

March 5, 2020

The Hon. Elissa Silverman  
Chairman  
Committee on Labor and Workforce Development  
Council of the District of Columbia  
John A. Wilson Building  
Washington, DC 20004

The Hon. Robert White  
Chairman  
Committee on Facilities and Procurement  
Council of the District of Columbia  
John A. Wilson Building  
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Dear Councilmembers:

I write to share with you the results of an evaluation requested by Councilmember Silverman who asked the Office of the D.C. Auditor in July 2018 to examine the Department of Employment Services (DOES) procurement of training services for workforce development and youth programs. In making the request Councilmember Silverman and Committee staff identified concerns about how contractors are chosen and evaluated, noting that DOES had not been responsive to their earlier requests for documentation, reporting, and monitoring.

On January 31, 2020, ODCA issued a draft report for comment to the Department of Employment Services and the Office of Contracting and Procurement. We received comments on the draft report from OCP and held three meetings with senior leadership of the agencies, including DOES Director Unique Morris-Hughes and Chief Procurement Officer George Schutter. Based on those discussions I determined that additional fieldwork would be required to complete a more comprehensive review of the FY 2016-FY 2018 Human Care Agreements (HCAs) that were part of the original evaluation. Further assessment of documents that are now more than two years old would not serve the best interests of all parties given that the agencies have reportedly made improvements on the procedures then in place. For these reasons we are sharing our findings in letter form with a focus on how the Committees may want to follow up to assess the progress described by the agencies. And I invite the agency leadership, copied on this letter, to provide written comments to the Committees.

Three broad areas we recommend for Council review:

- The scope of work that initially set out the areas of training to be offered to District residents.
- The joint use by the two agencies of Technical Evaluation Panels to assess the qualifications of those submitting proposals.
- Efforts to measure the past performance of training providers prior to granting option years, including a new Contractor Performance Evaluation System which the two agency directors said is now in use with the type of Human Care Agreements reviewed by ODCA.

What follows provides background on the issues and ODCA findings from our review.

## Background

The District of Columbia provides workforce training to prepare unemployed and under-employed residents for work through the Department of Employment Services (DOES). DOES hires contractors to provide workforce training services. DOES provides job training and placement related services for District residents, conducts research on the District’s economy, and collects local labor market data. Ward-level figures in the District reveal that unemployment rates are highest in Wards 7 and 8 with a rate of 8.7% and 11.6%, respectively.

**Figure 1: September 2019 Unemployment Rates by Ward**

Ward	Unemployment Rate
1	3.9%
2	3.8%
3	3.6%
4	4.8%
5	6.5%
6	4.6%
7	8.7%
8	11.6%

**Source: DOES, Office of Labor Market Research and Information**

DOES pays for workforce training primarily with a combination of local funds (48%), special purpose local revenue (28%),<sup>1</sup> and federal revenue (21%), with the remainder supported through private grants and intra-District funds. The Fiscal Year (FY) 2019 proposed operating funds budget for DOES was \$29.9 million to support workforce training and other activities. During FY 2016 through FY 2018, all federal money for workforce training programs operated by the Workforce Development and State Initiatives divisions within DOES was provided through federal Workforce Innovation and Opportunity Act (WIOA) grants.

Based on data provided by the DOES Agency Fiscal Officer (AFO), matched to a list of contractors provided by the Office of Contracting and Procurement (OCP), ODCA estimates that DOES spent \$17.9

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<sup>1</sup> Special purpose revenue funds include Workers’ Compensation Special Fund, Workers’ Compensation Admin, U.I. Interest / Penalties, Wage Theft, DC Jobs Trust Fund, and UI Administrative Assessment.

million on workforce training contracts for the period FY 2016 through FY 2018.<sup>2</sup>

## Human Care Agreements

The D.C. Code<sup>3</sup> permits DOES to use Human Care Agreements (HCA), a form of contract that allows the agency to procure services as needs arise. Regulations implementing this provision specify that HCAs may be used for a wide range of services for targeted populations, including the unemployed.<sup>4</sup> In this case, the HCA gives DOES the flexibility to request workforce training services as District residents need them<sup>5</sup> and pay the contractor as authorized services are provided to clients<sup>6</sup>.

During FY 2016 through FY 2018, DOES was a party to 140 HCAs with 91 contractors. A contractor can have multiple HCAs simultaneously if it serves multiple programs or agencies. For example, CHI Squared provided two different types of training for DOES, including: (1) work readiness for youth ages 14 through 17; and (2) how to apply for federal jobs. These services were provided under two separate HCAs.

HCAs can be in effect for a total of five (5) years (base year plus four option years).<sup>7</sup> OCP practice is to renew (“exercise an option year”) HCAs unless DOES registers any performance issues. OCP reports that nonrenewal for poor performance is rare.

Another actor in the process for some HCAs is the Workforce Investment Council (WIC) (<https://dcworks.dc.gov/>) the private sector-led board that advises the District government on workforce issues. The WIC vets contractors whose services are funded through federal WIOA (Workforce Innovation Opportunity Act) support. The WIC also identifies high-demand sectors and occupations for the District of Columbia. This study excludes the WIC vetting process but includes payments and renewals of WIOA-supported HCAs.

## Responsibilities of DOES and OCP

Both DOES and OCP have HCA procurement responsibilities, which are detailed in the D.C. Code,<sup>8</sup> District of Columbia Municipal Regulations (DCMR),<sup>9</sup> OCP’s Procurement Procedures Manual (PPM), and the OCP Policies and Procedures for DOES HCAs memorandum (OCP P&P). In practice, DOES identifies program needs, monitors contractor performance, and approves payments. OCP prepares the solicitation, sets up the HCA, determines contractor eligibility, and processes option years.

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<sup>2</sup> At the beginning of this study, OCP provided a list of workforce training Human Care Agreements (HCAs) in effect during any part of FY 2016, FY 2017, and FY 2018. The DOES AFO provided SOAR data that has information about payments, but in many cases, the contract or HCA number is missing. ODCA identified and summed payments associated with HCAs in the sample by HCA number (when it was listed), purchase order number, or other documents in the HCA files.

<sup>3</sup> D.C. Code § 2–354.06.

<sup>4</sup> D.C. Mun. Regs. tit. 27, § 1999.

<sup>5</sup> D.C. Code § 2–354.06(a)(3).

<sup>6</sup> D.C. Code § 2–354.06(h).

<sup>7</sup> See Office of Contract and Procurement for DOES Human Care Agreements Policies and Procedures memorandum dated July 2016.

<sup>8</sup> D.C. Code § 2–354.06.

<sup>9</sup> D.C. Mun. Regs. tit. 27, § 1905...Services.

The first step in the process is development of the Request for Qualifications (RFQ). The RFQ is the document in which DOES must describe specific training needs, qualification standards, performance expectations and Code requirements.

The process of reviewing contractor qualifications to receive an HCA is the District’s first opportunity to enforce requirements that address the quality of workforce training services, as it applies to specific contractors. Review of contractor qualifications is supposed to be a two-step process. OCP’s Procurement Procedures Manual (Section 2.9.4. Technical Evaluation Panel) implemented in 2018 directs the Contracting Officer (CO) to appoint a technical evaluation panel, including “program personnel or individuals who possess considerable knowledge of the services requested in the RFQ.” The panel is then to determine whether the contractor meets the requirements of the RFQ. Then the CO independently confirms the findings of the panel and conducts additional research to determine whether the contractor meets Code requirements. Upon completion of this process, OCP can enter into price negotiations with the contractor.

According to the OCP P&P, contractors are deemed qualified by: 1) meeting specific organizational requirements (that apply to all contractors); and 2) having specialized experience (that vary according to the service being provided). For instance, a contractor that purports to provide occupational skills training could be asked to submit evidence of state, local, or federal licensure to provide that training. Specialized experience requirements would appear in the RFQ.

**Figure 2: Key Roles in the DOES Contracting Process**

<b>OCP</b>	<b>Chief Procurement Officer (CPO)</b> – Director of the Office of Contracting and Procurement (OCP)
	<b>Contracting Officer (CO)</b> – CPO delegates contracting authority to Contracting Officers that serve and sit in individual agencies (i.e. DOES)
	<b>Contract Specialist (CS)</b> – Primary point of contact for contractors, responsible to the CO, signs off on the work.
<b>DOES</b>	<b>Contract Administrator (CA)</b> – DOES staff that manages the contract. DOES identifies a CA (who in many cases is a subject matter expert), then the CO formally appoints the CA. The CA represents the agency and is identified in the contract.

**Figure 3: Key Documents in the DOES Contracting Process**

<b>RFQ</b>	<b>Request for Qualifications</b> describes the need for the services to be provided, eligibility criteria, and the requirements that all District contractors must meet. The Code governs many of the eligibility criteria but DOES has the option to include specialized experience requirements specific to the RFQ. OCP develops the RFQ in collaboration with DOES.
<b>CQR</b>	Contractors respond to the RFQ with submission of a completed and signed <b>Contractor Qualifications Record</b> . Information on the CQR includes certificates, certifications, financial statements, references, and previous contracts or work history.
<b>HCA</b>	DOES uses <b>Human Care Agreements</b> (HCAs; Code § 2–354.06) to arrange for workforce training services. District agencies use the HCA as an open-ended purchasing arrangement for a wide range of services for targeted populations, including the unemployed. The HCA gives DOES the flexibility to purchase training services as District residents request them.

Source: Compiled by ODCA

## Safeguards designed to ensure quality

Laws, regulations, rules, procedures, and practices serve as a series of safeguards that could be used to ensure the quality of contractors and the services that they provide. The D.C. Code provides the foundation of legal requirements for OCP to determine that a contractor is worthy of an HCA. The language of the D.C. Code (§ 2-353.01 (a)) is clear, and its provisions are mandatory, not discretionary: “[t]CPO *shall* establish a process to certify, *on a solicitation-by-solicitation basis*, the responsibility of prospective contractors. The process [established by the CPO] *shall ensure* that the prospective contractor” meets 10 specific requirements [emphasis added]. The review process shall ensure that a prospective contractor:

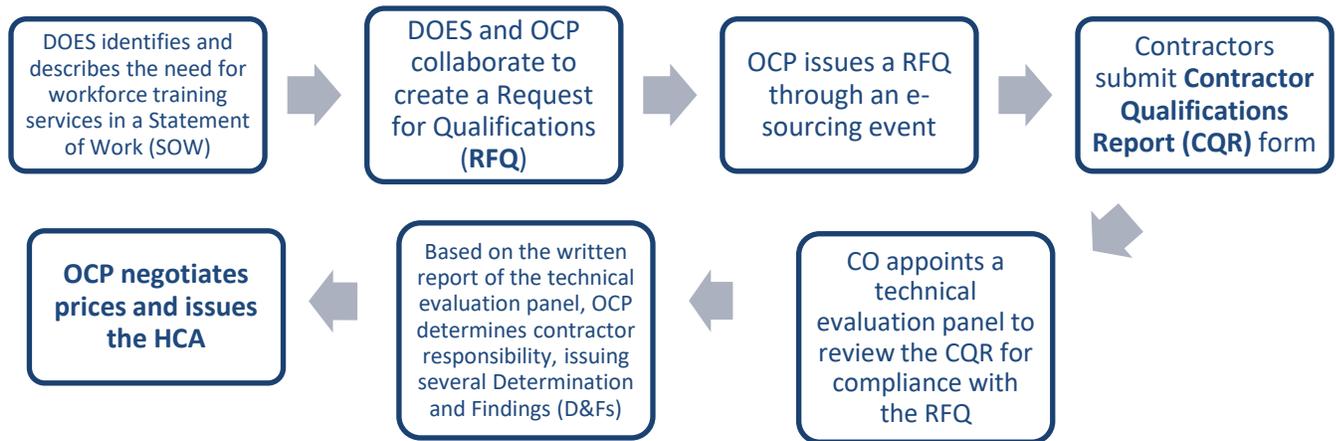
- (1) Has adequate financial resources to perform the contract or the ability to obtain those resources.
- (2) Is able to comply with the required or proposed delivery or performance schedule, based upon the bidder’s or offeror’s existing commercial and government contract commitments.
- (3) Has a satisfactory performance record.
- (4) Has a satisfactory record of integrity and business ethics.
- (5) Has a satisfactory record of compliance with the law, including labor and civil rights laws and rules and relevant portions of the District’s First Source requirements.
- (6) Has, or has the ability to obtain, the necessary organization, experience, accounting, operational control, and technical skills.
- (7) Has, or has the ability to obtain, the necessary production, construction, technical equipment, and facilities.
- (8) Has not exhibited a pattern of overcharging the District.
- (9) Does not have an outstanding debt with the District or the federal government in a delinquent status of more than the greater of \$1,000 or 1% of the contract value, up to \$25,000.
- (10) Is otherwise qualified and is eligible to receive an award under applicable laws and rules.

The DCMR requires OCP to make a written determination of qualifications<sup>10</sup>, sometimes referred to as determination and findings (D&F). Figure 4 shows the process for awarding HCAs from solicitation through award outlined in the PPM.

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<sup>10</sup> 10 D.C. Mun. Regs. tit. 27, § 1906.

**Figure 4: Solicitation Through Award of an HCA**

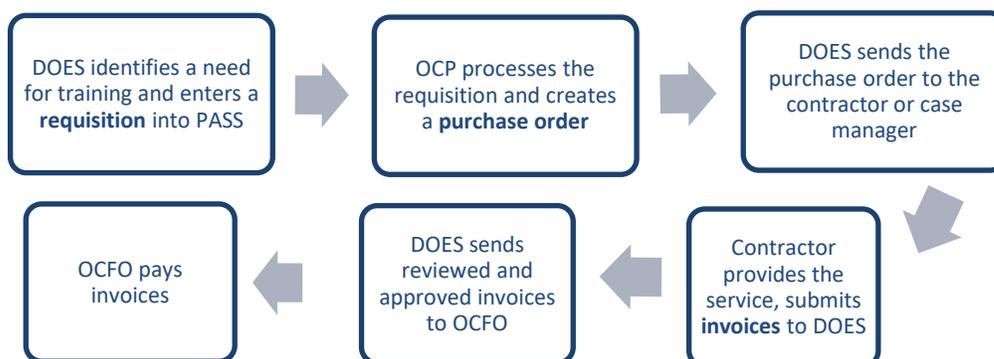


Source: OCP’s Procurement Procedures Manual

According to the OCP P&P, for HCAs that contain provisions for option years, OCP is supposed to exercise the option only if the contractor has made satisfactory progress in the prior year, as determined by the program. If appointed for that purpose by the Contracting Officer (in OCP), the Contract Administrator (in DOES) monitors contractor compliance, prepares evaluations of contractor performance, performs surveillance to assess compliance, and reports any inadequacies to the Contracting Officer.

Also, the OCP P&P states that to receive payment, the contractor shall document services provided and identify the contract line-item number (CLIN) that authorizes the charge. The District’s Standard Contract provisions do not explicitly require that the contractor demonstrates fulfillment of all terms of the HCA. Figure 5 shows the process for identifying training needs through payment.

**Figure 5: Services Through Payment for DOES HCAs**



Source: OCP P&P

## **ODCA Review**

In 2018 At-Large D.C. Councilmember Elissa Silverman asked ODCA to examine DOES procurement of training services for workforce development and youth programs. The objectives were to review procurement of training services in the areas of workforce development and youth programs and assess whether OCP and DOES met all procurement requirements and ensured that contractors met the performance, documentation and transparency requirements.

ODCA contracted with Nancy Augustine, a professor of public policy at George Washington University, to conduct the evaluation which included review of D.C. Code and District of Columbia Municipal Regulations (DCMR) related to contracts, the OCP Policies and Procedures for DOES HCAs memorandum (OCP P&P), OCP's Procurement Procedures Manual (PPM), as well as OCP training manuals. We analyzed contract and payment data obtained from PASS and SOAR, and project and administrative documentation obtained from DOES and OCP, the OCFO, and publicly available sources. ODCA also conducted interviews with staff at multiple levels within OCP and DOES.

The timeframe for our work was FY 2016 through FY 2018. ODCA did the following:

- 1) Selected 10 HCA files using a random and judgmental sample to get a mix of programs, contracting officers and fiscal years within a scope of FY2016 through FY2018, all of which had payments to determine if required procedures to review qualifications were followed.
- 2) Reviewed another 10 HCA files (random and judgmental sampling to get a mix of programs, COs, and years) that were renewed during the scope period and had payments to determine if the renewal process was followed.
- 3) Randomly selected 75 invoice packages from HCAs (that were selected in Steps 1 and 2, including at least one invoice from each HCA) to ensure that the invoice process was followed.

ODCA reviewed files held by OCP but did not review files on the same HCAs maintained by DOES.

### **Importance of Training That Meets Workforce Needs**

One task of the District's Workforce Investment Council (WIC) is to develop a High Demand Sectors and Occupations list. DOES performance objectives including improving employment outcomes for District residents by providing high quality training programs that respond to business needs. In reviewing the first steps in the contracting process ODCA found that DOES did not develop Statements of Work (SOW) that identify specific types of training services for any HCAs in the sample. OCP issues RFQs but DOES is responsible for identifying and describing the need for workforce training services in a SOW. The SOWs we reviewed for FY 2016-2018 did not target specific workforce training services that align with business needs and therefore actual employment prospects for District residents. If any of the HCAs did align with business needs, it was by happenstance.

Each RFQ reviewed by ODCA described a broad range of training and supportive services, rather than identifying a specific business need. For example, two of the 10 HCA files ODCA reviewed included the RFQ that listed the categories of services being sought as Occupational Skills Training, Work Based Training, Work Readiness Training, Pre-Apprenticeship Training, Basic Skills Training.

DOES responded that the agency seeks workforce training services that align with the WIC's High Demand Sectors and Occupations list but "in-demand industries or occupations" appears as one item of only one category of services sought, and it was given no priority over the other items or categories nor

did it provide adequate specifics. Only one of the two RFQs that referred to in-demand industries or occupations provided a list of high-demand occupations by sector. The result is that the range of workforce training service providers in the District during the scope of our review was not necessarily correlated to demand for workers.

Along with a vague description of needs, the RFQs did not differentiate contractor qualifications by the type of training service to be provided, leaving the reviewer to make the determination as to which specific qualifications the contractor should possess. The D.C. Code and DCMR require OCP to determine that the contractor has the needed skills and competence to provide the training being offered.<sup>11</sup> RFQs asked for evidence that a contractor was licensed to be a training provider by a state, local, or federal agency, without specifying which license is necessary.<sup>12</sup> For example, a contractor offering training in information technology did not have to possess any specific credentials in IT. The same was true for contractors offering training in construction, hospitality, and other fields.

A documentation problem we noted in reviewing the OCP files was that only three of 10 files reviewed contained the RFQ, and a fourth file contained part of an RFQ, even though documents in nine of 10 HCA or Contractor Qualifications Record (CQR) files referred to an RFQ. In other words, the files implied that RFQs existed, but six (plus one partial) files did not contain the RFQs or provide any evidence that submissions were reviewed for compliance with these required documents.

ODCA recommends that DOES develop SOWs that contain specific requirements for specific categories of training that meet the needs of the District's High Demand Sectors and Occupations list. The OCP PPM (page 39) states that DOES is to provide to OCP "the SOW of the actual services that must be performed, including an identification of the minimum provider qualifications and a description of any unique qualifications necessary to provide the services." We recommend that the Council oversight committees follow up with DOES and OCP on the extent to which SOWs are designed with specific career paths in mind and whether the specificity required by the OPM requirements are being met.

### **Ensuring Contractor Qualifications**

OCP reviews contractor qualifications in a two-part process. For a contractor wishing to provide workforce training services through DOES, the first step in the process is to submit a completed and signed Contractor Qualifications Record (CQR). The eight-page CQR asks contractors to provide information on the organization<sup>13</sup> and to demonstrate that their proposal is in line with the RFQ. OCP uses documents and information submitted as part of the CQR in the second step of the process, to

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<sup>11</sup> D.C. Code § 2–353.01 (a)(6)); DCMR 27 § 1906.1) and §1905.4(d)).

<sup>12</sup> All four RFQS reviewed include "organizational requirements" and "specialized requirements" as qualification criteria. Organizational requirements include complete CQR form; Capabilities Statement of the organization; copy of the Certificate of Occupancy for each facility, if applicable; Certificate of Incorporation, if applicable; copy of the Certified Business Enterprise (CBE) Certification, if applicable; copy of the organization's most recent financial statement; copies of all licenses and certifications, including any specialty certifications; resumes of all key personnel. Specialized experience requirements vary across service types. For instance, a contractor that purports to provide occupational skills training could be asked to submit evidence of state, local, or federal licensure to provide one or more specific types of training.

<sup>13</sup> As part of the CQR, the contractor lists current and previous contracts, credentials and work experience of the organization's principals, references, licenses and certifications, financial standing including payment of taxes, family relationship with any District employees, certificate of occupancy, basic business license, and self-reported legal issues such as criminal convictions, debarment, or lawsuits.

verify additional eligibility criteria to “determine responsibility,” per D.C. Code requirements.<sup>14</sup> In our review of HCAs we determined that OCP did not conduct a complete initial review of contractor qualifications, foregoing one of the main safeguards they could have used to ensure high-quality workforce training services for District residents.

The OCP’s PPM adopted in 2018 sets out procedures for executing both requirements and one important requirement is the technical evaluation panel. The OCP PPM (page 40, section 2.9.4) specifically states that “the contracting officer shall establish a technical evaluation panel.”

Specifically:

“The contracting officer shall establish a technical evaluation panel and a Chairperson for each RFQ solicitation. The technical evaluation panel may be established while waiting for responses from prospective offerors or before the issuance of the solicitation.

“Prior to the submission of a Contractor Qualifications Record (CQR), OCP Form 1900 in response to the solicitation, the contracting officer or designee must conduct a technical orientation to the members of the technical evaluation panel. The technical evaluation panel shall receive an evaluation toolkit for technical evaluation. The chairperson shall lead the panel and prepare a final written report of the results of the panel’s findings and recommendations. The panel shall be composed of program personnel or individuals who possess considerable knowledge of the services requested in the RFQ to assist in reviewing and considering the qualifications of a prospective human care contractor. An individual from the program office shall be the chairperson of the technical panel.”

OCP did not set up a technical evaluation panel for any of the 10 HCAs in our sample and the Chief Procurement Officer said that such panels were optional during the scope of the ODCA review. Under the 2018 procedures manual, however, they are now required. The review panel offers the agencies the opportunity to make sure that contractors have the potential to fulfill program needs. Both OCP and DOES are responsible to ensure contractors are qualified.

During the period of our review, OCP’s failure to set up a technical review panel resulted in OCP staff being responsible for reviewing the qualifications of workforce training providers, rather than sharing the responsibility with DOES staff who should better understand training needs of District residents, as would be indicated through a needs assessment, and are responsible for managing workforce training programs. Non-specific language in RFQs amplifies the necessity, as the RFQs themselves do not list specific required credentials and capabilities.

In a discussion of the ODCA study on February 25, 2019, Chief Procurement Officer George Schutter and DOES Director Unique Morris-Hughes told ODCA that the agencies began using technical evaluation panels for DOES workforce HCAs during 2019 and would be using the strategy going forward. The practice provides DOES with the opportunity to bring subject-matter expertise to the review of CQRs providing a greater level of confidence that contractors were actually able to deliver high-quality training services.

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<sup>14</sup> D.C. Code § 2–354.06e.

We recommend that the D.C. Council oversight committees follow up on the use of technical evaluation panels with workforce training contractors.

### **Need for Improved Documentation on Contractor Eligibility**

ODCA found in reviewing our sample HCAs that OCP did not consistently require contractors to document their current eligibility before entering into HCAs, nor did they have an effective review process to ensure that contractors met all the requirements of the D.C. Code and relevant regulations.

The CPO is supposed to confirm the contractor’s compliance with requirements by certifying the “responsibility” and qualifications of prospective contractors with respect to standards in the D.C. Code and implementing regulations<sup>15</sup> before negotiating with a contractor.<sup>16</sup> The DCMR further specifies that the determination must be in writing. The issues here represent a combination of regulations in the DCMR that do not fully implement some D.C. Code sections and are silent to other D.C. Code sections, a process that does not fully implement the DCMR, and failures of execution at the management and staff levels. To address all Code requirements, a contractor need only submit documents or self-report the organization’s status. The DCMR does not have standards to assess the adequacy of documents or statements submitted by the contractor, rendering the content of the documents and statements irrelevant. Without policies and procedures to implement the D.C. Code and the DCMR, OCP today does not have clear criteria to reject an applicant based on the content of the documents.

The table below summarizes the gaps in requirements and D.C. Code implementation and the result of ODCA’s review of the HCA files held by OCP. It shows that out of 10 D.C. Code requirements and three additional DCMR requirements:

- Standards exist to assess the sufficiency of documentation related to one requirement (integrity and business ethics) and part of a second requirement (debt to the District but not to the federal government).
- Contractors did not have to address three requirements (appropriate facilities; history of not overcharging the District; otherwise qualified).
- Contractors provided information or checked boxes on the CQR form, but did not have to submit supporting documentation to address three requirements (capacity to comply with schedule; information about pending lawsuits; type of organization; past performance and references); additionally, the D.C. Code, the DCMR and PPM were silent as to how OCP should determine compliance with these requirements.
- Contractors were required to submit documents related to three requirements, but the D.C. Code, the DCMR and the PPM were silent as to how OCP should determine compliance with these requirements (sufficient financial resources; professional credentials, such as licenses, affiliations, and technical skills).
- One D.C. Code requirement—record of compliance with the law, including labor and civil rights laws—is partially implemented.

As seen in Figure 6, the DCMR and OCP’s policies and procedures have not fully implemented all D.C. Code and DCMR requirements which can contribute to noncompliance.

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<sup>15</sup> DCMR 27 § 1906.1.

<sup>16</sup> D.C. Code § 2-351.01.

**Figure 6: Results of ODCA’s Review of Criteria and OCP Files**

Criterion <sup>17</sup>	DCMR Standards Set Compliance Criterion	Evidence in Files	Number of Files That Contained Documentation
No outstanding debt with the District or federal government. D.C. Code § 2–353.01 (a)(9) 29 DCMR 1905.4(g)	Yes	Contractor submitted a certificate of Clean Hands to establish no debt to the District.	6 of 10
Satisfactory record of integrity and business ethics D.C. Code § 2–353.01 (a)(4) No DCMR provisions in the section on Human Care Agreements, 29 DCMR 1905	Yes	OCP checks federal and District excluded parties lists and includes copies of the reports in the file.	District excluded parties: 8 of 10 SAM report: 7 of 10
Appropriate facilities D.C. Code § 2–353.01 (a)(7) No DCMR provisions in the section on Human Care Agreements, 29 DCMR 1905	No	Contractor is not required to provide information or submit documentation	0 of 10
Otherwise eligible D.C. Code § 2–353.01 (a)(10) 29 DCMR 1905.4(k)	No	OCP does not ask for any other documentation to support that a vendor is otherwise eligible.	0 of 10
No pattern of overcharges to the District D.C. Code § 2–353.01 (a)(8) No DCMR provisions	No	Contractor is not required to provide information or submit documentations	0 of 10
Type of business or organization and its history 29 DCMR 1905.4(a)	No	Contractors checked a box on the CQR to identify the type of organization and years in business, but did not have to submit documentation	0 of 10
Capacity to comply with delivery or performance schedule D.C. Code § 2–353.01 (a)(2) 29 DCMR 1905.4(e)	No	Contractors provided information about other engagements on the CQR form, but did not have to submit documentation	0 of 10
Information about pending legal cases 29 DCMR 1905.4(j)	No	Contractor checked boxes on the CQR but did not have to submit documentation	0 of 10
Satisfactory performance record D.C. Code § 2–353.01 (a)(3) 29 DCMR 1905.4(f)	No	Contractor listed previous contracts or work history plus references on the CQR form, but did not have to submit documentation	0 of 10
Needed specialized experience and skills D.C. Code § 2–353.01 (a)(6) 29 DCMR 1905.4(d)	No	Contractor listed current and previous contracts and references on the CQR but did not have to submit documentation	0 of 10
Sufficient financial resources D.C. Code § 2–353.01 (a)(1) 29 DCMR 1905.4(c)	No	Contractor submitted documents with CQR	8 of 10

<sup>17</sup> OCP’s Procurement and Procedures Manual adds two requirements not addressed in the Code or the DCMR. OCP must complete a D&F for price reasonableness and another D&F establishing that the HCA is the appropriate contract method.

Criterion <sup>17</sup>	DCMR Standards Set Compliance Criterion	Evidence in Files	Number of Files That Contained Documentation
Professional qualifications, including licenses, affiliations, and specialties 29 DCMR 1905.4(b)	No	Contractor submitted credentials with the CQR	2 of 10
Compliance with labor and civil rights law D.C. Code § 2-353.01 (a)(5) 29 DCMR 1905.4(i)	Partial <sup>18</sup>	Contractor submitted EEO statement with CQR	2 of 10

According to the D.C. Code, the Contracting Officer<sup>19</sup> shall establish a process to ensure the contractor’s compliance with the requirements, by certifying “responsibility” with respect to 10 standards in the D.C. Code and implementing regulations<sup>20</sup> before negotiating with a contractor. However, to address requirements, a contractor need only submit documents or self-report the organization’s status. The content of the documents is effectively irrelevant for eight of the requirements because standards to establish sufficiency do not exist, resulting in staff having no basis on which to reject an applicant. In addition, one of the 10 HCA files reviewed did not include a signed statement of Determination and Findings (D&F) of contractor responsibility, leaving undetermined whether the contractor complies with the Code.

OCP did not gather complete documentation to demonstrate that the contractor has a satisfactory record of compliance with the law for three HCAs out of 10 ODCA reviewed. As a result, the District would have faced an increased risk that procurements were awarded to non-responsible contractors, potentially leading to additional costs to the District government due to subsequent default, late deliveries, or other unsatisfactory contractual performance.

One example of the heightened risk relates to the financial stability of the organization. The D.C. Code requires the CO to determine that the contractor has sufficient financial resources. Implementing regulations refer to review of information attesting to financial capability, including financial statements. However, standards to determine sufficiency do not exist. In effect, as long as the contractor submits documents, this criterion is met. One contractor submitted an income statement for 2014 and 2015, showing revenue of \$94,000 and \$144,000 respectively. The contractor did not have to report how much of that revenue came from the District government. This income statement showed positive net income, but it is not clear that net loss would have raised any red flags. For this contractor, salary comprised 84%-87% of total expenses; the District has no standard for a target range. Seven percent to 8% of this home-based business’s expenses went to furniture, equipment, and utilities, with no indication of facility rental costs. All of these characteristics could be legitimate, but the District would have no grounds on which to make this determination.

In our draft report we recommended that OCP develop policies and procedures to determine conformity with all relevant provisions of the D.C. Code and the DCMR. OCP officials, however, disagreed, contending that the wide variety of contracts and HCAs require flexibility on the part of trained

<sup>18</sup> Consistent with the DCMR (29 DCMR 1905.4(i)), the CQR does require the contractor to submit an EEO (equal employment opportunity) statement that commits to comply with EEO standards going forward. The DCMR (29 DCMR 1905.4(h)) also requires the contractor to attest to compliance with other labor laws.

<sup>19</sup> Contract Specialists carry out many tasks on behalf of the Contracting Officer. However, the responsibility for the accuracy and completeness of the tasks lies with the Contracting Officer.

<sup>20</sup> (D.C. Code § 2-351.01 et seq. and implementing regulations at DCMR 27 § 1906.1).

contracting officers. In their initial written response to the draft report, OCP said “It is not practical or feasible to write generalized rules that govern every decision that a Contracting Officer could make. Many of the decisions...must be done on a case-by-case basis.”

We recommend additional consideration be given to the issue of contracting officer discretion versus written policies and procedures on requirements that the Council has adopted in the D.C. Code.

### **Criminal Background Checks for Youth-Serving Contractors**

D.C. Code § 4-1501.03 governs criminal background checks, as follows:

“...the following individuals shall apply for criminal background checks... (1) An applicant who is under consideration for paid employment by a covered child or youth services provider; (2) An applicant who is under consideration for voluntary service in an unsupervised position by a covered child or youth services provider; (3) An employee of a covered child or youth services provider; and (4) A volunteer who serves a covered child or youth services provider in an unsupervised position.”

Of the 10 HCA initiations ODCA reviewed, six were considered “youth-serving.” They served age ranges of 14 to 17, 16 to 24 or 18 to 24. The D.C. Code provision above pertains to children and youth defined as those under 18 years of age. ODCA initially sought to confirm that each of the six HCA providers had background check documentations on file. We determined, however, that within our sample only one provider actually provided compensated services to individuals meeting the Code requirement and that the provider had documentation on file, including affirmation from the D.C. Department of Human Services meeting the Code requirement.

While the requirements were met in the sample we reviewed, the process appears cumbersome and may result in a delay in services. DOES officials explained that they do not require the criminal background check documentation unless and until a youth requests services under an HCA—a process detailed previously in Figure 5. The background check is documented after the purchase order is sent to the contractor or case manager so that the provider is aware that someone meeting the Code’s definition of a youth is seeking services.

It is also the case that:

- The background check requirement did not appear in sections of standard contract language we reviewed.
- OCP did not consistently ensure that HCAs included the requirement.
- CQR and HCA checklists did not alert OCP or DOES staff to the requirement.
- OCP’s PPM and the OCP P&P memorandum are silent on implementation procedures.
- Requisitions did not include a flag for youth-serving services.

We recommend that the partner agencies consider whether the process of assuring that background checks are obtained and documented can be improved.

### **Performance Monitoring**

The DCMR clearly states that the Contracting Officer may delegate several functions to a Contract Administrator (in DOES), including to monitor contractor compliance, preparing evaluations of

contractor performance, performing surveillance to assess compliance, and reporting any inadequacies to the Contracting Officer. In addition, standard contract language in five of 10 HCA files we reviewed required DOES to actively monitor compliance.<sup>21</sup> The OCP P&P states that, “The agreement for training services can only be extended for an option year when the contractor makes satisfactory progress in the prior year, as determined by the program.”

Our review of sample HCAs found that OCP processed 14 of 21 renewals (67%) without evaluations that documented performance. DOES conducts provider and performance monitoring independently of OCP and the monitoring reports did not appear in OCP files for any of the 10 HCAs we examined. According to DOES officials, “no documentation is required to exercise an option year. If a cure notice had been issued during the period of performance, it is factored, as well as other negative feedback/evaluations.”

Indeed, although DOES is obligated to monitor and evaluate contractor performance, the frequency, depth, and format of this oversight and related reporting did not appear to be documented in current regulations. OCP is not required to request a written report or base the renewal on it. OCP provided context for this practice, stating that because HCAs don’t obligate money from the District, the bar is lower for them to execute the option. OCP exercises option years essentially by default, refraining from the extension only if DOES reports a problem. Failing to exercise an option year has been rare.

According to agency leadership in our more recent discussions, performance monitoring is improving significantly. In his February 13, 2020, performance hearing testimony, CPO Schutter said:

“OCP also successfully launched the Contractor Performance Evaluation System in April 2019. The evaluation system allows contract administrators and contracting officers to assess the performance of contractors for all contracts valued at over \$100,000. The system also allows contractors to provide comments on their evaluations, fostering increased transparency and engagement. Since April, we have evaluated 466 contractors, 285 users have accessed the system, and 758 evaluations have been completed.”

In our February 25, 2020, meeting CPO Schutter and DOES Director Morris-Hughes said the new evaluation system came into use for DOES workforce contracts in the third quarter of 2019. A copy of the evaluation tool is included as an attachment.

ODCA recommends that the D.C. Council oversight committees monitor the agencies’ use of the new performance evaluation tool, including whether there is an increase in HCA workforce providers being denied options years based on performance and whether additional metrics are developed to measure overall impact.

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<sup>21</sup> Standard contract language:

E.1.2 DOES will monitor the activities of the Provider to ensure that the Provider is meeting and complying with all applicable requirements outlined in Section C of this HCA. DOES will make scheduled and unscheduled monitoring visits to review records and discuss the scope of work in relation to the services being rendered. DOES will interview youth participants to secure their feedback on their overall experience and the quality of services they are receiving.

E.1.3 Staff from the DOES will conduct a minimum of one monitoring review of each Provider. Additionally, the DOES staff will review and investigate unusual incidents and complaints related to the services provided by the Provider.

## Conclusion

It was clear from multiple interviews with the leadership of DOES and OCP that providing District residents with training opportunities that prepare them for gainful employment is a high priority. And there appears to be a commitment to meeting the goals and objectives of the job training programs including improvements described as having been made during our review, such as the use of technical evaluation panels and OCP's new performance evaluation system.

The D.C. Code and District regulations do provide safeguards designed to protect District residents and taxpayers, including requirements that those receiving District funds for services are demonstrated to be effective in their performance and agencies making effective use of those safeguards is an important piece for ongoing oversight.

Thank you.

Sincerely yours,

A handwritten signature in blue ink that reads "Kathleen Patterson". The signature is written in a cursive style with a large initial 'K'.

Kathleen Patterson  
D.C. Auditor

cc: D.C. Councilmembers  
Dr. Unique Morris-Hughes, Director, DOES  
George Schutter, Chief Procurement Officer, OCP

Attachment



## CONTRACTOR PERFORMANCE EVALUATION SYSTEM (CPES) RATINGS SCORECARD

***RATINGS FORM: The purpose of this document is to evaluate contractor performance. Each question in the rating categories should be assigned one of the rating attributes as described in the definitions. Comments should be thorough and supportive of the rating.***

### EVALUATION RATINGS (see definitions)

#### QUALITY OF PRODUCT(S)/SERVICE(S)

1. How well did the product (s)/service(s) comply with contract requirements/specifications?

Exceptional  Very Good  Satisfactory  Marginal  Unsatisfactory

Explain your rating:

2. How accurate and complete was the required reporting?

Exceptional  Very Good  Satisfactory  Marginal  Unsatisfactory  N/A

Explain your rating:

3. Rate the contractor's personnel qualifications and performance in completing assigned tasks?

Exceptional  Very Good  Satisfactory  Marginal  Unsatisfactory

Explain your rating:

#### TIMELINESS OF PRODUCT(S)/SERVICES(S)

4. How well did the contractor deliver the product(s) /service (s) based on agreed upon timelines?

Exceptional  Very Good  Satisfactory  Marginal  Unsatisfactory

Explain your rating:

## COST CONTROL OF PRODUCT(S)/SERVICES(S)

5. How well did the contractor control the cost of the contract and its components?

Exceptional  Very Good  Satisfactory  Marginal  Unsatisfactory

Explain your rating:

6. How accurate, complete and current were the submitted invoices?

Exceptional  Very Good  Satisfactory  Marginal  Unsatisfactory  N/A

Explain your rating:

## MANAGEMENT/BUSINESS RELATIONS

7. How was the contractor's performance in resolving issues for all involved stakeholders?

Exceptional  Very Good  Satisfactory  Marginal  Unsatisfactory

Explain your rating:

8. How well did the contractor meet the CBE subcontracting requirements according to the "Small and Certified Business Enterprise Development and Assistance Act of 2014", D.C. Official Code § 2-218.01 *et seq.*, if applicable?

Exceptional  Very Good  Satisfactory  Marginal  Unsatisfactory  N/A

9. How well did the contractor display reasonable and cooperative behavior?

Exceptional  Very Good  Satisfactory  Marginal  Unsatisfactory

Explain your rating:

10. How would you rate contractor customer service (communication, quality, accessibility, responsiveness)?

Exceptional  Very Good  Satisfactory  Marginal  Unsatisfactory

Explain your rating:

11. Have you any reason to believe that the contractor has not paid its subcontractors in accordance with the requirements of the contract?

YES  NO  UNSURE  NA

Explain:

12. Would you recommend the use of this contractor again? YES  NO

Explain:

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**RATING:**

**DATE:**

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Evaluation Type: Interim (mid-year)  End of contract year  Final (end of contract)

Does the evaluator have a CA designation letter from the CO for this contract? Yes  No

Did the evaluator consider performance input from program personnel, end-users and others affected by the contract? Yes  No

Has the CO met with the CA during contract performance period? Yes  No

CO review date: mm/dd/yyyy

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**OTHER EVALUATOR INFORMATION** *(If different from the Contract Administrator for this contract)*

**EVALUATOR NAME:**

**Evaluator Title:**

**Phone:**

**email:**

## CPES RATING DEFINITIONS

### (5) EXCEPTIONAL

Performance met the contractual requirements with no significant weaknesses. This element of performance was accomplished without any problems and no corrective action necessary. (Performance benefitted DC beyond contractual requirements) *Exceeds requirements*

### (4) VERY GOOD

Performance met the contractual requirements with minor problems for which effective corrective actions were taken by the contractor. *Always meets requirements*

### (3) SATISFACTORY

Performance met the contractual requirements with minor problems for which corrective actions were taken by the contractor with assistance from DC. *Usually meets requirements*

### (2) MARGINAL

Performance did not meet some of the contractual requirements which the contractor had trouble overcoming. Corrective action was marginally effective or was not completely implemented. *Sometimes meets requirements*

### (1) UNSATISFACTORY

Performance did not meet most contractual requirements which the contractor is unlikely to correct or was ineffective in the corrective action. *Unable to meet requirements*

### (N/A) NOT APPLICABLE

*The rating factor does not apply.*

Rating attributes are as follows:

Exceptional	4.50 - 5.00
Very Good	3.50 - 4.49
Satisfactory	2.50 - 3.49
Marginal	1.50 - 2.49
Unsatisfactory	0.00 - 1.49