



OFFICE OF THE DISTRICT OF COLUMBIA AUDITOR

717 14TH STREET N.W., SUITE 900

WASHINGTON, D.C. 20005

TEL. 202-727-3600 • FAX: 202-724-8814

Deborah K. Nichols
District of Columbia Auditor

013:00:DCA:DDCA

**Review of Quantum Meruit Payments Made
By District of Columbia Government Agencies**

June 9, 2000



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The Honorable Phil Mendelson
Councilmember-at-Large
Council of the District of Columbia
441 4th Street, N.W., Suite 720
Washington, D.C. 20001

Letter Report: Review of Quantum Meruit Payments Made By District of Columbia Government Agencies

Dear Councilmember Mendelson:

Pursuant to your request of February 23, 1999, the District of Columbia Auditor conducted a review of goods and services received by the District government without the benefit of valid written contracts or purchase orders¹ in fiscal years 1998, 1999, and 2000, as of March 31st.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of the review were to:

1. quantify the amounts expended by District agencies to pay claims of vendors providing goods or services to the District without a valid contract;
2. identify examples of the kind of goods or services obtained by agencies without valid contracts;

¹ D.C. Code, Section 1-1181.7 (13)(D) defines "contract" as a mutually binding agreement covered by the act which, unless otherwise authorized, is in writing. The term "contract" includes, among other things, purchase orders, letter contracts, and contract modifications.

3. determine whether specific goods and services acquired without a contract were exempt from the requirement for a valid contract pursuant to the Procurement Practices Act of 1985, or by order of the District's Chief Financial Officer; and
4. determine whether any adverse or corrective actions had been taken against any District official or employee found to have permitted or allowed a contractor to provide goods or services without a valid contract.

The Auditor reviewed direct payments² made by District of Columbia government agencies in fiscal years 1998, 1999, and 2000, as of March 31st.

In conducting the audit, the Auditor reviewed applicable laws, regulations, and internal memoranda pertaining to the acquisition of, and payment for, goods and services received by District government agencies. The Auditor also interviewed agency chief financial officers, agency procurement officials, and other relevant personnel at eight District agencies. Additionally, the Auditor reviewed documents and records supplied by the Office of the Corporation Counsel, the Office of the Chief Procurement Officer, and a database of direct payments obtained from the District's financial management systems (FMS and SOAR) through the Office of Financial Operations and Systems. The fiscal year 1998 FMS database consisted of 64,425 records evidencing payments of \$242.3 million. The fiscal years 1999 and 2000 SOAR database was combined and consisted of 69,077 records documenting direct payments of \$468.6 million. Within the universe of 133,502 direct payment records, the Auditor conducted a limited review of specific object codes to obtain an estimated amount of payments made for goods and services received without a written contract, as more fully described below. The amounts noted in this report as expenditures for non-exempt goods and services acquired without a valid written contract are conservatively estimated minimums. To gain a more accurate measure of quantum meruit payments, the Auditor would be required to conduct a more exhaustive review of the 133,502 payment records and their underlying documentation to determine whether the expenditures were recorded in the proper object code

² Direct payment vouchers are vouchers that do not liquidate an obligation document. These are vouchers that District government agencies use to pay for goods and services received without a written contract or a valid purchase order, and/or to pay for goods and services that are exempted from the requirement for an executed purchase order or written contract.

BACKGROUND

D.C. Code, Section 1-1181.5(d)(1) of the Procurement Practices Act of 1985 states:

"No District employee subject to this chapter shall authorize payment for the value of goods and services received without a valid written contract. This subsection shall not apply to a payment required by a court order or a final decision of the Contract Appeals Board."

The Procurement Practices Act also contains several provisions enacted by the Council to specifically address prior instances where goods or services were received by the District government without the benefit of a valid written contract. For example, D.C. Code, Section 1-1181.5(d)(2) prohibits any District employee, after April 12, 1997, from entering any oral agreement with a vendor to provide goods or services to the District Government without a valid written contract. Any employee violating this provision may be subject to termination. Further, D.C. Code, Section 1-1181.5(d)(3) provides that any vendor who, after April 12, 1997, enters an oral agreement with a District employee to provide goods or services to the District government without a valid written contract shall not be paid. The Procurement Practices Act also provides that if a District employee, at the direction of a supervisor, entered into the oral agreement, the supervisor may be subject to termination. Further, the Mayor is required to submit a report to the Council at least 4 times a year on the number of persons cited or terminated for violating the above provisions.

In addition to the provisions of the Procurement Practices Act, the Chief Financial Officer (CFO) of the District of Columbia has issued directives regarding contracting for goods and services. The CFO's Financial Management and Control Order No. 96-04, effective May 20, 1996, states:

Pursuant to DCMR, Title 27, Chapter 12, Section 1200.1, only a contracting officer is authorized to sign and enter into a legal contract for goods and services on behalf of the District government. Any other government employee found to have entered into a written or verbal agreement for goods and services will be subject to appropriate administrative discipline, including suspension from duty without pay or removal from office.

Generally, pursuant to the provisions of the Procurement Practices Act of 1985 and its implementing regulations, no goods or services can be acquired without a properly executed valid contract, and no contract involving the expenditure of public funds shall be entered into unless there is an appropriation that is properly encumbered for the goods or services to be acquired. [Auditor's Emphasis] The Procurement Practices Act of 1985 exempts two types of payments from the general procurement rule requiring a valid written contract — payments required by court order or a final

decision of the Contract Appeals Board. In addition to the exemptions contained in the law, the Chief Financial Officer expanded the statutory exemptions by identifying twenty-one (21) other types of permissible direct payments. The CFO's Resource Management Guidance No. 96-02, effective September 20, 1996, provides that:

All expenditures, with the exceptions of the items listed below, shall first be obligated in the District's Financial Management System (FMS) before being vouchered and paid.

Resource Management Guidance No. 96-02 exempts the following items from the requirement for a valid written contract prior to receiving goods or services:

1. payments for settlements and judgments;
2. court ordered payments;
3. payments to receivers appointed by court;
4. court ordered fines;
5. benefit payments for employees;
6. worker's compensation and unemployment benefits;
7. medical payments for disability (excludes long-term services in rehabilitation centers, nursing homes, etc.);
8. medical payments for victims of assault crimes;
9. health benefit insurance payments pursuant to D.C. Law 8-196;
10. payments for public defenders;
11. employee reimbursements (limited to \$250 for items not covered by petty cash);
12. expenses of volunteers (transportation only);
13. jury duty and court witness fees;
14. payments for employee travel reimbursement and employee training (Excludes direct payments to air carriers, etc);
15. payments of stipends;
16. compensation related to the Criminal Justice Act;
17. payroll withholding (taxes and deductions) and related employer contributions;
18. debt service;
19. membership dues;
20. advertising of \$250.00 or less; and
21. funeral expenses.

FINDINGS

LEGISLATION ENACTED TO ADDRESS PAYMENTS TO VENDORS FOR GOODS AND SERVICES PROVIDED WITHOUT A VALID WRITTEN CONTRACT

During fiscal years 1995 through 1998, the Council of the District of Columbia enacted special legislation to resolve numerous vendor payment issues arising from the acquisition of goods and services without a properly executed and funded contract. The legislation enacted by the Council included:

- D.C. Act 11-84, "Vendor Payment Emergency Act of 1995," whose purpose was to allow, on an emergency basis, the District of Columbia government to receive and pay valid claims for certain vendors who provided goods and services to the Department of Human Services from October 1, 1994 through July 31, 1995, without the benefit of a valid written contract.

D.C. Act 11-84 authorized payments to more than 400 vendors that had provided human care services without a valid contract.

- D.C. Act 11-186, the "Equitable Relief for Certain Persons and Vendors of J.B. Johnson Nursing Center Emergency Act of 1996" stated that, notwithstanding any other provisions of this Act, the Mayor shall receive claims and cause to be paid any person or vendor with a valid claim for goods and services provided to J.B. Johnson Nursing Center ("J.B. Johnson") from November 20, 1995 through November 29, 1995, without the benefit of a valid written contract with the District government.

D.C. Act 11-186 lists 296 persons and vendors that provided goods or services to the J.B. Johnson Nursing Center, and authorized a payment to the listed persons and vendors in a total amount not to exceed \$300,000.00.

- D.C. Act 11-491, the "Vendor Payment Emergency Act of 1996" was passed by the Council of the District of Columbia on January 13, 1997. The purpose of this Act was to allow, on an emergency basis, the District of Columbia government to receive and pay valid claims for certain vendors who provided goods or services to the Department of Human Services from January 1, 1996 through the 90th day after the

effective date of the Vendor Payment Emergency Act of 1996, without the benefit of a valid written contract.

D.C. Act 11-491 authorized payments to 131 vendors that provided goods or services without a valid contract.

- D.C. Act 12-396, the "Vendor Payment and Drug Abuse, Alcohol Abuse, and Mental Illness Coverage Emergency Act of 1998" authorized, on an emergency basis, the District of Columbia government to pay outstanding invoices for goods and services received during Fiscal Years 1995 through 1998 for which the required purchase orders or contracts were not executed or entered into the Financial Management System.

The above enactments allowed certain vendors that provided goods and services to the District government without a valid written contract to be paid, subject to specific limitations on vendor claims and payments. Those limitations required that:

1. any person or vendor who received payment in accordance with the provisions of the Act to forfeit any claim for interest under the District of Columbia Quick Payment Act of 1984;
2. vendors or persons would only be paid if the person or vendor and the Mayor (or Director) would provide a sworn statement that the specific goods and services were provided; and
3. prior to the remittance of payment from the District, the claimant would execute a release in a form approved by the Mayor.

In addition to the actions taken by the Council, the District of Columbia Financial Responsibility and Management Assistance Authority (DCFRMAA) issued a resolution, dated March 25, 1998, that authorized District agencies and the Office of the Chief Procurement Officer to pay approximately \$43 million of unpaid invoices for goods and services acquired without a proper contract. The resolution authorized payment for invoices dating back to 1994, and directed the following:

- immediate payment of invoices for transactions under \$10,000.00, without the necessity for re-verification or suit;

- payment of invoices between \$10,000 and \$50,000 by April 30, 1998, without the necessity for re-verification or suit, unless the head of the affected agency in his or her sole discretion required re-verification prior to payment or required the vendor to sue;
- payment of invoices over \$50,000 by June 30, 1998, following a process of ratification to be managed by the Office of Contracting and Procurement (OCP), upon the ascertainment of the validity of the claim; and
- that the Chief Procurement Officer (CPO), in consultation with the Chief Financial Officer, devise and implement a plan to prevent the recurrence of problems of delay in paying supplier invoices.

DCFRMAA adopted another resolution on March 5, 1999, by which it gave the CPO permanent authority to review vendor claims for goods or services obtained by District agencies without a valid contract. The resolution entitled, "Resolution and Order Concerning Authority Review of District Contracts and Resolution and Order Concerning Payment of Supplier Invoices," provided that: "...the Chief Procurement Officer, in consultation with the Chief Financial Officer shall review and verify invoices submitted in the absence of valid contractual or purchase order authorization; and either ratify such an invoice for payment or remit the supplier to suit." The Office of Contracting and Procurement was required to submit to the DCFRMAA, on a monthly basis, notice of any ratification actions and the details concerning who requested or authorized the supplies or services, why the procurement action was not authorized, and what steps have been or will be taken to prevent recurrence. Any proposed ratification of an amount exceeding \$100,000 required prior approval by the Executive Director of the DCFRMAA.

Notwithstanding the authority to review, verify, and ratify invoices submitted in the absence of valid contractual or purchase order authorization, the CFO and CPO do not appear to have abated this proscribed practice through effective enforcement of existing provisions of law and regulations or the establishment of effective internal controls designed to impede, if not totally preclude, such transactions.

On August 20, 1999, the DCFRMAA issued an opinion to the Chief Financial Officer stating that during a control year, the Chief Financial Officer has the authority to authorize payment of vendor invoices for the value of goods and services rendered to the District government even absent a written contract. According to information supplied by the DCFRMAA, it no longer receives notice of and requests for ratification of such payments. Currently, authority to pay such claims resides with the Chief Financial Officer, at least during a control year. As previously noted, the Auditor's examination indicated that all quantum meruit payments were entered into the SOAR and FMS by agency chief financial officers who are under the authority of the District's Chief Financial Officer.

Finally, to address the numerous claims from vendors that supplied goods or services without a contract, the Office of the Corporation Counsel (OCC) instituted a "friendly suit" procedure. The procedure established a mechanism whereby vendors that had provided goods and services without a contract could file claims with the Superior Court of the District of Columbia. In a June 5, 1996 memorandum entitled, " Procedure for execution of consent judgments to pay for goods and services provided without a valid written contract," the Corporation Counsel stated that, in general, a monetary recovery for the value of goods and services provided without benefit of a valid written contract can be made under a quantum meruit theory when the following is established:

- valuable goods or services were provided to the person or entity sought to be charged;
- the goods or services were accepted and used by the person or entity sought to be charged; and
- the goods or services were provided under such circumstances as to reasonably notify the person or entity receiving the goods or services that the provider of the goods or services expected to be paid.

The Corporation Counsel stated that in order for the OCC to agree to the payment of such claims on behalf of the District government and enter a consent judgment in favor of the vendor, the following conditions must be met:

- a letter or other document from the vendor, which may include an invoice, showing description of goods and/or services provided, the date it was provided, the amount of the goods and/or services provided, and certification that no payment has been received for the stated goods and/or services;
- copies of all relevant documentation from the agency that acquired the goods or services;
- a certification by the appropriate agency program administrator or other senior agency official which states that the specific goods or services were received and accepted, the dates when the goods or services were accepted, and the charges for the goods or services received;
- a certification by the agency director that the agency received and accepted the goods and services, the amount claimed by the vendor is fair and reasonable, and the goods or services were received pursuant to an agreement;

- certification by an agency director that the agency has budget authority for the amount of the claim; and
- a letter from the vendor agreeing to the amount and stating that the vendor will forfeit any claim under the Quick Payment Act of 1984.

Once the above conditions were met, the vendor filed a civil action in the Superior Court of the District of Columbia stating the amount owed. OCC, on behalf of the District, then consented to entry of judgment in the amount agreed upon. The responsible agency then prepared a direct payment voucher charging the program area responsible for the acquisition of the goods or services.

DISTRICT AGENCIES CONTINUE TO ACQUIRE GOODS AND SERVICES WITHOUT THE BENEFIT OF A VALID CONTRACT

According to the report the Auditor obtained from the Office of Corporation Counsel, in fiscal year 1998, sixteen (16) agencies paid \$7,299,193.86, and in fiscal year 1999, eight (8) agencies paid \$306,405.82 to vendors that initiated a "friendly suit". The agencies and the amounts paid under OCC's friendly suit procedure are shown in Table I below:

TABLE I

Amounts Paid for Goods and Services Provided Without a Valid Contract Under the Office of the Corporation Counsel's Friendly Suit Procedure

| Agency | Amount paid In FY 1998 | Amount paid In FY 1999 |
|--|---------------------------|---------------------------|
| Office of the Mayor | \$0.00 | \$1,500.00 |
| No agency identified, vendor NAMIR Inc. | \$10,257.23 | \$0.00 |
| Department of Administrative Services | \$2,947,175.56 | \$0.00 |
| DC Public Schools | \$896,906.88 | \$0.00 |
| Office of the Chief Financial Officer | \$464,195.75 | \$0.00 |
| Office of Financial Operations & Systems | \$62,716.50 | \$0.00 |
| Office of the Corporation Counsel | \$38,619.32 | \$0.00 |
| Department of Corrections | \$56,789.01 | \$44,363.50 |
| D.C. General Hospital | \$56,945.00 | \$0.00 |
| Department of Employment Services | \$79,581.42 | \$0.00 |
| Housing- DPAH & DCHA | \$81,221.89 | \$7,002.50 |
| Department of Human Services | \$1,148,900.00 | \$124,548.51 |
| Lottery & Charitable Games Control Board | \$16,035.12 | \$0.00 |
| Metropolitan Police Department | \$251,192.53 | \$42,522.00 |
| Office Economic Development | \$17,981.23 | \$0.00 |
| District of Columbia Public Library | \$3,077.88 | \$0.00 |
| Department of Public Works | \$1,166,388.54 | \$76,969.31 |
| Department of Recreation and Parks | \$0.00 | \$7,500.00 |
| University of District of Columbia | \$1,210.00 | \$0.00 |
| UDC School of Law | \$0.00 | \$2,000.00 |
| TOTAL PAID | \$7,299,193.86 | \$306,405.82 |

Source: Office of the Corporation Counsel

In addition to the procedures utilized by OCC, the Office of the Chief Procurement Officer (OCPO) also instituted, pursuant to the DCFRMAA resolution, a procedure to pay claims for goods and services received without a contract. The Auditor requested and received from the Office of the Chief Procurement Officer a detailed report of ratified vendor claims for goods and services provided to District agencies without a proper contract. The report indicated that the CPO ratified payments totaling \$15,306,784 in fiscal year 1998 and \$2,189,142 in fiscal year 1999.

The Office of the Corporation Counsel's friendly suit procedure and the Chief Procurement Officer's ratification procedure were discontinued after the Chief Financial Officer assumed authority to pay quantum meruit claims.

Notwithstanding the information provided by OCC and OCP, the Auditor requested and received data of all direct payment vouchers from the Office of the Chief Financial Officer for fiscal years 1998, 1999, and 2000 (through March 31, 2000). This data indicated that payments have been and continue to be made by the Office of the Chief Financial Officer for goods and services obtained without a valid written contract. A review of the data indicated that in fiscal year 1998 expenditures exceeded \$105 million for goods and services obtained without a valid written contract. In fiscal year 1999, District agencies paid in excess of \$96 million for goods and services obtained without a valid written contract. In fiscal year 2000 through March 31, 2000, District agencies paid in excess of \$51 million for goods and services obtained without a valid written contract. Table II below presents the above noted expenditures pursuant to the procedures instituted by the Office of the Corporation Counsel, the Office of the Chief Procurement Officer, and quantum meruit payments authorized by the Office of the Chief Financial Officer.

TABLE II

Payments Made Outside of the Friendly Lawsuit and Ratification Procedures

| Category | Fiscal Year 1998 | Fiscal Year 1999 | Fiscal Year 2000 |
|--|-----------------------------|-----------------------------|-----------------------------|
| Office of the Corporation Counsel's "Friendly Lawsuit" | \$7,300,000.00 | \$306,000.00 | N/A |
| Chief Procurement Officer's Ratification Procedure | \$15,000,000.00 | \$2,000,000.00 | N/A |
| Expenditures Made Outside of the OCC's and CPO's Procedures | \$105,000,000.00 | \$96,000,000.00 | \$51,000,000.00 |
| Total | \$127,300,000.00 | \$98,306,000.00 | \$51,000,000.00 |

Source: Office of the Corporation Counsel, Office of the Chief Procurement Officer, and the Office of the District of Columbia Auditor

Table III presents examples of services obtained without a valid written contract.

TABLE III

**Examples of Payments Made to Vendors Who Provided Services
Without A Valid Contract**

| Vendor | Amount | Nature of the Expenditure |
|-------------------------------|------------------------|--|
| Bell, Boyd and Lloyd | \$38,723.40 | Professional Administrative Services |
| Rogers Casey Consulting, Inc. | \$168,750.00 | Professional Services |
| Anchor Mental Health Assoc. | \$3,115,502.39 | Professional Services to the Mentally Challenged |
| Andromeda, Inc. | \$228,087.00 | Case Management & Medication Management Services |
| City Lights, Inc. | \$182,066.00 | Vocational Rehabilitation for the Blind |
| Dytrad Management Services | \$176,841.49 | Youth Group Home Services |
| The Fedora Center | \$1,225,925.00 | Residential Services for Juveniles |
| HBO, Inc. | \$10,590,847.00 | Professional EDP/ADP Services |
| Coates and Lane Enterprises | \$1,289,822.42 | Group Home Services |
| Educational Designs | \$183,816.00 | Youth Group Home Services |
| Tricom Training Institute | \$263,325.00 | Group Home Services |
| Maximus, Inc. | \$853,780.00 | Professional Services |
| KPMG Peat Marwick | \$1,385,759.00 | Professional Services |
| Thompson, Cobb, Bazillio | \$1,388,330.00 | Professional Services |
| Arthur Anderson | \$85,090.82 | Professional Services |
| Regent Consultants, Inc. | \$543,108.50 | Renovation Services |
| Total | \$21,719,774.02 | Services Provided Without Contract |

Source: Office of the District of Columbia Auditor and Office of the Chief Financial Officer

Significant Deficiencies Currently Exist in Internal Controls Over Payments for Goods and Services Provided Without a Valid Written Contract

As noted above, the CFO now exercises discretion over payments for goods and services received without a written contract. The Office of Financial Operations and Systems (OFOS) provided the Auditor with current policies governing accounts payable. Pursuant to the policies, OFOS now only periodically monitors and conducts audits of direct payments. Further, agency

CFOs have the authority to approve direct payments for amounts greater than \$5,000, with no upper limit specified. The audit team determined that not all agencies follow this procedure. For example, in one agency the accounts payable manager approves all direct payments, without the review and approval of the agency's chief financial officer. The audit team also noted that the policies and procedures in use do not require certification or other verification of the receipt and acceptance of conforming goods and services. Finally, limiting the review of direct payments to periodic monitoring and audits, without more, does not adequately implement such internal controls as would ensure compliance with the requirement to execute valid written contracts before acquiring goods and services.

Agency Finance Officers Are Making Payments to Vendors from Inappropriate Object Codes (Accounts) for Goods and Services Provided Without a Valid Written Contract

The Auditor found instances in which payments for goods and services provided by vendors without a valid written contract were charged to inappropriate object codes. These instances appeared to violate the Reprogramming Policy Act of 1980 which, in relevant part, states:

§ 47-362. Policies enumerated.

(a) A reprogramming shall be used only when an unforeseen situation develops, and then only if postponement until the next appropriations cycle would result in a serious hardship in the management of the City....

§ 47-363. Council approval for reprogramming requests for appropriated or estimated non-appropriated authorities; procedure; monthly reprogramming summary; exclusions.

(a) The Mayor shall submit to the Council for approval any reprogramming request(s) which individually or on a cumulative basis would result in a change to the original appropriated or estimated non-appropriated authority of any responsibility center of more than \$400,000 or 10% (whichever is less) of the original appropriated or estimated non-appropriated authority in any fiscal year; provided, however, that Council approval shall not be required for any reprogramming of up to \$25,000. Council approval is required for any subsequent reprogrammings which individually or considered on a cumulative basis would result in additional changes of more than \$100,000 or 10% (whichever is less) of the original appropriated or estimated non-appropriated authority of any responsibility center.

(b) The Mayor shall submit to the Council for approval any shift(s) in funding among object categories within the same responsibility center which individually exceed \$50,000 in any fiscal year. Council approval is required for any subsequent actions which individually would move funds in excess of \$50,000 among object categories within the same responsibility center in any fiscal year. [Auditor's Emphasis]

In addition to the Reprogramming Policy Act of 1980, the Office of Budget and Planning issued OBP Circular FY99-03 entitled, "Reprogramming Policy and Procedures for the Operating Budget," dated February 22, 1999, which states in relevant part the following:

The purpose of this memorandum is to clarify the District of Columbia's reprogramming policy (Section I) and procedures (Section II) for the operating budget, particularly within the context of the new System of Accounting and Reporting (SOAR). SOAR is designed to enhance the District's ability to control expenditures and prevent deficits....[Auditor's Emphasis]

2. Agency Justification Requirements

Each reprogramming request must include (1) a memorandum justifying the reprogramming request and, if applicable, the allotment change request, (2) a reprogramming request form signed by the Director or agency Chief Financial Officer,...

3. Approval Thresholds

A. Reprogrammings require only OBP approval when:

1. Changes are within an object category (personal services or nonpersonal services) in the same responsibility center, regardless of the amount.
2. Changes are between object categories in the same responsibility center up to \$50,000.
3. Changes are between responsibility centers in the same control center and the amount is below \$25,000. In addition, if the amount is less than 10 percent of the responsibility center budget from which the funds are taken, OBP may approve a shift of up to \$400,000.
4. Changes are between control centers and the amount is below \$25,000 and is less than 10 percent of the control center from which the funds are taken.

B. Reprogrammings require Authority and Council approval when:

1. Changes are between object categories within the same responsibility center and the amount exceeds \$50,000.

Table IV presents examples of expenditures over \$25,000 that should have been paid from, or funds reprogrammed to, more appropriate object codes which would have required OBP or Council approval. Instead, these payments were improperly charged to inappropriate object codes for goods and services provided without a valid contract. Thus, the examples presented in Table IV appear to have circumvented and, therefore, violated the Reprogramming Policy Act of 1980 and OBP Circular FY99-03. (See Attachment I for OBP's reprogramming policy) There are no penalties for violating the Reprogramming Policy Act of 1980.

TABLE IV
Payments Charged to Inappropriate Object Codes in the
District's FMS and SOAR During
Fiscal Years 1998 Through the 2nd Quarter of 2000

| Vendor | Services | Amount | Object Code | Object Code Description |
|-------------------------|----------------------|---------------------|-------------|----------------------------|
| Maximus, Inc. | Consulting | \$120,000.00 | 201 | Office Supplies |
| Maximus, Inc. | Consulting | \$416,000.00 | 309 | Rentals- Land & Structures |
| KPMG Peat Marwick | Consulting | \$258,842.00 | 305 | Electricity |
| The Fedora Center | Residential Services | \$63,622.71 | 300 | Energy, Building Rent |
| Thompson, Cobb, Bazilio | Consulting | \$30,655.00 | 305 | Electricity |
| Select Temp. Services | Temporary Staffing | \$69,060.31 | 204 | Educational |
| Devereux | Residential Services | \$37,528.00 | 300 | Energy, Building Rent |
| Total | | \$995,708.02 | | |

Source: Office of the District of Columbia and the Office of the Chief Financial Officer

Despite the Continuing Receipt of and Payment for Goods and Services Without a Valid Written Contract, the Auditor Has Found No Evidence That Adverse or Corrective Actions Were Initiated Against Any District Employee or Official

D.C. Code, Section 1-1181.5(d)(3) requires the Mayor to submit a report to the Council at least 4 times a year on the number of persons cited or terminated for violating the requirement to establish a written contract prior to acquiring goods or services. Notwithstanding requests by the Auditor to the Executive Office of the Mayor to produce such reports, no reports have been supplied. (See Attachment II for letters requesting reports required by section 1-1181.5 (d) (3)) Further, the Office of the Secretary of the Council indicated that the Council has no record of receiving any reports required by Section 1-1181.5(d)(3).

There was no documentation available for the Auditor's review which indicated that the CFO or CPO, or their designees, provided prior review and authorization of payments made for goods and services provided without a valid contract. Further, the Auditor's review indicated that neither officer conducted any investigations into goods and services procured without a contract. The Auditor also found no instances in which District officials and employees responsible for authorizing such transactions were held accountable under the District's procurement or personnel laws. [See Attachment III for the Chief Procurement Officer's response on this matter.]

Non-Exempt Quantum Meruit Payments Should Be Assigned a Unique Accounting Attribute

Quantum meruit payments are currently assigned the same accounting attributes as all other items exempt from the requirement of establishing a valid written contract, thus making it difficult to identify and evaluate the appropriateness of such payments. Assigning unique accounting attributes to exempt payments should facilitate identification and quantification of such payments. Similarly, quantum meruit payments that are not exempt should also be assigned unique accounting attributes to make them easy to identify, quantify, and trace back to the accountable agency and approving official. Also, the District's Chief Procurement Officer and Chief Financial Officer have not established effective internal controls which are designed to impede, if not preclude, such transactions. Further, the Chief Procurement Officer has not effectively enforced existing provisions of the procurement law pertaining to the proscribed practice of obtaining goods and services without a valid written contract.

RECOMMENDATIONS

To correct the noted deficiencies, the Auditor recommends that:

1. the accounting attributes necessary to identify payments for goods or services received without a valid written contract or a valid purchase order must be separately established and used to record all non-exempt direct (quantum meruit) payments;
2. the District's Chief Procurement Officer immediately investigate the circumstances of any instance in which an agency received goods or services without a valid written contract, and report those findings in detail to the Mayor, the Council of the District of Columbia, and the District of Columbia Auditor within 90 days of the date of this report;
3. the Chief Procurement Officer and/or the appropriate agency Director, immediately take the necessary and appropriate disciplinary action against any District official or employee under their supervision found to have authorized the acquisition of goods or services without having executed a valid written contract; and

4. the Mayor, or his designee, file reports detailing the number and amount of quantum meruit payments made by agencies in accordance with the requirements of D.C. Code, Section 1-1181.5(d)(3) of the Procurement Practices Act of 1985, and provide the name of each employee against whom a disciplinary action was initiated and its outcome.

CONCLUSION

Generally, District agencies are prohibited from acquiring goods or services without a valid written contract. The Auditor's review indicated that District procurement and finance personnel continue to procure and pay for goods and services without a valid written contract. The responsibility for ensuring that goods and services are obtained in compliance with the Procurement Practices Act of 1985, as amended, and other applicable laws, regulations, and standards resides with the District's Chief Procurement Officer. Similarly, the District's Chief Financial Officer is responsible for ensuring that funds are properly encumbered in the District's financial management system, SOAR, before vendors are authorized to provide goods and services and before the District pays for the same. The Auditor's examination indicated that effective accountability has not been established with regard to this matter.

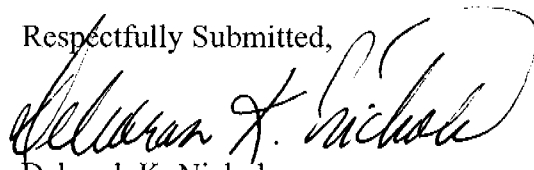
The Auditor believes that the District's Chief Procurement Officer and Chief Financial Officer have not exerted effective control over the practice of procuring goods and services without a valid contract and have not developed and implemented effective internal controls to ensure compliance with the Procurement Practices Act of 1985 and other applicable procurement and accounting rules and standards. As a consequence, in part, because of the breakdown in adherence to and enforcement of applicable procurement and financial management laws, regulations and standards, the District government has experienced chronic, longstanding problems with District personnel violating the above requirement. In the past five years, the District government has implemented several measures designed to remedy prior violations and prohibit agencies from acquiring goods and/or services without a valid contract, including:

- the enactment of laws specifically authorizing payments to vendors that provided goods or services without the benefit of a valid written contract, and prohibiting District employees from entering such an arrangement;
- the institution of a "friendly suit" procedure wherein the government consented to a judgment for payment of goods and/or services received without a valid contract; and
- adoption of resolutions by the DCFRMAA establishing procedures to pay claims of vendors and implementation of a mechanism whereby the Chief Procurement Officer ratified invoices submitted for goods or services provided without a contract.

Although existing laws, rules and policies currently prohibit the acquisition of goods or services without a valid written contract, a review of data from various government sources indicates that agencies continue to improperly acquire goods and services. Aggregating the expenditures incurred through the "friendly suit" process, the CPO's ratification process, and a sample of direct payments recorded by the Office of the Chief Financial Officer, the Auditor has determined that the District government spent, at minimum, \$127.3 million in fiscal year 1998, \$98.3 million in fiscal year 1999, and \$51 million in fiscal year 2000 through March 31, 2000, for goods and services received without the benefit of a valid written contract. Given the volume of transactions shown in the District's financial management system, the above figures are conservative estimates. Currently, the authority to ratify and pay claims arising from the government's acquisition of goods or services without a contract resides with the Chief Financial Officer and the Chief Procurement Officer.

Despite this continuing problem, the Auditor could find no evidence that corrective or adverse actions were taken against any District officials or employees for acquiring goods or services without a valid written contract. The review conducted by the Auditor also revealed that significant internal control deficiencies exist in the payment and ratification process currently used by the CPO and CFO, and that vendor payments are being charged to inappropriate object codes in apparent violation of laws governing the reprogramming of funds. Finally, the review determined the need for assigning a unique accounting attribute to quantum meruit payments to facilitate identifying, quantifying, tracking and monitoring such payments.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Deborah K. Nichols", with a large, stylized flourish at the end.

Deborah K. Nichols

District of Columbia Auditor

ATTACHMENTS

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Chief Financial Officer

Dr. Abdusalam Omer
Deputy Chief Financial Officer



Budget and Planning

OBP CIRCULAR FY99-03

TO: Agency Heads, Agency CFOs, and Other Budget Entities

FROM: Abdusalam Omer *AO*
Deputy CFO for Budget and Planning

DATE: February 22, 1999

SUBJECT: Reprogramming Policy and Procedures for the Operating Budget

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8000
11/11/99

The purpose of this memorandum is to clarify the District of Columbia's reprogramming policy (Section I) and procedures (Section II) for the operating budget, particularly within the context of the new System of Accounting and Reporting (SOAR). SOAR is designed to enhance the District's ability to control expenditures and prevent deficits. It will stop processing non-personal services (NPS) spending transactions if an agency has spent its budget on an annual basis or an allotment basis at the spending plan level (equivalent to old FMS responsibility center, revenue type, revenue source code, object class, and fund). SOAR contains 100 percent of the budget authority for local funds (0100), and Special Purpose Revenue or other funds (0600). The budgets for all other funds ---Federal grant (0200), Private Grant (0400), Intra-District funds (0700), Capital funds (0300), and the Highway Trust Fund (0350) --- have been allotted to allow for improved management of revenues and expenditures in these areas.

The reprogramming policies and procedures are based on the Reprogramming Policy Act of 1980 (D.C. Law 3-100), as amended, the D.C. Financial Responsibility and Management Assistance Act of 1995 (P.L. 104-8), the yearly Congressional appropriations acts for the District, and the capabilities of the new financial management system. They pertain to the reprogramming of operating and capital funds. The reprogramming policy and procedures for the capital budget will be discussed in a separate circular.

There have been some discussions on revising the thresholds. However, unless you are notified otherwise, the thresholds stated in this circular are the ones in effect.

SECTION I: POLICY

Reprogramming policy includes: (1) General Policy Guidelines, (2) Agency Justification Requirements, (3) Approval Thresholds, and (4) Reporting Requirements.

1. General Policy Guidelines

Definition. A reprogramming is defined as any budget modification which results in an offsetting reallocation of dollars within a fund from one budget category to another for purposes other than those originally planned. The key word in the definition is **offsetting**. This means that there is no change in total dollars available for that fund. An increase in one budget category is simply matched by a decrease in another budget category.

The general policy guidelines are:

- (a) A reprogramming should be requested only when an unforeseen situation develops and then only if postponement until the next appropriations cycle would result in a serious hardship on the District.
- (b) Reprogrammings are not to be used to establish new programs or to change allocations specifically denied, limited, or increased by the Congress, Council, Authority or the Office of Budget and Planning.
- (c) Programs or projects deferred through reprogramming are not to be accomplished by further reprogramming later. Funding for such action is to await the regular budget request.

2. Agency Justification Requirements

Each reprogramming request must include (1) a memorandum justifying the reprogramming request and, if applicable, the allotment change request, (2) a reprogramming request form signed by the Director or agency Chief Financial Officer, (3) the entries of a Batch Header and transaction details on-line in R*Stars, (4) the entries of an allotment change request in R*Stars, when applicable, and (5) the DAFR 7430 Report(s) signed by the agency analyst preparing the reprogramming request and, if applicable, the allotment change request. Details of what should be included in the request are discussed in Section II, Procedures, of this circular.

3. Approval Thresholds

The law provides specific thresholds for approval by OBP, the Authority and Council. All reprogrammings must be submitted to OBP for approval. Reprogrammings are divided among (1) those that require only OBP approval, and (2) those that require approval of the Authority and Council when appropriate. The FY 1999 District Appropriations Act requires that Congress be given 30 days advance notification in writing of certain reprogrammings.

The detailed explanation of the thresholds provided below pertains to the accounting structures used in the District's old financial management system (FMS) and is still used in existing public laws on reprogrammings. Agencies must apply the new SOAR accounting structures that are equivalent to the old FMS accounting structures when requesting reprogrammings. This translation is provided throughout this document.

These thresholds are *cumulative* during a fiscal year, except the thresholds for changes within the same responsibility center and for those requiring Congressional notification. See Attachment 1 and 2 for a summary of these thresholds.

A. Reprogrammings require only OBP approval when:

1. Changes are within an object category (personal services or nonpersonal services) in the same responsibility center, regardless of the amount.
2. Changes are between object categories in the same responsibility center up to \$50,000.
3. Changes are between responsibility centers in the same control center and the amount is below \$25,000. In addition, if the amount is less than 10 percent of the responsibility center budget from which the funds are taken, OBP may approve a shift of up to \$400,000.
4. Changes are between control centers and the amount is below \$25,000 and is less than 10 percent of the control center from which the funds are taken.

B. Reprogrammings require Authority and Council approval when:

1. Changes are between object categories within the same responsibility center and the amount exceeds \$50,000.
2. Changes are between responsibility centers in the same control center and are greater than \$25,000, and the amount is also greater than 10 percent of the responsibility center budget from which the funds are taken. In any case, Authority and Council approval is required if the amount is more than \$400,000, regardless of the percentage.
3. Changes are between control centers and the amount is either above \$25,000 or greater than 10 percent of the control center from which the funds are taken.
4. Changes are between any responsibility center or control center within the Department of Human Services and the amount exceeds \$50,000.
5. The D.C. Board of Education and the Board of Trustees of the University of the District of Columbia do not require Council approval. However, reprogrammings between control centers of authority in excess of \$50,000 on an annual basis must be submitted to the OBP, Council, and the Authority for review and comment.

6. The D.C. General Hospital Commission does not require approval to reprogram nonlocal authority. However, reprogramming of its local authority is subject to Council approval as outlined for all other agencies.

C. Reprogrammings require 30 days advance notification in writing to Congress when:

1. Changes are over \$1,000,000 or 10 percent, whichever is less, to a program, project or activity.
2. Increases are 20 percent or more of the personnel assigned to a program, project or activity.¹

4. Reporting Requirements

The Reprogramming Policy requires that the District Council and the Authority receive a monthly report on all reprogrammings regardless of the amount. OBP will compile this report from the information in R*Stars for each agency. These monthly reports, in turn, will be used to create the quarterly reports on reprogramming as required by the Congress.

¹ By law, reprogrammings that create new programs, eliminate a program, project or activity, establish or change an allocation specifically denied, limited or increased by the FY 1999 Appropriations Act, increase funds or personnel for any project or activity for which funds have been denied or restricted or reestablish any program or project previously deferred through reprogramming also require Congressional notification. However, these reprogrammings are already contrary to OBP policy (see Section I (1)). So the issue of Congressional notification never arises.



OFFICE OF THE DISTRICT OF COLUMBIA AUDITOR

717 14TH STREET N.W., SUITE 900

WASHINGTON, D.C. 20005

TEL: 202-727-3600 • FAX: 202-724-8814

Deborah K. Nichols
District of Columbia Auditor

May 9, 2000

00:078:DKN

The Honorable Anthony A. Williams
Mayor
District of Columbia
One Judiciary Square
441 4th Street, N.W., Suite 1100
Washington, D.C. 20001

Dear Mayor Williams:

Attached please find a copy of a letter sent to you on June 29, 1999 requesting copies of all reports submitted to the Council of the District of Columbia pursuant to D.C. Code, Section 1-1181.5(d)(3). As of May 9, 2000, I have not received a response to this letter. Therefore, I am reiterating my request of June 29, 1999 for copies of all reports submitted pursuant to D.C. Code, Section 1-1181.5(d)(3) in fiscal years 1998, 1999 and 2000 (as of March 31st). Please provide the requested information before the close of business Wednesday, May 10, 2000.

Thank you for your cooperation and assistance in this matter. You may contact me at 727-3600 should you have any questions concerning this request.

Respectfully,

Deborah K. Nichols
District of Columbia Auditor

Enclosure



OFFICE OF THE DISTRICT OF COLUMBIA AUDITOR

717 14TH STREET N.W., SUITE 900
WASHINGTON, D.C. 20005
TEL. 202-727-3600 • FAX: 202-724-8814

Deborah K. Nichols
District of Columbia Auditor

99:088:DKN

June 29, 1999

The Honorable Anthony A. Williams
Mayor
District of Columbia
One Judiciary Square
441 4th Street, N.W., Suite 1100
Washington, D.C. 20001

Dear Mayor Williams:

I am requesting copies of all reports submitted by the Mayor to the Council of the District of Columbia pursuant to D.C. Code 1-1181.5(d)(3) which states in relevant part:

"Any vendor who, after April 12, 1997, enters into an oral agreement with a District employee to provide goods or services to the District government without a valid written contract shall not be paid. If the oral agreement was entered into by a District employee at the direction of a supervisor, the supervisor shall be terminated. The Mayor shall submit a report to the Council at least 4 times a year on the number of persons cited or terminated under this provision."(Auditor's Emphasis)

Thank you for your cooperation and assistance in this matter. You may contact me at 727-3600 should you have any questions concerning this matter.

Respectfully,

Deborah K. Nichols
District of Columbia Auditor

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Contracting and Procurement

Director



May 22, 2000


Ms. Deborah K. Nichols
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street N.W., Suite 900
Washington, D.C. 20005

Dear Ms. Nichols:

This is in response to your letter dated May 9, 2000, where you request a list of names of persons cited pursuant to the D.C. Code, Section 1-1181.5(d)(3), the goods or services involved, the amount thereof, and the corrective or adverse action taken during Fiscal Years 1998, 1999 and 2000 as of March 31st. As of today, May 22, 2000, I am not aware of any District employee being cited pursuant to this requirement.

If you have any questions, please contact me on (202) 727-0252.

Sincerely,


Elliott B. Branch
Director

AGENCY COMMENTS

AGENCY COMMENTS

On May 23, 2000, the Office of the District of Columbia Auditor transmitted this report, in draft, for review and comment to the District of Columbia Chief Financial Officer and the District of Columbia Chief Procurement Officer.

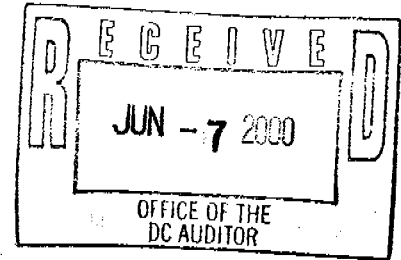
Comments were received from the Chief Financial Officer on June 7, 2000 and from the Chief Procurement Officer on June 8, 2000. Where appropriate, changes were made to the final report as a result of the comments. The comments, in their entirety, are appended to the final report.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Chief Financial Officer



JUN - 7 2000

Ms. Deborah Nichols
District of Columbia Auditor
717 14th Street N.W., Suite 900
Washington, DC 20005



Subject: "Review of Meruit Payments Made By District of Columbia
Government Agencies.

Dear Ms. Nichols:

Thank you for the opportunity to respond to your draft letter report titled, "Review of Meruit Payments Made by District of Columbia Government Agencies."

The draft findings are accepted with the following explanation. Statistically it is acceptable to extrapolate the results of a sample over a large population; however the dollar estimates in Table II of the report may not necessarily reflect true amount of the overall payments made without contract. This office is implementing immediate remedies pursuant to the recommendations cited in the draft report.

The following is the Remedial Action Plan:

1. REGULAR INTERNAL REVIEWS OF PAYMENTS MADE WITHOUT CONTRACTS

To continue to address the issue of vendor payments made without contract, the internal audit arm of the Chief Financial Officer, will continue a program of regular reviews of expenditures made by District Agencies for FY 2000 without the benefit of contracts or valid purchase orders as cited in Table II. Such reviews will specifically focus on the expenditures totaling \$51 million identified in your report, for FY 2000 through March 31, 2000.

These internal reviews will be regular and continual. Moreover, the CFO will institute the necessary corrective measures and/or adverse personnel action, if warranted, based on the results of these reviews.

2. **IMPLEMENT ADEQUATE INTERNAL CONTROLS OVER PAYMENTS FOR GOODS AND SERVICES PROVIDED WITHOUT A VALID WRITTEN CONTRACT**

In addition to regular reviews of payments made without contracts, the internal auditors will evaluate current payments practices and existing internal controls at District agencies. The auditors will present recommendations to eliminate unauthorized payments by agencies and to improve controls for such payments. This office will continue to work with the District of Columbia Procurement to develop enforcement policies.

3. **CORRECTION TO MISCODED ACCOUNTS**

Miscoded payments create errors in reporting correct balances of District accounts. To address this weakness, the Office of Financial Operations and Systems (OFOS), will take the lead in assuring properly coded transactions in the District System of Accounting and Reporting (SOAR). Agency CFOs will be held responsible for ensuring the agencies' transactions are correctly recorded and reported. Procedures will accordingly be implemented to review and monitor transactions for accurate coding of accounts and prompt corrections will be made wherever appropriate.


4. **ASSIGNING UNIQUE ACCOUNTING ATTRIBUTES TO NON-EXEMPT QUANTUM MERUIT PAYMENTS**

OFOS will review the feasibility and implementation of establishing designated accounting attributes to the various classes of payments made within the District system. If this accounting procedure is feasible, this action would be implemented. In addition, OFOS would also evaluate the issue and propose alternative solutions, if necessary.

Should you have any questions on this subject or need additional information, please do not hesitate to contact me at 727-2476 or Anthony F. Pompa at 442-8200.

Respectfully,



 Natwar M. Gandhi
Interim Chief Financial Officer

**RESPONSE
OF THE
OFFICE OF CONTRACTING AND PROCUREMENT
TO THE
FINDINGS AND RECOMMENDATIONS
IN THE
DRAFT LETTER REPORT, ENTITLED-**

**“REVIEW OF QUANTUM MERUIT PAYMENTS MADE BY THE DISTRICT
OF COLUMBIA GOVERNMENT AGENCIES”**

1. RECOMMENDATION:

That the noted accounting attributes necessary to identity payments for goods or services received without a valid written contract or valid purchase order must be separately established and used to record all non-exempt direct (quantum meruit) payments.

1. RESPONSE:

The Office of Contracting and Procurement (OCP) generally concurs with the recommendation. We are currently revising, in consultation with the Office of the Chief Financial Officer (OCFO), the forms that are utilized to process the ratification of unauthorized commitment action. The OCP will work with the OCFO to revamp the new forms to include the accounting codes as identified by the OCFO.

2. RECOMMENDATION:

That the District's Chief Procurement Officer immediately investigate the circumstances of any instance in which an agency received goods and services without a valid written contract, and report those findings in detail to the Mayor, the Council of the District of Columbia, and the District of Columbia Auditor within 90 days of the date of this report.

2. RESPONSE:

Currently, the Office of Contracting and Procurement has been working with the United States General Accounting Office (GAO) to formulate a comprehensive list of all ratification actions of unauthorized commitments that have been completed within the past three (3) years. GAO and OCP will be sharing this information with the District of Columbia Office of the Inspector General (OIG)

upon finalization of the listing. The OCP would be happy to share this listing upon completion of this work with the District of Columbia Auditor.

In addition, the OCP has previously forwarded to the OIG copies of the ratification actions approved by the Chief Procurement Officer prior to August 1, 1999. The OCP took that action in order to obtain any management recommendations that the OIG might have, as well as to afford the OIG an opportunity to pursue any investigative action that deemed appropriate.

3. RECOMMENDATION:

That the Chief Procurement Officer immediately take the necessary and appropriate disciplinary action against any District Official or employee found to have authorized the acquisition of goods or services without a valid written contract.

3. RESPONSE:

The OCP has some concerns with this proposed recommendation. First, only the ratification actions for unauthorized commitments of those agencies operating under the Procurement Practices Act are processed for completion through OCP. The Table III on page 12 of the draft report appears to contain several expenditures for agencies that are not subordinate to the Mayor, including the Commission on Mental Health Services which has been operating under a receiver appointed by the United States District Court. Additionally, Table III includes several listings for which the OCP has no record demonstrating that a ratification action was processed through OCP. Given these circumstances, there are ratification actions that occur outside the scope of the Chief Procurement Officer.

Second, the Chief Procurement Officer is not in the direct supervisory personnel chain of the vast majority of the employees or officials who may have made an unauthorized commitment. Neither the Procurement Practices Act of 1985, nor the Procurement Reform Amendment Act of 1996, which established the position of Chief Procurement Officer, vests the Chief Procurement Officer with the authority to "take necessary and appropriate disciplinary action" against any District official or employee found to have made an unauthorized commitment when that individual is not within the supervisory authority of the Chief Procurement Officer. The ratification form utilized by the OCP requires the name of the employee who made the unauthorized commitment, a description of the circumstances, and signature by the agency head. Since the agency head has both the authority and the relevant information pertaining to the ratification, it is more appropriate that the affected agency head take the necessary and appropriate disciplinary action.

Third, many of the employees affected are no longer employed by the District government. While some of the ratifications were approved within the last few years, many relate to actions that occurred as far back as 1995. During that time, some agencies have experienced significant change and employees have left the District government for a variety of reasons.

4. RECOMMENDATION:

The Mayor, or his designee, file reports detailing the number and amount of quantum meruit payments made by agencies in accordance with the requirement of D.C. Code, section 1-1181.5(d)(3) of the Procurement Practices Act of 1985, and provide the name of each employee against whom a disciplinary action was initiated and its outcome.

4. RESPONSE:

Generally, the OCP concurs with this recommendation, with one reservation. The OCP is establishing a written policy for the processing of unauthorized commitments, and revising the forms that will be used. One key element of the policy requires an agency head to report any disciplinary action initiated against any employee who may have made an unauthorized commitment.

The OCP will be providing quarterly reports to the Mayor and agency heads on the number and type of unauthorized commitment actions. While the OCP may be able to report whether disciplinary action has been initiated against any employee or official who may have made an unauthorized commitment, the OCP is not staffed, nor is it equipped, to follow each disciplinary action initiated against an employee or official to its conclusion.