

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Executive Office of Mayor Muriel Bowser



Office of the City Administrator

**MEMORANDUM**

**TO:** Rashad M. Young, City Administrator

**THROUGH:** Nelsie Birch, Strategic Officer / Interim Director of Agency Operations, Office of the City Administrator

**FROM:** George A. Schutter, Chief Procurement Officer, Office of Contracting and Procurement

**DATE:** July 24, 2015

**SUBJECT:** Procurement Accountability Review Board After-Action Report

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On June 15, 2015, Mayor Muriel Bowser signed Mayor's Order 2015-165 establishing the Procurement Accountability Review Board (PARB). With the goal of improving the quality, efficiency, and integrity of the District's contracting and procurement process, the PARB meets quarterly to examine problematic procurement issues. The purpose of this memorandum is to provide a report of the matters presented to the Board at its inaugural meeting, proposed findings and conclusions, proposed recommendations, and action items with associated timelines.

**I. PARB MEETING OVERVIEW**

On June 16, 2015, the PARB convened its inaugural meeting with a particular focus on contracts requiring retroactive Council approval. The PARB's examination of these contract actions is critical to improving the integrity and accountability of the District's procurement process. Toward that end, the PARB examined 21 retroactive contracts for the period ranging from January 1, 2015 to June 15, 2015. These contracts ranged in value from \$1.2 million to \$338 million, and originated from nine different District agencies.

**Table 1** summarizes the dollar value of each agency's retroactive contracts, the number of retroactive contracts by agency, a description of the root cause of each retroactive contract, and the current status of the retroactive contract.

**Table 2** provides a background of the retroactive contract and remedial actions taken to address the root causes of each retroactive contract.



**Table 1: OCP Contracts Requiring Retroactive Council Approval**

Agency	Value	# of Retro Actions	Description	Root Cause and Current Status
DDOT	\$5,042,071.68	1	Bicycle Sharing Services	<b>Root Cause(s):</b> Poor Planning and Coordination, and Extenuating Circumstances. <b>Current Status:</b> Will be submitted for Council approval in September 2015.
DHCF	\$1,051,495,429.77	10	Nursing / Home Health Agencies/ Managed Care Organizations	<b>Root Cause:</b> Poor Planning and Coordination. <b>Current Status:</b> All contracts were approved by Council at the 6/30 Legislative Meeting.
DCRA	\$ 5,519,052.00	1	Professional Licensing	<b>Root Cause:</b> Poor Planning and Coordination. <b>Current Status:</b> The contract was submitted to Council for retroactive approval but did not make the 7/14 Legislative agenda.
FEMS	\$6,345,889.45	1	Ambulance Billing	<b>Root Cause:</b> Poor Planning and Coordination <b>Current Status:</b> Approved by Council at the 6/30 Legislative Meeting.
OCTO	NTE \$106M	2	IT Staff Augmentation; DC Net Man Based Telephony	<b>Root Cause(s):</b> Programming Change in Requirements and Extenuating Circumstances. <b>Current Status:</b> DC Net approved by Council at 4/14 Legislative Meeting.  ITSA extension approved by Council at the 6/30 Legislative Meeting.
DHS	NTE \$51.5	1	DC Access System (Affordable Healthcare)	<b>Root Cause:</b> Amendment to Law Governing Services and Extenuating Circumstances. <b>Current Status:</b> Approved by Council at the 6/2 Legislative Meeting.
DOC	\$5,900,145.00	1	Inmate Medical Services	<b>Root Causes:</b> Extenuating Circumstances. <b>Current Status:</b> Approved by Council at the 5/5 Legislative Meeting.



DPW	\$3,174,921.21	2	Road Salt; Vehicle Preventative Maintenance	<p><b>Root Cause:</b> Extenuating Circumstances.</p> <p><b>Current Status:</b> Vehicle Maintenance approved by Council at the 4/14 Legislative Meeting.</p> <p>Road Salt approved by DC Council at the 5/5 Legislative Meeting.</p>
DGS	\$2,081,037.00	2	Snow Removal	<p><b>Root Cause:</b> Poor Planning and Coordination.</p> <p><b>Current Status:</b> Both retroactive contracts were approved and passed by Council at 6/2/2015.</p>

**Table 2: Rationale and Remedial Action**

Agency	Description	Agency Rationale	Remedial Action
DDOT	Bicycle Sharing Services	During initial outreach to the vendor, the CO discovered that Alta Bicycle Share changed its name to Motivate, Inc. The name change required legal review by the attorneys for DDOT and the vendor. While the review process was ongoing, the contracting officer exercised a partial option period to avoid an interruption in service.	<p>OCP is actively recruiting for a senior contracting officer to manage DDOT's procurement team.</p> <p>In the interim, two experienced contracting officers from OCP's Special Projects team were assigned to DDOT to support the agency's procurement workload.</p>
DHCF	Nursing	<p>The services in the original contract were originally anticipated to be awarded for less than one million dollars and, therefore, did not require Council approval.</p> <p>Unanticipated needs for the services caused the contract to surpass the one million dollar threshold.</p>	<p>The contracting officer was relieved of his duties via administrative action due to the large number of contracts requiring retroactive Council approval. Additional counseling on agency policies and procedures pertaining to contracts requiring retroactive Council approval was provided to the remaining staff. OCP is actively recruiting for an experienced contracting officer to lead the team.</p> <p>OCP is also assessing the workload and the resources assigned to DHCF to determine what additional support is needed.</p>



DHCF	Home Health Agencies	In 2014, the Federal Bureau of Investigation (FBI) and the United States Attorney investigated widespread health care fraud in District's Medicaid Program. The investigation and subsequent suspension of Medicaid payments to several home health care agencies accused of Medicaid fraud forced the closure of several large home health agencies that were providing Personal Care Assistance (PCA) services to District Medicaid beneficiaries.	The contracting officer was relieved of his duties via administrative action due to the large number of contracts requiring retroactive Council approval. Additional counseling on agency policies and procedures pertaining to contracts requiring retroactive Council approval was provided to the remaining staff. OCP is actively recruiting for an experienced contracting officer to lead the team.  OCP is also assessing the workload and the resources assigned to DHCF to determine what additional support is needed.
DHCF	Managed Care Organizations	The funding of the contract modification was delayed due to budgetary constraints. The services covered by the contract are critical to the public and service could not be interrupted.	The contracting officer was relieved of his duties via administrative action due to the large number of contracts requiring retroactive Council approval. Additional counseling on agency policies and procedures pertaining to contracts requiring retroactive Council approval was provided to the remaining staff. OCP is actively recruiting for an experienced contracting officer to lead the team.  OCP is also assessing the workload and the resources assigned to DHCF to determine what additional support is needed.
DCRA	Professional Licensing	OCP and the Office of the Attorney General (OAG) determined in May 2012 that the option year in the existing contract could not be exercised because the payment process and funding of the contract were anti-deficient.	The contracting officer was counseled regarding the policies and procedures associated with retroactive contracts.  The solicitation for the long-term contract was issued on 7/2 and will close on 7/24.
FEMS	Ambulance Billing	The sole source was necessary for continuation of services after OCP and the Office of the Attorney General (OAG) determined in May 2012 that the option year in the existing contract could not be exercised because the payment process and funding of the contract were anti-deficient.	The contracting officer was counseled regarding the policies and procedures associated with retroactive contracts.  A further extension (non-retro) will be awarded to cover service during the new solicitation period.



OCTO	IT Staff Augmentation	At the request of the program, OCP delayed the award of the new ITSA contract to allow Chief Technology Officer to review the ITSA program. To avoid an interruption in services, the CO extended the existing contract through September 30.	An integrated procurement team was established for acquisition planning for IT services going forward.
OCTO	DC Net Man Based Telephony	Vendor was non-compliant with tax requirements at the time the option year was due to be exercised.	An integrated procurement team was established for acquisition planning for IT services going forward.
DHS	DC Access System (Affordable Healthcare)	During the responsibility check for IPS, the contract specialist received a non-compliance letter from the Office of Tax and Revenue (OTR) stating that IPS was not in compliance with the tax filing and payment requirements of the District. The District revised its requirement and methodology to comply with minor changes mandated by the Center for Medicare and Medicaid Services (CMS).	No remedial action was taken because the issues that led to retroactive Council approval were due to vendor-related issues.
DOC	Inmate Medical Services	OCP issued a three-month extension for the inmate medical services provided by Unity Healthcare for the Department of Corrections (DOC) after Council voted against the proposed new contract award to Corizon, Inc.  This extension was deemed approved June 29 <sup>th</sup> .	OCP and DOC completed negotiations for a one-year sole source contract with two option years that includes the pricing that Unity proposed in the competitive procurement, the mental health step down facility, and inmate transition data.  This contract was deemed approved July 12 <sup>th</sup> .
DPW	Road Salt	This is a cooperative contract that is awarded by Montgomery County on the District's behalf. According to Council rules, the contract would automatically require retroactive Council approval.	No remedial action was taken because the issues that led to retroactive Council approval were due to extenuating circumstances.



DPW	Vehicle Preventative Maintenance	The vendor was tax compliant upon the initial award in 2014. The contracting officer exercised a partial option while the vendor addressed its tax compliance issues with the District. Once the vendor's tax compliance issues were resolved, the CO exercised the remainder of the option year to avoid an interruption in critical services while the contract received legal sufficiency and Council approval.	No remedial action was taken because the issues that led to retroactive Council approval were due to extenuating circumstances.
DGS	Snow Removal	Higher than estimated snowfalls increased the need for snow removal services.	No remedial action was taken because the issues that led to the contracts requiring retroactive Council approval were beyond the control of the CO.

The PARB, in consultation with respective agency directors, reviewed each contract requiring retroactive approval to ascertain the facts surrounding the retroactive contract, determine the root cause(s), and discuss policy options to reduce and eventually eliminate future retroactive contracts.

## II. FINDINGS & CONCLUSIONS

Upon initial examination of each retroactive contract, the Office of Contracting and Procurement (OCP) identified four root causes that resulted in retroactive contracts: (1) planning and coordination, (2) change in requirements, (3) extenuating circumstances, and (4) change in the law. OCP concluded that 74 percent of retroactive contracts were primarily attributed to issues involving planning and coordination; only 16 percent of retroactive contracts could be attributed to extenuating circumstances; while, changes in the law and changes in requirements each accounted for 5 percent of retroactive contracts.

Accordingly, the PARB undertook a closer examination of issues involving planning and coordination as this primary root cause was determined to have caused, or directly contributed to, the overwhelming majority of retroactive contracts. The Board, with valuable assistance from agency directors and contracting officers, identified several secondary root causes falling under the category of planning and coordination issues. These secondary root causes are listed in **Table 3** below.

**Table 3: Secondary Root Causes**

<ul style="list-style-type: none"> <li>• Failure to timely escalate and resolve issues</li> <li>• Failure to define requirements adequately</li> <li>• Lack of timely response</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of purposeful collaboration between integrated procurement team</li> <li>• Inadequate workload visibility, tracking, and management reporting</li> <li>• Changes in staff</li> </ul>
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### III. PROPOSED RECOMMENDATIONS & ACTION ITEMS

Based on the discussion at the inaugural PARB meeting, the following proposed recommendations, including both legislative and non-legislative, are outlined below.

#### OCP's Recommendations to Improve Planning and Coordination

1. To improve the lack of coordination between program teams, agencies recommended streamlining the “clean hands” certification process through collaborative efforts with the Department of Employment Services (DOES) and the Office of Tax and Revenue (OTR). (process TBD by Sept 2015) (non-legislative)
2. Change the focus of the Council’s “clean hands” review requirement from holding up the ability to award a contract or exercise an option if a vendor is not current in District taxes, to a procedure allowing the award or option exercise to proceed and withholding payment under the contract to offset the tax liability. (This may also require a corresponding change in the clean hands law.) (legislative)
3. OCP recommends creating a management dashboard that tracks the status of contracts and contracting requirements (including incremental clearances and approvals) for large (*i.e.*, greater than \$1 million) and mission critical procurements. This is aimed at remedying the lack of timely responses, failure to define requirements adequately, and to facilitate the escalation of issues. (non-legislative)
  - Develop an intermediate reporting solution for management and escalation of contracting challenges based on systems and data currently available. (Aug 31<sup>st</sup>, 2015)
  - Interview directors, program managers, and contracting officers on management dashboard data needed to track, take management action, and appropriately escalate challenges in large and mission critical procurements and contracting actions. (Aug 31<sup>st</sup>, 2015)
  - Develop automated management dashboard for visibility and management of large and critical contracts. (Dec 31<sup>st</sup>, 2015)
  - Develop a separate procurement process for emergency contracts so they are specifically tracked. (Dec 31<sup>st</sup>, 2015)
4. To ensure visibility of all contracting and procurement action workload requirements and the ability to continuously manage resource needs against that workload, OCP recommends developing a workload management report for agency directors and procurement managers detailing workload and portfolio mix (by agency and by procurement official) that integrates deadlines of major procurement actions. (non-legislative)
  - Develop an intermediate reporting solution for management and escalation of contracting challenges based on systems and data currently available. (Aug 31<sup>st</sup>, 2015)
  - Develop automated management dashboard for visibility and management of large and critical contracts. (Dec 31<sup>st</sup>, 2015)



5. Agencies recommended developing guidance for agency directors and program managers around adequate timeframe to make determinations on issuing solicitations and executing contract options under the District's current contracting and procurement processes to help ensure timelines are being met. (non-legislative)
  - OCP to develop a recommendation for changes to expedite the exercising of the option year process. (Oct 31<sup>st</sup>, 2015)
  - Establish a processing cycle baseline generated from executed mid-FY14 through mid-FY15 contracts (via RFP and IFB procurements) to understand District performance under the current contracting and procurement processes. (Dec 31<sup>st</sup>, 2015)
  
6. To improve the efficiency of the contracting and procurement processes without impeding transparency or oversight, the following recommendations by agencies involve amending the Procurement Practices Reform Act of 2010, in the FY16 legislative calendar, to include the following:
  - A. Modify the Council's review requirements so that an emergency contract over \$1 million can be entered into immediately, with subsequent, timely submission of the contract for Council 10-day passive review.
  - B. If the options were a part of the contract initially awarded and approved by the Council, eliminate the need for additional Council approval to exercise option years over \$1 million.
  - C. Eliminate the "tipping action" procedure that requires Council approval at a legislative session. Add a new provision that modifications to a contract which did not previously require Council approval and which increase the contract to an amount in excess of \$1 million during a 12-month period, shall be considered under the 10-day passive review.
  - D. Clarify that the 10-day passive Council review is appropriate for cumulative partial option exercises in which the first partial option exercise does not exceed \$1 million in a 12-month period and the remaining partial option exercise results in the total option period exceeding \$1 million.

### **Recommendations to Improve Extenuating Circumstances**

1. For cooperative agreements in which another jurisdiction awards a contract that includes the District requirements, add a provision that submission of the task or delivery order, or the purchase order, may be submitted to the Council for 10-day passive review even if subsequent to the award of the contract by the other jurisdiction. (legislative)



If you have any additional questions, or would like further briefing from staff on this matter, please do not hesitate to contact me.

cc: Kevin Donahue, Deputy City Administrator

