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Noncompetitive Memorandum of Agreement Between DPW and WMATA Is Not Cost Effective

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EXECUTIVE SUMMARY

PURPOSE

Pursuant to Public Law 93-198, Section 455, and a request from Councilmember Carol Schwartz, the District of Columbia Auditor conducted an examination of the Memorandum Of Agreement (MOA) between the Department of Public Works (DPW) and the Washington Metropolitan Area Transit Authority (WMATA) which required WMATA to provide design and construction support services to the District's Federal-Aid Highway Program.

CONCLUSION

During the District's financial crisis of the 1990's, DPW's staffing levels were drastically reduced for street construction designers and planners, maintenance inspectors, and project managers overseeing street and highway construction and maintenance projects. In early 1999, due to the need to complete street construction projects, the Williams Administration's then-Interim Deputy Mayor for Planning and Economic Development entered into negotiations with WMATA to provide architectural and engineering services: (1) to assist DPW in its efforts to meet planned work volumes; and (2) to assist in the timely completion of street construction and street improvement projects. The negotiations culminated in the execution of a Memorandum of Agreement between WMATA and DPW for various street construction services.

The total annual cost of the MOA, according to WMATA documents, was \$3,739,962 for the first year, with the option to extend the MOA for an additional two years. The average projected annual salary to be paid 36 WMATA employees under the MOA was \$94,411.22, including fringe benefits and overhead. During the term of the MOA, the Auditor found that WMATA employees were: 1) performing duties outside the scope of the original MOA during the first year of the MOA; 2) overqualified for the functions they were performing under the MOA; and 3) paid at rates much higher than the rates paid to DPW employees for similar work. Based upon the Auditor's review and analysis, it was concluded that no cost savings resulted from the use of WMATA employees when compared to the options of DPW: (1) hiring additional qualified employees to perform inspection duties, or (2) awarding a competitive contract for the provision of these services. The analysis, consistent with an analysis conducted by DPW's Chief Financial Officer, found that DPW paid more for WMATA's inspection services than it would have paid by hiring additional DPW inspectors.

The Auditor also found that there was no legitimate justification for obtaining the services under the MOA through an essentially non-competitive, sole source procurement. In order to foster competitive pricing, the services should have been procured through the competitive bid process rather than a costly non-competitive, sole source arrangement with WMATA. In fact, during a public briefing on the MOA before the Council's Committee on Public Works and the Environment, four separate firms possessing prior experience in providing street construction and maintenance services to the District testified that they could have possibly provided these services to the District at a cost savings. These firms testified that they were not afforded this opportunity due to the District's failure to use the competitive bid process.

In conducting a review of invoices submitted to DPW by WMATA, the Auditor further found that DPW paid for services not supported by time sheets; WMATA submitted invoices for materials testing that did not correctly reflect time sheets submitted; and WMATA submitted, and was paid for, monthly cellular telephone charges which were not supported by cellular phone company invoices that would substantiate these costs. Finally, the Auditor found that, due to inefficient and ineffective record keeping, DPW was unable to verify that invoices submitted by WMATA correctly reflected information provided in supporting documentation submitted with the monthly invoices.

MAJOR FINDINGS

1. The cost associated with the MOA did not benefit the District government as compared to hiring additional DPW employees.
2. The cost associated with the MOA did not benefit the District government as compared to contracting for the services through the competitive bid process.
3. Some services provided by WMATA were outside the scope of the original MOA.
4. DPW paid for services without maintaining adequate supporting documentation.

MAJOR RECOMMENDATIONS

1. The Auditor recommends that the District exercise its option to terminate the MOA¹ and either begin the process of hiring additional employees to provide the services currently provided under the MOA or use the competitive contracting process to award a cost effective competitive contract. Hiring additional employees would serve three purposes:
 - a. allow DPW to rebuild its human resource infrastructure;
 - b. allow for the possible increased employment of District residents at a cost substantially lower than those incurred under the MOA; and
 - c. eliminate, or reduce, unnecessary costs totaling approximately \$726,317 annually which consist of: \$220,089 in potential annual administrative expenses, \$216,000 in annual insurance expense, and \$290,228 in additional overhead costs.
2. DPW must immediately adhere to all District procurement laws and regulations and competitively solicit the services needed under the MOA through an Invitation for Bids or Request for Proposals contracting process if unable to directly hire the needed staff. In utilizing the competitive procurement process, DPW will be able to objectively determine whether services required under the MOA can be obtained at a lower cost to the District.
3. DPW's Division of Transportation should immediately require WMATA to submit monthly progress reports which detail, at minimum, specific tasks performed, date performed, identity of employees performing the reported tasks, percentage of work completed, and status, with a projected completion date, of work to be performed in order to ensure that services provided are consistent with the existing terms of the MOA.
4. DPW should immediately demand reimbursement for the above cited overpayments or require WMATA to produce adequate documentation to substantiate these charges.

¹The MOA stipulates that WMATA or DPW may terminate the MOA or any work or delivery required from time to time either in whole or in part, whenever such termination is determined to be in the best interest of either party subject to notice provisions provided for in the MOA.

5. DPW should immediately conduct an internal audit to ascertain whether costs associated with the MOA correctly reflect the services provided.
6. DPW should require WMATA to revise their reporting process to ensure efficient and accurate verification of invoiced costs on a monthly basis.

PURPOSE

Pursuant to Public Law 93-198, Section 455, and a request from Councilmember Carol Schwartz, the District of Columbia Auditor conducted an examination of the Memorandum Of Agreement (MOA) between the Department of Public Works (DPW) and the Washington Metropolitan Area Transit Authority (WMATA) which required WMATA to provide design and construction support services to the District's Federal-Aid Highway Program.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of the examination were to determine whether:

1. DPW adhered to relevant District government procurement regulations;
2. the cost associated with the MOA benefitted the District government as compared to:
 - a. hiring additional DPW employees to provide the services; or
 - b. competitively contracting for the same services; and
3. WMATA provided and was paid for services outside the scope of the MOA.

The examination covered the period November 10, 1999 through January 12, 2001.

BACKGROUND

In 1967, WMATA was created by the Washington Metropolitan Area Transit Authority Compact, an interstate compact between the District, Maryland and Virginia, to operate a regional transportation system in the national capital area. WMATA began building a regional rail system in 1969; acquired four area bus operations from which WMATA's Metrobus system was established in 1973; and began operating the first phase of Metrorail in 1976. Metrorail currently operates 83 stations and 103 miles of line. Metrorail and Metrobus serve a population of 3.4 million people within a 1,500 square mile area. WMATA is governed by a six-member Board of Directors consisting of two directors each from the District of Columbia, Maryland, and Virginia.

Pursuant to D.C. Code, Section 9-1107.01, Title III, Article II, the purpose of the Washington Metropolitan Area Transit Authority Compact was to:

create a regional instrumentality, as a common agency of each signatory party, empowered,...(1) to plan, develop, finance and cause to be operated improved transit facilities, in coordination with transportation and general development planning for the Zone, as part of a balanced regional system of transportation, utilizing to their best advantage the various modes of transportation, (2) to coordinate the operation of the public and privately owned or controlled transit facilities, to the fullest extent practicable, into a unified regional transit system without unnecessary duplicating service, and (3) to serve such other regional purposes and to perform such other regional functions as the signatories may authorize by appropriate legislation.

The District's Division of Transportation (DDOT), which is within DPW, manages and maintains the District's transportation infrastructure. DDOT:

- plans, designs, constructs, and maintains 1,100 miles of streets, 453 miles of alleys, 1,600 miles of sidewalks, and 241 bridges;
- plans, designs, constructs, and maintains traffic signals and street lights; and
- manages and makes improvements to the street system to facilitate traffic flow through the District of Columbia.

DDOT, through DPW, is responsible for overseeing \$173 million in federal funds available through calendar year 2002 pursuant to the Barney Circle Interstate Substitution Funds.² Of the \$173 million that must be placed under contract for construction by 2002, \$98 million has been directed to local street improvements and \$75 million has been earmarked for the National Highway System (NHS) which includes construction, repair and maintenance of highways and bridges within the District of Columbia.

²These funds were set aside for District street and highway projects after the Barney Circle Freeway Project was abolished. The Barney Circle Freeway would have connected the Southeast-Southwest Freeway (Interstate 395) and the Anacostia Freeway (Interstate 295) with a new bridge across the Anacostia River. The project was abolished by the D.C. Council due to environmental concerns.

During the District's financial crisis of the 1990's, DPW's staffing levels were drastically reduced for street construction designers and planners, street construction and maintenance inspectors, and project managers overseeing street and highway construction and maintenance projects. Table I illustrates DPW's reduction in staffing levels for street and bridge construction and maintenance between 1990 and 1998.

Table I
DPW Human Resource Trends:
1990-1998

YEAR	Street Construction # of Staff	Street Maintenance # of Staff	Bridge Construction # of Staff	Bridge Maintenance # Staff
1990	114	92	27	31
1991	98	88	25	26
1992	102	87	18	26
1993	90	60	18	23
1994	87	62	18	15
1995	82	64	17	11
1996	75	46	12	10
1997	72	46	11	10
1998	72	48	11	10
Change	(42)	(44)	(16)	(21)
% Change	-37%	-48%	-60%	-68%

Source District of Columbia Department of Public Works

Increases in the number of street and highway construction projects, as well as funding for such projects, were adversely impacted by DPW's shortage of employees necessary to provide services to these projects. As a consequence of staff shortages in certain areas and its need to complete construction projects in a timely manner, DPW officials decided to contract with consultants to provide design and construction management services. However, according to DPW officials, after negotiations were initiated with WMATA by the Williams Administration's then Interim Deputy Mayor for Planning and Economic Development, DDOT was approached by WMATA, in March 1999, with a proposal to provide architectural and engineering services: (1) to assist DPW in its efforts to meet planned work volumes; (2) to assist in the timely completion of street construction and street improvement projects; and (3) to avoid an anticipated layoff of numerous WMATA employees due to the near completion of WMATA's 103-mile rail construction program. The services that WMATA proposed to provide to DPW included constructability

reviews, construction inspection and management, materials testing, contract administration services, and project design services. WMATA indicated that this proposal would be mutually beneficial to the District and WMATA for the following primary reasons:

- infrastructure improvements and service delivery were the District's priorities;
- the District had a critical need for technical expertise and it did not have an adequate level of resources for current and planned work;
- WMATA had the technical capacity and staff available to respond to the District's needs;
- WMATA had additional resources through open-ended contracts with three (3) professional design and construction consultants; and
- WMATA would avoid or minimize a reduction-in-force as the 103-mile rail construction program came to completion.

The Auditor found that WMATA relied upon its "quasi-agency" status with the District government in subsequently entering into an MOA. The total annual cost of the MOA, according to WMATA documents, is \$3,739,962 for a term of one year, with the option to extend the MOA for an additional two years.³ Table II outlines the budget projections submitted by WMATA for providing the services discussed above. As shown in Table II, the average projected annual salary to be paid to each of the 36 WMATA employees under the MOA was \$94,411.22 including fringe benefits and overhead.⁴

³WMATA provided DPW with budgeted cost projections for one year only. This time period was for November 10, 1999 through November 10, 2000.

⁴The average annual salary was based on the projected total base salaries, fringes, and overhead divided by the estimated 36 employees WMATA assigned to the project.

Table II
MOA Budget Projections

Project Budget Categories	# Staff	# Hours	Avg. Hours Per Staff	Total Base Salaries	Total Fringes ⁵ & Overhead Per Staff	Avg. Base Salary w/o F & O	Avg. Base Salary w/ F&O	Avg. Hourly Rate w/o F & O	Avg. Hourly Rate w/ F&O	Total Projections
Administration	3fte	2,763	921	\$137,434	\$82,656	\$45,811.33	\$73,363.33	\$49.74	\$79.66	\$220,089
Director Extension	25 fte	690				\$34,320.60	\$54,965.40			
Sr. Project Manager	33 fte	911				\$45,313.14	\$72,570.26			
Project Mgr	1 fte	1,160				\$57,698.40	\$92,405.60			
Cost & Schedule Controls	7 fte	12,215	1,745	\$464,619	\$293,920	\$66,374.14	\$108,363	\$38.04	\$62.10	\$758,539
Coordination Inspection	20 fte	34,900	1,745	\$1,041,725	\$696,863	\$52,086.25	\$86,929.40	\$29.85	\$49.82	\$1,738,587
Design Review Services	6 fte	10,470	1,745	\$419,184	\$262,403	\$69,864	\$113,598	\$40.04	\$65.10	\$681,587
Direct Costs ⁷										\$341,160
Total	36fte	60,348		\$2,062,962	\$1,335,842					\$3,739,962

Source DPW/WMATA MOA and the District of Columbia Auditor

⁵Fringe Benefits is defined in Title 27 of the D.C. Municipal Regulations as allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. WMATA used a 50% fringe benefit rate for the MOA budget projections

⁶WMATA's budget projection for its work on the DPW/DDOT project assumed an average combined 64 75% fringe and overhead rate. Overhead (also called indirect cost and expenses) is defined as costs of a business that are not directly associated with the production or sale of goods and services. WMATA based its overhead projections on the following: (a) all indirect WMATA support offices as a factor of direct man-hours, and (b) vehicle maintenance, gas and depreciation. For budget projections WMATA calculated overhead as \$5.04 per man-hour worked

⁷Direct Costs included communications, insurance, vehicles, equipment, and other services (printing, delivery, etc.)

FINDINGS

THE COST ASSOCIATED WITH THE MOA DID NOT BENEFIT THE DISTRICT GOVERNMENT AS COMPARED TO HIRING ADDITIONAL DPW EMPLOYEES

With respect to contracting out to provide goods or services to or on behalf of the District government that are currently provided by employees, departments, or agencies of the District government, D.C. Code, Section 1-1181.5c provides, in relevant part, that the Mayor shall state in writing to the Council that the contract will meet specific criteria for the service to be contracted out, including costs savings resulting from the contract.⁸

The Auditor requested a cost-benefit analysis for this MOA from DPW officials and was provided a copy of a fiscal impact review prepared by DPW's Office of the Chief Financial Officer (OCFO). The OCFO's review found that WMATA's rates were well above those of consultants used by DPW. The analysis further found that the hiring of staff by DPW to perform the work would have cost roughly one-half the cost in the WMATA agreement. Finally, the analysis raised concerns that the agreement could be viewed as a sole source contract. The Auditor also conducted a limited cost analysis to determine whether the District would have benefitted from hiring additional DPW employees rather than entering into the MOA with WMATA. In conducting this analysis, we reviewed personnel costs for 20 street and road construction inspectors (as presented in WMATA's proposal) whose qualifications, according to DPW officials, were equivalent to a DPW resident engineer. Inspectors represented 55% of the total number of WMATA employees assigned to DPW projects, and 46% of the total costs associated with the MOA. The Auditor's analysis, presented in Tables III, IV, and V, compares salaries that could have been paid to a DPW employee classified as a civil engineering technician, conducting the same duties as the WMATA engineer, with the salaries paid to similarly qualified WMATA employees providing services under the MOA.⁹ The Auditor's analysis is presented in Tables III, IV and V at three different step levels of a grade 12 for the reader's comparison.

⁸While the Auditor recognizes that the statute refers primarily to contracts, the terms and provisions of the agreement between DPW and WMATA are comparable to terms that would normally appear in a contract. Referring to the agreement as a "MOA" arguably exempts the agreement from the requirements to competitively acquire the services, as well as the requirements related to privatized services. The Auditor notes, however, that D.C. Code, Sections 1-1181.5b and 1-1181.5c, specifically includes "other agreements" as being subject to the requirements relating to privatized services.

⁹As asserted by officials in DPW's Office of Contracting and Procurement.

Table III
Grade 12 step 10¹⁰
Salary Analysis

Hours	Avg Hours Per Staff	Total Base Salary Cost	Total Fringes & Overhead Costs	Avg Base Salaries W/O Overhead	Avg Base Salaries W/ Overhead	Avg Fringe & Overhead Cost Per Employee	Total Overhead & Benefit Rate	Insurance	Annualized Projections
500	2,080	\$1,182,260	\$366,973	\$59,113	\$77,462	\$18,349	31.04%	N/A	\$1,549,233
700	1,745	\$1,041,725	\$697,956	\$52,086	\$86,984	\$34,898	67%	\$216,000	\$1,955,681
									\$406,448
									20.8%

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Table IV
Salary Analysis
Grade 12 Step 5

Hours	Avg Hours Per Staff	Total Base Salary Cost	Total Fringes & Overhead Costs	Avg Base Salaries W/O Overhead	Avg Base Salaries W/ Overhead	Avg Fringe & Overhead Cost Per Employee	Overhead Rate	Insurance	Annualized Projections
500	2,080	\$1,035,260	\$321,345	\$51,763	\$67,830	\$16,067	31.04%	N/A	\$1,356,605
700	1,745	\$1,041,725	\$697,956	\$52,086	\$86,984	\$34,898	67%	\$216,000	\$1,955,681
									\$599,076
									30.63%

or a Civil Engineer is classified as a grade 12. The salary range used for the analysis is schedule 1A, District service code A01 within the n employees. The effective date for these salary ranges was October 10, 1999 through FY2000.

As Tables III, IV, and V indicate, no cost savings resulted from the use of WMATA employees when compared to the option of DPW hiring additional qualified employees to perform inspection duties. Our analysis indicates that DPW paid an average of 30%, or \$586,234, more per year for WMATA's inspection services than it would have paid by hiring additional inspectors. Most of the increased costs were generated by the average combined 67% fringe benefit and overhead rate under the MOA, which appears excessive when compared to the 31.04% fringe benefit rate the District would have incurred by hiring employees to perform the same services. Further, if WMATA had conducted a reduction-in-force, DPW may have been able to hire terminated WMATA employees who possessed the skills needed by DPW to perform design and construction support services.

While the Auditor's analysis indicates that the District would have saved several hundred thousand dollars by hiring employees at the salary levels noted in Tables III, IV, and V, it must be noted that the saving is based on a full 2,080-hour work-year for the District employees while the calculations for the WMATA employees are based on 1,745 hours per employee which is 335 hours short of an average 2,080-hour work year. When these potential hours are factored into the average salary for each of the WMATA employees, the District's potential savings from hiring employees increases dramatically.

The Auditor questioned DPW officials as to why they did not recruit additional employees to provide the services performed under the MOA. DPW officials stated that it was their desire to hire additional employees in an effort to increase DPW's human resource infrastructure, however, according to officials in DPW's Office of Contracting and Procurement and DPW's Office of the Chief Financial Officer, the Williams Administration's then-Interim Deputy Mayor for Planning and Economic Development had begun negotiating for WMATA's services during calendar year 1999 without initially involving DPW officials in the process. By the time DPW officials were allowed into the process, the then-Interim Deputy Mayor for Planning and Economic Development and WMATA representatives had already established the basic terms of an agreement for WMATA to provide the services and the matter was considered a "done deal".

The Auditor found that WMATA exercised its "quasi-agency" status in subsequently entering into a Memorandum of Agreement with the District government based on WMATA's unsolicited proposal. Although WMATA enjoys agency status with the District government through the WMATA Compact, the purpose of the compact is to create a regional instrumentality as a common agency of the District, Maryland, and Virginia in providing a unified regional transit system to benefit all three regions. The Compact applies to the operation and construction of transit

facilities. Although the Compact authorizes WMATA to perform other regional functions outside the Compact's scope, questions remain as to whether WMATA may perform the services required by the MOA absent specific, authorizing legislation.¹¹

Additionally, WMATA differs from District agencies in the following significant ways in that it:

- is governed by a regional Board of Directors rather than an entity of the District of Columbia government;
- may enter into its own contracts which are not subject to District of Columbia procurement rules and regulations that apply to all other District agencies;
- maintains its own separate transit police department, which operates independently of the Metropolitan Police Department;
- owns its own property that is separate and distinct from the District of Columbia government-owned property;
- obtains its own insurance coverage, or must be self-insured¹²;
- can sue and be sued as a separate entity from the District of Columbia government;
- is liable for its contracts and torts as well as those of its Directors, officers, employees and agents committed in the course of any proprietary function; and
- is exempt from all laws, rules, regulations and orders of the District of Columbia, otherwise applicable to such transit service and persons, except that laws, rules, regulations and orders relating to safety and inspection shall remain in effect.

¹¹The Auditor reviewed three separate legal opinions addressing this issue. An October 25, 1999, opinion of the General Counsel of the District of Columbia Council found, among other deficiencies, these services to be outside the scope of WMATA's authority. Conversely, a November 4, 1999, opinion from WMATA's Office of the General Counsel found that Section 2 of the Compact empowers WMATA to perform contract management of transportation related projects on behalf of DPW. Finally, a November 8, 1999, opinion of the District's Office of the Corporation Counsel found that "a plausible argument exists that WMATA has the authority" to enter into the MOA

¹²Further highlighting the "non-agency" status exhibited between DPW and WMATA, the MOA stipulated that WMATA carry its own Worker's Compensation, Liabilities and Professional Errors and Omissions Liability Insurance coverage with both parties believing it would be perceived by the public that any losses arising out of WMATA's work for DPW would be WMATA's responsibility and not DPW's or the District's.

By entering into the MOA, the Auditor found that District officials involved in the process failed to protect the District government's interest in two critical areas:

1. They failed to conduct a cost or cost-benefit analysis that included all available options. By not conducting a cost or cost-benefit analysis, DPW unnecessarily incurred substantially higher costs for this work than would have been incurred by hiring additional employees.
2. They relinquished an opportunity to rebuild DPW's human resource infrastructure by:
(a) rehiring experienced employees displaced during the District's period of financial crisis, (b) hiring qualified, experienced employees terminated under a then-impending WMATA reduction-in-force; and/or (c) hiring qualified employees from the private sector.

RECOMMENDATION

The Auditor recommends that the District exercise its option to terminate the MOA¹³ and either begin the process of hiring additional employees to provide the services currently provided under the MOA or use the competitive contracting process to award a cost effective competitive contract. Hiring additional employees would serve three purposes:

- a. allow DPW to rebuild its human resource infrastructure;
- b. allow for the possible increased employment of District residents at a cost substantially lower than those incurred under the MOA; and
- c. eliminate, or reduce, unnecessary costs totaling approximately \$726,317 annually which consist of: \$220,089 in potential annual administrative expenses, \$216,000 in annual insurance expense, and \$290,228 in additional overhead costs.

¹³The MOA stipulates that WMATA or DPW may terminate the MOA or any work or delivery required from time to time either in whole or in part, whenever such termination is determined to be in the best interest of either party subject to notice provisions provided for in the MOA.

THE COST ASSOCIATED WITH THE MOA DID NOT BENEFIT THE DISTRICT GOVERNMENT AS COMPARED TO CONTRACTING FOR THE SERVICES THROUGH THE COMPETITIVE BID PROCESS

D.C. Code, Section 1-1183.5 states, in relevant part, that procurement contracts may be awarded through non-competitive rules when the Director or Director's designee determines in writing that one of the following conditions exists:

1. there is only one source for the required commodity, service, or construction item;
2. the contract is for the purchase of real property or interest in real property;
3. the contract is with a vendor who maintains a price agreement or schedule with any federal agency, so long as no contract executed under this provision authorizes a price higher than is contained in the contract between the federal agency and the vendor; or
4. the contract is for the purchase of commodities, supplies, equipment, or construction services that would have ordinarily been purchased on a competitive basis but an emergency has been declared pursuant to §1-1183.12.¹⁴

The Auditor found that none of the conditions existed to justify obtaining the services provided under the MOA through an essentially non-competitive, sole source procurement. To foster competitive pricing, the services should have been procured through the competitive bid process rather than a costly non-competitive, sole source arrangement with WMATA. In fact, in a public briefing on the MOA before the Council's Committee on Public Works and the Environment, four separate firms possessing prior experience in providing street construction and maintenance services to the District testified that they could possibly have provided these services to the District at a cost savings. These firms further testified that they were not afforded this opportunity due to the District's failure to use the competitive bid process. Additionally, DPW was offered the pro-bono services of 13 consulting firms, through the Consulting Engineers Council of

¹⁴An emergency condition is defined as a condition when there exists an imminent threat to the public health, welfare, property, or safety. The Auditor found that there was no evidence of an emergency situation which would have created an immediate threat to the public health, welfare or safety. The existence of an emergency condition creates an immediate need for supplies, services, or construction which cannot be met through normal procurement methods.

Metropolitan Washington (CECMW), with expertise in the District's procurement process. The CECMW offered to assist DPW with procuring contractors to provide the services ultimately provided under the MOA. Instead of utilizing these pro-bono procurement services, the Auditor found that DPW officials continued to finalize negotiations for the MOA with WMATA.

The Auditor reviewed contracts between DPW and vendors offering the same or similar services as those provided under the MOA. The audit team found that DPW could have obtained the services of vendors who: 1) possessed prior experience working on street improvement and construction projects with DPW; and 2) could have possibly provided these services at a lower cost than incurred under the MOA. The Auditor conducted an analysis of five vendors, currently under contract with the District, providing construction engineering and support services on streets and highways in the District of Columbia. These five contracts were entered into in March and April of 1999. The Auditor's analysis compared the costs charged by the vendors to budgeted costs under the MOA. As in the prior analysis, the Auditor used inspectors for comparative purposes. Table VI presents the Auditor's analysis.

Table VI
Cost Analysis of MOA Compared to
District Vendors

	# Staff	Hours	Hourly Billing Rate	Insurance ¹⁵	Projected Cost	Difference
WMATA Resident Engineer	20	34,900	\$49.82	\$216,000	\$1,954,718	-\$0-
Vendor I Resident Engineer	20	34,900	\$50.95	N/A	\$1,778,155	-\$176,563
Vendor II Resident Engineer	20	34,900	\$53.95	N/A	\$1,876,224	-\$71,863
Vendor III Resident Engineer	20	34,900	\$54.12	N/A	\$1,888,788	-\$65,930
Vendor IV Resident Engineer	20	34,900	\$55.66	N/A	\$1,942,534	-\$12,184
Vendor V Resident Engineer	20	34,900	\$63.36	N/A	\$2,211,264	\$256,546

Source: Department of Public Works, Office of Contracting and Procurement and the District of Columbia Auditor

As Table VI indicates, only one of the five vendors provided services at a cost higher than the projected budget costs for inspectors under the MOA. Insurance costs and the fringe benefit rate incurred by DPW under the MOA again appeared to be the primary factors increasing the cost of the

¹⁵Insurance costs were added to this analysis. WMATA was required as a stipulation of the MOA to carry its own liability insurance with DPW incurring the costs. Insurance costs for the contracts used for comparison were included in the hourly billing rate, which included labor, overhead, profit and direct costs.

MOA. The Auditor further questioned DPW officials as to why services provided under the MOA were not contracted out through the District's competitive bid process.¹⁶ DPW officials again stated that the framework for the MOA had already been established by the then-Interim Deputy Mayor for Planning and Economic Development prior to DPW officials entering into the process. By not using the competitive process and entering into the MOA on a non-competitive, sole source basis, the Auditor found that the then-Interim Deputy Mayor and DPW officials missed an opportunity to:

1. obtain the services provided under the MOA at a cost beneficial to the District;
2. increase economic development in terms of entrepreneurial opportunities for District businesses and employment opportunities for District residents;
3. strengthen one or more existing District businesses, possibly facilitate the creation of one or more new businesses in the District, or allow for the possible relocation of one or more businesses from outside to inside the District;
4. facilitate an expansion of the District's tax base¹⁷;
5. provide increased support to minority and women-owned businesses; and
6. provide increased public confidence in the procedures followed in public procurements.

RECOMMENDATION

DPW must adhere to all District procurement laws and regulations and competitively solicit the services needed under the MOA through an Invitation for Bids or Request for Proposals procurement process if unable to directly hire the needed staff. In utilizing the competitive contracting process, DPW will be able to objectively determine whether services required under the MOA can be obtained at a lower cost to the District.

¹⁶Through DPW, DDOT utilizes contracts awarded by the United States General Services Administration (GSA), Washington Area Council of Governments (COG), and other local jurisdictions as a priority source of supply. For those acquisitions that cannot be fulfilled using the above methods (and valued in excess of \$25,000), DPW uses the Invitation for Bids (IFB) and Request for Proposals (RFP) method of procurement

¹⁷WMATA is exempt from all federal, State, District of Columbia, municipal and local taxation. This exemption includes without limitation all motor vehicle license fees, sales taxes and motor fuel taxes.

SOME SERVICES PROVIDED BY WMATA WERE OUTSIDE THE SCOPE OF THE ORIGINAL MOA

The Auditor found that WMATA employees were:

1. performing duties outside the scope of the MOA;
2. overqualified for these functions; and
3. paid excessive wages for their duties.

As stated in the MOA, WMATA and DPW agreed that WMATA employees would provide the District with construction inspection and management services for federally-funded street construction and street maintenance projects. Pursuant to the MOA, the Auditor found that these projects would include reconstruction, rehabilitation and resurfacing projects requiring a background in construction engineering. According to DPW procurement officials, WMATA employees providing these services would be paid the equivalent of \$45,883 for a grade 12 on the District Service Salary Schedule 1A for Compensation Unit 1 in effect at that time.

Through a review of invoices, time sheets, and work orders submitted by WMATA and approved by DPW, the Auditor found that DPW and WMATA assigned four WMATA inspectors to conduct inspections of utility cut restorations which were not within the scope of the original MOA. Street restoration projects are to be completed after utility companies make cuts in District roadways and streets to install utility lines and cables. DPW inspectors oversee utility cut restoration projects to ensure that the streets are restored to their original condition.

To perform this work, each of the four WMATA inspectors was paid an average annual salary of \$60,413, or approximately \$29 per hour. DDOT's street maintenance branch also inspected utility cut restorations. The Auditor found that utility cut restoration inspections were performed by DPW employees at grades ranging from grade levels 3 through 12 step 5 on the District Service Salary Schedule 1A for Compensation Unit 1, with annual salaries ranging from \$17,310 to \$51,763, or \$8.32 per hour to \$24.89 per hour. For example, DPW officials assigned utility cut restoration inspections to a grade 3, Step 1, \$8.32 per hour employee hired through a welfare-to-work program established by the U.S. Department of Transportation, Federal Highway Administration. By comparison, WMATA inspectors were paid an average of \$60,413 annually, or \$29 per hour, to

perform the same work. In other words, WMATA employees were paid approximately 3.5 times more to perform the same duties as a DS-3, Step 1, \$17,310, or \$8.32 per hour, DPW employee. Table VII presents the grade, step, hourly rate of pay and annual salary of DPW and WMATA employees assigned to conduct utility cut restoration inspections.

**TABLE VII
DPW AND WMATA INSPECTORS
ASSIGNED TO UTILITY CUT RESTORATION PROJECTS**

Utility Cut Restoration Inspectors	Grade/ Step	Hourly Rate¹⁸	Annual Salary
DPW Employee A	3/1	\$8.32	\$17,310.00
DPW Employee B	4/1	\$9.26	\$19,271.00
DPW Employee C	5/1	\$10.29	\$21,396.00
DPW Employee E	6/5	\$12.84	\$26,697.00
DPW Employee F	9/2	\$15.76	\$32,771.00
DPW Employee G	9/4	\$16.73	\$34,805.00
DPW Employee H	9/4	\$16.73	\$34,805.00
DPW Employee I	10/3	\$17.83	\$37,078.00
DPW Supervisor	11/8	\$22.54	\$46,877.00
DPW Employee J	11/8	\$22.54	\$46,877.00
DPW Employee K	11/10	\$23.72	\$49,335.00
DPW Employee L	12/6	\$24.47	\$50,894.00
DPW Employee M	12/5	\$24.89	\$51,763.00
WMATA Employee A	N/A	\$25.21	\$52,436.00
WMATA Employee B	N/A	\$29.73	\$61,838.00
WMATA Employee C	N/A	\$30.62	\$63,689.00
WMATA Employee D	N/A	\$30.62	\$63,689.00

Source: Department of Public Works, Street Maintenance Branch

¹⁸This hourly rate for DPW and WMATA employees does not include the overhead and fringe benefits being charged by WMATA which is calculated at an average 67%

As Table VII indicates, the average hourly wage rate of \$29.05 paid to WMATA employees exceeded the average hourly rate of \$17.38 paid to DPW employees by an average of \$11.67 per hour, including a DPW supervisor. Further, WMATA employees performed duties at an annual salary which, on average, was \$24,269 higher than the average annual salary of \$36,145 paid to DPW employees who performed the same work. It should be reiterated that utility cut restoration inspections were not included in the list of services to be provided by WMATA under the original MOA.

The MOA states that, when appropriate, an amended Incremental Work Plan (IWP) (such as the scope of work being performed under the utility cut restoration project outlined above) shall be part of any amendment to the MOA. The Auditor found that utility cut restoration inspections were performed by WMATA employees before the original MOA was amended to include these services. On November 1, 2000, the MOA was modified by Amendment No.1. The amendment extended the duration of the MOA through November 10, 2001. The amended MOA also included a revised Incremental Work Plan which required WMATA to perform services, including construction inspection and management services for utility cut restorations, that were not included in the original MOA. Exhibit 1b attached to the IWP listed four distinct projects related to utility cut restoration services to be provided by WMATA and the WMATA personnel assigned to each project. The four WMATA inspectors assigned to utility cut restoration projects had a cumulative average hourly salary of approximately \$50 per hour; the average annual salaries, without fringes or overhead, was \$52,086 as shown in Table III on page 7. The average annual salary, with fringes and overhead, totaled \$86,984.

The Auditor requested from DPW's Chief Contracting Officer monthly progress reports of project work performed under the MOA, as stipulated in the MOA and District procurement policies. These monthly progress reports were requested in an effort to ascertain the exact dollar amount expended for utility cut restoration inspections. Contracting officials asserted that there were no monthly progress reports required or needed because this was an MOA not a contract. The Auditor notes, however, that this assertion is contradicted by the terms of the MOA which specifically states: "WMATA shall advise DPW regarding the progress of the project work at such time and in such manner as DPW may require, including but not limited to, meetings and interim reports."

The Auditor found that as a result of the lack of effective oversight by DPW officials to ensure strict adherence to the terms of the MOA and the failure of DPW contracting and program officials to demand periodic progress reports from WMATA, there was no concerted effort on the part of DPW to ensure that the services delivered were within the scope of the initial MOA and at a price which was in the best interest of the District.

RECOMMENDATION

DPW's Division of Transportation should immediately require WMATA to submit monthly progress reports which detail, at minimum, specific tasks performed, date performed, identity of employees performing the reported tasks, percentage of work completed, and status, with a projected completion date, of work to be performed in order to ensure that services provided are consistent with the existing terms of the MOA.

DPW PAID FOR SERVICES WITHOUT MAINTAINING ADEQUATE SUPPORTING DOCUMENTATION

As stipulated in the MOA, WMATA submitted to DPW monthly invoices detailing project management, technical, and administrative services rendered under the MOA. The monthly invoices were to be submitted within 30 days after the services were rendered and were to include supporting documents to verify billed costs. The Auditor questioned DPW officials as to the methodology used to verify the monthly charges submitted by WMATA. Officials in DPW's Office of the Chief Financial Office (OCFO) stated that WMATA submitted four copies of the monthly invoice and supporting documentation (e.g., time sheets, direct costs invoices) to DPW. The invoices and supporting documentation were then sent to four DDOT supervisors, who were responsible for overseeing the WMATA project, for their review, verification, and approval. After their review and approval, the monthly invoice was approved by the Acting Chief Transportation Engineer within DPW's Design, Engineering and Construction Administration, who then forwarded the invoice to the DPW OCFO's accounts payable department for payment. It should be noted that after the supervisor's review and approval of the invoice, no other discernible verification of the monthly invoice for accuracy was conducted by the Chief Financial Officer's staff.

The Auditor reviewed monthly invoices for a 14-month period from November 10, 1999 through January 12, 2001. The Auditor's review of these invoices revealed that:

1. DPW paid for services not supported by time sheets;
2. WMATA submitted invoices for materials testing that did not correctly reflect time sheets submitted; and
3. WMATA submitted, and was paid for, monthly cellular telephone charges which were not supported by cellular phone company invoices that would substantiate

these costs and link them to work performed under the MOA. Additionally, for the monthly cellular telephone charges that were supported by cellular phone company invoices, the invoices did not reflect the amounts that WMATA billed DPW for work performed under the MOA.¹⁹

Tables VIII, IX, and X present the discrepancies found during the Auditor's review of the WMATA invoices, time sheets, and cellular phone charges submitted to and paid by DPW pursuant to the MOA.

Table VIII
Services Provided by DPW
Not Supported by Time Sheets²⁰

Invoice Period	Hours Per Invoice	Hours Per Time Sheets	Discrepancy	Amount Overcharged
12/16/99 to 1/15/00	2,484.95	2,354.95	130	\$3,765.25
1/16/00 to 2/11/00	2,338.38	1,667.38	671	\$33,745.28
2/12/00 to 3/10/00	2,416.20	2,236.70	179.5	\$6,439.02
Total	7,239.53	6,259.03	980.50	\$43,949.55

Source: DPW's Office of the Chief Financial Officer

¹⁹The Auditor reviewed payments to WMATA for telephone charges billed to DPW during the period November 10, 1999 through January 12, 2001. During the 14-month period, amounts invoiced by WMATA included a supporting invoice for only four months. Nevertheless, DPW paid cellular phone charges each month, for a total of \$19,226 during the relevant period. The Auditor obtained and reviewed additional telephone bills sent to WMATA by the service provider, and a WMATA schedule of charges attributed to DPW. The invoices covered the period May 2000 through January 2001. No invoices were produced for the months of July or November 2000. Further, the invoices included all charges for the assigned phones used by WMATA, and WMATA did not provide the methodology used to determine what portion of the telephone charges were related to DPW work. Finally, WMATA invoiced DPW for the months of June 2000 through January 2001 in the amount of \$1,500 each month, however, WMATA schedules of DPW reimbursable telephone charges showed charges in excess of \$1,500 for only two months. The remaining monthly charges reimbursable by DPW, based on WMATA schedules, were below \$1,500, except for June and December 2000, which were \$1,501.61 and \$1,622.94 respectively.

²⁰Although WMATA supplied the Auditor with these time sheets, the Auditor found that DPW officials had approved payment for these invoices absent these time sheets, and failed to verify the time sheets with the actual billed invoices.

Table IX
Charges for Materials Testing
Inconsistent with Time Sheets

Invoice Period	Materials Testing Hours Per Invoice	Materials Testing Hours Per Time Sheets	Discrepancy	Overcharged Amount
11/15/99 to 12/15/99	261.79	176.50	85.29	\$4,739.28
12/16/00 to 1/15/00	327.70	232.50	95.20	\$5,087.32
1/16/00 to 2/11/00	301.12	206.50	94.62	\$5,393.42
2/12/00 to 3/10/00	251.08	182.10	68.98	\$6,884.95
3/11/00 to 4/15/00	437.99	334.50	103.49	\$6,166.36
4/16/00 to 5/19/00	466.41	352.50	113.91	\$6,988.27
5/20/00 to 6/16/00	349.78	264.00	85.78	\$5,008.31
6/17/00 to 7/15/00	353.48	267.50	85.98	\$5,059.13
7/16/00 to 8/12/00	376.03	274.50	101.53	\$5,448.08
8/13/00 to 9/22/00	515.72	381.00	134.72	\$7,941.63
9/23/00 to 10/20/00	331.63	234.50	97.13	\$5,580.28
10/21/00 to 11/10/00	272.40	195.00	77.4	\$4,410.78
11/11/00 to 12/15/00	445.41	311.50	133.91	\$7,470.49
12/16/00 to 1/12/01	286	202.50	83.5	\$4,646.47
Total	4,976.54	3,615.10	1,361.44	\$80,826.77

Source: DPW's Office of the Chief Financial Officer

Table X
Monthly Cellular Telephone Charges
Billed to DPW Under the MOA

Invoice Period	Monthly Cellular Invoiced Amount	Supporting Nextel Invoice or Bill Attached Y/N	Unsubstantiated Payment
11/15/99 to 12/15/99	\$1,146	Y	- 0 -
12/16/00 to 1/15/00	\$910	Y	- 0 -
1/16/00 to 2/11/00	\$1,050	Y	- 0 -
2/12/00 to 3/10/00	\$1,120	N	\$1,125
3/11/00 to 4/15/00	\$1,500	N	\$1,500
4/16/00 to 5/19/00	\$1,500	N	\$1,500
5/20/00 to 6/16/00	\$1,500	Y	- 0 -
6/17/00 to 7/15/00	\$1,500	N	\$1,500
7/16/00 to 8/12/00	\$1,500	N	\$1,500
8/13/00 to 9/22/00	\$1,500	N	\$1,500
9/23/00 to 10/20/00	\$1,500	N	\$1,500
10/21/00 to 11/10/00	\$1,500	N	\$1,500
11/11/00 to 12/15/00	\$1,500	N	\$1,500
12/16/00 to 1/12/01	\$1,500	N	\$1,500
Total	\$19,226		\$14,625

Source: DPW's Office of the Chief Financial Officer

Of the \$2,676,482 that WMATA billed to DPW between November 10, 1999 and January 12, 2001, the Auditor found that at least \$139,399.32, or 5%, of the total invoiced amount was not adequately documented in DPW records. Nevertheless, DPW officials approved and paid the invoices.

In addition to the above findings, the Auditor attempted to reconcile employee time sheets with monthly invoices to test for invoicing accuracy. The Auditor found that WMATA invoiced DPW by: 1) the job number; 2) the contract number; 3) the total hours, by contract and job; and 4) the total dollars to be paid by DPW with each of these line items charged at a different rate. When the audit team attempted to match these line items on the invoices with actual employee time sheets, it could

not be done because the time sheets contained no reference to job numbers, contract numbers, total hours, or total amounts listed on the invoice; therefore, it was impossible to associate the dollar amounts charged with the employees' hours and whether the hours billed were related to work performed under the MOA. WMATA officials stated that they were informed by DPW officials to discontinue the practice of recording the contract number and job number on the time sheets and invoices. This request was made, according to WMATA officials, because DPW indicated that certain projects performed under the MOA would have to be paid from Federal Highway Funds and certain projects would have to be paid out of District appropriated funds. Without these attributes, more of the expenditures could be charged to Federal Highway Funds.

This system of record keeping makes it virtually impossible to track employees' hours to invoiced amounts and to verify the accuracy of billed amounts. The lack of detail in this invoicing system allows for a high incidence of inaccurate billing. Additionally, the audit team found there was no way to verify whether the work performed by an employee was related to the scope of work under the MOA and related to DPW projects. The audit team found that the time sheets for each employee contained only a reference note of "DCDPW" and the total number of hours worked by the employee. No description of the type or location of work performed, and no reference to the job number under which the employee performed the work was provided. The Auditor found that, due to inefficient and ineffective record keeping, DPW was unable to verify that invoices submitted by WMATA correctly reflected the supporting documentation submitted with the monthly invoices.

RECOMMENDATIONS:

1. DPW should immediately demand reimbursement for the above cited overpayments or require WMATA to produce adequate documentation to substantiate the charges;
2. DPW should immediately conduct an internal audit to ascertain if costs associated with the MOA correctly reflect the services provided;
3. DPW should require WMATA to revise their reporting process to ensure efficient and accurate verification of invoiced costs on a monthly basis.

CONCLUSION

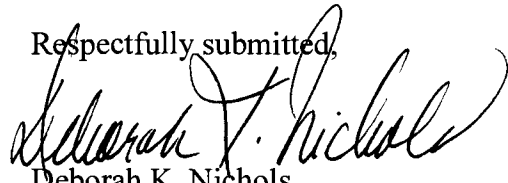
During the District's financial crisis of the 1990's, DPW's staffing levels were drastically reduced for street construction designers and planners, maintenance inspectors, and project managers overseeing street and highway construction and maintenance projects. In early 1999, due to the need to complete street construction projects, the Williams Administration's then-Interim Deputy Mayor for Planning and Economic Development entered into negotiations with WMATA to provide architectural and engineering services: (1) to assist DPW in its efforts to meet planned work volumes; and (2) to assist in the timely completion of street construction and street improvement projects. The negotiations culminated in the execution of a Memorandum of Agreement between WMATA and DPW for various street construction services.

The total annual cost of the MOA, according to WMATA documents, was \$3,739,962 for the first year, with the option to extend the MOA for an additional two years. The average projected annual salary to be paid 36 WMATA employees under the MOA was \$94,411.22, including fringe benefits and overhead. During the term of the MOA, the Auditor found that WMATA employees were: 1) performing duties outside the scope of the original MOA during the first year of the MOA; 2) overqualified for the functions they were performing under the MOA; and 3) paid at rates much higher than the rates paid to DPW employees for similar work. Based upon the Auditor's review and analysis, it was concluded that no cost savings resulted from the use of WMATA employees when compared to the options of DPW: (1) hiring additional qualified employees to perform inspection duties, or (2) awarding a competitive contract for the provision of these services. The analysis, consistent with an analysis conducted by DPW's Chief Financial Officer, found that DPW paid more for WMATA's inspection services than it would have paid by hiring additional DPW inspectors.

The Auditor also found that there was no legitimate justification for obtaining the services under the MOA through an essentially non-competitive, sole source procurement. In order to foster competitive pricing, the services should have been procured through the competitive bid process rather than a costly non-competitive, sole source arrangement with WMATA. In fact, during a public briefing on the MOA before the Council's Committee on Public Works and the Environment, four separate firms possessing prior experience in providing street construction and maintenance services to the District testified that they could have possibly provided these services to the District at a cost savings. These firms testified that they were not afforded this opportunity due to the District's failure to use the competitive bid process.

In conducting a review of invoices submitted to DPW by WMATA, the Auditor further found that DPW paid for services not supported by time sheets; WMATA submitted invoices for materials testing that did not correctly reflect time sheets submitted; and WMATA submitted, and was paid for, monthly cellular telephone charges which were not supported by cellular phone company invoices that would substantiate these costs. Finally, the Auditor found that, due to inefficient and ineffective record keeping, DPW was unable to verify that invoices submitted by WMATA correctly reflected information provided in supporting documentation submitted with the monthly invoices.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deborah K. Nichols", written in a cursive style.

Deborah K. Nichols

District of Columbia Auditor