

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, Office of Contracting and Procurement

DATE: October 20, 2015

SUBJECT: Procurement Accountability Review Board After-Action Report

The purpose of this memorandum is to provide an After-Action Report following the October 5, 2015 meeting of the Procurement Accountability Review Board (PARB).

The October 5 meeting was the PARB's second meeting. Under Mayor's Order 2015-165, the PARB is charged with examining four 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. The Office of Contracting and Procurement (OCP) is pleased to report that since the Board's last meeting on June 16, 2015, no District contract required retroactive approval by the Council. OCP can also report that there were no decisions by the Contract Appeals Board or audit findings that warranted the PARB's review since the last meeting of the PARB.

The Board was requested, however, to review three issues significant to the District's procurement process: (1) option year modifications for two contracts between the Department of Human Services (DHS) and The Community Partnership for the Prevention of Homelessness (TCP); (2) an analysis of sole source contract extensions; and (3) updates on key action items identified at the PARB's June 16, 2015 meeting. Each of these issues is discussed in detail below.

I. DHS CONTRACT MODIFICATIONS

The first issue considered by the PARB concerned the modifications of two contracts (both in option year three) between DHS and TCP. The two TCP contracts in question—valued individually at \$85.3 million and \$17 million—account for the vast majority of DHS' continuum of services of care to families and individuals experiencing homelessness in the District, including shelters, transitional housing rental payments, meals, outreach, transportation, and case management.



DHS completed modifications on these two critical contracts to add funds of \$24 million and \$3 million, respectively, to fund services invoiced for July through September 2015. However, these modifications were not completed in time for passive Council review, thereby requiring emergency legislation. In light of the importance of the services these contracts provide to District residents, the matter was referred to the PARB for its consideration.

The PARB identified planning and coordination as the primary root cause that led to the need for emergency legislation. A closer examination of the issues relating to the planning and coordination and of the circumstances surrounding the need for the modifications of the TCP contracts led to the identification of secondary root causes, which are listed in Table 1 below.

Table 1: Secondary Root Causes

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| <ul style="list-style-type: none">• Monitoring of contract spend amounts against the ceiling of certified funds• Coordination of Council package reviewers' responses• Coordination of updated documents of Council packages |
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In light of the root causes identified, the PARB made the following recommendations to avoid the need for emergency legislation for future TCP contract modifications:

- Automate the report tracking contract actions to the Council;
- Refine and communicate the approval process for million dollar contract package development for review from the Office of the Attorney General (OAG) for legal sufficiency, through the Office of the City Administrator (OCA) and the Office of Policy and Legislative Affairs (OPLA), through logging at Council for their review and approval; and
- Continue to focus on acquisition planning by improving coordination between contracting, program, and finance staffs to ensure adequate funds are available at the beginning of the contract, and contract funding ceilings are actively monitored through contract administration.

II. ANALYSIS OF SOLE SOURCE CONTRACTING

Ensuring that procurements are as competitive as possible is a key part of the PARB's mandate to improve the quality, efficiency, and integrity of the District's contracting and procurement process. In its October meeting, the PARB examined sole source contracts—contracts that were not open to competition. Accordingly, the PARB reviewed 199 sole source contracts executed during FY15, which had a total value of \$634,100,254 and originated from 27 District agencies.

The PARB's review of sole source contracts—the first time these contracts were examined across District agencies—provided valuable information and several important conclusions upon which future procurement policy can be based. First, the majority of sole source procurements (74.4 percent) fell into one of the following four categories:

- Where the vendor's specialized expertise makes it the only contractor that can meet an agency's requirements;
- Where a vendor holds a patent, copyright, the rights to a particular program or curriculum, or has exclusive rights to other proprietary technology that meets the District's requirements;



- Where system compatibility requires continued use of a particular vendor; or
- Where a change in or lapse of service would be detrimental to service recipients.

The PARB, however, also identified sole source procurements that were issued to extend a current contract as a result of a delay in the procurement process. Such “stop-gap procurements”, while necessary to continue District operations, may harm competition and indicate an issue with a particular procurement. The Board identified a total of 51 stop-gap procurements (25.6 percent of all sole sources) having a total value of \$281,957,749 (44.5 percent of all sole sources) and originating from 14 different District agencies.

Looking closely at these stop-gap procurements, the Board drew three conclusions. First, there was no indication of a District-wide or systemic problem with the procurement process that caused sole sources to be issued. Second, some stop-gap sole sources do indicate a breakdown in the planning and coordination between programmatic and procurement personnel at the agency level. Third, the overwhelming majority of stop-gaps were the result of procurement-specific problems.

OCP noted that it is now identifying all stop-gap procurements going forward. Moreover, the addition of the management and workload dashboards will assist in the early identification of possible stop-gap procurements with the goal of their total elimination. The Board made additional recommendations, which are listed below in section IV.

III. UPDATES FROM THE JUNE 2015 PARB MEETING

Lastly, the Board heard updates from stakeholders on the recommendations and deliverables from the June 16, 2015 PARB meeting. Each update is summarized below.

A. Large and Critical Contracts Dashboard and Workload Management Dashboard

OCP, in conjunction with the Office of the Chief Technology Officer (OCTO), has been working to create and implement two electronic platforms—the large and critical contracts and workload management dashboards. The large and critical contracts dashboard is used by agency and procurement staff to track the status of contracts over \$1 million and mission critical procurements and allows monitoring of actions for appropriate coordination and issue escalation. The workload management dashboard is the first step in automating the contract workload in the District. It does so by: (1) tracking all live procurement requirements by agency, and individual contracting officer; (2) tracking individual requisitions by days in the system; (3) allowing monitoring of workload and performance by person; and (4) allowing monitoring of cycle time by contract. These two tools will assist in coordination of contract actions with a goal of elimination of both retroactive contract actions and stop-gap procurements. OCTO provided a demonstration of these two systems. Full system implementation is expected by late November.

B. 2016 Acquisition Planning

OCP reported to the Board that it has coordinated with all 76 agencies on 2016 acquisition planning. All agencies with planned procurements for 2016 have submitted an OCP Acquisition Planning Tool. Final planning tools were sent to all agency directors and leadership for final review of 2016 planned procurements listed in the agency plans. OCP is consolidating agency plans for a 2016 summary acquisition plan submission to Council. Acquisition plans will contain summary data as well as the planning tool each agency submitted.



C. Guidance for Procurement Actions

Procurements in the District are defined by complex laws and regulations. However, there is often a lack of clear procedural guidance leading to inconsistent understandings of roles and functions. OCP is therefore undertaking to develop standard operating procedures and process maps to standardize procurement processes across agencies, educate agencies on the procurement process, and increase transparency with the business community. Accordingly, OCP is creating standard operating procedures in three areas: (1) requests for proposals, (2) invitation for bids, and (3) simplified procurements. OCP expects the procedures to be completed for all areas no later than January 2016.

D. Legislative Updates

Lastly, it was reported that the Mayor's legislative priorities were drafted into legislation and introduced in the Council as the Procurement Practices Reform Amendment Act of 2015, Bill No. B21-0397. The legislation proposed the following four key changes to the District's procurement process:

- (1) Council Review of Contracts – Currently, options years valued greater than \$1 million must receive Council approval even though those options were previously reviewed and approved with the base year. Under the bill, the Council would not be required to approve option periods that were approved with the base contract. The bill also allows the Council to approve tipping actions in the same manner as they currently approve \$1 million contracts, rather than require legislation and affirmative action. These changes will streamline the Council review process and will significantly save time resources.
- (2) Procurement Integrity – The bill prevents attempts by outside stakeholders to improperly influence District decision-makers and protects the confidentiality of all information obtained in the procurement process from public disclosure. These changes represent good business practices and are similar to many other jurisdictions' "Good Government Rules".
- (3) Acquisition Plans – The bill changes the date for submitting acquisition plans to 60 days after budget approval rather than March, aligning the acquisition plans with the approved District budget.
- (4) Clean Hands – The bill lastly permits the District to award contracts in cases of *de minimus* delinquent tax obligations, allows contracting officers to access and utilize immediate tax information from the District's Clean Hands database, and require that proposed contractors self-certify compliance with federal tax obligations. These changes will allow flexibility, permit a contract award to the most qualified vendor, reduce the time to prepare a Council package, and more accurately reflect Clean Hands information.

IV. RECOMMENDATIONS

The PARB made the following recommendations and deliverables:

Regarding the TCP Contracts:

- Review and improve the TCP contract funding mechanisms, specific to local and TANF funding so that additional funds do not have to be modified to add funding to the contracts mid-year;



- Provide additional procurement staff as available to address DHS's fluctuating contracting needs, as well as needs at other agencies;
- Review the Council contracts review process, with the goal of reducing the amount of time it takes for any contract package developed from the program agency to the Council for review and approval;
- Ensure continuity of services and that a new TCP contract is in place by October 2016; and
- Ensure the contracts administrator notifies the agency director and contracting officer when the contract service received by line items are getting close to the contract line item funding ceilings.

Regarding Sole Source Extensions:

- Examine whether agencies with the largest number of sole sources could find an alternative way to award these contracts;
- Ensure that acquisition plans include realistic timeframes to prevent the need for stop-gap procurements;
- Going forward, bring agency directors with stop-gap procurements to the PARB to review the root cause of stop-gap actions; and
- Task the Office of Procurement Integrity and Compliance to identify and track stop-gap procurements as part of their ongoing audit process.

Regarding the Large and Critical Contracts Dashboard and Workload Management Dashboard:

- Convene a workgroup of OCP, OCTO, and OCA staff to ensure that the dashboards meet all needs.

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

