


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




Office of the City Administrator

**M E M O R A N D U M**

**TO:** Mayor Muriel Bowser

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

**FROM:** George A. Schutter III, Chief Procurement Officer 

**DATE:** January 26, 2018

**RE:** Procurement Accountability Review Board After-Action Report No. 8

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The purpose of this memorandum is to provide an After-Action Report following the eighth meeting of the Procurement Accountability Review Board (PARB) on December 13, 2017. Under Section VII of Mayor's Order 2015-165, the following matters are required to be referred to the PARB for its consideration: (1) contracts requiring retroactive approval by the Council of the District of Columbia, (2) noteworthy decisions by the Contract Appeals Board, (3) audit findings, and (4) other procurement matters specifically referred to the Board.

No audit findings or decision of the Contract Appeals Board adverse to the District required consideration by the Board. Accordingly, the PARB's December 13 agenda consisted of the following two items: (1) a Department of Health Care Finance (DHCF) contract modification that required retroactive Council approval; and (2) a discussion of the Department of Small and Local Business Development's (DSLBD) certified business enterprise (CBE) waiver process. Each issue is discussed in more detail below.

**I. DHCF RETROACTIVE CONTRACT ACTION – CONDUENT STATE HEALTHCARE, LLC**

The first item the PARB reviewed concerned the need for retroactive Council approval of a modification to exercise Option Year Two of DHCF's contract with Conduent State Healthcare, LLC ("Conduent"), No. CW26966. Conduent currently provides services to enhance and implement a federally-owned and certifiable Medicaid Management Information System (MMIS). This system supports the traditional fee-for-services delivery model for the District's Medicaid enrollees and is essential to ensure timely payment to health care providers treating a wide portfolio of medical needs.

Conduent was initially awarded a multi-year contract to provide these services for the period from September 10, 2007 through September 9, 2014 in the amount of \$111,255,534.00. Upon

the base period's expiration, the District executed a sole source contract with Conduent that extended services through September 30, 2016, and permitted the District to exercise two one-year option periods.

After Conduent failed to meet its 25 percent subcontracting requirement during Option Year One, DSLBD, Conduent, and OCP negotiated a lower 13.5 percent subcontracting requirement for Option Year Two (Oct. 1, 2017 through Sept 3, 2018). To ensure a continuity of MMIS services, on September 28, 2017, OCP exercised a partial option for the period from October 1, 2017 through October 18, 2017 in the amount of \$981,031.63. The remainder of Option Year Two was prepared for submission to Council as a tipping action. Retroactive Council approval became necessary as no legislative session of the Council was scheduled for October 17, 2017. Council retroactively approved Option Year Two in its entirety on November 7, 2017 (D.C. Act A22-177; 24 D.C. Reg. 12,286).

OCP noted that the length of the negotiations between OCP, DSLBD, and Conduent was atypically long which precipitated the delay in exercising the full Option Year Two. Moreover, the size of the contract and the applicable burn rate resulted in a very short timeframe to obtain Council approval prior to crossing the \$1 million spend threshold. The Office of the Attorney General opined that there was no available means by which the District could maintain the continuity of MMIS services while adhering to all applicable laws and regulations. That is, the contracting officer was in a position of having to choose which law to violate.

The PARB's root cause analysis identified two factors that led to the need to obtain retroactive Council approval of the Conduent MMIS contract. First, the nature and complexity of the CBE waiver negotiations delayed the exercise of Option Year Two beyond date of the last legislative session of the Council prior to exceeding the \$1 million spend limit. Second, MMIS legacy contract, which began in 2007, did not contain a subcontracting waiver requirement for the first 7 years of performance. As such, the existing MMIS contract had to incorporate new CBE requirements during the period of performance rather than at the time of contract formation.

## **II. DSLBD CERTIFIED BUSINESS ENTERPRISE WAIVER PROCESS**

The second agenda item considered by the Board was a topical discussion of the CBE waiver process as administered by DSLBD. The Mayor opened the discussion by noting that CBEs are the foundation upon which the District's economic health rests, and reaffirmed her longstanding commitment to creating an environment where District-based businesses can thrive. Reiterating her administration's goal to have the maximum CBE participation in District procurements, the Mayor noted that the discussion of the CBE waiver process was in furtherance of that end.

OCP, with data provided by DSLBD, presented a breakdown of CBE waiver applications occurring in FY17. DSLBD received 226 waiver applications in FY17 with a cumulative value of \$2.25 billion.<sup>1</sup> Of those, 174 (77 percent) were approved in the total amount of \$1.8 billion. Health services accounted for 72 percent of CBE waivers (\$1,331,429,440 in FY17, followed by

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<sup>1</sup> Under District law, only the Director of DSLBD is authorized to grant waivers to CBE subcontracting requirements. *See* D.C. Official Code § 2-218.51(a).

human services, which received 14 percent of CBE waivers (\$246,007,110). No other industry accounted for more than 4 percent of the total value of waivers.

The Board next turned to discussing various strategies to increase CBE participation in District contracts, both at the time of the initial contract award and prior to the exercise of each option period, as well as any obstacles to realizing maximum CBE participation. Using the Conduent MMIS contract as an example, it was noted that waivers for contract option periods can present a challenge for the District. Currently, each option exercise requires the submission and review of a new waiver application. A proposed change to a contractor's CBE subcontracting requirement during the period of performance could, however, result in delays in exercising the option or otherwise unfairly alter the prime contractor's cost structure.

Several possibilities for increasing CBE participation and improving the CBE waiver process were discussed, including:

- The possibility of tiered CBE requirements in which the contract would establish yearly increases in CBE subcontracting requirements;
- Having industry-specific CBE requirements;
- Requiring greater program agency leadership in subcontracting negotiations;
- Conducting more nuanced and detailed market research to ascertain the CBE capacity for any given industry;
- Requiring DSLBD to notify OCP of new capable CBEs that have entered the market during the period of contract performance;
- Having DSLBD review acquisition plans which include option years;
- Having the DSLBD compliance officer review contractors' subcontracting compliance and to report findings on a *quarterly* basis to the contracting officer, who would then issue a notice to cure with the vendor; and
- Levying fines in the event that a contractor fails to comply with subcontracting requirements.

The meeting concluded with the Board ordering the following action items:

- (1) The Directors of OCP and DSLBD shall convene and discuss the waiver process with the aim of increasing CBE participation and administrative efficiency;
- (2) OCP is to provide DSLBD its data analysis for further examination;
- (3) Ascertain whether other health and human care CBE-waived contracts could provide opportunities for CBEs and whether contract opportunities from OCP list of major such contracts are included in DSLBD "Green Book"; and
- (4) DSLBD is to begin issuing a fiscal year report on CBE waivers.