



**District of Columbia Agencies' and
Contractors' Compliance with
Subcontracting Requirements Needs
Significant Improvement**

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A Report by the Office of the District of Columbia Auditor
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The Honorable Phil Mendelson, Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 504
Washington, D.C. 20004

Letter Report: District of Columbia Agencies' and Contractors' Compliance with Subcontracting Requirements Needs Significant Improvement

Dear Chairman Mendelson:

The Office of the District of Columbia Auditor (ODCA) examined and assessed District of Columbia government agencies' and contractors' compliance with subcontracting requirements of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005 (the Act), as amended.¹

Background

The Act states that all District of Columbia agencies that execute construction and non-construction contracts in excess of \$250,000 must subcontract at least 35 percent of the dollar volume to Small Business Enterprises (SBEs).² If there are insufficient, qualified SBEs to meet this requirement, then the subcontracting requirement may be satisfied by subcontracting 35 percent of the dollar volume to any Certified Business Enterprise (CBE)³. This includes SBEs, Local Business Enterprises (LBEs), Disadvantaged Business Enterprises (DBEs), Local Business Enterprises with Principle Offices Located in an Enterprise Zone (DZEs), Resident-Owned Businesses (ROBs), Longtime Resident Businesses (LRBs), Local Manufacturing Enterprises (LMEs), and Veteran Owned Businesses (VOBs).⁴

If an agency contracts directly with a SBE, LBE, or DBE for a non-construction contract or a construction contract of less than \$1 million, the subcontracting requirements described above are not applicable. However, if an agency selects a CBE as the prime contractor for a construction contract of more than \$1 million and gives the CBE preference during the evaluation of proposals, the Act requires the CBE to perform at least 35 percent of the contracting effort⁵ and, if the CBE subcontracts, 35 percent must be subcontracted to another CBE⁶. If an agency selects a CBE as the prime contractor for a construction project of \$1 million or less and gives the CBE preference during the evaluation of proposals, the CBE must perform at least 50 percent of the contracting effort.⁷

¹ See D.C. Official Code § 2-218.46.

² See D.C. Official Code § 2-218.46(a)(1) and (2)

³ See D.C. Official Code § 2-218.46(a)(2)(B)

⁴ See D.C. Official Code §§ 2-218.31 – 39.

⁵ See D.C. Official Code § 2-218.46 (b)(1)

⁶ *Ibid.*

⁷ See D.C. Official Code § 2-218.46 (c).

The Act permits the Office of Contracting and Procurement (OCP) to waive the subcontracting requirements specifically for non-construction contracts in excess of \$250,000.⁸ The Act also permits the Director of the Department of Small and Local Business Development (DSLBD) to waive all of the requirements described above if the contracting officer submits a request and a statement with justifications for the waiver.⁹

The Act requires agencies to reject contractor proposals for solicitations that require subcontracting if the proposals do not include CBE subcontracting plans. All CBE subcontracting plans must specify the following:

- The name and address of the subcontractor;
- Whether the subcontractor is currently certified as a CBE;
- The scope of work to be performed by the subcontractor; and
- The price to be paid by the contractor to the subcontractor.¹⁰

The Act does not allow contractors to amend CBE subcontracting plans without the consent of the contracting officer and the Director of DSLBD.¹¹

The Act requires all contractors to provide to the contracting officer and the Director of DSLBD copies of the executed contracts with the subcontracts identified in the subcontracting plan. Effective April 20, 2010 the Act requires each contractor or beneficiary to submit a copy of the contract, which includes the subcontracting plan for utilization of certified business enterprises, within 10 days of its execution to the Office of the District of Columbia Auditor.¹²

Contractors must also provide a quarterly report to DSLBD and the Office of District of Columbia Auditor that includes:

- A list of each subcontractor identified in the CBE subcontracting plan;
- A description of the goods procured or the services provided; and
- The amount the contractor paid and/or expects to pay each subcontractor.¹³

The Act states that agencies may not renew multiyear or extended contracts or execute contract option years that are worth more than \$1 million if the contractor has not complied with the Act's subcontracting requirements.¹⁴

The Act prescribes penalties for willful breach of a CBE subcontracting plan. Contractors are to be fined \$15,000 or 5 percent of the total amount of the work that the contractor was to subcontract to CBEs, whichever is greater, for each breach. Contractors will be presumed to have willfully breached the CBE subcontracting plan when they:

- Fail to submit any required subcontracting plan monitoring or compliance report;
- Submit a monitoring or compliance report containing a false statement; or
- Fail to disclose required information.¹⁵

⁸ See D.C. Official Code § 2-218.46 (a)(2).

⁹ See D.C. Official Code § 2-218.51.

¹⁰ See D.C. Official Code § 2-218.46 (d).

¹¹ See D.C. Official Code § 2-218.46 (e).

¹² See D.C. Official Code §§ 2-218.46 (h) and (i).

¹³ See D.C. Official Code § 2-218.46 (i).

¹⁴ See D.C. Official Code § 2-218.46 (f).

The Act is silent on which agency is responsible for monitoring compliance with the CBE subcontracting plan and which agency is responsible for assessing penalties.

OCP provides contracting services for over 60 agencies and programs in the District. In addition, there are 16 agencies with independent contracting authority.

¹⁵ See D.C. Official Code § 2-218.48.

Objectives, Scope and Methodology

The objectives of this examination were to determine whether:

1. The Office of Contracting and Procurement (OCP), the Department of General Services (DGS), and contractors complied with the subcontracting requirements of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005 (the Act), as amended; and
2. District agencies are monitoring contractors' compliance with subcontracting requirements.

The Office of the District of Columbia Auditor (ODCA) undertook two separate reviews of subcontracting activities. The first review was an examination of DGS' subcontracting activities that covered select contracts for completed modernization projects that were in effect during FY 2008 (October 1, 2007 to September 30, 2008). DGS is the agency responsible for letting a majority of the District government's construction contracts. The facilities selected for our examination included: (1) Deal Middle School, (2) School Without Walls, (3) Wilson Aquatic Center, (4) Phelps High School, (5) Hardy Middle School, and (6) Savoy Elementary School. It should be noted that, during the period of our review (October 1, 2007 to September 30, 2008) the construction contracts were overseen by the Office of Public Education Facilities Modernization (OPEFM)¹⁶.

We reviewed applicable procurement laws, regulations, policies and procedures, and DGS and OPEFM internal policies and procedures. We examined supporting documentation related to the modernization projects including, but not limited to, the following: contractor and sub-contractor payment applications, Certified Business Enterprise (CBE) Compliance Reports, DGS contract files, and records of payments to contractors maintained in the District's System of Accounting and Record (SOAR). We also conducted a survey with sub-contract awardees and interviewed responsible DGS staff, contract, and sub-contract awardees (where necessary). Using this information, we then determined compliance with subcontracting requirements and assessed monitoring processes for the sample construction projects.

ODCA's second review was an examination of OCP's subcontracting activities that focused on all contracts in excess of \$5 million that ended between January 1, 2014 and March 31, 2014. We reviewed copies of available contracts, CBE subcontracting plans, waivers, and contractor invoices provided by OCP. Using this information, we then determined compliance with subcontracting requirements and assessed monitoring processes for the sample contracts.

We also conducted interviews with officials of DGS, DSLBD, and OCP during the week of September 22, 2014. We conducted these interviews to ascertain the agencies' current activities with regard to subcontracting compliance, contractor reporting, and monitoring.

¹⁶ Pursuant to D.C. Law 19-0021, "Fiscal Year 2012 Budget Support Act of 2011", effective October 1, 2011, the District established the DGS. The DGS assumed the functions of the Department of Real Estate Services and OPEFM, along with the construction and property management functions of several other District agencies. The Budget Support Act §1022(b) provides that one of the functions of the Department shall be to: *Manage the capital improvement and construction program for District government facilities, including the modernization or new construction of District facilities by approving and authorizing decisions at every stage of modernization and new construction, including planning, design, procurement, and construction, in accordance with the approved Capital Improvement Plan.*

We did not conduct the examination as an audit as defined by the Government Accountability Office's Government Auditing Standards.

Results of the Auditor's Examination

Overall, District agencies and contractors are not in compliance with subcontracting reporting requirements. Furthermore, agencies are not sufficiently monitoring ongoing contracts to ensure that contractors are following their CBE subcontracting plans.

Department of General Services' Subcontracting Activities

The review of DGS' subcontracting activities focused on six modernization projects. Figure 1 includes information on each of the six contracts in our sample.

Figure 1
DGS Sample Contracts

Facility	Contractor	Total Payments	35% Subcontracting Requirement
Deal Middle School	Heery Construction Company	\$76,358,409	\$26,725,443
Hardy Middle School	Sigal Construction Company	\$19,976,943	\$6,991,930
Savoy Elementary School	Turner Construction Company	\$30,666,604	\$10,733,311
School Without Walls	Turner Construction Company	\$36,845,401	\$12,895,890
Phelps High School	Turner Construction Company	\$67,654,636	\$23,679,122
Wilson Aquatic Center	Sigal Construction Company	\$27,880,302	\$9,758,106
Total		\$259,32,295	\$90,783,803

DGS' payments to each of the six contractors for the life of the contract totaled approximately \$259 million. Therefore, the SBE expenditure goal was approximately \$90 million, 35 percent of the total contract effort.

The six sample contracts were subject to the following subcontracting requirements of the Act, in effect at that time. As noted previously, the Act states that:

- Contractors must subcontract at least 35 percent of the dollar volume of the contract to SBEs or other CBEs if SBEs are not qualified or available;
- Agencies must reject contractor proposals if the proposals do not include CBE subcontracting plans;
- Contractors must submit to the contracting officer and the Director copies of executed contracts with the subcontracts identified in the subcontracting plan. Failure to submit copies of the executed contract shall render the underlying contract voidable by the District.

Figure 2 summarizes the compliance of each prime contractor with the relevant subcontracting requirements.

Figure 2
DGS Contract Compliance with Act’s Subcontracting Requirements

Facility	Contractor	Total Payments	Subcontracted 35% (Based on Self Reporting Documentation Provided by DGS)	CBE Subcontracting Plan	Executed Subcontracts to DGS Contracting Officer
Deal Middle School	Heery Construction	\$76,358,409	Yes	Yes, however plan was inadequate	Yes
Hardy Middle School	Sigal Construction	\$19,976,943	Yes	Yes, however plan was inadequate	Yes
Savoy Elementary School	Turner Construction	\$27,869,215	Yes	Yes, however plan was inadequate	Yes
School Without Walls	Turner Construction	\$34,802,613	Yes	Yes, however plan was inadequate	Yes
Phelps High School	Turner Construction	\$62,512,295	No	Yes	Yes
Wilson Aquatic Center	Sigal Construction	\$26,916,900	Yes	Yes, however plan was inadequate	Yes

The Act requires that subcontracting plans contain the following elements:

- The name and address of the subcontractor;
- Whether the subcontractor is currently certified as CBE business enterprise,
- The scope of work to be performed; and
- The price to be paid to the subcontractor.¹⁷

Each of the contracts for the six sampled projects contained a requirement that the contractor submit a subcontracting plan to DGS for approval. Five of the six contractors did not submit a complete subcontracting plan that contained the required elements. The five contractors submitted a “CBE Utilization Plan” indicating what actions they would attempt in securing the work of CBEs. We found no documentation indicating DGS’s approval of a subcontracting plan for the five contractors.

The Act requires agencies to reject contractor proposals for solicitations that require subcontracting if the proposals do not include CBE subcontracting plans.¹⁸ DGS did not reject any of the contractor proposals lacking a subcontracting plan containing the required elements. Although the five contractors did not fully comply with the requirement to submit a subcontracting plan, they did provide the DGS contracting officer with copies of executed

¹⁷ See D.C. Official Code § 2-218.46 (d).

¹⁸ *Ibid.*

subcontracts. We could not confirm whether contractors provided copies of these executed subcontracts to the Director of DSLBD, as required.

The six contractors reported spending approximately \$97 million with CBEs on the six projects during the duration of the projects. Figure 3 summarizes spending on CBEs, as self-reported by the six contractors.

Figure 3
Contractor CBE Expenditures

Facility	Contractor	35% Requirement (Based on Total Payments to Prime Contractor)	CBE Subcontracting (Based on Self Reporting Documentation Provided by DGS)	% Compliance (Based on Self Reporting Documentation Provided by DGS)
Deal Middle School	Heery Construction	\$26,725,443	\$27,335,674	36%
Hardy Middle School	Sigal Construction	\$6,991,930	\$7,391,468	37%
Savoy Elementary School	Turner Construction	\$10,733,311	\$14,635,340	48%
School Without Walls	Turner Construction	\$12,895,890	\$17,957,574	49%
Phelps High School	Turner Construction	\$23,679,122	\$19,709,516	29%
Wilson Aquatic Center	Sigal Construction	\$9,758,106	\$10,701,851	38%
Total		\$90,783,803	\$97,731,423	

DGS's monitoring of these CBE expenditure reports however was inadequate. The contracts between DGS and the six contractors required the contractor to submit a CBE expenditure report with each monthly application for payment. The contractors complied; however, there was no process on the part of DGS to verify the CBEs reported by the contractors or the amounts paid to the CBEs listed on the contractor's CBE expenditure reports. We reviewed a sample of compliance reports and identified three companies located in Maryland or Pennsylvania who should not have been listed as a CBE but were included on CBE reports. In our sample, the CBE compliance reports were overstated by \$1,595,812.

DGS also required each contractor to submit, with each monthly pay application, a waiver of lien signed by the subcontractor evidencing payment in addition to subcontractor invoices. We reviewed all pay applications for three of the six modernization projects in our sample. DGS paid invoices to the contractors without the required subcontractor waiver of liens. Pay applications, in some cases, also lacked subcontractor invoices. We attempted to match subcontractor invoices to the contractor's monthly pay applications and CBE reports. Without the signed waiver of lien and invoices, we were unable to verify payments to subcontractors listed on the contractor's CBE reports. We identified instances, through a survey with subcontractors listed on CBE reports, in which CBE reports indicated higher payments to subcontractors than those

confirmed by the subcontractor. These differences resulted in a possible overstatement of \$1,726,359 on contractor-submitted CBE reports.

Although the overstatements listed above could have been human error, the lack of a sufficient verification process increases the risk that CBE expenditure reports submitted by contractors may be overstated and go undetected.

As previously stated, the Act is silent on which agency is responsible for monitoring compliance with the CBE subcontracting plan or assessment of applicable penalties. The Act states that a contractor found to have willfully breached a subcontracting plan for utilization of certified business enterprises shall be subject to the imposition of penalties, including monetary fines of \$15,000 or 5 percent of the total amount of the work that the contractor was to subcontract to certified business enterprises, whichever is greater, for each breach.¹⁹ The Act is also silent on any monetary penalties for contractors failing to meet the 35 percent CBE subcontracting requirement.

Based on the cases of over-reporting cited above, substantial penalties totaling \$644,795 could have been applicable. However, because DGS accepted an insufficient subcontracting plan that did not meet the requirements of the Act, they were not able to pursue penalties against the contractor.

Office of Contracting and Procurement's Subcontracting Activities

The review of OCP's subcontracting activities focused on the following 13 contracts that were in excess of \$5 million and ended between January 1, 2014 and March 31, 2014. OCP established eight of the 13 contracts on behalf of other District government agencies. Figure 4 includes information on each of the 13 contracts.

Figure 4
OCP Contract Sample

	Contractor Name	Agency	Contract Description	Award Amount	Base Contract Period
1	Aetna Life Insurance Company	D.C. Department of Human Resources	Employee Health Benefits	\$178,742,862.00	1/2/2013 - 1/1/2014
2	Motorola, Inc.	Office of Unified Communications	Equipment Upgrade	\$59,997,500.79	8/19/2010 - 2/18/2014
3	Lutheran Social Services of the National Capital Area	Child and Family Services Agency	Family Based Foster Care Services-Traditional	\$35,716,548.00	1/1/2014 - 3/1/2014
4	Medical Transportation Management, Inc.	Department of Health Care Finance	Non-Emergency Transportation Services	\$23,747,496.00	3/15/2013 - 3/14/2014

¹⁹ See D.C. Code 2-218.48 (c).

	Contractor Name	Agency	Contract Description	Award Amount	Base Contract Period
5	OST, Inc.	Office of Chief Technology Officer	Information Technology Staff Augmentation Services	\$20,000,000.00	8/19/2013 - 1/18/2014
6	Aramark Correctional Services	Department of Corrections	Food Service Program- Aramark Correctional Services	\$12,657,001.94	3/4/2013 - 3/3/2014
7	Capital Retail Group, LLC.	Office of Contracting and Procurement	IT Equipment and Software	\$10,000,000.00	1/29/2013 - 1/28/2014
8	Banner Staffing, LLC.	Office of Contracting and Procurement	Temporary Support Services	\$10,000,000.00	1/29/2013 - 1/28/2014
9	The Triage Group, LLC.	Office of Contracting and Procurement	Mission Oriented Business Integrated Services (MOBIS)	\$10,000,000.00	3/7/2013 - 3/6/2014
10	ABC Technical Solutions	Office of Contracting and Procurement	IT Equipment and Software	\$9,500,000.00	4/1/2013 - 3/31/2014
11	Standard Insurance Company	D.C. Department of Human Resources	Group Term and Short and Long Term Life Insurance	\$9,039,778.68	1/2/2013 - 1/1/2014
12	American Traffic Solutions, Inc.	Metropolitan Police Department	IT - Automated Traffic Safety Enforcement (ATSE) System	\$6,386,179.64	2/24/2013 - 2/23/2014
13	Dell Computer Corp.	District Wide	Dell VITA Contract	\$5,000,000.00	2/2/2013 - 2/1/2014

The 13 contracts were all non-construction contracts. For each contract in the sample, OCP provided copies of contracts, CBE subcontracting plans, waivers, and contractor invoices, when available.

As noted previously, the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005 (the Act), as amended, permits OCP to waive subcontracting requirements for non-construction contracts in excess of \$250,000.²⁰ The Act also permits the Director of the Department of Small and Local Business Development (DSLBD) to waive all subcontracting requirements if the contracting officer submits a request and a statement with justifications for the waiver.²¹ OCP granted a waiver to one of the 13 contracts and the Director of DSLBD granted a waiver to one of the 13 contracts. These two contracts were fully compliant with the Act and are described in Figure 5.

²⁰ See D.C. Official Code § 2-218.46 (a)(2).

²¹ See D.C. Official Code § 2-218.51.

Figure 5
OCP Contracts with Subcontracting Waivers

	Contractor Name	Agency	Contract Description	Award Amount	Waiver Date and Justification
1	Lutheran Social Services of the National Capital Area	Child and Family Services Agency (CFSA)	Family Based Foster Care Services-Traditional	\$35,716,548.00	1/4/2013 The DSLBD Director found that CFSA made a good faith effort to meet the requirements of D.C. Official Code § 2-218.46.
2	American Traffic Solutions, Inc.	Metropolitan Police Department	IT - Automated Traffic Safety Enforcement (ATSE) System	\$6,386,179.64	2/16/2012 The Chief Procurement Officer approved a waiver for this contract because the contract was a sole source contract with no subcontracting opportunities because the equipment and system needed for the scope of work was proprietary to the contractor.

OCP awarded 5 of the 13 contracts to SBEs, LBEs, and/or DBEs. The five contracts were non-construction contracts and the Act excludes these types of contracts from subcontracting requirements. The five contracts exempt from subcontracting requirements are listed in Figure 6.

Figure 6
OCP Contracts Awarded to SBEs, LBEs, and/or DBEs that are Exempt from Subcontracting Requirements

	Contractor Name	Agency	Contract Description	Award Amount	Contractor's Relevant CBE Type
1	OST, Inc.	Office of Chief Technology Officer	Information Technology Staff Augmentation Services	\$20,000,000.00	LBE
2	Capital Retail Group, LLC.	Office of Contracting and Procurement	IT Equipment and Software	\$10,000,000.00	SBE, LBE, DBE
3	Banner Staffing, LLC.	Office of Contracting and Procurement	Temporary Support Services	\$10,000,000.00	SBE, LBE, DBE
4	The Triage Group, LLC.	Office of Contracting and Procurement	Mission Oriented Business Integrated Services (MOBIS)	\$10,000,000.00	SBE, LBE, DBE
5	ABC Technical Solutions	Office of Contracting and Procurement	IT Equipment and Software	\$9,500,000.00	SBE, LBE, DBE

The remaining seven sample contracts were subject to the subcontracting requirements of the Act. As noted previously, the Act states that:

- Contractors must subcontract at least 35 percent of the dollar volume of the contract to SBEs or other CBEs if SBEs are not qualified or available;
- Agencies must reject contractor proposals if the proposals do not include CBE subcontracting plans;
- Amendments to CBE subcontracting plans must be approved by the contracting officer and the Director of DSLBD;
- Contractors must provide a copy of the contract with the subcontracts identified in the subcontracting plan to the contracting officer and the Director of DSLBD;
- Contractors must submit a copy of the contract and the CBE subcontracting plan to the Office of the District of Columbia Auditor; and
- Agencies may not renew contracts or execute contract option years that are worth more than \$1 million if the contractor has not complied with the Act's subcontracting requirements.
- Contractors must provide a quarterly report to DSLBD and the Office of District of Columbia Auditor.²²

Figure 7 summarizes the compliance of each agency and contractor with the relevant subcontracting requirements. Further details on each of the six contracts follow Figure 7.

²² See D.C. Official Code § 2-218.46 and § 2-218.48.

Figure 7
OCP Contract Compliance with the Act's Subcontracting Requirements

	Agency	Contractor Name, Award Amount, and Description	Subcontracted 35% (Based on Documents Provided by OCP)	CBE Subcontracting Plan	Submitted Contract to ODCA	Submitted Quarterly Reports to ODCA
1	D.C. Department of Human Resources	Aetna Life Insurance Company \$178,742,862.00 Employee Health Benefits	Unknown	No CBE Subcontracting Plan found	No	No
2	Office of Unified Communications	Motorola, Inc. \$59,997,500.79 Equipment Upgrade	Unknown	No CBE Subcontracting Plan found	No	No
3	Department of Health Care Finance	Medical Transportation Management, Inc. \$23,747,496.00 Non-Emergency Transportation Services	No	Yes, but CBE Subcontracting Plan was not in compliance with the Act	No	No
4	Department of Corrections	Aramark Correctional Services \$12,657,001.94 Food Service Program-Aramark Correctional Services	No	Yes	No	No
5	D.C. Department of Human Resources	Standard Insurance Company \$9,039,778.68 Group Term and Short and Long Term Life Insurance	No	Yes. The contractor was permitted to establish a modified CBE subcontracting plan with a requirement to subcontract 5% to SBEs.	No	No
6	District Wide	Dell Computer Corp. \$5,000,000.00 Dell VITA Contract	Unknown	No CBE Subcontracting Plan found	No	No

Contract #1: D.C. Department of Human Resources' Contract with Aetna Life Insurance Company

The D.C. Department of Human Resources entered into a contract with Aetna Life Insurance Company for employee health benefits. OCP was not able to provide ODCA with a CBE subcontracting plan for this contract. The only reference to CBE subcontracting was in Section H.13 of the contract. It states, "The District encourages the use of certified Local, Small, Disadvantaged Businesses (LSDBEs) to the maximum extent practicable." Because it appears that the contractor did not submit a CBE subcontracting plan, OCP and the D.C. Department of Human Resources should have rejected the contractor's proposal.

OCP could not provide ODCA with any invoices or other evidence of subcontracting with CBEs; therefore, it is impossible to conclude whether the contractor spent the required 35 percent of the dollar volume of the contract with CBEs. It did not appear that OCP or the D.C. Department of Human Resources monitored the contractor's compliance with subcontracting requirements. In addition, the contractor did not submit the contract or any quarterly reports to ODCA, as required. DSLBD could not confirm whether the contractor had submitted the contract or any quarterly reports.

Despite the apparent noncompliance of the contractor with SBE spending requirements, OCP and the D.C. Department of Human Resources executed an option year on this contract, in violation of the Act.

Contract #2: Office of Unified Communications' Contract with Motorola, Inc.

The Office of Unified Communications entered into a contract with Motorola, Inc. for an equipment upgrade. This procurement was part of a cooperative purchasing agreement, which is "a procurement conducted by the District government with, or on behalf of, any government or public entity, including a state, county, or municipal jurisdiction or the Federal government."²³ It is unreasonable to expect that OCP could dictate the terms of such a contract to accommodate the District's CBE subcontracting requirements. However, the Office of Unified Communications and/or OCP could have complied with the Act's subcontracting requirements by obtaining a waiver for this contract.

Contract #3: Department of Health Care Finance's Contract with Medical Transportation Management, Inc.

The Department of Health Care Finance entered into a contract with Medical Transportation Management, Inc. for non-emergency transportation services. OCP provided ODCA with a CBE subcontracting plan for this contract; however, the CBE subcontracting plan did not comply with the requirements of the Act. The CBE subcontracting plan only required the contractor to subcontract 0.74 percent of the total contract amount (excluding the cost of materials, goods, supplies, and equipment) to CBEs. Because it appears that the contractor did not submit a valid CBE subcontracting plan, OCP and the Department of Health Care Finance should have rejected the contractor's proposal.

Additionally, based on invoices provided to ODCA by OCP, the contractor spent only \$91,505 with SBEs, or 0.39 percent of the total contract amount. However, OCP's possession of these

²³ See D.C. Official Code § 2-351.04 (18).

invoices indicate that OCP or the Department of Health Care Finance performed some type of monitoring of the contractor's compliance with subcontracting requirements.

The contractor did not submit the contract or any quarterly reports to ODCA. DSLBD could not confirm whether the contractor had submitted the contract or any quarterly reports.

Contract #4: Department of Corrections Contract with Aramark Correctional Services

The Department of Corrections entered into a contract with Aramark Correctional Services for a food service program. This contractor's CBE subcontracting plan complied with the requirements of the Act. It stated that the contractor would subcontract 35 percent of the total contract amount for each year of the contract (excluding the cost of materials, goods, supplies, and equipment) to a SBE.

Based on monthly compliance reports provided to ODCA by OCP, the contractor reported paying the SBE \$240,316.09 for base year 1 of the contract, which represented only 16 percent of the total contract amount for base year 1 of the contract. However, the reports indicated that the contractor never executed the subcontract so it is unclear how the contractor could have been making any payments without a finalized subcontract. OCP's possession of these invoices indicates that OCP or the Department of Corrections performed some type of monitoring of the contractor's compliance with subcontracting requirements.

The contractor did not submit the contract or any quarterly reports to ODCA. DSLBD could not confirm whether the contractor had submitted the contract or any quarterly reports.

Contract #5: D.C. Department of Human Resources' Contract with Standard Insurance Company

The D.C. Department of Human Resources entered into a contract with Standard Insurance Company for group term and short- and long-term life insurance. DSBLD approved a modified CBE subcontracting plan for this contract due to limited opportunities for subcontracting. The modified subcontracting plan required the contractor to subcontract 5 percent of the total contract amount to SBEs. However, in April 2014, the contractor reported that they had not entered into any subcontracts and therefore did not comply with their CBE subcontracting plan. At that time, OCP was working with the contractor to try to bring them into compliance with their CBE subcontracting plan.

The contractor did not submit the contract or any quarterly reports to ODCA. DSLBD could not confirm whether the contractor had submitted the contract or any quarterly reports.

Contract #6: District Wide Contract with Dell Computer Corp.

OCP entered into a contract with Dell Computer Corp. for information technology hardware, software, and services. This procurement was also part of a cooperative purchasing agreement. It is unreasonable to expect that OCP could dictate the terms of such a contract to accommodate the District's CBE subcontracting requirements. However, OCP could have complied with the Act's subcontracting requirements by obtaining a waiver for this contract.

Conclusion

Overall, we found that both agencies and contractors are not complying with the requirements of the Act. Based on our limited sample, agencies often execute contracts without valid CBE subcontracting plans in place. Even when CBE subcontracting plans do exist, agencies are not adequately monitoring compliance with the plans. Furthermore, contractors may not be aware of the reporting requirements to DSLBD and ODCA as there is rampant violation of those specific requirements.

We found that much of the information regarding CBE subcontracting activity and subcontracting compliance is not accessible to the public via agency websites. This limits the public's ability to gauge whether District funds are being spent in accordance with District law.

We also found that many agencies are unsure of their role in ensuring subcontracting compliance. There are several parties involved in every government contract: contracting officers, contract administrators from the agency that is obtaining the good or service, DSLBD, and contractors. The lack of defined responsibilities for each of these groups is hindering the effective monitoring of compliance.

Without consistent establishment of CBE subcontracting plans and adequate monitoring of ongoing contracts, the District is at risk of failing to stimulate and foster economic growth and development of businesses based in and serving the District of Columbia, particularly CBEs. Inadequate monitoring and assessment of penalties also results in lost revenue. The lack of transparency regarding compliance with subcontracting requirements erodes the public's confidence that CBE subcontracting requirements are being met. The following section addresses the recommended steps that District agencies should take to address these issues.

Next Steps

To address the issues identified in this report, it is important to define the responsibilities for all of the impacted agencies involved in each contract. ODCA proposes the establishment of an inter-agency working group comprised of DSLBD, OCP, and each of the 16 agencies with independent procurement authority. We also recommend the establishment of a central database accessible by all relevant agencies, including ODCA, where contractors can enter required subcontracting compliance data.

Specifically, the working group can ensure that member agencies:

1. Identify all contracts that are subject to subcontracting requirements and enter them into a central database;
2. Develop and implement policies and procedures to effectively communicate reporting requirements to contractors, ideally as a standard clause in the contract;
3. Develop and implement policies and procedures for monitoring contractor compliance with subcontracting requirements, to include verification of submitted compliance reports;
4. Develop a system of notification to non-compliant contractors for failure to submit required copies of contracts, subcontracting plans, and quarterly CBE compliance reports;
5. Assess penalties to noncompliant contractors and/or discontinue contracts when necessary;
6. Submit a quarterly report to the Mayor and Council of the District of Columbia (accessible to the general public) that provides information regarding compliance and non-compliance with subcontracting requirements of the Act; and
7. Develop a strategic plan including an in-depth cost analysis of additional resources required to complete the above steps and submit to the Mayor and Council of the District of Columbia for review and additional input.

ODCA has already met with DSLBD, OCP, and DGS and we will continue to work with these agencies to improve compliance with the Act's subcontracting requirements.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence Perry". The signature is fluid and cursive, with a large initial "L" and "P".

Lawrence Perry
Acting District of Columbia Auditor