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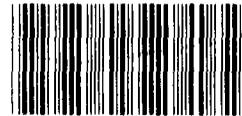
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Briefing Report to the Ranking Minority Member, Committee on the District of Columbia, House of Representatives

December 1987

DC GOVERNMENT

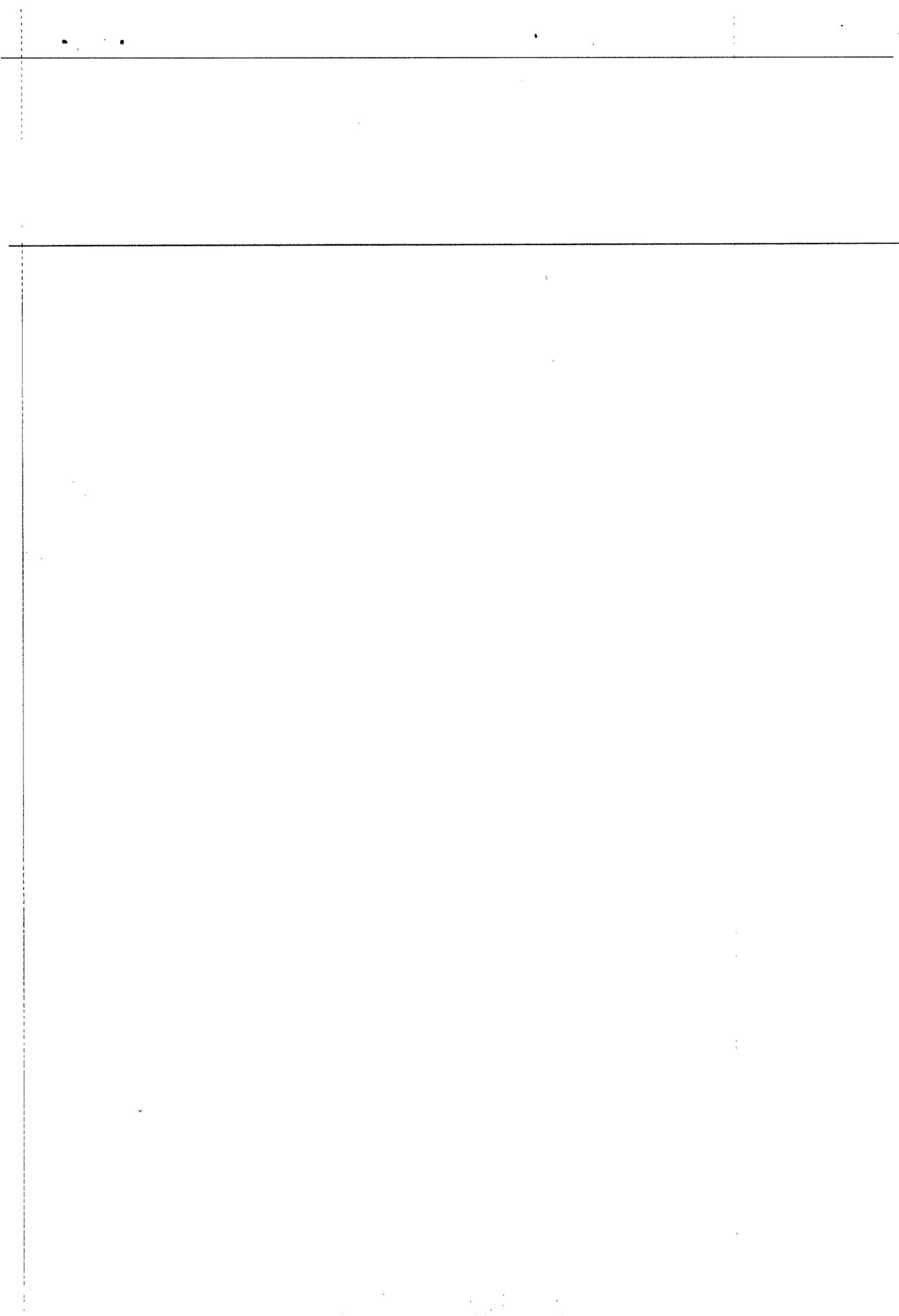
Comments on Suggested Revisions to Proposed District of Columbia Procurement Regulations



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General Government Division

December 4, 1987

B-222359

The Honorable Stanford E. Parris
Ranking Minority Member
Committee on the District of Columbia
House of Representatives

Dear Mr. Parris:

Your office expressed concern about some aspects of the District's proposed regulations to implement the District of Columbia Procurement Practices Act of 1985. Such draft regulations are currently under review by the District of Columbia Council, and we understand that they are scheduled to become effective on December 8, 1987, unless the Council takes some action to the contrary.

In a November 2, 1987, letter and at a subsequent meeting on November 10, we were requested to provide our comments on your office's suggested revisions to the proposed regulations dealing with several specific procurement issues. We understand that your office is considering suggesting these revisions to the District. This briefing report responds to those requests. As discussed with your office, we have found in earlier work that although the District's regulations were generally adequate, they were not always followed. That is not to say, however, that the regulations should not be revised, as appropriate, to better control this important government function.

As agreed with your office, our objective was to compare the suggested changes with the proposed regulations to determine whether the suggestions were included in the proposed regulations in some way. If not, you asked for our comments on whether including the suggestions might improve the regulations. Our work was limited to the proposed regulations dealing with the specific issues which were of concern to your office. The limited time available to do the work did not allow for a detailed review of these regulations to try to ascertain whether matters not raised by your office warranted further consideration. The results of our work should be used in light of these scope limitations.

Our work showed that some of the suggested changes were already covered in the proposed regulations. However, others were not and including these suggested changes in the regulations might improve them, although, as mentioned earlier, compliance was found to be a problem in the past, and issuing stronger regulations does not, in itself, guarantee improved procurement. Our comments on the suggested revisions to the procurement regulations are included in the appendix to this letter.

As your office requested, we did not obtain comments from any District officials on the matters discussed in this report. Also, as arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its issue date. At that time, we will make copies available to other parties upon request.

If you have any questions, please call me on 275-8387.

Sincerely yours,

A handwritten signature in cursive script that reads "Gene L. Dodaro". The signature is written in dark ink and is positioned above the typed name and title.

Gene L. Dodaro
Associate Director

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COMPARISON OF SUGGESTED CHANGES WITH
RELATED PROPOSED PROCUREMENT REGULATIONS

ISSUE: SOLE SOURCE CONTRACTS

Suggestion

Your office suggested that the proposed regulation be revised to require that sole source contracts be executed only after specific information is provided. The information would include, among other things, the name of the company, the names of all principals of the company, and a list of all contracts the company and the principals have with the District Government for the current year and the preceding fiscal year.

GAO Comment

The proposed regulations require the company's name. However, including the names of all company principals and a list of their present and recent contracts with the District is not required for sole source or other contracts. Much of this information could be required by regulation and made available through the District's proposed Materiel Management Information System (MMIS). Contracting officers could be required to review this information for trends in executing sole source contracts with the same companies or individuals.

Suggestion

Your office also believed that the required information to be provided should include a description of the actual services or products contracted for; the specific amount of the services or products; proof that the contractor is in fact the only source; and a description of how the contract was advertised.

GAO Comment

The proposed regulations require contracting officers to indicate the factors that qualify the requirement for sole source procurement and what was done to make this determination. The regulations do not specify the types of information needed to support these determinations. Information describing the unique nature of the service and/or product to be acquired, empirical data on the lack of other sources, and results of advertisement of solicitation can help minimize determinations which simply state that a vendor is the only one providing the product or service.

The proposed regulations specifically state that sole source solicitations do not have to be publicized. This section would have to be amended if advertising, as discussed above, is required.

Suggestion

Your office suggests that all sole source contracts over \$10,000 be reviewed, verified, and approved by the Chief Procurement Officer.

GAO Comment

The proposed regulations require the Director (Chief Procurement Officer) to review all sole source contracts greater than \$10,000 but not more than \$25,000 on a post-execution basis. For those contracts over \$25,000, each sole source determination and finding for the procurement is required to be reviewed by the Director before solicitation and approved by the Director before contract execution. We have no data at hand on the number of sole source contracts between \$10,000 and \$25,000, but if that number is large it could constitute a delay in the orderly flow of contracting activities. Nonetheless, lowering the pre-execution review and approval level would seem to provide some additional assurance that the regulations would be followed.

Suggestion

Your office suggests that renewals or extensions of sole source contracts must go through the competitive bidding process.

GAO Comment

Renewals or extensions to sole source contracts without going through the competitive bidding process would be prohibited under the provisions of proposed federal legislation currently pending before Congress. In the event these provisions do not become part of the law, such prohibition would need to be included in the regulations. Further, requiring a third party such as the District's Inspector General, to review not only the extension of a sole source contract, but the initial awarding as well, would add another level of control over this process, although this is not a traditional audit function. The requirement could be removed at such time as it was determined that the function did not need the additional control.

Suggestion

The final suggestion on this issue is that sole source contracts should have a fixed term for 1 fiscal year and a ceiling amount.

GAO Comment

The term and amount of sole source contracts is not covered in the regulations. The suggestion that such contracts be limited to 1 fiscal year could cause some problem if the goods or services are to be provided over a period that involves more than one fiscal year. Perhaps a requirement that the contracts have a 12-month maximum term would meet the objective of the suggestion without negatively affecting the District's procurement efforts. Concerning the suggestion that sole source contracts have a ceiling, it seems that establishing a single ceiling amount would not be practical, given the variety of goods and services purchased by the city. If a ceiling is deemed desirable, perhaps varying ceilings for specific types of goods and services could be established.

ISSUE: EMERGENCY CONTRACTSSuggestion

Your office suggested that emergency contracts be limited to 1 fiscal year and, with the exception of construction, should have a ceiling amount. Under this suggestion emergency contracts could not be extended or renewed; they would be limited to one contract for those services/products for that fiscal year; and any need for additional products or services would be filled through the competitive bidding process.

GAO Comment

The proposed regulations limit emergency procurement of services to a period of not more than 120 days but do not specify the time frame for emergency purchases of supplies. Perhaps including a maximum period for supplies would allow for purchase of needed emergency supplies without allowing for purchases under the emergency criteria which could be as easily accomplished through the normal contracting process. According to the proposed regulations, if a long-term requirement for supplies, services, or construction is anticipated, the contracting officer is to initiate a separate nonemergency procurement action at the same time that the emergency procurement is made.

Concerning ceiling amounts, contracting officers have been authorized pursuant to Mayor's Order 86-44 to execute emergency contracts in varying amounts, up to a maximum of \$250,000 for acquisition of real property in the case of the Department of Housing and Community Development (DHCD). For other emergency purchases, DHCD and four other major District departments have maximums of \$100,000. As discussed under source sole contracts,

establishing a single ceiling amount would not be practical; there is no way to realistically anticipate the types and extent of emergencies that may occur. Regulations do require that each contract valued at \$10,000 or more awarded on an emergency basis be published in the District of Columbia Procurement Digest.

Under the proposed regulations, a contract entered into on an emergency basis should not be modified to expand the scope or extend the time of the procurement unless a limited number of additional commodities, services, or other items are needed to fill an ongoing emergency requirement until regular procurement procedures can be initiated.

Suggestion

A second suggestion for this issue is that an emergency contract file should contain a Determination of Findings with very specific criteria that must be met and documented and then verified by the Chief Procurement Officer. The criteria should include very detailed descriptions of the emergency; how the provider will solve this crisis; and the time frame for the end of the crisis, as per the contractor's plan.

GAO Comment

The regulations define emergency conditions as a situation that creates an immediate threat to the public health, welfare, or safety, such as a flood, epidemic, riot, equipment failure, or other reason set forth in a proclamation issued by the Mayor. The regulations state that the emergency condition must create an immediate need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten one or more of the following: the health or safety of any person; the preservation or protection of property; or the continuation of necessary governmental functions.

The proposed regulation prohibits using emergency procurements in instances related solely to internal governmental circumstances, such as

- (1) The lack of adequate advance planning for the procurement of required supplies, services, or construction;
- (2) Delays in procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
- (3) Pending expiration of budget authority.

Regulations currently require contracting officers to prepare written determinations and findings that set forth specific information identifying the emergency, the justification for the emergency procurement, and the estimated value or cost.

Also, the contracting officer is directed to attempt to solicit offers or proposals from as many potential contractors as possible under the emergency condition and not make an emergency procurement on a sole source basis unless the emergency determination and findings include justification for the sole source procurement. A contracting officer may use a letter or a verbal request to solicit proposals for an emergency procurement. If a letter request is used, the contracting officer is to ensure that the letter is as clear and concise as possible and does not include unnecessary verbiage or notices. A letter request should only contain the data and information necessary for providing a proposal.

Each emergency procurement is to be reviewed by the Chief Procurement Officer on a post-execution basis. This requirement does not satisfy your office's suggestion that the Chief Procurement Officer verify the Determination of Findings. If this suggestion goes forward, a provision should be made to ensure that the emergency procurement is not delayed pending the Chief Procurement Officer's review. In this connection, you may wish to suggest also that all emergency procurements be reviewed by the Inspector General within 15 days of the emergency to further validate the Determination of Findings and to evaluate whether only those goods and services needed to deal with the emergency have been or are being contracted for under the emergency provisions. Again this is not a traditional audit function, but as mentioned earlier it could be instituted on a temporary basis until such time as this added control is no longer needed.

ISSUES: AMENDMENTS TO EXISTING CONTRACTS;
DOCUMENTATION OF CONTRACT REVISIONS/MODIFICATIONS

Suggestion

Your office proposes that all contracts contain a more specific description of the services, receivers, locations, time frame, and expected completion of contract. The suggestion is intended to make it difficult to execute amendments that extend the contract but provide for totally different services, etc., which should go through the competitive bidding process. The suggestion goes on to propose that all amendments/modifications to any contract should be documented in writing and that the products/services should be described and entered into the new automated system (MMIS), both by contractor's code and by the principal's code, to ensure any favoritism is noted by the Chief

Procurement Officer.

GAO Comment

The proposed regulations contain specific requirements concerning the content of both the Invitation for Bids and the uniform contract to be used by the District. The items contained in your office's suggestions for more detail on this issue appear to be adequately covered in the proposed regulations. The proposed regulatory provisions dealing with the amendment of contracts do not address amending a contract to circumvent the competitive-bidding process for items different from those acquired under the original contract. To deal with this issue, you may want to suggest that before an amendment is executed, the contracting officer certify, on the basis of a comparison with the original contract data in MMIS, that the amendment is for goods and services directly related to the objectives of the original contract. This certification, along with the change order, would then become part of the package to be reviewed by the Chief Procurement Officer.

Contract modification forms are to be used by the contracting officer to record contract changes. The proposed MMIS has a section pertaining to change orders and contract modification which would be recorded by the contractor's code. At this point the regulations do not require data on each of the principals of an entity doing business with the District, as mentioned earlier (see page 5 for discussion). Inclusion of principals would seem appropriate for this type of procurement as well.

By regulation, the contracting officer is to include a changes clause, approved by the Chief Procurement Officer, in each solicitation. In addition, the Chief Procurement Officer is to conduct a pre-execution review of each proposed contract modification (except to a construction contract) in an amount greater than \$100,000 and each proposed construction contract modification greater than \$50,000. In addition, a contracting officer is to submit to the Chief Procurement Officer, on a post-execution basis, a completed form for each contract award and modification over \$10,000. As a further measure to help ensure contract modifications are being administered properly, a third party, such as the District's Inspector General, could be required to periodically review contract modifications, including those below the dollar limits requiring the Chief Procurement Officer's review and/or approval.

ISSUES: RATING PROPOSALS;
CONTRACTORS AND THEIR STAFF UNDERQUALIFIED

Suggestion

Your office suggests giving evaluation points to bidders who supply proof of on-staff credentialed persons who can deliver the highest quality services and to bidders having proven expertise, licenses, accreditation, etc., and who can demonstrate that such staff will be providing the actual services.

GAO Comment

The proposed regulations do not provide for a rating point bonus for licensed or accredited individuals, but the regulations do address the issue of quality performance under a contract, charging contracting officers with assuring that contractors are qualified and charging contract administrators with assuring adequate performance. The issue here seems to be the qualifications of contractors, whether they are minority firms or not. If your office feels that contractor's qualifications are not adequately documented you could suggest requiring the contracting officer to more fully document his determination that a contractor is qualified and make the documentation part of the package that is reviewed by the Chief Procurement Officer.

Suggestion

Your office proposes requiring, by law, the certification, licensing, or accreditation of shelters, clinics, halfway houses, etc.

GAO Comment

The issue of certification, licensing, or accrediting operations, such as shelters and clinics is beyond the scope of procurement regulations, but you might want to suggest that the regulations be amended to preclude contracting with entities that are not appropriately certified, licensed, or accredited.

Suggestion

Your office suggests bringing sanctioning powers to bear on the procurement process.

GAO Comment

The authority to invoke sanctions for transgressions in the procurement process exists under the proposed procurement regulations and existed under the old regulations embodied in the

Material Management Manual. Under both sets of regulations, authority exists to remove contracting authority, bar or suspend vendors from doing business with the District, and to recover damages. District personnel regulations provide for disciplining District procurement personnel. The Inspector General and the D.C. Auditor have reported transgressions that seemed to warrant such sanctions, however, their reports do not mention what sanctions, if any, are invoked. You may want to suggest that the Inspector General's report on procurement activities required by the 1985 D.C. Procurement Practices Act include a section dealing with sanctions imposed on individuals responsible for violations included in the report or an explanation of why sanctions were not imposed.

ISSUES: FAVORITISM TO CERTAIN CONTRACTORS;
PERSONAL SERVICE CONTRACTS

Suggestion

Your office suggests that with implementation of the new automated procurement data system (MMIS) a requirement should be established to record, by code, the identification of principals of all contractors, along with the vendor code, so that cronyism cannot be so easily concealed from the auditors and inspectors. Also, a tight description of the project should be required with a start-up and completion date included, so that a series of small contracts cannot be awarded over what is, in fact, an ongoing or long-term project. Further, you suggest that the Chief Procurement Officer be provided with a monthly report of the status of all contracts, both by vendor and principal codes.

GAO Comment

The principals of companies could be given a code, along with vendor codes, to be inserted into the proposed MMIS. This would allow preparation of a list of present and recent contracts with the District by vendor and their principals that could be reviewed for trends, such as several small purchase contracts being made to, in effect, the same company for essentially the same products or services without being subjected to the competitive review process. Once MMIS is operational, a provision could be made for the Chief Procurement Office to receive and review a monthly report of vendors and their principals with more than one contract with the District.

In addition, if there is a question concerning repetitive small contracts, you may wish to further suggest that principal products and services be captured and reported on so that instances of numerous small purchases for the same product or service would also be highlighted, regardless of whether the contracts were with

the same companies or principals. For control purposes the District's Inspector General could also periodically review the reports. Contracting officers should also be instructed to request this information when they have reason to believe some abusive practices may be taking place.

Suggestion

Your office suggests that the ceiling on small purchases should be clarified because it was not clear whether the ceiling was \$10,000 or \$25,000.

GAO Comment

In general, the small purchase procedures as set forth in the proposed regulations may only be used for the procurement of supplies, services, and other items when the total amount of the procurement does not exceed \$10,000; for some District agencies the small purchase contracting authority is limited to \$5,000 and for others to \$2,500.

ISSUE: CONTRACTING OFFICERS HAVE TOO MUCH POWER

Suggestion

Your office suggests that one method to help reduce the power of contracting officers would be to reduce their \$250,000 contracting authority.

GAO Comments

The District of Columbia Procurement Act of 1985 gives the Mayor the authority to appoint contracting officers for the District. The Mayor has designated Department heads as his contracting officers and has given them maximum contracting authority for emergency purchases. Four departments have \$100,000 emergency procurement maximums, a few have \$25,000 and \$10,000 maximums, and DHCD has a \$250,000 emergency procurement maximum.

The suggestions your office has made to tighten and improve sole source, emergency, and other personal services contracts should help in controlling and improving the District's contract administration. However, lowering DHCD's \$250,000 emergency contracting authority or any of the other maximums could present a problem. We would caution against establishing a maximum at too low a level without also providing a mechanism for obtaining a waiver of the maximum in the event a higher amount was necessary for emergencies.

ISSUE: VAGUE DESCRIPTION OF CONTRACTED SERVICES/PRODUCTSSuggestion

Your office believes that descriptions of services and products are too vague and that specific criteria should be developed for describing services and products.

GAO Comment

The proposed regulations list nine specifications that appear to apply to the purchase of materials. However, for services, the proposed regulations only state that work statements be specific and complete. It does not list specific criteria that should be included in the work statement, other than the duration of the contract.

The proposed regulations could be revised to require specifications and standards and specific criteria the contractors must meet. While the degree of specificity will obviously vary with the type of service being sought, all descriptions should include information such as the objectives sought under the contract, the type of product required, and the specific term of the contract. Certainly when very specific services are sought, more specific descriptions can be provided.

ISSUE: CONTRACT EVALUATIONSSuggestion

Your office suggests that the regulations be revised to require the bidder to outline the terms for how and why the contract could be evaluated for compliance and successful, full delivery; the terms for evaluation would also be made a part of the rating process.

GAO Comment

The proposed regulation requires the contracting officer to include a clause in each solicitation and contract that establishes terms for delivery, including the date and quality control factors. It does not address the role of the bidder in evaluating the contract. You could suggest revising the guidelines on this issue if you so desire. Similarly, the terms for evaluation could be made part of the rating process.

ISSUE: FIXED-PRICE CONTRACTS AND DETERMINATE QUANTITYSuggestion

Your office suggests that fixed-price contracts need to be more closely monitored and that a provision be adopted to provide for return of unused funds.

GAO Comment

Fixed-price contracts are a widely used tool in procurement, usually used when fair and reasonable prices can be established for a known product or service. If these circumstances do not exist, the proposed regulations instruct contracting offices to consider other contract types, such as fixed-price with economic-price adjustments (to provide for upward or downward price adjustment) or with prospective price redeterminations (to provide for renegotiation due to variances in quantity, production, or services). We have no data at hand to help us evaluate where the problem discussed by your office lies, but it seems that the basic cause might be found in the type of contract selected, i.e., firm fixed price may not be the type of contract that should have been used.

You may wish to suggest requiring the Inspector General to analyze fixed-price contracts for appropriateness on a random sample basis. As your office has suggested, under the proposed MMIS, fixed-price contracts can be identified and it may be appropriate to have the Chief Procurement Officer receive and analyze reports on fixed-price contracts. In addition, the District's Inspector General could also periodically review the fixed-price contracts, to ensure they are being administered properly and review those fixed-price contracts where there may be potentially unused funds, such as economic price adjustment or prospective price redetermination contracts, to ensure that unused funds are being recovered when appropriate.

ISSUE: NO CLEARLY DEFINED ROLE FOR D.C. INSPECTOR GENERALSuggestion

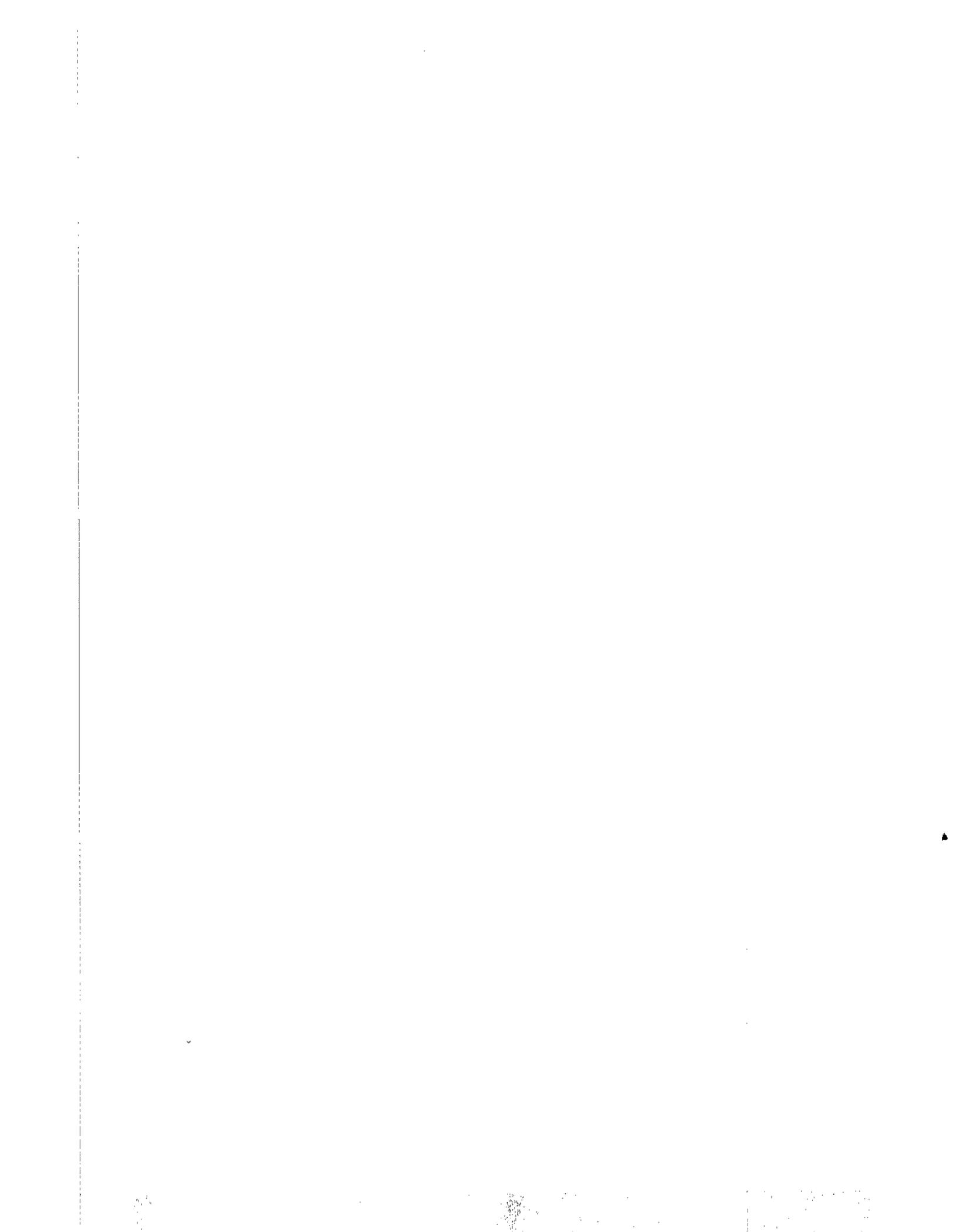
Your office suggests establishing criteria for the annual review by the D.C. Inspector General, based on identified gaps in the D.C. Procurement Code and Regulations. The annual report would examine areas where known abuses have taken place and report on control in those areas as well as allow for identification of other unknown areas.

GAO Comment

The proposed regulations are silent concerning the Inspector General's audit responsibilities under the Procurement Act. Whether it is feasible to implement your office's suggestions at this point is not clear. The procurement function, District wide, represents a major activity. Given the staffing of the District's audit function, it would seem that an orderly, well-planned audit effort is required to get even minimum coverage. One suggestion could be that the Inspector General advise the Council of his audit plans for the coming year in the annual budget process. The Council could then have an opportunity for input before the plan is finalized.

The suggestions made previously regarding increased Inspector General activity are aimed at specific functional areas of concern, and should address at least some of the gaps your office perceives. This work could be officially required by the Director (Chief Procurement Office) under section 208(e) of the act, which provides that the Inspector General may, at the request of the Director, undertake reviews and investigations, make determinations, and issue opinions, with the resulting report provided to the Council within 10 days of publication. The various actions suggested in the issues discussed earlier concerning the Inspector General's activities could be made a matter of regulation under the Director's authority to have special audits made.

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