCRB:

14. Revise internal policies to guide acquisition planning and the appropriate use of sole-source contracts.

Agree _____ X _____ Disagree _____

DCRB’s May 2020 Response to Recommendation 14:

Please see our response above to Recommendation #5 regarding efforts to finalize and adopt the Draft Regulations on or before June 1, 2021, which include provisions governing the use and permissibility of sole source solicitations.

15. Implement a review and approval process for sole source justifications independent of the Procurement Department and the DCRB entity that will benefit from the procurement.

Agree _____ X _____ Disagree _____

DCRB’s May 2020 Response to Recommendation 15:

Please see our response above to Recommendation #14.

-
- Utility services, when available from only one source; and
 - Intellectual property rights that are owned or controlled by one source and made available through that source; including patents, copyrights, licenses, secret processes, material monopolies or other established rights that affect distribution of goods and services.

See DCRB Procurement Manual, *supra* note 21, § 13.2.

⁵⁵ 27 DCMR §§ 1700.3 and 1702.3.

DCRB ADVERTISED FOR ONE TYPE OF IT CONTRACT THEN, IN EFFECT, CHANGED THE TYPE OF CONTRACT AFTER MAKING THE AWARD.

According to 7 DCMR § 1608.4: “Each solicitation shall clearly indicate the type or types of contract that will be used for the specific procurement.”

In December 2015, DCRB published a solicitation for a “firm-fixed-price” (FFP) contract⁵⁶ for “Pension Oversight Project Management and Quality Assurance Services,” which would be awarded on a “best value basis considering price and technical factors.” The RFP asked offerors to submit fixed prices for each contract period (i.e., base year and option years), not hourly rates. In March 2016, DCRB recommended that a specific vendor (vendor) receive the award, which had a potential value of \$2,614,919, including option years.

After DCRB selected the vendor and notified the unsuccessful bidders, but before the award was signed, DCRB began to discuss potential problems with the award. Two important issues were identified: the RFP did not include a sufficiently detailed description of what DCRB expected from the vendor, and, using a cost-reimbursable contract⁵⁷ may have been more appropriate than an FFP contract. After considering other options, including canceling the RFP and issuing a new RFP or amending the RFP/Solicitation and allowing the three bidders who had submitted a bid to amend their bids, DCRB elected to negotiate only with the recommended vendor to correct the issues identified. DCRB chose this course of action despite the recommendation from a procurement consultant that DCRB re-issue the RFP.

DCRB and the vendor executed the FFP contract in August 2016. After DCRB awarded the contract, the vendor did not submit fixed monthly invoices that would be customary under an FFP contract. Instead, the vendor submitted and DCRB accepted invoices based upon hours worked at rates that DCRB had not agreed to before signing the contract, a practice in line with a cost-reimbursable contract.

From the inception, DCRB attempted to expedite this contract without taking sufficient time to consider what contract type would be most appropriate. A document the IT Department used to initiate this procurement did not include sufficient information regarding contract requirements. DCRB employees did not have a discussion related to what contract type would be most appropriate. As a result, DCRB chose a contract type (firm -fixed-price contract) that was not the most appropriate for the necessary services. Then, the contractor did not invoice DCRB consistent with contract terms. Internal memoranda indicated that both the IT Department and the Benefits Department treated the engagement as a labor-hour contract (similar to a cost-reimbursable one), not advertised type.

⁵⁶ “Firm-fixed-price contracts shall be used for procuring goods or services on the basis of reasonably definite functional or detailed specifications and when the contracting officer can establish fair and reasonable prices at the outset.” DCRB Procurement Manual, *supra* note 21, § 17.3.1.

⁵⁷ Cost-reimbursement contracts “may be used only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.” DCRB Procurement Manual, *supra* note 21, § 17.4.1. These contracts are considered a “high-risk” to DCRB because it assumes a high level of risk for the final cost of the contract, which would not be determined until *after* the contractor performed all obligations under the contract.

Advertising a type of contract that is different from the type ultimately negotiated and awarded could dissuade potential offerors and prevent an agency from obtaining optimal value through robust competition. An internal memorandum that analyzed the solicitation and award of this contract addressed the risk associated with how DCRB constructed the RFP: “What typically happens when an agency issues an RFP that combines a contract type of ‘firm fixed price’ with very broad and general requirements, prospective offerors either: 1) do not submit proposals or 2) increase their costs to reflect the risk associated into entering into such a contract.”

Advertising one type of contract and then using another could also foster abuse in the procurement process. For example, an agency could advertise a less desirable contract type to suppress competition, and then negotiate and award a more desirable type of contract once a vendor is selected.

We recommend the Executive Director, DCRB:

16. Adopt a policy requiring contracts to be re-competed if the type of contract being negotiated is changed after bids have been received.

Agree _____ X _____ Disagree _____

DCRB’s May 2020 Response to Recommendation 16:

Please see our response above to Recommendation #5 regarding efforts to finalize and adopt the Draft Regulations on or before June 1, 2021, and update the accompanying procurement manual in accordance therewith.

DCRB DID NOT REPORT A POTENTIAL CONFLICT OF INTEREST TO THE BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY (BEGA).

Title 7 of the DCMR states that “[a]ny attempt by an employee to realize personal gain through employment with the Board by conduct inconsistent with proper discharge of duties is a breach of ethical standards.”⁵⁸ It also provides that the Executive Director designate an Ethics Officer to render “guidance on ethical matters.”⁵⁹

DCRB Procurement Manual Section 2.1 echoes similar sentiments to the DCMR regarding conflicts of interest. Section 2.1 requires employees involved in the procurement process to 1) “conduct business impartially and in a manner above reproach, with preferential treatment for none;” and 2) “strictly avoid any conflict of interest or the appearance of a conflict of interest in the procurement process.” Section 2.4.1(3) prohibits both employees and Trustees from “participat[ing] in or attempt[ing] to influence any procurement when the employee or Trustee knows or has reason to know [...] the employee or Trustee or any relative of the employee or

⁵⁸ 7 DCMR § 1602.2.

⁵⁹ 7 DCMR § 1602.5.

Trustee has an agreement or arrangement for prospective employment with a business or organization involved.”

Any credible violations of government ethics must be reported immediately and directly to the Office of Government Ethics (OGE),⁶⁰ the Office of Inspector General, or both.⁶¹ Supervisors, in particular, must report the violation as soon as the supervisor becomes aware of the violation – failure to make such disclosure could result in employee discipline or dismissal.⁶²

DCRB interviewees identified the following scenario involving a potential conflict of interest at DCRB:

Upon leaving DCRB, a former employee began working for a DCRB Vendor.

An executive-level employee at DCRB served as a member of the Source Selection Evaluation Board (SSEB) for a solicitation involving project oversight for an IT initiative and participated in the evaluation of bidders’ submissions. DCRB awarded the contract, and the employee then served as the project manager with oversight of the contractor. In 2018, the employee terminated their employment with DCRB and, within weeks, began working for a subsidiary of the DCRB vendor.

Current executive-level employees and Board members of DCRB were personally aware of the employee’s conduct. Despite this awareness, no one reported the potential conflict of interest to BEGA for an independent investigation.⁶³ Board members cited their reliance on DCRB’s executive-level employees to solicit BEGA’s involvement. Executive-level DCRB employees indicated that DCRB had conducted an internal investigation, but could not articulate a reason why they had not reported the potential conflict of interest.

Since the start of FY 2017, BEGA has conducted four ethics training sessions at DCRB. Despite this training and employees being personally aware of the potential conflicts of interest, the incidents went unreported. Current District and DCRB laws, regulations, and policies forbid actual *and the appearance of* impropriety. If DCRB does not report a potential conflict of interest, even if the potential conflict does not end up being a violation, it may create an appearance of impropriety and lead to public distrust of DCRB’s operations.

We recommend the Executive Director, DCRB:

17. Provide quarterly reminders to employees regarding their duty to report potential conflicts of interest.

Agree _____ X _____ Disagree _____

⁶⁰ OGE “is an office within BEGA that investigates allegations of ethical misconduct concerning District government employees and officials. See BEGA website, <https://bega.dc.gov/page/about-board-ethics-and-government-accountability-bega> (last visited Dec. 30, 2019).

⁶¹ See DPM § 1801.1.

⁶² D.C. Code §§ 1-615.58(8), (9), (11).

⁶³ BEGA “investigates alleged ethics law[] violations by District government employees and public officials.” See BEGA website, <https://bega.dc.gov/page/mission> (last visited Dec. 30, 2019).

DCRB's May 2020 Response to Recommendation 17:

As noted in the OIG Report & Recommendations, DCRB hosted multiple onsite Code of Conduct trainings in the past year, including annual sessions tailored for Trustees, senior- and mid-level management, and all other personnel, including onsite contractors. Further, in February 2018, DCRB's Legal & Compliance Department commissioned a DCRB Whistleblower Protections & Complaints section on DCRB's website, to inform DCRB personnel and stakeholders of their rights and responsibilities under the District's whistleblower statute, as well as allow for the anonymous submission of whistleblower complaints to DCRB's Legal & Compliance Department and the OIG.

DCRB's Legal & Compliance Department will continue to coordinate with the District's Board of Ethics and Government Accountability ("BEGA") to provide Code of Conduct and other ethics-related training, at least annually, to all Trustees and staff. In addition, the department will ensure that quarterly email reminders are sent to all DCRB personnel, covering a variety of ethics topics, including conflicts of interest. Currently, the department sends reminders to staff at various intervals throughout the year and coordinates the requisite filings of financial disclosure statements with BEGA.

18. Pursuant to 7 DCMR § 1602.5, designate an Ethics Officer to provide DCRB employees with guidance on ethical matters.

Agree _____ Disagree _____

DCRB's May 2020 Response to Recommendation 18: (OIG Note: DCRB did not indicate whether it agreed or disagreed with this recommendation.)

DCRB's General Counsel serves as the Agency's Ethics Officer, and has served in this capacity since September 2008.

On September 13, 2018, DCRB's General Counsel sent an email to the former BEGA General Counsel Legal & Compliance Department, along with a written report detailing facts related to a former employee and an on-site DCRB vendor. A copy may be forwarded to the OIG upon your request.

With regard to the former senior-level employee, please note that the contract of the onsite DCRB vendor had been suspended, with the last vendor-payment made in September 2017, and vendor work ending by that time. This means that vendor work had concluded approximately six months prior to the employee's resignation (in April 2018). Moreover, DCRB's General Counsel informed the former employee of the BEGA post-employment restrictions, which was acknowledged prior to the employee's resignation. On July 19, 2018, DCRB was informed of the former employee's arrangement with the then DCRB vendor. On August 22, 2018, DCRB

did not exercise the option to extend its contract with the vendor. DCRB did not — and would not — have allowed a former employee to work on the vendor contract. However, this matter, in hindsight, should have been reported to BEGA.

OIG Comment: The OIG did not find any public document identifying DCRB’s General Counsel as its Ethics Officer. DCRB should ensure that his or her role as Ethics Officer is prominently advertised. When this advertisement is completed, the OIG will consider this recommendation closed.

The draft report that the OIG sent to DCRB for comment cited a second potential conflict of interest. With its response to the draft report, DCRB provided documentation showing that it referred the second potential conflict of interest to BEGA for review; the OIG removed discussion of the second potential conflict from the report.

CONCLUSION

DCRB management and the Board focus primarily on the investment of fund assets to obtain greater returns for its members. That focus, however, properly directed, should not marginalize the establishment of sound procurement practices. As an independent agency with no external oversight of its procurement practices, DCRB has a heightened risk of fraud, waste, and abuse in its procurement processes, which could have significant consequences for DCRB’s stakeholders given the value of DCRB’s annual procurements, and that these expenditures are funded directly from the Plans’ investment returns. Figure 1 below illustrates DCRB’s approved budgets over the past 6 years for expenses related to IT⁶⁴ and special projects, which together constitute a significant percentage of DCRB’s annual budget.

⁶⁴ IT activities refer to all support necessary to operate DCRB’s technology systems, and special projects involve activities of interest that may fall outside of DCRB’s regular course of business.

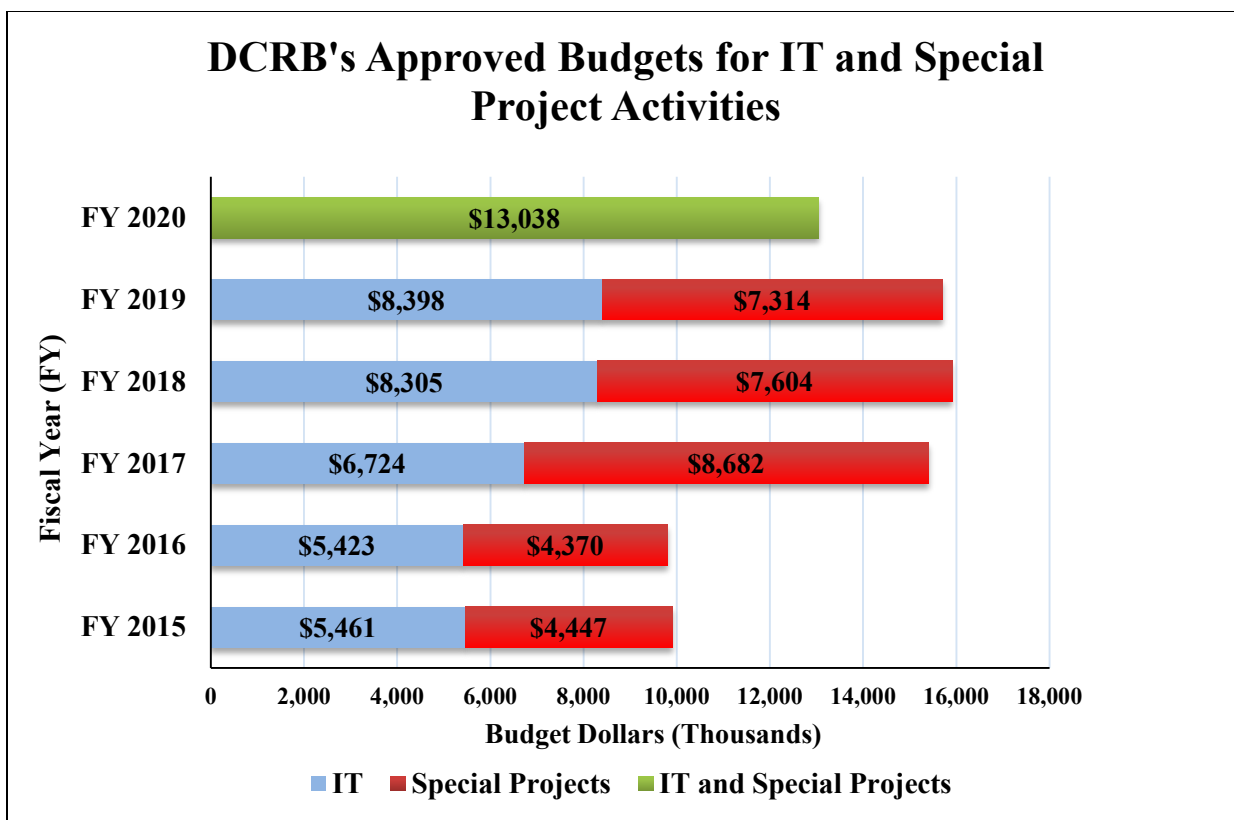


Figure 1: DCRB’s Approved Budgets for IT and Special Project Activities⁶⁵

DCRB’s approved budgets for IT and special projects in FY 2019 and FY 2020 totaled \$15.7 million (36 percent of DCRB’s total approved operating budget) and approximately \$13 million (30 percent of DCRB’s total approved operating budget), respectively.

While many agencies must go through the process of coordinating with other agencies to effectuate change, DCRB has the capacity and authority to readily implement new procurement policies and fill key staff vacancies. DCRB has the ability to resolve the deficiencies in its procurement process quickly because of its independence, available resources, ready access to consulting expertise, and the findings and recommendations from previous assessments. DCRB also benefits from having a 12-member Board of Directors, some of whom sit on an Audit Committee that stands ready to assist DCRB with prioritizing and implementing necessary improvements. Finally, DCRB has a “blueprint” for what an adequate procurement framework should look like in the assessments already provided by several external entities. The risk and magnitude of potential consequences due to inaction should motivate DCRB to prioritize necessary procurement reforms and move expeditiously to begin improving the effectiveness of its internal control system.

⁶⁵ The numbers presented in Figure 1 are taken from DCRB’s Budget Books and reflect the approved budget for activities related to IT and special projects. The amounts cited are not an account of the actual amount spent on IT or special projects during the indicated FY. DCRB consolidated its budget for IT and Projects in FY 2020.

APPENDIX A. OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

The primary objectives were to:

- (1) evaluate DCRB's procurement processes to determine whether adequate internal controls are in place; and
- (2) assess DCRB's compliance with regulations and policies during solicitation, award, and administration of sampled procurements.

Scope

The scope of this evaluation primarily focused on six selected procurements of over \$10,000 active from FY 2017 to the present. The OIG team also conducted a primary review of all contracts available onsite at DCRB.

Methodology

During this evaluation, the OIG team reviewed DCRB's Procurement Manual and compared it to relevant laws and policies in the D.C. Code, DCMR, DPM, PPRA, and OCP regulations. We also reviewed best practices from the neighboring state of Virginia and guidelines provided in the GAO Green Book. We visited DCRB's website and other websites for publicly available information. Additionally, the OIG team conducted a preliminary review of all contracts available to us at DCRB. We then selected six procurements to evaluate more thoroughly for this report. Other documentation reviewed includes but is not limited to: minutes from Board meetings and internal memoranda; past independent reports; and the MOU between OCP and DCRB. Lastly, we interviewed individuals involved in DCRB's procurement processes. The fieldwork for this evaluation spanned from June through November 2019.

APPENDIX B. ACRONYMS AND ABBREVIATIONS

BEGA	D.C. Board of Ethics and Government Accountability
CAB	D.C. Contract Appeals Board
CCO	Chief Contracting Officer
COR	Contracting Officer Representative
DCMR	D.C. Municipal Regulations
DCRB	District of Columbia Retirement Board
FFP	Firm-fixed price
FTE	Full-time employee
FY	Fiscal Year
GAO	Government Accountability Office
IFB	Invitation for Bid
IT	Information Technology
MOU	Memorandum of Understanding
OCFO	D.C. Office of the Chief Financial Officer
OCP	D.C. Office of Contracting and Procurement
OGE	D.C. Office of Government Ethics
OIG	D.C. Office of the Inspector General
PPRA	Procurement Practices Reform Act of 2010
RFP	Request for Proposal
SSEB	Source Selection Evaluation Board
SWOT	Strengths, Weaknesses, Opportunities, Threats
USC	United States Code
VRS	Virginia Retirement System

APPENDIX C. LIST OF RECOMMENDATIONS

1. In cooperation with the Board, assess personnel needs, prioritize which vacancies in senior-level leadership must be filled and create a plan of action to fill the vacancies.
2. Create a Chief Operations Officer role to assume the Executive Director's current operational duties, to include oversight of the DCRB Procurement Department.
3. Revise DCRB's MOU with OCP to specify principal duties, a reporting chain, and contracting authorities.
4. Implement annual training for Board Members to familiarize them with procurement rules and processes.
5. Promulgate a regulation subjecting DCRB to the PPRA and OCP's regulations in Title 27 DCMR while maintaining independence from OCP's authority.
6. Review and revise the Procurement Manual to better align it with the PPRA and OCP's regulations in Title 27 DCMR.
7. Create a procurement-specific action plan that aggregates and prioritizes recommendations from the consultants' reviews, identifies which recommendations DCRB will implement, and establishes a timetable for implementing each.
8. Present the action plan to the Board's Audit Committee for review, approval and monitoring.⁶⁶
9. Revise the Procurement Manual to require the public posting of all available procurement information
10. Document, implement and publicize a bid/contract protest procedure.
11. Improve DCRB's capability to track spending on active contracts against budget and contract ceilings, to include automated notifications to both the Procurement and Finance Departments if a requisition will approach or exceed the authorized value of the contract.
12. Create a mechanism whereby the Procurement Department, Finance Department, and the Contract Officer's Representative assigned to a contract are automatically informed of key events, such as payments to contractors and approaching contract option deadlines.

⁶⁶ Pursuant to 7 DCMR § 1503.1, the Audit Committee of DCRB's Board of Trustees was created to manage risks of irregularities and fraud across DCRB's operations.

APPENDIX C. LIST OF RECOMMENDATIONS

13. Update DCRB's Procurement Manual to include all new processes and related duties and responsibilities of those involved in the contract administration process.
14. Develop a policy forbidding the use of lack of advance planning as justification for a solicitation conducted on a sole source basis.
15. Implement a review and approval process for sole source justifications that is independent of the Procurement Department and DCRB entity that will benefit from the procurement.
16. Adopt a policy requiring contracts be re-competed if the type of contract being negotiated is changed after bids have been received.
17. Provide quarterly reminders to employees regarding their duty to report potential conflicts of interest.
18. Pursuant to 7 DCMR § 1602.5, designate an Ethics Officer to provide DCRB employees with guidance on ethical matters.

APPENDIX D. OIG COMPARISON OF PROCUREMENT POLICIES AND REGULATIONS USED BY DCRB AND THE DISTRICT



**Office of The Inspector General
Inspections and Evaluations Division**

MEMORANDUM OF OBSERVATION

Agency/Component	District of Columbia Retirement Board
Observation	Comparison of Procurement Policies and Regulations used by DCRB and the District
Observer/Inspector(s)	[REDACTED]
MOO Completion Date	January 9, 2019

This Memorandum of Observation (MOO) identifies the differences in the procurement policies and regulations used by DCRB and the District. Specifically, we analyzed DCRB’s Procurement Manual (revised March 21, 2017) and the District of Columbia Municipal Regulations (DCMR) related to DCRB’s procurement (DCMR Title 7, Chapter 16) along with the “Procurement Practices Reform Act of 2010” (PPRA) and the DCMR related to procurement used by the Office of Contracting and Procurement (OCP) (DCMR Title 27, Chapters 13- 17). This MOO is only a comparison of certain components of each set of criteria, not every provision.

Observation(s):

Component	Issue/Differences	Relevant Citations
Sole Source	DCRB policies and regulations do not mention Notices of Intent (NOI) for sole source procurements whereas OCP’s regulations describe the contents of a NOI and require such NOIs to be published on the internet 10 days prior to award.	<ul style="list-style-type: none"> • D.C. Code § 2-354.04(c) • 27 DCMR §§ 1304.1- 1304.2 • 27 DCMR § 1701.1
	DCRB policies and regulations lack the following prohibition on sole source justifications that OCP regulations include: “A sole source contract shall not be justified on the basis of: a) the lack of adequate advance planning for the procurement of the required goods or services; b) delays in the procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or c) pending expiration of budget authority.”	<ul style="list-style-type: none"> • 27 DCMR § 1700.3
	Unlike OCP, DCRB does not require the Determinations and Findings statement (D&Fs) used to justify sole source procurements to contain specific, detailed information.	<ul style="list-style-type: none"> • 27 DCMR § 1700.2
	DCRB policies and regulations do not contain the following OCP prohibition related to procuring additional goods on a sole source contract: “Justification for a sole source procurement shall cover all of the goods or services being procured under a single contract. The justification for the sole source procurement of goods or services shall not be used to avoid competitive procedures for obtaining other goods or services which do not qualify as a sole source procurement under the same contract.”	<ul style="list-style-type: none"> • 27 DCMR § 1700.5
	DCRB policies and regulations do not contain any requirements to post sole source contracts on the internet.	<ul style="list-style-type: none"> • D.C. Code § 2-354.04(d) • 27 DCMR § 1701.2 • 27 DCMR § 1304.3

APPENDIX D. OIG COMPARISON OF PROCUREMENT POLICIES AND REGULATIONS USED BY DCRB AND THE DISTRICT



Continuation of MEMORANDUM OF OBSERVATION

Component	Issue/Differences	Relevant Citations
Emergency Procurements	DCRB policies state that should authorization for an emergency procurement be given verbally, it must then be put in writing “in a reasonable timeframe” only if “a written contract or modification is executed as soon thereafter as is reasonably practicable.”	<ul style="list-style-type: none"> • DCRB Procurement Manual § 14.2 • 7 DCMR § 1610.7 • D.C. Code § 2-354.05(c) • 27 DCMR § 1702.6
	The PPRA allows for the same verbal authorization but requires that the “directive be reduced to writing within 3 business days.” OCP regulations state, “The contracting officer shall have the authority to issue oral orders or notices to proceed to contractors to provide goods or services to the District, provided the directive is reduced to writing within 3 business days after issuance.”	
	DCRB policies and regulations do not contain any restriction on the length of emergency procurements; however, the PPRA/OCP regulations restrict emergency procurements to 90 or 120 days.	<ul style="list-style-type: none"> • D.C. Code § 2-354.05(d) • 27 DCMR § 1702.7
	DCRB policies and regulations do not require a notice of emergency procurement to be published to internet within 7 days.	<ul style="list-style-type: none"> • D.C. Code § 2-354.05(f) • 27 DCMR § 1307.1 • 27 DCMR § 1702.9
	DCRB policies and regulations do not require D&Fs to be drafted and do not include what should be in those D&Fs.	<ul style="list-style-type: none"> • 27 DCMR § 1702.2
	DCRB policies and regulations lack restrictions on what can be used to justify emergency procurements like those in 27 DCMR § 1702.3, which states: “An emergency contract shall not be justified on the basis of: a) the lack of adequate advance planning for the procurement of the required goods or services; b) delays in the procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or c) pending expiration of budget authority.”	<ul style="list-style-type: none"> • 27 DCMR § 1702.3
	DCRB policies and regulations lack a restriction on modifying the scope or extending the time period on a contract.	<ul style="list-style-type: none"> • 27 DCMR § 1702.8
	Simplified Acquisition	DCRB policies and regulations allow it to use the “small purchase procurement method” for “large purchases” when “other procurement methods do not meet the Board’s time requirements.” Its regulations also allow “the small purchase method” to be used for “any purchase when time is of the essence (expedited purchase). The PPRA and Title 27 of the DCMR do not have such an allowance.
DCRB regulations contain a provision against parceling purchases so they can use a simplified acquisition process and the PPRA/Title 27 of the DCMR do as well. However, DCRB’s policies do <i>not</i> contain this provision.		<ul style="list-style-type: none"> • 7 DCMR § 1608.6 • D.C. Code § 2-354.07(b) • 27 DCMR § 1800.2

APPENDIX D. OIG COMPARISON OF PROCUREMENT POLICIES AND REGULATIONS USED BY DCRB AND THE DISTRICT



Continuation of MEMORANDUM OF OBSERVATION

Component	Issue/Differences	Relevant Citations
Categorical Exemptions	DCRB policies exempt the following items from competition that the PPRA does not: <ul style="list-style-type: none"> • Purchase, rent, or lease of land or other interest in real property • Personal property sold at an auction by a licensed auctioneer • Research programs; and • Intergovernmental agreements and cooperative agreements with other institutions where the primary purpose is not the purchase of goods or services. 	<ul style="list-style-type: none"> • DCRB Procurement Manual § 15.2 • 7 DCMR §§ 1610.4(a), (c), (f), (h) • D.C. Code § 2-354.13
	DCRB policies and regulations exempt “travel services” from competition. The PPRA only exempts “public transit fare cards, passes, and tokens.”	<ul style="list-style-type: none"> • 7 DCMR § 1610.4(i) • D.C. Code § 2-354.13(9)
Contract Types	DCRB policies and regulations are sparse as to the details and restrictions on certain types of contracts.	N/A
	The PPRA and OCP regulations do not list a “Fixed-Ceiling-Price Contracts with Retroactive Price Redetermination” as an eligible contract type. DCRB does.	<ul style="list-style-type: none"> • DCRB Procurement Manual § 17.3.4
	The PPRA and OCP regulations do not list a “Level of Effort” contract as an eligible contract type. DCRB does. <i>Auditors indicated that DCRB was misusing this type of contract.</i>	<ul style="list-style-type: none"> • DCRB Procurement Manual § 17.3.5
	When describing its economic adjustment contracts and incentive contracts, DCRB does not include any language stating that the value of the contract can be revised upward and downward.	<ul style="list-style-type: none"> • DCRB Procurement Manual § 17.3.2 • 27 DCMR § 2403.2 • 27 DCMR § 2406.3
	DCRB does not limit incentives, like 27 DCMR § 2407.1 does, “Incentive contracts shall include cost incentives, which take the form of a profit or fee adjustment formula. No incentive contract shall provide for other incentives without also providing for a cost incentive.”	<ul style="list-style-type: none"> • 27 DCMR § 2407.1
	DCRB policies do not require a “price ceiling” being established for cost-reimbursement contracts.	<ul style="list-style-type: none"> • 27 DCMR § 2405.3
	OCP regulations state time-and-materials contracts “shall only” be used when, “[i]t is not possible at the time of executing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence; and the contracting officer determines, <u>in writing</u> , that no other type of contract is suitable. DCRB policies simply say they “may be advantageous” to use in certain instances.	<ul style="list-style-type: none"> • DCRB Procurement Manual § 17.5 • 27 DCMR § 2420.1
Competitive Proposals	The PPRA and DCMR state that competitive proposals shall be solicited from “the maximum number of qualified sources.”	<ul style="list-style-type: none"> • D.C. Code § 2-354.03(b) • 27 DCMR § 1600.2
	DCRB policies state that the Request for Proposal (RFP) notice shall be mailed to “an adequate number of prospective contractors to ensure full and open competition.”	<ul style="list-style-type: none"> • DCRB Procurement

APPENDIX D. OIG COMPARISON OF PROCUREMENT POLICIES AND REGULATIONS USED BY DCRB AND THE DISTRICT



Continuation of MEMORANDUM OF OBSERVATION

Component	Issue/Differences	Relevant Citations
		Manual § 7.3
	DCRB policies and regulations do not mention Request for Information (RFI).	<ul style="list-style-type: none"> • 27 DCMR § 1601
	DCRB policies do not require pre-solicitation conferences to be published.	<ul style="list-style-type: none"> • 27 DCMR § 1602.2
	The PPRA and OCP regulations require publishing an RFP solicitation for 21 days but say it can be shortened to 14 if the Chief Procurement Officer (CPO) issues a determination and findings in writing justifying it. DCRB policies require publishing a solicitation for 30 days unless “the contracting officer determines otherwise.” It does not state this determination must be in writing.	<ul style="list-style-type: none"> • 27 DCMR § 1313.1 • D.C. Code § 2-354.03(c) • DCRB Procurement Manual § 7.3
	DCRB policies do not require DCRB to state the minimum evaluation factors. It also does not describe how “past performance” will be approached and described.	<ul style="list-style-type: none"> • D.C. Code § 2-354.03(d-2)(1) • D.C. Code § 2-354.03(d-2)(2) – (4)
	DCRB policies do not describe RFQs like the PPRA and OCP regulations do.	<ul style="list-style-type: none"> • D.C. Code § 2-354.03(f) • 27 DCMR § 1615 et. al.
	DCRB policies lack the protections afforded in 27 DCMR §§ 1604.3-1604.5.	<ul style="list-style-type: none"> • 27 DCMR § 1604.3 • 27 DCMR § 1604.4 • 27 DCMR § 1604.5
	DCRB policies do not speak to the rules of proposals in the set-aside Small Business Enterprise (SBE) market.	<ul style="list-style-type: none"> • 27 DCMR § 1605
	DCRB policies do not require solicitations to list the evaluation factors in descending order of importance and do not require listing the numerical weights that will be used to evaluate solicitations.	<ul style="list-style-type: none"> • DCRB Procurement Manual § 7.4.3.2 • 27 DCMR § 1613.4 • 27 DCMR § 1613.3
	DCRB policies do not include language restricting the use of RFPs to obtain information or for planning purposes.	<ul style="list-style-type: none"> • 27 DCMR § 1604.7
	Whereas DCRB policies require RFP amendments to be “issued in writing to formalize changes to the solicitation,” they do not specify any timing requirements for those amendments. OCP regulations, however, state “The contracting officer shall not award a contract unless all amendments made to the RFP have been issued in <u>sufficient time to be considered by prospective offerors.</u> ” (Emphasis added)	<ul style="list-style-type: none"> • DCRB Procurement Manual § 7.3.3 • 27 DCMR § 1623.3

APPENDIX D. OIG COMPARISON OF PROCUREMENT POLICIES AND REGULATIONS USED BY DCRB AND THE DISTRICT



Continuation of MEMORANDUM OF OBSERVATION

Component	Issue/Differences	Relevant Citations
	DCRB policies are silent as to the role of the contracting officer and the information to be shared during the pre-proposal conference.	<ul style="list-style-type: none"> • DCRB Procurement Manual § 7.3.2 • 27 DCMR § 1621.2 • 27 DCMR § 1621.3
	DCRB policies allow for the cancellation of an RFP, but do not say the requirements for how to do so (i.e., in writing, returning unopened proposals, retaining open proposals in a file, posting notice of cancellation on the Internet, etc.).	<ul style="list-style-type: none"> • 27 DCMR § 1644 et. al. • DCRB Procurement Manual § 7.3.1
	Unlike DCRB, OCP regulations do not accept late proposals because of circumstances “beyond the control due to no fault or negligence of the offeror.”	<ul style="list-style-type: none"> • DCRB Procurement Manual § 7.4.2 • 27 DCMR § 1627.6
	DCRB policies are silent about sharing confidential information to prospective contractors.	<ul style="list-style-type: none"> • 27 DCMR § 1629.3
	DCRB policies do not address a technical evaluation report.	<ul style="list-style-type: none"> • 27 DCMR § 1630.4
	DCRB does not require itself to rank proposals in order of advantageousness like the PPRA does.	<ul style="list-style-type: none"> • D.C. Code § 2-35403(a)(2)
	DCRB does not have a policy allowing for the rejection of all proposals.	<ul style="list-style-type: none"> • 27 DCMR § 1630.6
	DCRB policies and regulations do not include details related to “the competitive range.”	<ul style="list-style-type: none"> • DCRB Procurement Manual § 7.4.3.3 • 27 DCMR §§ 1637.1- .3
	DCRB policies and regulations do not prohibit discussions with offerors within the competitive range like in 27 DCMR § 1638.3 – 27 DCMR § 1638.5.	<ul style="list-style-type: none"> • 27 DCMR § 1638.3 • 27 DCMR § 1638.4 • 27 DCMR § 1638.5
	DCRB policies do not describe the contracting officer’s responsibilities during the negotiation process and procedures for when a satisfactory contract cannot be negotiated with the highest-ranked offeror.	<ul style="list-style-type: none"> • DCRB Manual Procurement § 7.4.3.4 • 27 DCMR § 1634.1 – 1634.6
	DCRB policies do not address or provide guidance on issuing “Best and Final Offers” (BAFOs).	<ul style="list-style-type: none"> • 27 DCMR § 1639 et. al.
	DCRB policies do not require it to substantiate offered prices.	<ul style="list-style-type: none"> • 27 DCMR § 1642.2
	DCRB policies state that the offer will be chosen based on what is “most advantageous to the Board.” OCP policies and the	<ul style="list-style-type: none"> • DCRB Procurement

APPENDIX D. OIG COMPARISON OF PROCUREMENT POLICIES AND REGULATIONS USED BY DCRB AND THE DISTRICT



Continuation of MEMORANDUM OF OBSERVATION

Component	Issue/Differences	Relevant Citations
	PPRA further define what is “most advantageous to the District.”	<ul style="list-style-type: none"> • Manual § 7.5.1 • 7 DCMR § 1609.2 • D.C. Code § 2-354.03(e) • 27 DCMR § 1646.2
	DCRB policies do not state that any debriefings will include “the overall cost or price,” “past performance information,” or “an overall numerical ranking, if applicable.”	<ul style="list-style-type: none"> • 27 DCMR § 1648.2 • DCRB Procurement Manual § 7.5.2
Multistep Procurements Multiyear Contracts	DCRB policies require a notice that “provides a general description of the scope or purpose of the procurement and invites potential offerors to submit information that allows the Board to advise the offerors about their potential to be viable competitors” and requires that notice to “identify the information that must be submitted and the criteria that will be used in making the initial evaluation.” Unlike OCP, it does not list the specific elements of its “requests for technical proposals.”	<ul style="list-style-type: none"> • DCRB Procurement Manual § 8.3.2 • 27 DCMR § 1552.1
	DCRB policies do not describe how the contracting officer must safeguard proposals upon receipt.	<ul style="list-style-type: none"> • DCMR Policy § 8.3.3 • 27 DCMR § 1553.1
	DCRB policies do not include the language contained in OCP’s policies, which allow the contracting officer to proceed with step two of the multistep procurement process if: <ul style="list-style-type: none"> a. There are a sufficient number of acceptable proposals to ensure adequate price competition under step two; and b. Further time, effort and delay to make additional proposals acceptable, and thereby increase competition, would not be in the best interest of the District. If these conditions are not met, OCP’s policies allow bidders to submit additional or supplemental information and further discussions to occur.	<ul style="list-style-type: none"> • 27 DCMR §§ 1553.6- 1553.7
	DCRB policies do not mention multiyear contracts are subject to review and approval from D.C. Council.	<ul style="list-style-type: none"> • D.C. Code § 2-352.02(a)(1) • D.C. Code § 2-352.02(b)(1)
	The PPRA speaks much less favorably about the use of multi-year contracts than DCRB policies	<ul style="list-style-type: none"> • D.C. Code § 2-355.04(a) • DCRB Procurement Manual § 4.11
	DCRB policies do not require the contracting officer to make a written determination prior to entering into a multiyear contract containing several recitals such as confirming the availability and appropriation of funds.	<ul style="list-style-type: none"> • 27 DCMR § 2000.6 • D.C. Code § 2-

APPENDIX D. OIG COMPARISON OF PROCUREMENT POLICIES AND REGULATIONS USED BY DCRB AND THE DISTRICT



Continuation of MEMORANDUM OF OBSERVATION

Component	Issue/Differences	Relevant Citations
		355.04(b)
	DCRB policies allow multi-year contracts to be cancelled should funds not be available, but they do not detail the procedures to take following the cancellation, like OCP's regulations.	<ul style="list-style-type: none"> • DCRB Procurement Manual § 4.11 • 27 DCMR § 2001.2 • 27 DCMR § 2001.3
	DCRB policies do not describe the information that must be included in a solicitation for a multiyear contract.	<ul style="list-style-type: none"> • 27 DCMR § 2002.1
	DCRB policies do not require, prior to exercising an option in a multiyear contract, a written determination that the exercise will be in accordance with the terms of the options. OCP's policies further detail the factors to be considered while making such determination.	<ul style="list-style-type: none"> • 27 DCMR § 2008.1 • 27 DCMR §§ 2008.3, 2008.4 - 2008.6
Prequalification	DCRB policies do not detail how the contracting officer shall conduct the prequalification process. It also does not mention what must be included in a Request for Qualifications.	<ul style="list-style-type: none"> • 27 DCMR § 1513.3 • 27 DCMR § 1513.4
	DCRB policies do not prohibit it from using the prequalification process to nullify the requirement for a determination of contractor responsibility.	<ul style="list-style-type: none"> • D.C. Code § 2-354.20(b) • 27 DCMR § 1513.9
Competitive Bids	DCRB policies and regulations allow it to use competitive bidding, but the PPRA <u>requires</u> agencies to use competitive bidding for contracts that exceed \$100,000 unless the contracting officer issues a determinations and findings that the use of a competitive sealed bidding is not practicable.	<ul style="list-style-type: none"> • DCRB Procurement Manual § 6.1 • D.C. Code § 2-354.02(a) • 27 DCMR § 1500.1
	DCRB policies do not require the presence of at least one witness (whose name and address must be recorded) at the bid opening. They do require a public opening, however.	<ul style="list-style-type: none"> • 27 DCMR § 1527.1 • 27 DCMR § 1527.3
	DCRB policies do not include certain requirements concerning the recording and publishing of bid information.	<ul style="list-style-type: none"> • 27 DCMR § 1527.5 • 27 DCMR § 1527.6 • 27 DCMR § 1527.7
	DCRB policies do not require the certification or publishing of the bid abstract.	<ul style="list-style-type: none"> • 27 DCMR § 1529.1 • 27 DCMR § 1529.2
	DCRB policies do not require Invitations for Bids to be advertised for a minimum of 14 days.	<ul style="list-style-type: none"> • DCRB Procurement

APPENDIX D. OIG COMPARISON OF PROCUREMENT POLICIES AND REGULATIONS USED BY DCRB AND THE DISTRICT



Continuation of MEMORANDUM OF OBSERVATION

Component	Issue/Differences	Relevant Citations
		<ul style="list-style-type: none"> Manual § 6.2.2 • D.C. Code § 2-354.02(e)(1) • 27 DCMR § 1302.1
	DCRB policies do not require IFBs to include “whether contracts will be made on the basis of the lowest bid price or the lowest evaluated bid price, whichever is applicable” and do not require them to include the “objective measurable criteria to be used” when bids are evaluated by the lowest evaluated bid price.	<ul style="list-style-type: none"> • DCRB Procurement Manual § 6.2.1 • 27 DCMR § 1500.3(c) • 27 DCMR § 1500.4 • D.C. Code § 2-354.02(d)
	DCRB policies lack a policy requiring the contracting officer to maintain an internet site that provides prospective contractors with public notice of opportunities to bid and/or amendments.	<ul style="list-style-type: none"> • D.C. Code § 2-354.02(e)(2)(A) • 27 DCMR § 1517.3
	DCRB policies do not require written documentation of the contracting officer’s decision to cancel an invitation for bids.	<ul style="list-style-type: none"> • DCRB Procurement Manual § 6.2.6 • DCRB Procurement Manual § 6.2.7 • D.C. Code § 2-354.14 • 27 DCMR § 1518.1
	DCRB policies allow “late” bids when the bid “was received prior to the contract award and the contracting officer determines that it would have been timely but for the action or inaction of Board personnel after timely receipt of the bid at the location specified in the solicitation.” OCP regulations allow for two other instances: 1) when a bid “was sent by registered or certified mail not later than five (5) calendar days before the bid receipt date specified” and 2) when the bid “was sent electronically by the bidder prior to the time and date specified and there is objective evidence in electronic form confirming that the bid was received prior to the bid receipt time and date specified.”	<ul style="list-style-type: none"> • DCMR Procurement Manual § 6.3.2 • 27 DCMR § 1524.1(a) and (c)
	DCRB policies do not include OCP’s standards regarding the receipt and safeguarding of bids.	<ul style="list-style-type: none"> • 27 DCMR § 1526
	OCP regulations specify the four examples of “minor informalities and irregularities that can be waived. DCRB simply states minor informalities and irregularities can be waived.	<ul style="list-style-type: none"> • DCMR Procurement Manual § 6.3.8 • 27 DCMR § 1535.1 • 27 DCMR §

APPENDIX D. OIG COMPARISON OF PROCUREMENT POLICIES AND REGULATIONS USED BY DCRB AND THE DISTRICT



Continuation of MEMORANDUM OF OBSERVATION

Component	Issue/Differences	Relevant Citations
		1535.2
	DCRB policies do not limit the submission of bids to a certain time period or discuss how that time period may be shortened.	<ul style="list-style-type: none"> • DCMR Procurement Manual § 6.2.8 • 27 DCMR § 1503.1 • 27 DCMR § 1503.2
	DCRB policies do not address the use of bid samples. OCP regulations prohibit them except under identified conditions.	<ul style="list-style-type: none"> • 27 DCMR §§ 1506.2- .3
	DCRB policies do not contain language restricting discussion with bidders and the release of information concerning proposed acquisitions.	<ul style="list-style-type: none"> • 27 DCMR § 1500.6 • 27 DCMR § 1500.7
	Although DCRB policies provide guidance on how to proceed in the event the agency only receives one bid, it does not discuss how to resolve tie bids.	<ul style="list-style-type: none"> • 27 DCMR § 1543.1 • 27 DCMR § 1543.2
Changes, Amendments, Modifications	DCRB policies do not state how to determine the effective date following an amendment, change order, or administrative change.	<ul style="list-style-type: none"> • 27 DCMR §§ 3606.1- .4
	DCRB policies do not restrict the contracting officer from executing a contract modification or change order that will cause an increase in the funding level of the contract without having first obtained a certification for the availability of funds.	<ul style="list-style-type: none"> • 27 DCMR § 3600.3 • 27 DCMR § 3600.4
Compliance	DCRB policies do not contain all of the applicable factors presented in OCP regulations relating to the establishment of a contract delivery or performance schedule for goods or services.	<ul style="list-style-type: none"> • DCMR Procurement Manual § 20.20 • 27 DCMR § 2301.1
	DCRB policies do not require the time of delivery or performance to be clearly stated in each solicitation and contract.	<ul style="list-style-type: none"> • 27 DCMR § 2300.1 • 27 DCMR § 2300.3
Contractor Responsibility	DCRB policies and regulations only lists four standards to determine contractor responsibility whereas OCP regulations lists ten.	<ul style="list-style-type: none"> • DCRB Procurement Manual § 22.2 • D.C. Code § 2-353.01(a)
	DCRB does not require contractors for contracts exceeding \$100,000 to submit a certification that provides information needed to make determination of responsibility.	<ul style="list-style-type: none"> • D.C. Code § 2-353.02(b)
	DCRB does not require the CPO to consider whether proposed contractors should be suspended or debarred after a determination of non-responsibility.	<ul style="list-style-type: none"> • D.C. Code § 2-353.02(e)
Contingent Fees	DCRB policies and regulations do not have any prohibitions against contingent fee arrangements.	<ul style="list-style-type: none"> • D.C. Code § 2-354.16

APPENDIX D. OIG COMPARISON OF PROCUREMENT POLICIES AND REGULATIONS USED BY DCRB AND THE DISTRICT



Continuation of MEMORANDUM OF OBSERVATION

Component	Issue/Differences	Relevant Citations
		<ul style="list-style-type: none"> • 27 DCMR § 1005.2
Citywide Clean Hands	DCRB does not require proposed contractors to submit a Citywide Clean Hands certification.	<ul style="list-style-type: none"> • D.C. Code § 47-2862
Terminating Contracts	Both OCP and DCRB regulations allow termination for various reasons, but only OCP lists “Fails or refuses to go forward with the work in accordance with the directions of the contracting officer” and “Expresses through word or conduct an intention not to complete the work in a timely manner” as reasons for termination by default.	<ul style="list-style-type: none"> • DCRB Procurement Manual § 20.15 • 27 DCMR § 3700.2
	OCP regulations provide greater detail about this subject than DCRB policies and regulations (<i>i.e.</i> , determining which party would be responsible for payment in the event of a Termination for Default; determining whether to issue a written notification to the contractor; and requiring the contracting officer to prepare a memorandum for the contract file explaining why a contract was terminated for default).	<ul style="list-style-type: none"> • DCRB Procurement Manual § 20.15 • 27 DCMR § 3710- 3713
	DCRB policies does not contain any details about “Excusable Failure to Perform and Other Non-Termination Actions.	<ul style="list-style-type: none"> • 27 DCMR § 3714.1
	OCP regulations include more general information about this subject than DCRB. For example, OCP regulations require the notification of Termination for Convenience to include greater details than DCRB. OCP regulations also require the contractor to submit settlement proposals and governs settlement negotiations.	<ul style="list-style-type: none"> • DCRB Procurement Manual § 20.16 • 27 DCMR § 3702.2 • 27 DCMR § 3703- 3706
	OCP regulates the termination of subcontracts whereas DCRB’s policies and regulations are silent on this subject.	<ul style="list-style-type: none"> • 27 DCMR § 3707
Dispute Claims	OCP has different regulations for disputes arising from the District and for disputes arising from contractors. DCRB policies and regulations are silent on claims made by the District.	<ul style="list-style-type: none"> • 27 DCMR §§ 3802- 3803 • D.C. Code § 2-359.06 • D.C. Code § 2-359.08

APPENDIX E. SUMMARY OF RECOMMENDATIONS FROM EXTERNAL AUDIT REPORT (Oct. 2018)

The following is a summary of recommendations taken directly from the “Information Technology (“IT”) and Information Security (“IS”) Processes Audit” DCRB received in October 2018.⁶⁷ We do not intend this summary to be a full account of all recommendations made by the contractor but a condensed version of only those recommendations related to DCRB’s procurement processes, organized by topic.

Policy and Guidance

1. Using DC’s Procurement Guidance as the baseline, finalize DCRB specific rules, regulations, and guidance that govern DCRB’s procurement activities.
2. Develop DCRB’s internal procurement guidance in alignment with the governing guidance and socialize for buy-in and approval by Leadership.
3. Ensure the DCRB Procurement Manual/ Guidance aligns with the approved rules and the organization’s size, mission, etc.
4. Disseminate DRAFT procurement rules to DCRB stakeholders to get buy-in and validate the rules are comprehensive and realistic for the organization’s environment.
5. Finalize procurement rules and gain approval from DCRB’s Executive Leadership and Trustees.
6. Publish DCRB Procurement Rules across the organization, training all staff with procurement interactions on the procurement rules.
7. Define, document, and disseminate standard processes to eliminate program offices from implementing “workarounds.”
8. Define a process for resolving unique situations that may not be completely covered by the new guidance, to ensure contract actions are properly vetted through DCRB Executive Leadership, Legal Department, and stakeholder program offices.
9. Document unique situations and incorporate these into the organization’s guidance documentation.
10. DCRB should mandate that all contracts or agreements must be submitted to Office of General Counsel (OGC) for review and approval as to form and legal sufficiency when required by Agency policies, guidance, and procedures.

Process and Procedures

11. In the near term, develop a comprehensive current-state acquisition process map that takes into account the variety of procurement strategies, clearly articulates each step in the process with assigned roles, key decision points and timelines built in. This includes process maps for all acquisition activities (both pre-award and post-award) such as:
 - a. Define and document the Full DCRB Acquisition Lifecycle (requirements definition through award)

⁶⁷ NGEN, LLC conducted an audit of DCRB’s information technology and information security network.

APPENDIX E. SUMMARY OF RECOMMENDATIONS FROM EXTERNAL AUDIT REPORT (Oct. 2018)

- b. Emergency Procurement Process that supports an accelerated acquisition action, but still follows sound and logical practices
 - c. GSA Schedule process
 - d. Full and open competition process
 - e. P-Card usage and required approvals
 - f. P-Card reconciliation
 - g. Contractor Management and Evaluation
 - h. Option Year Planning and Execution to eliminate continued missed award dates
 - i. Source Selection (SSEB)
 - j. Approvals needed to initiate a package, pre-package release, pre-award, Option Exercise, etc.
 - k. Invoice payment review and payment process
 - l. Modification process
12. Plan for regular monitoring of program effectiveness, with built-in mechanisms that support continuous process improvement into the future.
13. Document and communicate any activities (and their typical timelines) that may add to process steps and time to an acquisition schedule, such as development of a business case, Board reviews /approvals of acquisition packages, etc.
14. When planning acquisitions, it is important to understand the time it takes to process them.

DCRB acquisition stakeholders must work together to establish realistic milestone schedules (referred to as Procurement Action Lead Time (PALT)) for all actions and tailor them to fit the individual requirement. These schedules are an important accounting of the individual milestone events for actions to ensure timely awards.

- 15. The acquisition stakeholders (Budget Office, Contracting Officer, Contracting Officer's Representative, etc.) also face a great deal of rework when PALT milestones are missed.
- 16. Any stakeholder involved in drafting documents for the specific acquisition has to process extensions, bridges, and modifications. Missing milestones can lead to additional unnecessary documentation.

Tools and Templates

- 17. Design templates that align with the specific procurement (one size does not fit all).
- 18. Ensure SOW templates align with DCRB's typical procurement types and develop clear and easy to understand instructions.
- 19. Other templates to consider include:
 - a. Cost Estimate Template with instructions
 - b. Market Research Template with instructions
 - c. Contractor Evaluation with instructions
 - d. Acquisition Status Report (from Procurement)

APPENDIX E. SUMMARY OF RECOMMENDATIONS FROM EXTERNAL AUDIT REPORT (Oct. 2018)

- e. Acquisition Status Report (from the Program Office)
 - f. Business Case Template
 - g. Acquisition Plan Template
 - h. DCRB Acquisition Schedule Tool
20. The state of DCRB's procurement environment may not yet be enhanced by the introduction of automation but would benefit from automation after a more solid set of rules, policies, and processes have been established.
21. DCRB should not consider implementing automated tools or systems until their manual processes and procedures have been finalized and standardized. Introducing automation before the organization has solidified its basic operational practices will not help to resolve existing challenges, but will most likely introduce a new set of challenges that DCRB has not yet encountered within its existing environment.

Contract Formation

22. Make the Contract Self-Contained and Complete. If there are provisions in the RFP or the proposal of the successful firm that are important contractual terms, scope of work descriptions, performance expectations, or scheduling issues, take the time to extract these relevant items from the RFP and proposal, and directly include them in the appropriate location in the actual contract. Make sure the language DCRB develops is contractual so that the firm that is contracted with can be held accountable for the work.
23. Templates for standard contract language and clauses should be developed to prevent the need to draft new contractual language for every acquisition.
24. Organize contract requirements into specific sub-tasks that emphasize the outcomes DCRB seeks to achieve through the award and execution of each contract.
25. Use clear and consistent language. Many of the contracts reviewed were not consistent with the terms "will" and "shall" and included ambiguous language such as, "DCRB desires to install three systems by the end of the first quarter of FY15 ... ". The term "desires" creates confusion as to whether the Contractor must perform the work as part of the contract or not. Consider using more clear requirements, such as: "The Contractor shall install and document the three systems and their configurations."
26. Develop robust and tailored evaluation criteria to include in the RFP. The evaluation criteria used to assess proposals should reflect the areas of greatest importance to DCRB in its selection decision. Through the evaluation factors, DCRB is able to assess the similarities and differences and strengths and weaknesses of competing proposals and, ultimately, use that assessment in making a sound source selection decision. A well-integrated evaluation scheme provides consistency, discipline, and rationality to the source selection process. Many of the evaluation factors included in the contracts reviewed were the same across contracts and appeared generic rather than tailored to the requirements.

APPENDIX E. SUMMARY OF RECOMMENDATIONS FROM EXTERNAL AUDIT REPORT (Oct. 2018)

Contract Deliverables

27. Include a more comprehensive list of deliverables with service contracts. Matching invoices and the quality and timeliness of deliverables will help DCRB manage Contractor performance. One potential point of reference is to search FedBizOpps for contracts of similar scope and see what deliverables are included.
28. Create a standard list of deliverables that should be included in all service contracts and a separate list of deliverables to include in all product contracts.

Contract Duplication

29. Conduct cross-functional acquisition planning to ensure DCRB is not duplicating an existing contract and that they are getting the best value establishing or renewing contracts for commonly used goods and services, such as software support.
30. Prepare “business cases” to ensure identified needs are reviewed and approved at the appropriate levels to eliminate unnecessary spending and to identify the impact, benefit, and return of investment. Utilizing business case and acquisition planning will allow acquisitions to be presented and approved for action before time and energy are wasted developing a package that will only be disapproved when presented for release.
31. Create a matrix with all the current DCRB contracts with a description of their scope for staff to cross-reference before pursuing a new contract.

Contract Performance Accountability

32. Maximize the use of performance-based contracting methods. The use of performance-based contracting methods can help to ensure DCRB is receiving high-quality products and services that conform to the requirements in the contract. This includes incorporation of a Quality Assurance Surveillance Plan (QASP) with services contracts. DCRB can develop the QASP or have Offerors include a QASP with their proposal.
33. Develop positive and negative incentives tied to performance measures to hold the Contractor accountable for contract performance.
34. Select the most technically proficient staff to define the correct metrics for the contract and the performance of the contract.
35. Ensure appropriate expertise is in place for post-award contract administration to monitor and manage performance (have the right team in place).

Staffing

36. Directly assess the current state of the Procurement Office staff’s knowledge, skills, and abilities to determine if DCRB has sufficient expertise.
37. Design training program to develop staff skills and ensure the Procurement Office has sufficient staff to support DCRB’s acquisition needs and fully support the role of trusted advisor and partner to the Program Offices.

APPENDIX E. SUMMARY OF RECOMMENDATIONS FROM EXTERNAL AUDIT REPORT (Oct. 2018)

38. Design and deploy COR training, with recurring refresher training.

Communication

39. Increase the transparency in the acquisition process by providing regular updates to the Procurement Office and DCRB management on the status of active procurements.
40. Increase collaboration among Procurement Office staff, Program Offices, Legal, and DCRB Management to increase effectiveness and ensure that the SOW and other contract documents reflect the most accurate information from the appropriate SMEs.
41. Institute quarterly or mid-year contractor/contract performance reviews with the Procurement Office, Program Office, and other stakeholders.
42. Ensure that the Program Office SMEs have final approval for all SOW content. Procurement Office staff can manipulate the format of acquisition documents but should not change the content of SOWs or other procurement documents without agreement from the Program Office SME.

APPENDIX F. SUMMARY OF RECOMMENDATIONS FROM STRATEGIC PLANNING REPORT (March 2019)

The following is a summary of recommendations taken directly from a “Strategic Planning Report” DCRB received in March 2019. We do not intend this summary to be a full account of all recommendations made by the contractor but a condensed version of only those recommendations related to DCRB’s procurement processes, organized by topic.

Improve the DCRB Procurement Process

Background:	Targets / Goals (cont'd)
<p>Some DCRB contract issues are a result of challenges with the processes, procedures, and practices that have existed within DCRB’s Procurement Department.</p> <p>DCRB’s staff are unclear on what procurement policies govern acquisition activities. DCRB contracts utilize the winning vendor’s proposal as the primary contract document and thereby lack important contract clauses that would provide contractual protection of DCRB’s interests.</p> <p>DCRB expends excessive time, energy, and effort in executing procurement actions due to a lack of clarity and consistency in processes and limited understanding of required actions.</p>	<p>Define, document, and disseminate standard processes to eliminate program offices from implementing “workarounds.”</p> <p>Define a process for resolving unique situations that are not completely covered by the new guidance. Ensure actions are properly vetted through DCRB Executive Leadership, Legal Department, and stakeholder program offices.</p> <p>Utilize a Procurement Acquisition System that connects with the Financial Management System.</p>
Current Conditions:	Implementation Plan:
<p>Currently there are no staff assigned to the Procurement Department. DCRB plans to utilize the District’s Office of Contracts & Procurement (OCP) to manage its procurement operations for FY’19-’20. There are no metrics that can be used or relied upon at this time.</p>	<p>The steps envisioned for executing this initiative are as follows:</p> <ol style="list-style-type: none"> 1. Select DCRB team members to coordinate with the District’s OCP. 2. Define prior procurement process and interface with FMS. Assess how the new procurement interface with FMS should occur. 3. Establish clear expectations and metrics for OCP 4. Ensure DCRB staff are properly trained for their roles within the OCP/DCRB process. 5. Assess of progress
Targets / Goals	Analysis
<p>Clarify roles and responsibilities with DCRB procurement operations and their customers.</p> <p>Use the District’s Procurement Guidance as the baseline, and amend DCRB rules and procurement manual as appropriate.</p> <p>Train all DCRB staff with procurement interactions on the procurement rules.</p>	<p>TBD upon implementation</p>
	Follow Up
	<p>TBD upon implementation</p>

APPENDIX F. SUMMARY OF RECOMMENDATIONS FROM STRATEGIC PLANNING REPORT (March 2019)

Organizational Re-Design Analysis

Background:	Implementation Plan:
<p>DCRB's overall organizational structure has undergone few changes over the past decade or so. In this context, the organization's current structure does reflect the functional/operational needs of the agency, and also is designed to meet the needs of its constituents. However, as the agency evolves, it becomes increasingly important to ensure that DCRB is designed for optimal efficiency and effectiveness.</p>	<p>The steps envisioned for executing this initiative include:</p> <ol style="list-style-type: none"> 1. Solicit leadership's input on DCRB's current organizational design. 2. Secure agreement on common expectations for external expertise. 3. Develop an RFP based on the aforementioned. 4. Solicit and engage an external consultant to help identify an optimal organizational structure for DCRB—for current and future needs. 5. Identify at least three organizational models (with pros and cons), which DCRB can review, assess, and potentially migrate to. Options may include the current structure or a combination of other designs. 6. Select / customize model that is best fit for DCRB. 7. Identify staffing ratio benchmarks against which DCRB can begin staffing plans (whether hiring, redeployment, or other actions). 8. Develop transition plan from current structure to proposed new structure.
Current Conditions:	
<p>The current organizational, ideally, should be assessed in the context of other organizations of similar size (in staff, membership, and plan-assets), and similar objectives, functions, and obligations. Part of the current "level of performance" might be described in terms of internal and external ratios; for example:</p> <ul style="list-style-type: none"> - Number of Benefits staff to number of members; - Number of Investments staff to total fund size; and - Number of operational staff (Finance, HR, etc.) to total staff. <p>And part of "performance" might be assessed in terms of reporting relationships; for example:</p> <ul style="list-style-type: none"> - How many maximum reporting levels are necessary? - Which roles require only "direct reports" vs. those requiring multiple levels? - Are current reporting relationships optimal for DCRB's needs? <p>The challenge in this approach is that, as DCRB understands it, there may be no "true" peer organizations against which to compare.</p>	
Targets / Goals	Analysis
<p>TBD upon implementation, though improvements in member experience and employee engagement would be expected as a result of successful implementation.</p>	<ul style="list-style-type: none"> - TBD upon implementation
	Follow Up
	<ul style="list-style-type: none"> - TBD upon implementation

APPENDIX F. SUMMARY OF RECOMMENDATIONS FROM STRATEGIC PLANNING REPORT (March 2019)

Establish Consistent Spending Protocols (Administration)

Background:	Implementation Plan:
<p>It is essential to plan and properly manage DCRB's spending and financial performance.</p> <p>This initiative suggests action-points to help DCRB manage its spending more effectively and ensure the plans are practical.</p>	<p>The main aim of DCRB's spending plan is to set out the strategy, action plan, and priorities --by project or by department-- for spending Plan resources. This should include a clear financial picture of where DCRB stands, and where spending is anticipated, during the fiscal year. The annual spending plan should include the following tasks:</p>
Current Conditions:	<ol style="list-style-type: none"> 1. Develop an outline of changes that we want to make as part of this strategic plan. 2. Identify potential changes to our members, our partners and our stakeholders. 3. Outline our objectives and goals for the year. 4. State our key performance indicators need to be developed. 5. Leverage existing District/external resources and services. 6. Identify any issues or problems that need to be rectified. 7. Identify any operational changes within the agency that need to be addressed (including fiduciary audit). 8. Monitor our financial performance and forecasts. 9. Detail capital expenditures that need to be made. 10. Hire an internal auditor. 11. Review inventory, procurement, other operational spending. <p>The DCRB budget is set annually. However, the spending plan is how that budget is spent. Managers need to plan on an ongoing basis. This will allow DCRB to act quickly where necessary, rather than simply reacting to events after the fact.</p>
Current Conditions:	
<p>DCRB has an administrative budget that seems adequate for current projects and programs. DCRB has underspent in some areas, due to pausing some projects and initiatives. Also, there have been several constraints that affected the ability to spend, to develop RFPs, and to implement spending plans.</p>	
Targets / Goals	Analysis
<ul style="list-style-type: none"> - Review DCRB's current spending against last year/current year targets (spending target for FY 2019 ≤ \$43.5 million). - Review opportunities and threats to stay on track with spending. - Analyze projects, by department and expense category, during the previous year. - Look at key objectives for the coming year and revise, change direction, and re-visit short-term and longer-term planning; - Identify and refine the resource implications and limitations when planning to spend during the course of the year; and - Conclude the plan. - Review the plan regularly—for example, on a quarterly basis—by monitoring performance, reviewing progress and determining if objectives have been achieved. 	<p>- TBD upon implementation</p>
	Follow Up
	<p>- TBD upon implementation</p>

APPENDIX G. DCRB RESPONSE TO THE DRAFT REPORT

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May 22, 2020

Via Electronic Mail

Mr. Daniel W. Lucas
Inspector General
District of Columbia Office of the Inspector General
717 14th Street, NW, 5th Floor,
Washington, DC 20005

Dear Inspector General Lucas:

The District of Columbia Retirement Board (“DCRB”) would like to thank you, as well as Assistant Inspector General Edward Farley and his team, for your evaluation of DCRB’s procurement processes and contracting vulnerabilities, which were outlined in the Office of the Inspector General’s (“OIG”) draft report, *District of Columbia Retirement Board: Evaluation of Procurement Processes and Selected Contracts* (“OIG Report & Recommendations”). We welcome this opportunity to respond to the OIG Report & Recommendations.

DCRB is firmly committed to identifying and mitigating any and all internal-control vulnerabilities that could result in corruption, fraud, mismanagement, waste, or abuse—or the appearance of the same. While the primary purpose of this letter is to respond to the OIG Report & Recommendations, it is vital to understand the history and accomplishments of DCRB and, in certain instances, how governmental restraints prevent DCRB from recruiting and retaining the talent necessary to achieve all its goals.

DCRB is a Fully Funded, Award Winning Pension Board

DCRB was created by Congress in 1979 as an independent agency of the District of Columbia Government. Our mission is to serve the interests of the District’s Police Officers, Firefighters, Teachers and their Survivors and Beneficiaries by prudently investing fund assets and delivering accurate and timely benefit payments with excellent member service. The Board of Trustees serve in an oversight capacity, with specific responsibility to provide guidance in setting policy, and serve collectively as fiduciaries of the assets of the District of Columbia Teachers’ Retirement Fund and the District of Columbia Police Officers and Fire Fighters’ Retirement Fund (additional information about DCRB may be found at dcrb.dc.gov).

Trustee members do not manage the day-to-day operations of DCRB. Rather, the Trustees hire an Executive Director, who leads DCRB administration and staff in the execution of DCRB’s operational duties and responsibilities. Both DCRB and its Trustees take seriously the ongoing commitment to meet the retirement needs of its members and are proud of the Fund’s status. As reported to District Council in DCRB’s 2020 Performance Testimony:

The Actuarial Valuation Report for Fiscal Year (FY) 2019 indicates that the aggregate funded ratio for the District Plans was 105.5 percent... For some perspective, The National Conference on Public Employee Retirement Systems—the largest trade association for public sector pension funds—recently reported that the average funded level was 71.7 percent....”

APPENDIX G. DCRB RESPONSE TO THE DRAFT REPORT

DCRB also is proud of its supporting role in the District's financial health. The Office of the Chief Financial Officer (OCFO) recently indicated that, since July 2018, the Fund's status also has been recognized as a key factor in the District's annual attainment of the highest quality credit rating of AAA.

Our core values are firmly rooted in accountability, collaboration, respect, responsiveness, trustworthiness, and excellent customer service. We are accountable for our decisions, and take responsibility for the associated results. We collaborate to achieve the best results, and strive to maintain a culture of respect and courtesy towards our staff and members alike. We understand the time-sensitive nature of our work, and seek to earn the trust of our members by making prudent investment decisions, acting with integrity, and being the best source of benefits information. And, like any public facing organization, we are focused on enhancing the customer experience through attentiveness to the needs of members, and by exceeding their expectations.

In many ways, our work is showing results. The agency has earned numerous industry awards over the years, including the Government Finance Officers Association of the United States and Canada (GFOA) *Certificate of Achievement for Excellence in Financial Reporting, from 2009-through 2018. (GFOA has not yet published its awards for 2019 submissions).*

Opportunities to Improve DCRB's Procurement Process

Despite its accomplishments, DCRB fully recognizes and would agree with the OIG that there are opportunities to improve its procurement process and address any related operational issues. In the targeted responses below, DCRB clarifies erroneous assertions in the OIG Report & Recommendation, identifies progress it has made both during and after the OIG's investigation, proposes alternative solutions where appropriate, and offers targeted completion dates.

1) In cooperation with the Board, assess personnel needs, prioritize which vacancies in senior-level leadership must be filled and create a plan of action to fill the vacancies.

a) Agree.

Since 2018, certain members of DCRB mid-level management have served in an interim capacity in the absence of senior-level leadership. DCRB's Human Resources Department is expending a significant portion of its time and resources, including the use of an executive search firm, to locate qualified, full-time and permanent candidates for each of the current senior-level leadership vacancies within the agency. DCRB anticipates having all current senior-level vacancies, as of the date of this response, filled on or before the end of the calendar year. In some instances, however, the agency anticipates it could encounter difficulty in recruiting and/or retaining senior-level talent, given the District's current pay maximums, and its residency requirements.

b) Prior to the completion of the OIG's investigation and report, the following positions were filled at DCRB: Controller; IT Director; IT Specialist; and Director of Risk and Investment Compliance. Finally, through its MOU with the District's Office of Contracts and Procurement ("OCP"), DCRB also has been assigned a full-time Contract Specialist, who is focused solely on administering DCRB's procurements.

c) Based in part on the 2018 IT audit findings, DCRB's IT Department determined it would be unnecessary to backfill the vacated position of IT Projects Coordinator and Budget Manager. Funds allocated for administrative expenses such as payroll that are not expended for the designated purpose are returned to the corpus of the fund and ultimately inures to the benefit of the plan members.

APPENDIX G. DCRB RESPONSE TO THE DRAFT REPORT

d) There is no vacancy for a legal assistant, as DCRB's Legal & Compliance Department has not requested nor has any budget been allocated for a legal assistant.

2) Create a Chief Operations Officer role to assume the Executive Director's current operational duties, to include oversight of the DCRB Procurement Department.

Agree.

Over the past several months, DCRB has had several internal discussions regarding a COO and is working with an executive search firm to conduct a national search slated to begin in June 2020. Again, we are anticipating challenges around compensation, benefits, and to some extent, residency requirements, given the cost of living in the District of Columbia. We will endeavor to identify and hire a COO before the end of the calendar year.

3) Revise DCRB's MOU with OCP to specify principal duties, a reporting chain, and contracting authorities.

Agree.

Prior to receipt of the OIG's Report & Recommendations, DCRB and OCP were in the process of modifying memorandum of understanding for procurement-related services and personnel ("MOU") for fiscal year 2021. DCRB and OCP will use this opportunity to clearly delineate, within the MOU, each party's roles and responsibilities, reporting structure, and governing contracting authorities.

Currently, DCRB's primary procurement functions are performed by a Contract Specialist assigned to DCRB but managed by OCP. DCRB's MOU with OCP states that its purpose is to *"support procurement reform and provide procurement expertise for the District of Columbia Retirement Board."* In this context, OCP maintains managerial oversight of the Contract Specialist, while DCRB accesses and leverages OCP's systems, processes, and expertise.

DCRB anticipates negotiating and executing a revised MOU with OCP for fiscal year 2021, on or before the end of this fiscal year. Looking ahead, DCRB will assess its projected, longer-term procurement needs, and will determine the best approach for meeting those needs. This may result in a determination to hire experienced staff to bring procurement services back "in-house."

4) Implement annual training for Board Members to familiarize them with procurement rules and processes.

a) Agree.

At the July 2019 DCRB, Board of Trustees Operations Committee Meeting, OCP's Chief Contracting Officer and DCRB's General Counsel presented an overview of DCRB's new procurement operations to Trustees. Further, OCP's Senior Contract Specialist also attended Board committee meetings, upon request, to present on specific procurement matters and answer other general and procurement-specific questions posed by Trustees.

b) DCRB will continue to coordinate with OCP to make training available, at least annually, to Trustees, and at least quarterly to all DCRB personnel, on procurement best practices for District and Federal government entities. DCRB will request that an annual procurement training calendar be incorporated into its MOU with OCP, along with an annual report to the Board's Audit Committee on procurement activities for the fiscal year. DCRB anticipates negotiating and executing a revised MOU with OCP for fiscal year 2021, on or before the end of this fiscal year. DCRB will coordinate training for Trustees and staff, based on OCP's availability and recommended subject matter.

APPENDIX G. DCRB RESPONSE TO THE DRAFT REPORT

5) Promulgate a regulation subjecting DCRB to the PPRA and OCP's regulations in Title 27 DCMR while maintaining independence from OCP's authority.

DCRB's Legal & Compliance Department Presented Substantive Changes to the Procurement Regulations in 2017

On September 28, 2017—before the start of the OIG's investigation—DCRB's Legal & Compliance Department presented its recommended substantive changes to DCRB's procurement regulations ("Draft Regulations") to the Board for approval. These changes were tantamount to a complete overhaul of DCRB's procurement regulations to more closely align with Title 27 of the District's Municipal Regulations, which were used as a template.

An excerpt from the September 28, 2017 Board meeting minutes states that the recommended revisions to the Draft Regulations were to: "[(1)] prepare for the release of the Pension Information Management System RFP; [(2)] to provide the District's Contract Appeals Board with jurisdiction to adjudicate appeals of contract disputes; [(3)] to align DCRB's Procurement Rules more closely with those of the District; and [(4)] to increase transparency of DCRB's Procurement Rules for reference by vendors/contractors. These changes will facilitate standardized procurement training, support the use of standard contract terms and conditions, and streamline recordkeeping and processes to simplify audits. To avoid any confusion, the Rules clarify that DCRB retains contracting authority that is independent from the District's procurement provisions and general oversight."

As noted, the Draft Regulations were one component of an overarching initiative focused on procurement reform, which included updating DCRB's procurement regulations and accompanying procurement manual, policies and procedures; establishing an MOU with OCP for procurement onsite support, guidance and training; establishing an impartial dispute resolution process, under which an MOU with the District's Contract Appeals Board was a primary option; and exploring alternatives to replace DCRB's current purchasing system with a full-service acquisition system that would track a procurement action—from requisition to contract-award, and through to contract-closeout.

The Board Approved the Draft Regulations and Leadership Began Executing on Implementation

After receiving unanimous Board approval of the Draft Regulations, DCRB's Legal & Compliance Department continued through the first half of 2018 to meet regularly with key Procurement stakeholders. The primary objective of these meetings was to solicit input for refining the contents of the Draft Regulations for publication, and to identify key provisions with procedural requirements for Procurement personnel to further develop in DCRB's internal operations procurement manual. DCRB wanted to ensure that the Draft Regulations could be effectively implemented immediately after codification.

During this time, subject matter experts from the Information Technology (IT), Procurement, and Legal & Compliance Departments also were deeply engaged in finalizing a request for proposal for a multi-million-dollar Pension Information Management System ("PIMS RFP"). DCRB applied the procurement concepts outlined in the Draft Regulations to structure the PIMS RFP requirements, deliverables, and contract administration. DCRB's Legal & Compliance Department engaged the services of the Commercial Procurement Division of the District's Office of the Attorney General to ensure that DCRB was properly structuring the PIMS RFP and accompanying contract clauses. DCRB found that the application of the Draft Regulations to the PIMS RFP process required a greater amount of time and specificity than previously allotted to the effort.

APPENDIX G. DCRB RESPONSE TO THE DRAFT REPORT

Transitions in Staff Complicated Implementation Leading to Engagement with OCP

At that point, as noted in the *OIG Report & Recommendations*, DCRB began experiencing a significant turnover in key personnel in both the Procurement and IT Departments. This, ultimately, resulted in the

suspension of the release of the PIMS RFP while DCRB conducted an audit of its IT Department (“IT Audit”). From May 2018 to October 2018, DCRB’s Legal & Compliance Department oversaw the conduct of the IT Audit, which, as referenced in the *OIG Report & Recommendations*, included an audit of DCRB’s IT-related procurements. By September 2018, DCRB had also lost two senior managers in the IT Department, as well as all full-time and contractual employees in its Procurement Department.

In October 2018, DCRB’s Legal & Compliance Department reached out to OCP for procurement support and personnel. OCP management and DCRB’s Legal & Compliance Department met extensively through the end of 2018 and into early-2019 to structure a relationship that adequately reflected the needs and resources of both parties. In March 2019, DCRB’s Executive Director executed DCRB’s current MOU with OCP and, once an OCP Senior Contract Specialist was detailed to DCRB, met with the specialist to outline the expectations for the Procurement Department. DCRB’s Legal & Compliance Department continued to work closely with OCP to support the Senior Contract Specialist in her transition, and was slated to reactivate the finalization and publication of the Draft Regulations in early 2020. Unfortunately, due to a rotation in the OCP Contract Specialist detailed to DCRB and the unforeseen impact of COVID-19, focus on the Draft Regulations has been delayed.

Draft Regulation Will be Subject to Codification and Systems Integration Achieved

Upon further refinement with OCP, DCRB executive leadership, and Trustees, DCRB will publish the Draft Regulations in the District of Columbia Register for the requisite public comment period on or before June 1, 2021. The draft and final published regulations will outline the impartial dispute-resolution process agreed upon for DCRB procurements, and will serve as the foundation for the accompanying procurement manual. DCRB anticipates negotiating and executing a revised MOU with OCP for fiscal year 2021, on or before end of this fiscal year. DCRB will continue to work with OCP, the District’s Office of the Chief Technology Officer (“OCTO”), and the District’s Office of the Chief Financial Officer (“OCFO”) on the integration of the PASS system (subject to expenditure-approval by the Board), on or before end of fiscal year 2021 (or, in lieu of integration, procure and implement an alternative acquisition system comparable to PASS).

6) Review and revise the Procurement Manual to better align it with the PPRA and OCP’s regulations in Title 27 DCMR.

Please see our response above to Recommendation #5. Please note the Procurement Manual was intended to serve as an internal standard operating procedural document; as such, it was drafted by the previous DCRB Procurement personnel. DCRB’s Legal & Compliance Department provided advice, as necessary, on the Procurement use, reliance, and application of the DCRB Procurement Manual to DCRB procurements.

7) Create a procurement-specific action plan that aggregates and prioritizes recommendations from the consultants’ reviews, identifies which recommendations DCRB will implement, and establishes a timetable for implementing each.

DCRB continues to implement the recommendations from the IT and Procurement external audits performed in FY 2018 to ensure that the agency’s IT footprint is consistent with the needs of the Agency. DCRB continues to reduce the complexity in the IT footprint and has transitioned its critical systems to OCTO’s data center. As part of this transition, DCRB’s hardware and software footprint has been thoroughly

APPENDIX G. DCRB RESPONSE TO THE DRAFT REPORT

analyzed, and unused hardware/software has been decommissioned. Following prudent contract procedures, DCRB has worked with the Procurement Officer to terminate several contracts related to the data center and data communication lines. These activities were completed before the data center's contract expiration on March 31, 2020.

Over the past year, the agency has taken a comprehensive approach to control IT costs and streamline IT procurements. As mentioned previously, in May 2019, all DCRB acquisition stakeholders (including staff and leadership) participated in mandatory two-day Contract Administrator training that covered various

topics, including contracts, responsibilities of the Contract Administrator, and the Contracting Officer authority. A more recent Procurement meeting in November 2019 discussed the vendor process workflow.

In anticipation of the aforementioned migration to OCTO's data center, all non-essential IT services and product renewals were placed on hold in the FY2019-FY2020 timeframe. The 23 items included in the IT Acquisition Planning list (which also listed current renewal status, and final expiration dates), have been prioritized to move forward with only nine (9) critical initiatives; the other 14 items were placed on hold. With the new IT Director hired in November 2019, DCRB has further reviewed the IT contracts and renewals over the past three years, and has developed a comprehensive, current-state acquisition process map. Several contracts related to the data center have been converted to monthly terms at the time of renewal, to avoid *Early Termination* fees on contract termination. In leveraging the partnership with OCTO for IT services, and with Treasury for jointly developing the self-service applications, DCRB has eliminated several IT contracts and contract staff positions.

DCRB agrees to develop a comprehensive action plan, following the recommendations from the two audits mentioned in this report. Working with assigned staff from OCP, DCRB will implement the recommendations, in both the short term as well as the long term.

- a) Policy and Guidance—DCRB will update the DCRB Procurement Manual with current DCMR rules and as amended by DCRB. DCRB will publish the revised manual and arrange with OCP for the training of all relevant staff on DCRB procurement rules.
- b) Tools and Templates—DCRB agrees that automation and the use of standard templates is key to simplifying and streamlining the acquisition process.
- c) Contract Formation—DCRB will review the District's Standard Contract Provisions and amend, as appropriate and necessary, to make compatible with DCRB's unique procurement acquisitions.
- d) Contract Deliverables—Deliverables are established on a case-by-case basis, as part of the SOW/Requirements-development process.
- e) Contract Duplication—With guidance and support from the OCP Contract Specialist, DCRB has begun to review its IT contracts and the renewals for commonly used goods and services. To get the best value for these services, DCRB is considering contracts with base-and multiple option periods.
- f) Contract Performance Accountability—DCRB will coordinate with the Contract Specialist to implement In-Progress Reviews (IPRs) on a quarterly basis. This process includes a review of contract performance, schedules, and costs.
- g) Staff Training—DCRB, in coordination with OCP, will further review and update its COR training process (the most recent training was offered in May 2019). The agency will provide refresher training to staff, at least twice yearly.

APPENDIX G. DCRB RESPONSE TO THE DRAFT REPORT

- h) Communication—The Contract Specialist position presently reports to the Executive Director and briefs the Executive Leadership Team on DCRB procurement activities. DCRB will coordinate with Procurement to conduct these meetings on at least a monthly basis, and with business operations and Finance functions on at least a bi-weekly basis (to determine procurement priorities and requisition status).

8) Present the action plan to the Board’s Audit Committee for review, approval and monitoring.

Agree.

Once the initial action plan is completed, it will be presented to the Board’s Audit Committee for review and feedback. Based on the feedback, the plan then will be finalized and DCRB’s goal is to have an initial action plan ready for presentation by end of calendar year 2020.

9) Revise the Procurement Manual to require the public posting of all available procurement information.

Agree.

As noted in our response above to Recommendation #5, the finalization and adoption of the Draft Regulations will serve as the foundation for DCRB’s accompanying procurement manual. The Draft Regulations will require public posting of certain procurement actions to DCRB and/or OCP’s website within a specified timeframe.

In the interim, OCP posts— and has confirmed that it will continue to post— certain DCRB procurement actions on its website in accordance with OCP’s standard policies and procedures. DCRB is further exploring whether a link or additional information can be included on DCRB’s own website directing interested parties to OCP for procurement information.

10) Document, implement and publicize a bid/contract protest procedure.

Agree. Please see our response above to Recommendation #5.

11) Improve DCRB’s capability to track spending on active contracts against budget and contract ceilings, to include automated notifications to both the Procurement and Finance Departments if a requisition will approach or exceed the authorized value of the contract.

Agree.

Since June 2019, DCRB, OCP, OCTO, OCFO have taken steps to integrate DCRB’s current financial management system with the District’s PASS system. The completion of this complex integration would afford DCRB even greater access to the controls already built into PASS.

12) Create a mechanism whereby the Procurement Department, Finance Department, and the Contract Officer’s Representative assigned to a contract are automatically informed of key events, such as payments to contractors and approaching contract option deadlines.

Agree.

Please see our response above to Recommendation #11 regarding efforts to begin physically integrating DCRB’s financial management system with PASS.

APPENDIX G. DCRB RESPONSE TO THE DRAFT REPORT

13) Update DCRB's Procurement Manual to include all new processes and related duties and responsibilities of those involved in the contract administration process.

Agree.

Please see our response above to Recommendation #5 regarding efforts to finalize and adopt the Draft Regulations on or before June 1, 2021.

14) Develop a policy forbidding the use of lack of advance planning as justification for a solicitation conducted on a sole source basis.

Agree.

Please see our response above to Recommendation #5 regarding efforts to finalize and adopt the Draft Regulations on or before June 1, 2021, which include provisions governing the use and permissibility of sole source solicitations.

15) Implement a review and approval process for sole source justifications that is independent of the Procurement Department and DCRB entity that will benefit from the procurement.

Agree. Please see our response above to Recommendation #14.

16) Adopt a policy requiring contracts be re-competed if the type of contract being negotiated is changed after bids have been received.

Agree.

Please see our response above to Recommendation #5 regarding efforts to finalize and adopt the Draft Regulations on or before June 1, 2021 and update the accompanying procurement manual in accordance therewith.

17) Provide quarterly reminders to employees regarding their duty to report potential conflicts of interest.

Agree.

As noted in the *OIG Report & Recommendations*, DCRB hosted multiple onsite Code of Conduct trainings in the past year, including annual sessions tailored for Trustees, senior- and mid-level management, and all other personnel, including onsite contractors. Further, in February 2018, DCRB's Legal & Compliance Department commissioned a DCRB Whistleblower Protections & Complaints section on DCRB's website, to inform DCRB personnel and stakeholders of their rights and responsibilities under the District's whistleblower statute, as well as allow for the anonymous submission of whistleblower complaints to DCRB's Legal & Compliance Department and the OIG.

DCRB's Legal & Compliance Department will continue to coordinate with the District's Board of Ethics and Government Accountability ("BEGA") to provide Code of Conduct and other ethics-related training, at least annually, to all Trustees and staff. In addition, the department will ensure that quarterly email reminders are sent to all DCRB personnel, covering a variety of ethics topics, including conflicts of interest. Currently, the department sends reminders to staff at various intervals throughout the year and coordinates the requisite filings of financial disclosure statements with BEGA.

APPENDIX G. DCRB RESPONSE TO THE DRAFT REPORT

18) Pursuant to 7 DCMR § 1602.5, designate an Ethics Officer to provide DCRB employees with guidance on ethical matters.

a) DCRB's General Counsel serves as the Agency's Ethics Officer, and has served in this capacity since September 2008.

b) On September 13, 2018, DCRB's General Counsel sent an email to the former BEGA General Counsel Legal & Compliance Department, along with a written report detailing facts related to a former employee and an on-site DCRB vendor. A copy may be forwarded to the OIG upon your request.

c) With regard to the former senior-level employee, please note that the contract of the onsite DCRB vendor had been suspended, with the last vendor-payment made in September 2017, and vendor work ending by that time. This means that vendor work had concluded approximately six months prior to the employee's resignation (in April 2018). Moreover, DCRB's General Counsel informed the former employee of the BEGA post-employment restrictions, which was acknowledged prior to the employee's resignation. On July 19, 2018, DCRB was informed of the former employee's arrangement with the then DCRB vendor. On August 22, 2018, DCRB did not exercise the option to extend its contract with the vendor. DCRB did not—and would not—have allowed a former employee to work on the vendor contract. However, this matter, in hindsight, should have been reported to BEGA.

Conclusion

In responding to the feedback provided by OIG, DCRB is confident in its ability to implement the aforementioned action steps, correct the identified vulnerabilities, and significantly mitigate the potential risks of corruption, fraud, mismanagement, waste, or abuse in the agency's procurement processes.

Respectfully,

Sheila Morgan-Johnson
Executive Director

Digitally signed by
Sheila Morgan-Johnson
Date: 2020.05.22
21:47:01 -0400

cc: DCRB Board of Trustees