

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



Office of the City Administrator

MEMORANDUM

TO: Mayor Muriel Bowser

THROUGH: Rashad M. Young, City Administrator

FROM: George A. Schutter, Chief Procurement Officer

DATE: August 1, 2016

SUBJECT: Procurement Accountability Review Board After-Action Report #5

The purpose of this memorandum is to provide an After-Action Report following the July 11, 2016 meeting of the Procurement Accountability Review Board (PARB). The July 11 meeting was the fifth convening of the PARB. Under Section VII of Mayor's Order 2015-165, the PARB is charged with examining four general issue areas: (1) contracts that required retroactive approval by the Council; (2) noteworthy decisions by the Contract Appeals Board; (3) audit findings; and (4) other matters specifically referred to the Board.

No audit findings or Contract Appeals Board decisions were identified as appropriate for the Board's consideration. Accordingly, the PARB's July 11 agenda consisted of: (1) District Department of Transportation (DDOT) retroactive contract actions; (2) modifications to an option year of an Office of the State Superintendent of Education (OSSE) contract; and (3) updates on the current status of procurement reform legislation pending before the Council of the District of Columbia. Each of these issues is discussed in detail below.

I. DDOT RETROACTIVE CONTRACT ACTIONS

The first agenda item considered by the PARB was two DDOT contracts that required retroactive approval by Council—alley restoration and repair by Capitol Paving of DC, Inc. ("Capitol Paving") and Capital Bikeshare advertising by Outfront Media, Inc. ("Outfront Media"). The Board examined these contracts individually as is discussed in the following sections.

A. Alley Restoration and Repair

The District contracted with Capitol Paving for city-wide alley restoration and repair, as well as for the District's "AlleyPalooza" campaigns. The current contract is now in Option Year Two, which has a period of performance from July 22, 2015 through July 21, 2016 and a value of \$5,270,770. Option Year Two was approved by the Council on June 23, 2015. DDOT's Streets and Bridges Team determined that an increase to the contract ceiling of \$1.6 million was necessary to respond to the alley restoration needs across the District. However, during the Office of Contracting and Procurement's (OCP) review of the Council package for that modification, it was discovered that retroactive Council approval was necessary for two related reasons. First, two prior modifications had already raised the contract ceiling above the Council-authorized spending limit. Second, relying on the unauthorized contract ceiling, purchase orders were issued that brought the total expended under the contract over the threshold authorized by the Council. This contract was added to the Council's legislative meeting agenda and approved on June 28, 2016 to avoid an interruption in services until Option Year 3 began on July 22, 2016.

The monitoring of contract expenditures and contract modifications against the contract's ceiling was the root cause of this retroactive contract action. Additionally, DDOT noted that the administration of contracts for construction services and those utilizing federal funding are labor-intensive in nature. As a result, DDOT and OCP have implemented or are implementing the following corrective actions:

- (1) OCP created a centralized database for tracking DDOT contract ceilings and spend amounts;
- (2) All contract modifications over \$500,000 now require review and approval by the DDOT Chief Contracting Officer;
- (3) OCP is undertaking an internal review of all active DDOT contracts and modifications over \$500,000 to ensure compliance with applicable laws and regulations;
- (4) OCP is requiring more detail in DDOT contract modification packages including: (a) submitting previously-approved purchase orders with the draft modification, and (b) maintaining contract spend versus contract ceiling data in the contract file;
- (5) Acquisition planning that is currently underway for FY17 is being based on historical program expenditures and budgetary restrictions; and
- (6) Employees are being provided with additional professional development and supervision.

One key observation made—and one made with the OSSE contract modification discussed in Section II—is that there is an inconsistent understanding of the relationship between contract funding and contract ceiling across District agencies. Accordingly, OCP and the Office of the Chief Financial Officer will be working to develop joint guidance for all agencies so the District has uniform contracting practices in this area.

B. Capital Bikeshare Advertising

The second DDOT contract requiring retroactive Council approval is a multiyear contract for Capital Bikeshare advertising with Outfront Media (formerly known as Van Wagner Communications). The Capital Bikeshare advertising contract is a revenue-generating contract enabling the program to self-fund. After receiving legal sufficiency from the Office of the Attorney General (OAG), a letter contract was issued, the definitized contract of which would be for a period of five years. However, the executed

letter contract required several extensions as Outfront Media's corporate structure changed, thus requiring novations. The proposed definitized contract was submitted to the Council, after receiving legal sufficiency from OAG for a second time for consideration at its June 28, 2016 legislative meeting as a multiyear package with the appropriate legislation.

On Monday, June 27, 2016, the Council informed OCP that its interpretation of the relevant law required the contract to be submitted as a retroactive contract action rather than for approval as a multiyear contract. Upon further review, OAG accepted the application of the law to this particular situation. This contract was accordingly withdrawn to allow time to revise the legislation. The Board noted that this is a novel and infrequent situation. However, in the rare situation where a letter contract is anticipated to exceed one year, it will be henceforth processed as a multiyear contract.

II. OSSE CONTRACT MODIFICATIONS

The second item considered by the PARB's agenda was a series of contract modifications of OSSE's contract with Precision Truck Repair, Inc. ("Precision"), which is for the repair and maintenance of District school buses. In June 2015, OSSE exercised Option Year One of the contract. At that time it was estimated that \$900,000 would be a sufficient amount to cover the full option year and the contract ceiling was set accordingly. Precision is one of five vendors currently contracting with OSSE for school bus repair and maintenance.

In December 2015, due to capacity challenges of the other vendors, OSSE determined the \$900,000 ceiling on the Precision contract would fall short of the amount necessary to cover the entire option year. Consequently, in early February 2016, OCP modified the contract to increase the maximum allowable spend under executive contracting authority to meet OSSE's immediate needs. However, administrative errors necessitated the execution of an additional modification to ensure the Precision contract did not require retroactive Council approval. Learning from experience, OSSE and OCP determined that Option Year Two of the Precision contract, which began on June 1, 2016, should be increased to \$1.3 million. After completing a pre-option period review, Option Year Two was submitted to the Council, which subsequently approved the increase.

The Board ascertained the following root causes that resulted in challenges to this procurement: (1) inadequate estimation of the anticipated spend in OSSE's acquisition plan; (2) administrative errors in contract administration; (3) poor revision of anticipated contract spend; (4) poor interagency coordination; and (5) inconsistent understanding of contract ceiling versus contract funding, as well as the requirements for financial certification. In light of these root causes, the following corrective actions have been, or are being, implemented:

- (1) OSSE program managers received training that emphasized contract funding versus ceiling;
- (2) Acquisition planning for FY17 was jointly coordinated between OSSE and OCP and is more comprehensive;
- (3) Senior OSSE and OCP staff now meet weekly to coordinate procurement issues;
- (4) The Chief Contracting Officer meets with staff biweekly to review and monitor OSSE procurement requirements and milestones;
- (5) The Chief Contracting Officer is counseling the Contracting Officer on contract ceiling and funding.

III. PENDING PROCUREMENT LEGISLATION

The last item the Board reviewed was the current status of the Procurement Integrity, Transparency, and Accountability Amendment Act of 2015, Bill No. B21-334, which is currently pending before the Council. While the Board discussed numerous provisions contained within the legislation, the primary focus centered on the bill's proposed amendment to the Quick Payment Act of 1984, particularly the proposed requirement that a prime contractor may stop work under a change order if the District does not pay invoices within thirty (30) days of their submission. This, in the Board's view, would significantly constrain the District's ability to execute change orders and effectively manage District contracts.

IV. RECOMMENDATIONS

The PARB made the following recommendations and deliverables:

Regarding the DDOT Retroactive Contract Actions:

- A centralized database has been created to track DDOT contract ceilings and spend amounts;
- The Chief Contracting Officer will henceforth review all DDOT contract modifications over \$500,000;
- OCP will complete an internal review of all active DDOT contract modifications over \$500,000 on or about July 15, 2016;
- DDOT contract modification packages will be required to contain additional information including data on contract spend versus contract ceiling;
- FY17 acquisition planning is being based on historical program expenditures and budgetary restrictions;
- Employees are being provided with additional professional development and supervision;
- OPLA will inquire as to when Option Year Three of the Capitol Paving contract will be transmitted to the Mayor's Office;
- DDOT will complete and submit the Council package to raise the Capitol Paving contract ceiling; and
- OCP and OCFO will issue joint guidance on certification of funds, contract ceiling, and contract funding.

Regarding the OSSE Contract Modifications:

- OSSE staff have received training on, inter alia, contract funding versus ceiling;
- OSSE and OCP better coordinated as to FY17 acquisition planning and based future estimates on historical data;
- Senior OSSE and OCP staff will continue to meet weekly to coordinate procurement issues;
- The Chief Contracting Officer will continue to meet with staff biweekly to review and monitor OSSE procurement requirements and milestones; and
- OSSE will look into interim improvement to bus depot facilities including internet access for drivers.

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 / Deputy Mayor for Public Safety, Justice, & Operations