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Auditor's Review of the Operations and Administration of the Office of Public Education Facilities Modernization

May 11, 2011

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EXECUTIVE SUMMARY

PURPOSE

Pursuant to Public Law 93-198, Section 455¹, and D.C. Code, Section 38-2973.05², the District of Columbia Auditor examined the operations and administration of the Office of Public Education Facilities Modernization (OPEFM).

CONCLUSION

The Auditor found that OPEFM established a procurement contract record management system that did not facilitate a review of school-and project-specific expenditures for school facility capital improvements, maintenance, repairs, and operating costs. OPEFM's contract and procurement files did not consistently contain sufficient information to constitute a complete history of contract and procurement transactions. OPEFM did not create or maintain meeting minutes, written summaries of key decisions, lists of project next steps, or reports on the impact that changes in project scopes had on subsequent modernization projects. Finally, OPEFM issued payments to a vendor without a valid contract and assigned managerial functions to a contractor.

MAJOR FINDINGS

1. OPEFM established a poorly designed contract and procurement records management system that obstructed review of school-and project-specific expenditures.
2. Project Manager vendor payment records were inaccurate and incomplete.
3. Drafting of change orders by a partner at the law firm OPEFM contracted to serve as Procurement Manager/Consultant created by appearance of impropriety.
4. OPEFM failed to document consultations with DCPS Chancellor and the State Superintendent of Education regarding school modernization.
5. The OPEFM Executive Director did not comply with a statutory mandate to provide Public School Modernization Advisory Committee members with quarterly status reports on capital improvement projects.

¹ See § 455 of the District of Columbia Home Rule Act ("Home Rule Act"), approved December 24, 1973 (Pub.L.No. 93-198; 87 Stat. 803; D.C. Code § 1-204.55 (2001)). D.C. Code § 1-204.55 (b) states: "The District of Columbia Auditor shall each year conduct a thorough audit of the accounts and operations of the government of the District in accordance with such principles and procedures and under such rules and regulations as he [she] may prescribe." See also D.C. Code § 1-204.55 (c) which states: "The District of Columbia Auditor shall have access to all books, accounts, records, reports, findings, and all other papers, things, or property belonging to or in use by any department, agency, or instrumentality of the District government and necessary to facilitate the audit."

² See D.C.Code, 38-2973.05 which states: "No later than June 1, 2007, and each year thereafter until the completion of all projects in the Facilities Master Plan, the District of Columbia Auditor shall prepare an annual report to the public on the use of the capital funds by the District of Columbia Public Schools during the preceding fiscal year. The report shall include a school-and project-specific audit of all expenditures for school facility capital improvement, maintenance, repairs, and operating costs and an assessment of whether the District has met the process, quality, schedule, and cost objectives of the Facilities Master Plan and Capital Improvement Plan and Budget."

6. OPEFM's contract and procurement files did not contain documentation to support \$15.3 million in payments.
7. OPEFM made payments totaling \$411,425 without a valid written contract.
8. OPEFM lacked written documentation to support the decision to spend \$1.3 million to obtain LEED certification for School Without Walls.
9. OPEFM paid \$12.7 million for project management services but did not require written documentation of issues and recommendations.
10. OPEFM modernization projects failed to consistently comply with requirements of Design Guidelines.
11. OPEFM paid \$1.3 million to renovate and lease office space instead of using office space owned by the District of Columbia.
12. OPEFM rules and regulations on consulting services are silent on contracting provisions for expert and consulting services, however, current practices are inconsistent with District of Columbia procurement regulations.

MAJOR RECOMMENDATIONS

1. OPEFM Executive Director should immediately take necessary steps to ensure that the OPEFM record keeping system is reorganized so that contract and procurement files, including records of expenditures, are organized specifically by school and project, as well as by contractor. This will aid in ensuring that the Auditor, the Council of the District of Columbia, and the Mayor have access to contract files that contain school-and project-specific records of all expenditures and transactions for school facility construction, capital improvements, maintenance, repairs, and operating costs.
2. OPEFM Executive Director should establish effective controls over the creation of school and project specific records by contractors to ensure that adequate, complete, and proper records are made, collected, and properly preserved.
3. OPEFM Executive Director should properly monitor the project management contract with DCPEP to ensure that vendor pay request information contained in PM project files is complete, accurate, and reconciled.
4. The Executive Director of OPEFM should prevent the L and L partner from drafting any OPEFM change orders for Turner in order to remove any real or perceived conflict of interest or potential appearance of impropriety.
5. The Executive Director of OPEFM should establish a written record documenting communications with the State Superintendent of Education and the DCPS Chancellor

regarding the school construction and modernization to ensure effective coordination throughout the school modernization process.

6. As required by Title 38, Section 38-2973.01 of the D.C. Code, the Executive Director of OPEFM should consult with the Public School Modernization Advisory Committee and provide written quarterly status reports on all capital improvement projects funded through OPEFM's capital budget.
7. OPEFM Executive Director should promptly ensure that each contract and procurement file contains a complete history of each transaction.
8. OPEFM Executive Director should discontinue the improper practice of allowing contractors to provide goods or services without a valid written, duly executed contract.
9. OPEFM Executive Director should revise OPEFM's Procurement Rules to prohibit the authorization of payment for the value of supplies and services received without a valid written contract.
10. OPEFM Executive Director should establish and maintain a record of key decisions, recommendations, and agency directives concerning DCPS modernization and stabilization projects.
11. OPEFM Executive Director should establish policies and procedures to ensure that expenditures for modernization and stabilization projects are reviewed and approved by the Chief Financial Officer (CFO) of the District of Columbia. To facilitate review by the CFO, OPEFM should install a web based software system to record project expenditure requests, justifications, and electronic signature approvals by project decision makers and the CFO of the District. This data collection technology would document the rationale for decisions, provide real time project status information, ensure complete project records, eliminate overspending, increase transparency, facilitate accountability and provide a verifiable audit trail.
12. OPEFM Executive Director should effectively monitor the performance of DCPEP and implement measures to ensure that DCPEP documents issues, recommendations and OPEFM directives pertaining to DCPS modernization and stabilization projects.
13. The program management contract between DCPEP and OPEFM should be modified to explicitly state that DCPEP should provide written reports of issues and recommendations pertaining to DCPS modernization and stabilization projects.

14. The Executive Director of OPEFM should work with DRES to develop a cost effective plan to relocate the offices of OPEFM to rent free space owned by the District of Columbia.
15. OPEFM Executive Director should revise OPEFM procurement rules and regulations for expert services under consulting contracts that are consistent with District procurement rules and regulations.



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The Honorable Kwame R. Brown
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, D.C. 20004

Letter Report: Audit of the Operations and Administration of the Office of Public Education Facilities Modernization

Dear Chairman Brown:

Pursuant to Public Law 93-198, Section 455¹, and D.C. Code, Section 38-2973.05², the District of Columbia Auditor examined the operations and administration of the Office of Public Education Facilities Modernization (OPEFM).

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of the audit were to determine whether:

1. modernization projects complied with requirements in OPEFM draft Design Guidelines;
2. determine whether efficient internal controls were in place to effectively ensure that District funds used for school facility capital improvements, maintenance, repairs, and operating costs were protected from fraud, waste or misuse; and
3. document expenditures for school facility capital improvements, maintenance, repairs, and operating costs.

¹ See § 455 of the District of Columbia Home Rule Act ("Home Rule Act"), approved December 24, 1973 (Pub.L.No. 93-198; 87 Stat. 803; D.C. Code § 1-204.55 (2001)). D.C. Code § 1-204.55 (b) states: "The District of Columbia Auditor shall each year conduct a thorough audit of the accounts and operations of the government of the District in accordance with such principles and procedures and under such rules and regulations as he [she] may prescribe." See also D.C. Code § 1-204.55 (c) which states: "The District of Columbia Auditor shall have access to all books, accounts, records, reports, findings, and all other papers, things, or property belonging to or in use by any department, agency, or instrumentality of the District government and necessary to facilitate the audit."

² See D.C. Code, 38-2973.05 which states: "No later than June 1, 2007, and each year thereafter until the completion of all projects in the Facilities Master Plan, the District of Columbia Auditor shall prepare an annual report to the public on the use of the capital funds by the District of Columbia Public Schools during the preceding fiscal year. The report shall include a school-and project-specific audit of all expenditures for school facility capital improvement, maintenance, repairs, and operating costs and an assessment of whether the District has met the process, quality, schedule, and cost objectives of the Facilities Master Plan and Capital Improvement Plan and Budget."

The scope of the audit included fiscal years (FY) 2008 through FY 2009 (October 1, 2007 through September 30, 2009), and included an examination of vendor pay requests for 14 DCPS modernization projects.³

In conducting the audit, the Auditor reviewed: (1) OPEFM paper contract and procurement files; (2) Request for Proposals (RFP) for original contracts and change orders for DCPS modernization and stabilization projects⁴; (3) school construction management data from public agencies in other jurisdictions; (4) OPEFM draft Design Guidelines; (5) Office of the Chief Financial Officer expenditure records; (6) OPEFM Project Manager expenditure reports; (7) DC Partners for the Revitalization of Education Projects (DCPEP) Project Manager files; (8) draft DCPEP policies and procedures; (9) new OPEFM Procurement Rules and Regulations; and (10) relevant District procurement laws, rules, and regulations. To gain an understanding of the operations of OPEFM, the Auditor interviewed the following members of the OPEFM staff: Chief of Staff/Consultant, General Counsel, Chief Financial Officer, Budget and Finance Analysis and Support staff, Director of Communications, Procurement Administrator, a Senior Contract Specialist, and the contracting staff. The Auditor also interviewed the Co-Principals of DCPEP, DCPEP Director of Operations, DCPEP Program Directors, DCPEP Project Managers, Director of the Office of Transformation Management for DCPS, and members of the Public School Modernization Advisory Committee.

Additionally, we selected four District of Columbia Public schools modernized by OPEFM: Deal Middle School (Deal), Savoy Elementary School (Savoy), School Without Walls High School (SWOW), and Wheatley Education Campus (Wheatley) to tour and interview school officials.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

³ Auditor Examination of Vendor Pay Requests for Addison Elementary School, Alice Deal Junior High School, Anacostia High School, Eastern Senior High School, HD Cooke Elementary School, Phelps Senior High School, Rose Hardy Middle School, Savoy Elementary School, School Without Walls High School, Sousa Middle School, Stoddert Elementary School, Wilson Aquatic Center, Wilson Senior High School, and Woodson Senior High School.

⁴ Auditor Examination of OPEFM Change Orders for DCPS modernization projects at SWOW, Savoy, and Deal. Additionally, the Auditor examined OPEFM Change Orders issued to Turner Construction Company.

BACKGROUND

OPEFM was established by the District of Columbia Public Education Reform Amendment Act of 2007, (D.C. Law 17-9; D.C. Official Code 38-451) to undertake large scale capital projects as well as the construction and modernization of D.C. Public School (DCPS) facilities. At the time of our work, the estimated cost of the 15-year modernization campaign was approximately \$3.5 billion. OPEFM is also responsible for designing the District of Columbia Public Schools Master Facilities Plan (MFP). However, at the time of the audit, the MFP was still a draft. D.C. Code, Section 38-2973.05, requires the Auditor to prepare an assessment of whether the District met the process, quality, schedule, and cost objectives of the MFP. The draft MFP should be promptly finalized to ensure that the District meets the process, quality, schedule, and cost objectives of the MFP.

OPEFM began operations on June 12, 2007. OPEFM reported completing full modernization projects at Savoy Elementary School (Savoy), Sousa Middle School, Brightwood Education Campus, Phelps High School, Wheatley Education Campus, School Without Walls High School (SWOW), Addison Elementary School, Walker-Jones Elementary School, H.D. Cooke Elementary School, Deal Middle School (Deal), and the Wilson Aquatic Center. OPEFM modernization projects featured enhanced technology and sustainable “green” designs. Additionally, OPEFM repaired boilers and air conditioning, addressed life-safety issues, implemented Americans with Disabilities Act upgrades, replaced windows and roofs, and made general improvements at most public schools in the District of Columbia. In FY 2008 and FY 2009, OPEFM capital expenditures totaled \$802,799,681.⁵

The OPEFM project management contract was awarded to DCPEP based on a competitive bid. DCPEP is a partnership between two firms, McKissack & McKissack and Brailsford & Dunlavey. Both firms have performed extensive contract work at other District construction projects including Nationals Ballpark Stadium and the Walter E. Washington Convention Center.

⁵ OPEFM FY07-FY 09 Capital Expenditures Report dated February 25, 2010, presented to the District of Columbia City Council on March 11, 2010, FY 2008 \$489,880,523 and FY 2009 \$312,919,158 (includes intra-district funds).

FINDINGS

OPEFM ESTABLISHED A POORLY DESIGNED CONTRACT AND PROCUREMENT RECORDS MANAGEMENT SYSTEM THAT OBSTRUCTED REVIEW OF SCHOOL- AND PROJECT-SPECIFIC EXPENDITURES

Title 38, Section 2973.05 of the District of Columbia Code states: "...the District of Columbia Auditor shall prepare an annual report to the public on the use of the capital funds by the District of Columbia Public Schools during the preceding fiscal year. The report shall include a **school-and project-specific audit** of all expenditures for school facility capital improvements, maintenance, repairs, and operating costs... [Auditor's Emphasis]"

Title 1, Section 1502.1 of the District of Columbia Municipal Regulations states: "Agency heads shall establish controls over the creation of records to ensure that adequate and proper records are made and preserved in the District government."

Title 1, Section 1502.3 states: "The record of every transaction of public business by any District official or employee shall be complete to the extent required by the following: (a) to facilitate actions by incumbents and their successors in office; (b) to make possible proper oversight by the Council of the District of Columbia, courts and other authorized agencies of the government, and other persons responsible for the manner in which public business has been discharged; and (c) to protect the financial, legal and other rights of the government and of persons affected by the government's actions."

The Auditor found that OPEFM did not establish a school-and project-specific record keeping system to account for all expenditures for school facility capital improvements, maintenance, repairs, and operating costs. Instead, OPEFM established an opaque, cumbersome contract file system based on contractor names. Additionally, OPEFM did not maintain a database of contractors that cross referenced each contractor to a specific school and project. It appears that OPEFM deliberately set up their record keeping system to obstruct transparency of and accountability for its use of capital funds on DCPS facility construction and modernization projects.

Since OPEFM's contract and procurement file system was based on the names of contractors, rather than school and project specific, OPEFM lacked readily available contract files that contained school and project specific data of all expenditures for school facility capital improvements, maintenance, repairs, and operating costs. Therefore, neither the Auditor, the Council of the District of Columbia, nor the Mayor had access to contract files that contained complete, comprehensive, school-and project-specific information necessary to properly document and account for the use of all public funds spent and to make informed decisions and assessments regarding expenditures for school facility capital improvements, maintenance, repairs, and operating costs.

RECOMMENDATION

OPEFM Executive Director should immediately take necessary steps to ensure that the OPEFM record keeping system is reorganized so that contract and procurement files, including records of expenditures, are organized specifically by school and project, as well as by contractor. This will aid in ensuring that the Auditor, the Council of the District of Columbia, and the Mayor have access to contract files that contain school-and project-specific records of all expenditures and transactions for school facility construction, capital improvements, maintenance, repairs, and operating costs.

PROJECT MANAGER VENDOR PAYMENT RECORDS WERE INACCURATE AND INCOMPLETE

Title 1, Section 1502.1 of the D.C. Municipal Regulations states: “Agency heads shall establish controls over the creation of records to ensure that adequate and proper records are made and preserved in the District government.”

OPEFM awarded DCPEP the program management contract for DCPS stabilization and modernization projects. The program management contract states: “The Program Manager shall provide management services to (OPEFM) in connection with the Project as set forth herein and shall use its reasonable best efforts to ensure that the Stabilization Project and the new Construction Projects assigned to the Program Manager are completed on time and within (OPEFM’s) budgetary requirements.”

In FY 2008, OPEFM paid DCPEP \$4,449,887 and \$8,387,160 in FY 2009.⁶ DCPEP assigned Project Managers (PMs) to manage school stabilization and modernization projects. The draft DCPEP Policies and Procedure Manual states: “PMs were responsible for reviewing and certifying the accuracy and completeness of vendor pay requests for stabilization and modernization projects.”⁷

Vendor pay requests contained in PM files did not represent the official OPEFM accounting record of payments for stabilization and modernization projects processed through SOAR, the District’s official accounting system. However, since PMs were responsible for reviewing and certifying the accuracy and completeness of vendor pay requests,⁸ PM project files were to be a reliable source of vendor pay request records.

⁶ OPEFM Vendor Payment Transaction Reports FY 2008 and 2009.

⁷ DCPEP Draft Management Policies and Procedure Manual, page 14.

⁸ DCPEP Draft Management Policies and Procedure Manual, page 14.

The Auditor examined 14 PM project files to review vendor pay requests.⁹ The Auditor found that PM project files created, maintained and controlled by DCPEP project managers did not consistently contain accurate and complete records of vendor pay requests. Based on a review of vendor pay requests contained in 14 PM project files, the Auditor found a total of \$238 million in expenditures based on vendor pay requests for FY 08 and FY 09. However, OPEFM reported to the Council of the District of Columbia,¹⁰ in April 2010, that expenditures for the 14 projects during the same fiscal years totaled \$270 million. Thus, there was a \$31 million difference between the total project expenditures reported by OPEFM to the Council and actual vendor pay requests contained in DCPEP PM project files.

There was no reconciliation or written explanation for the \$31 million discrepancy between payments OPEFM reported to the Council and PM files maintained by DCPEP personnel. According to PM's, staff turnover was cited as the cause for incomplete project files that did not contain a complete record of vendor pay requests. As a result, the same PM did not manage a project from start to finish. This record keeping deficiency indicates that the OPEFM management team did not establish effective controls and performance standards for its contractor concerning the creation, safeguarding, and retention of a complete record of every transaction of public business in the District government. Table I presents project expenditures for 14 projects that OPEFM reported to the Council compared to project pay requests contained in PM files.

⁹ Auditor reviewed the Project Manager's paper and/or electronic invoice files. These files included Letter to Allen Lew, Executive Director requesting approval for invoice from DCPEP Management Team; OPEFM's Application for Payment Checklist; Payment Request Cover Sheet for Work Performed; Application and Certification for Payment; and Vendor's invoice. The Auditor also reviewed OCFO's GA0 and GM0 FY07, FY08, and FY09 Capital Expenditure Report (2/25/2010); and OPEFM's/PM Activity Report (2/23/2010). All files were reviewed at OPEFM.

¹⁰ OPEFM FY07-FY 09 Capital Expenditures Report to Council of the District of Columbia - April 2010 OPEFM Budget Hearing.

Table I
Project Expenditures Reported to Council and Project Pay Requests Contained in PM Files

School Project	Total Expenditures for FY08 Reported to Council*	Total Expenditures for FY09 Reported to Council*	Total Expenditures for FY08 & FY09 Council*	Total Expenditures for FY08 in PM Files	Total Expenditures for FY09 in PM files	Total Expenditures for FY08 & FY09 in PM Files	Total Difference Between Report to Council and PM Files (FY08 & FY09)
Addison ES	\$5,136,137	\$3,987,120	\$9,123,257	\$4,165,676	\$4,808,701	\$8,974,377	\$148,880
Alice Deal JHS	\$30,047,324	\$23,875,980	\$53,923,304	\$26,194,240	\$19,380,815	\$45,575,055	\$8,348,249
Anacostia SHS	\$0	\$421,697	\$421,697	\$0	\$596,399	\$596,399	(\$174,702)
Eastern SHS	\$0	\$6,668,672	\$6,668,672	\$0	\$6,398,304	\$6,398,304	\$270,368
HD Cooke ES	\$8,894,516	\$17,231,545	\$26,126,061	\$8,356,138	\$18,867,242	\$27,223,380	(\$1,097,319)
Phelps SHS	\$32,140,548	\$2,287,503	\$34,428,051	\$17,113,898	\$3,409,800	\$20,523,698	\$13,904,353
Rose Hardy MS	\$23,813,913	\$5,398,253	\$29,212,166	\$21,600,702	\$82,300	\$21,683,002	\$7,529,164
Savoy ES	\$5,807,130	\$22,294,204	\$28,101,334	\$5,082,825	\$23,197,794	\$28,280,619	(\$179,285)
School Without Walls SHS	\$4,271,147	\$29,787,419	\$34,058,566	\$3,896,808	\$31,081,914	\$34,978,722	(\$920,156)
Sousa	\$7,945,136	\$629,961	\$8,575,097	\$5,990,874	\$71,557	\$6,062,431	\$2,512,666
Stoddert ES	\$0	\$4,555,208	\$4,555,208	\$0	\$4,513,713	\$4,513,713	\$41,495
Wilson Aquatic Center	\$7,788,284	\$18,484,405	\$26,272,689	\$6,297,313	\$19,896,984	\$26,194,297	\$78,392
Wilson SHS	\$0	\$788,312	\$788,312	\$0	\$788,312	\$788,312	\$0
Woodson SHS	\$2,322,749	\$5,243,008	\$7,565,757	\$2,802,719	\$3,826,170	\$6,628,889	\$936,868
TOTAL			\$269,820,171			\$238,421,198	\$31,398,973

*Source: OPEFM FY07-FY 09 Capital Expenditures Report to Council of the District of Columbia - April 2010 OPEFM Budget Hearing

Since PM files did not consistently contain complete, accurate records of vendor pay requests for school modernization and stabilization projects, neither the Auditor nor OPEFM's management could rely on PM files to determine accurate school-and project-specific modernization and stabilization expenditures. Additionally, the Auditor could not rely on PM files to establish a reliable, verifiable record of OPEFM's expenditures for specific school modernization and stabilization projects.

RECOMMENDATIONS

1. OPEFM Executive Director should establish effective controls over the creation of school and project specific records by contractors to ensure that adequate, complete, and proper records are made, collected, and properly preserved.
2. OPEFM Executive Director should properly monitor the project management contract with DCPEP to ensure that vendor pay request information contained in PM project files is complete, accurate, and reconciled.

DRAFTING OF CHANGE ORDERS BY A PARTNER AT THE LAW FIRM OPEFM CONTRACTED TO SERVE AS PROCUREMENT MANAGER/CONSULTANT CREATED THE APPEARANCE OF IMPROPRIETY

Section 5-3908.2 of the Office of Public Education Facilities Modernization Procurement Rules¹¹ states: “The ethical considerations that may authorize disqualification or other corrective measures go beyond violations of any ethics and conflict of interest rules the Office¹² may from time-to-time publish and the prospective contractor’s ethics and conflict of interest rules, if any. The Contracting Officer may properly elect to adopt corrective measures whenever necessary to avoid the appearance of impropriety or otherwise eliminate doubts about the integrity and fairness of procurements.”

OPEFM contracted¹³ with the law firm of Leftwich and Ludaway, (herein after referred to as L and L) to provide procurement services. A partner at L and L served as OPEFM’s Procurement Manager/Consultant. As OPEFM’s Procurement Manager/Consultant, this individual drafted change orders for review and approval by the OPEFM Executive Director.¹⁴ In FY 2008 and FY 2009, OPEFM issued a total of \$15 million in change orders to Turner Construction Company (Turner) for work it performed on school modernization and stabilization projects. According to disclosure forms submitted with Turner’s proposals, the L and L partner was the son-in-law of Turner’s Project Executive assigned to OPEFM stabilization and modernization projects.

¹¹ On August 24, 2007 OPEFM Notice of Emergency and Proposed Rulemaking was published in the DC Register, Volume 54, Number 34, setting forth OPEFM proposed procurement rules. Proposed resolution PR17-541 was submitted to the Council on November 2, 2007. PR 18-1131, Office of Public Education Facilities Modernization Procurement Rules Approval Resolution of 2010, was introduced on September 27, 2010, and deemed approved without Council action on November 20, 2010.

¹² Section 3900 of the Office of Public Education Facilities Modernization Procurement Rules refers to OPEFM as “the Office”.

¹³ Leftwich & Ludaway was awarded their contract under the D.C. Supply Schedule Mission Oriented Business Integrated Services (MOBIS) Contract (effective August 17, 2007).

¹⁴ Email dated March 3, 2010, from Kristen Ahern to Auditor.

The Auditor found at least one \$750,000¹⁵ change order for Turner that was drafted by the L and L/Turner son-in-law and approved by the OPEFM Executive Director for the SWOW modernization. While the L and L partner's role in drafting change orders was administrative, the L and L partner should not have been involved in drafting change orders for Turner based on the L and L partner's direct family connection with Turner's project executive assigned to OPEFM capital projects. OPEFM's executive management should have taken appropriate measures to avoid even the appearance of conflict of interest or impropriety and eliminated potential questions concerning the integrity and fairness of any change orders or other contract actions handled by the L and L partner related to Turner.

RECOMMENDATION

The Executive Director of OPEFM should prevent the L and L partner from drafting any OPEFM change orders for Turner in order to remove any real or perceived conflict of interest or potential appearance of impropriety.

OPEFM FAILED TO DOCUMENT CONSULTATIONS WITH DCPS CHANCELLOR AND THE STATE SUPERINTENDENT OF EDUCATION REGARDING SCHOOL MODERNIZATION

Title 38, Section 453(4) of the D.C. Code requires the Director of OPEFM to consult regularly with the Chancellor and the State Superintendent of Education to ensure coordination throughout the school modernization process.

Title 1 DCMR, Section 1502.5 states: "Officials shall create and maintain records containing all essential information relating to formulation and execution of government policy as follows: (a) Significant decisions and commitments reached orally (person to person, by telephone, or in conference) shall be documented."

OPEFM did not maintain a comprehensive, written record of recommendations, decisions, or key issues presented by the DCPS Chancellor or the State Superintendent of Education regarding the modernization, stabilization, maintenance, and repair of public school facilities in the District of Columbia. The Auditor found that OPEFM did not maintain written records memorializing consultations with the DCPS Chancellor and the State Superintendent of Education to ensure coordination throughout the school modernization process.¹⁶

¹⁵ Email dated November 10, 2008, from Will Mangrum to Allen Lew with a copy to Tom Bridenbaugh Subject – LEED Initiative.

¹⁶ Email dated May 5, 2010 from Scott Burrell to Auditor.

As a result, OPEFM's management did not have, and could not provide the Auditor, the necessary documentation to determine whether OPEFM consulted with the DCPS Chancellor and the State Superintendent of Education regarding school modernization, stabilization, maintenance, and repair activities to ensure coordination throughout the process.

RECOMMENDATION

The Executive Director of OPEFM should establish a written record documenting communications with the State Superintendent of Education and the DCPS Chancellor regarding the school construction and modernization to ensure effective coordination throughout the school modernization process.

THE OPEFM EXECUTIVE DIRECTOR DID NOT COMPLY WITH A STATUTORY MANDATE TO PROVIDE PUBLIC SCHOOL MODERNIZATION ADVISORY COMMITTEE MEMBERS WITH QUARTERLY STATUS REPORTS ON CAPITAL IMPROVEMENT PROJECTS

Title 38, Section 2973.01(a) of the D.C. Code states that the purpose of the Public School Modernization Advisory Committee is to: "(1) monitor that capital funds are aligned with the priorities of the Mayor for educational infrastructure; (2) monitor that expenditures are aligned with the approved Facilities Master Plan, the District of Columbia Improvement Plan and Budget, and the DCPS maintenance plan; (3) advise the Director of the Office of Public Education Facilities Modernization as to whether the expenditure of funds is managed in accord with best practices and budgetary limitations."

Title 38, Section 2973.02(d) of the D.C. Code states: "The Director of the Office of Public Education Facilities Modernization shall submit to the Public School Modernization Advisory Committee (Advisory Committee) on a quarterly basis a status report on all capital improvement projects funded through OPEFM's capital budget. The report shall include the following information:

- A summary of ongoing capital improvement projects;
- The approved budget and current and estimated cost of completion of each capital improvement project;
- Encumbered and actual expenditures of each project;
- A detailed list of change orders approved for each capital improvement project;
- A detailed schedule with milestones identified and a comparison of original schedule with current status of work; and
- If any project has a different scope, exceeds its budget, or is proceeding on a substantially modified schedule, an explanation regarding the revised scope of work, a new expected date of completion, a revised anticipated budget for each capital improvement project, and a justification for the change delay, or increase in cost."

Section 2973.02(d) further states: “the Advisory Committee shall submit concerns and recommendations about the quarterly report to the Mayor, the Council, the Chancellor, and the Chief Financial Officer.”

Based on interviews with Advisory Committee members,¹⁷ the Auditor found that OPEFM did not provide Advisory Committee members with quarterly status reports on capital improvement projects. According to the OPEFM Chief of Staff/Consultant, OPEFM did not provide Advisory Committee members with quarterly status reports on capital improvement projects because OPEFM did not know the agency was required to provide Advisory Committee members with quarterly reports on capital improvement projects.¹⁸ In other words, the Chief of Staff/Consultant, in essence, claimed ignorance of the law as the reason for not complying with the law. As a consequence, Advisory Committee members were not provided information necessary to effectively carry out the Committee’s purpose which includes: (1) to monitor that capital funds are aligned with the priorities of the Mayor for educational infrastructure; (2) to monitor that expenditures are aligned with the approved facilities starter plan, the District of Columbia Capital Improvement Plan and Budget, and the DCPS maintenance plan; and (3) to advise the Director of OPEFM as to whether the expenditure of funds is managed in accord with best practices and budgetary limitations. Further, Advisory Committee members were not able to provide their concerns and recommendations about school modernization projects to the Mayor, the Council, the Chancellor, and the Chief Financial Officer as provided by D.C. Code, Section 38-2973.02 (c).

RECOMMENDATION

As required by Title 38, Section 38-2973.01 of the D.C. Code, the Executive Director of OPEFM should consult with the Public School Modernization Advisory Committee and provide written quarterly status reports on all capital improvement projects funded through OPEFM’s capital budget.

OPEFM’S CONTRACT AND PROCUREMENT FILES DID NOT CONTAIN DOCUMENTATION TO SUPPORT \$15.3 MILLION IN PAYMENTS

Section 3931.1 of OPEFM’s Procurement Rules¹⁹ states: “The Contracting Officer is responsible for maintaining documentation regarding the contract and the procurement in the contract file. The contract file shall include: (a) the solicitation and any amendments; (b) the contract and any modifications; (c) any type of documentation that is specifically required to be maintained in the contract file by other sections of these rules; and (d) any other documentation that may be necessary to memorialize important decisions or events relating to the procurement

¹⁷ Auditor interviews with Public School Modernization Advisory Committee members Josh Courage, Ellen Considine and Terry Goings.

¹⁸ Auditor’s July 7, 2010, interview with OPEFM Chief of Staff.

¹⁹ PR 18-1131, OPEFM Procurement Rules Approval Resolution of 2010, was deemed approved without Council action on November 20, 2010.

or the contract.” The Auditor found that OPEFM’s contract and procurement files were not always complete and did not consistently contain sufficient information to constitute a complete history of contract and procurement transactions.

For example, the Auditor compared OPEFM vendor payments²⁰ with OPEFM contract and procurement files for RBK Landscaping and Construction (RBK). The Auditor found that OPEFM’s contract and procurement files for RBK did not include 6 purchase orders and supporting documentation for payments totaling \$9,756,525 to RBK. Table II presents OPEFM payments to RBK under purchase orders that were not found in OPEFM’s contract and procurement files, and lacked documentation justifying and supporting the payments to RBK.

Table II
OPEFM Payments to RBK under Purchase Orders not in OPEFM Contract Procurement Files

Purchase Order Number	Voucher Number	Amount Paid
PO 282190	V0 282190 ; V0 531444	\$999,950
PO 275210	V0 531447 ; V0 LAS008	\$1,951,393
PO 251706	V0 505090 ; V0 476216	\$284,000
PO 255056	V0 487082 ; V0 511043	\$416,200
PO 267447	V0 495279	\$4,028,000
PO 267447-V2	V0 JVS030 ; V0 267447	\$2,076,982
TOTAL		\$9,756,525²¹

Source: Capital Project Reports FY 2008 (March 17, 2008), OPEFM Contract Files and SOAR.

Additionally, the Auditor compared OPEFM vendor payments with contract and procurement files for Turner Construction and found that OPEFM files²² did not include 6 purchase orders and supporting documentation for \$5,553,608 in payments to Turner. Table III presents \$5,553,608 in payments OPEFM made to Turner that were not justified and supported by orders and underlying documentation that should have been found in OPEFM’s contract files for Turner.

²⁰ OPEFM Capital Project Reports FY 2008 (March 17, 2008).

²¹ Payment verified in SOAR.

²² Turner Construction: OPEFM Contract File – Contract Number GAFM-2007-C-0215: PO 257788, PO 257790, PO 257791, and P0257792; Contract Number GAFM-2007-C-0727, PO 259777; Contract Number GMFM-2008-0120: PO 270155; Contract Number GAFM-2007-C-0240.

Table III
Purchase Orders to Turner that were not in OPEFM contract procurement files

Purchase Order Number	Voucher Number	Amount Paid
PO 257788	V0 460853	\$300,000
PO 257790	V0 460878	\$740,500
PO 257791	V0 460880	\$632,351
PO 257792	V0 460883	\$279,883
PO 259777	V0 516017; V0 510177; V0 500848; V0 488457	\$600,874
PO 270155	V0 568000; V0 552272; V0 531893; V0516022; V0 510175	\$3,000,000
TOTAL		\$5,553,608 ²³

Source: Capital Project Reports FY 2008 (March 17, 2008), OPEFM Contract Files and SOAR.

For these two contractors alone, OPEFM's contract and procurement files did not contain supporting purchase order documentation for \$15.3 million in payments. As a result, the Auditor could not rely on OPEFM's contract files to determine the actual supported cost of modernization and stabilization expenditures. Given the projected \$3.5 billion that OPEFM plans to spend on school modernization and stabilization projects over the next 15 years, it is imperative that OPEFM substantially improve its record keeping practices and maintain files that are accurate, complete, and organized in a manner that is consistent with best practices and applicable regulations. Without an accurate, complete record of each transaction, it is impossible to establish a reliable, verifiable record of accountability and transparency, or a sufficient audit trail.

RECOMMENDATION

OPEFM Executive Director should promptly ensure that each contract and procurement file contains a complete history of each transaction.

²³ Payment verified in SOAR.

OPEFM MADE PAYMENTS TOTALING \$411,425 WITHOUT A VALID WRITTEN CONTRACT

Title 38, Section 451(b) of the D. C Code states: “The OFM²⁴ shall have independent procurement and personnel authority. The OFM shall promulgate rules to implement this authority.” The Auditor found that OPEFM procurement rules were silent with regards to authorizing payment for the value of supplies and services received without a written contract.

Title 2, Section 301.5 (d) (1) of the D.C. Code states: “No District employee shall authorize payment for the value of supplies and services received without a valid written contract.”

The Auditor found that in FY 2008 and FY 2009 OPEFM issued a total of \$411,425²⁵ in payments to McKissack & McKissack without a valid contract in place.²⁶ Additionally, the Auditor found that OPEFM did not maintain a contract file for McKissack & McKissack. Since OPEFM did not have a written contract or contract file related to the payments made to McKissack & McKissack neither the Auditor nor OPEFM’s management could determine the services McKissack & McKissack was expected to deliver, whether the services were delivered, whether the cost of the services were reasonable, or the basis of payments to McKissack & McKissack were valid.

While OPEFM has independent procurement and contracting authority and, therefore, is not subject to D.C. Code, Section 2-301.05(d) (1), OPEFM receives public funds to carry out its functions. As a result, in those instances where OPEFM’s procurement rules are silent, OPEFM is obligated to operate in a manner that is consistent with the District’s procurement laws and regulations. Further, OPEFM’s executive management has a fiduciary responsibility to ensure that OPEFM’s fiscal and contracting operations are conducted in an efficient, transparent, and accountable manner.

RECOMMENDATIONS:

1. OPEFM Executive Director should discontinue the improper practice of allowing contractors to provide goods or services without a valid written, duly executed contract.
2. OPEFM Executive Director should revise OPEFM’s Procurement Rules to prohibit the authorization of payment for the value of supplies and services received without a valid written contract.

²⁴ D.C. Official Code, Section 38-451(a) refers to the Office of Public Education Facilities Modernization as OFM.

²⁵ Purchase Order 256468 for \$290,485.72 and Purchase Order 304359 for \$120,939.11 Payments verified in SOAR.

²⁶ February 24, 2010 email from OPEFM Procurement Administrator to the Auditor, April 8, 2010 email from OPEFM CFO to the Auditor.

OPEFM LACKED WRITTEN DOCUMENTATION TO SUPPORT THE DECISION TO SPEND \$1.3 MILLION TO OBTAIN LEED CERTIFICATION FOR SCHOOL WITHOUT WALLS

The Government Accountability Office's (GAO) Standards for Internal Control state: "Internal control and all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination."²⁷ While the GAO Standards for Internal Control apply to the federal government, the standards provide useful guidance for the District of Columbia.

Title 1, Section 1502.1 of the District of Columbia Municipal Regulations states: "Agency heads shall establish controls over the creation of records to ensure that adequate and proper records are made and preserved in the District government."

Section 5-3931 of the Office of Public Education Facilities Modernization Procurement Rules²⁸ states: "The Contracting Officer is responsible for maintaining documentation regarding the contract and the procurement in the contract file. The contract file shall include: (d) any other documentation that may be necessary to memorialize important decisions or events relating to the procurement or the contract."

The Auditor found that OPEFM did not maintain a record of important decisions or events relating to procurements or contracts. As a result, OPEFM did not create or maintain meeting minutes, written summaries of key decisions, lists of project next steps, or reports on the impact that changes in project scopes had on subsequent modernization projects. Consequently, neither the Auditor nor OPEFM's management had records of key decisions made by OPEFM regarding the modernization and stabilization of public schools in the District of Columbia.

For FY 2008 through FY 2009, OPEFM capital expenditures totaled \$802,799,681.²⁹ OPEFM had a fiduciary duty to maintain a record of key decisions regarding the use of the public funds made available to it by the District of Columbia. Additionally, without a complete written record, neither the Auditor nor the residents of the District can accurately determine whether or not OPEFM was managed in an efficient and cost effective manner.

It is important to note that it is a best practice for construction project management to use computer software to record important project information, increase transparency, efficiency and cost savings.³⁰ For example, construction project management software such as Oracle's

²⁷ Standards for Internal Control in Federal Government, GAO/AIMD-00-21.3.1 (11/99) p. 15

²⁸ PR 18-1131, Office of Public Education Facilities Modernization Procurement Rules Approval Resolution of 2010, was introduced on September 27, 2010, and deemed approved without Council action on November 20, 2010

²⁹ OPEFM FY07-FY 09 Capital Expenditures Report dated February 25, 2010, presented to the District of Columbia City Council on March 11, 2010, FY 2008 \$489,880,523 and FY 2009 \$312,919,158 (includes intra-district funds).

³⁰ Gaining Transparency in Construction and Engineering, September 2009, page 2.

Primavera Contract Management could be adapted to collect data about DCPS modernization and stabilization projects such as justifications for key decisions, record approvals of project expenditures, and provide real time project status reports.

Due to the lack of a written record of important procurement and contracting decisions, OPEFM could not provide documentation to support the decision to obtain LEED³¹ certification for SWOW. The Council of the District of Columbia passed the D.C. Green Building Act of 2006 that required newly constructed or renovated buildings in the District, funded after FY 2008, to meet the LEED silver standard. Since SWOW was funded before FY 2008, the D.C. Green Building Act did not apply to SWOW.

Since OPEFM did not document any key decisions, the Auditor could not determine when or why OPEFM decided to obtain LEED certification for SWOW. Four months after OPEFM began construction of SWOW³² DCPEP sent the OPEFM Executive Director an email³³ stating that LEED certification would cost an additional \$2.5 million. The email further states: “This additional \$2.5M is not in the budget for SWOW, and will have to come from some other initiative.” The email concludes with a request to the OPEFM Executive Director to provide “direction to move forward with this initiative this week...”

OPEFM records did not include an analysis of “the other initiative” that would be financially impacted by OPEFM’s decision to obtain LEED certification for SWOW. Additionally, OPEFM records did not include a rationale for deciding, 4 months after construction began, to re-design SWOW at a cost of \$1.3 million to meet LEED standards.³⁴

While the final cost of \$1.3 million was lower than the initial estimate of \$2.5 million, it would have been more cost efficient if OPEFM decided to obtain LEED certification for SWOW during the conceptual and schematic design stages of the SWOW modernization. Since the decision to obtain LEED certification was made after the conceptual and design stages of SWOW, it was necessary to redesign walls, floors, ceilings and the sprinkler system.³⁵ By comparison, according to the PM for Savoy, there were no re-design costs to obtain LEED certification for Savoy.³⁶ This is due to the fact that OPEFM decided to obtain LEED certification for Savoy during the conceptual and design stages of the modernization of Savoy.

³¹ According to the U.S. Green Building Council, LEED is defined as “the Leadership in Energy and Environmental Design.” This refers to the Green Building Rating System which represents the nationally accepted bench mark for the design, construction, and operation of high performance green buildings.”

³² OPEFM began construction on SWOW in July 2008. Construction on SWOW was completed on July 31, 2009.

³³ Email dated November 5, 2009, from DC PEP Director of Operations to OPEFM Executive Director.

³⁴ Letter dated January 30, 2009, from Turner to OPEFM Executive Director

³⁵ Ibid: “The work includes a significant amount of wall, floor and ceiling redesign; MEP and sprinkler system redesign, and revised LEED required site improvements. We have also included costs for managing and coordinating the additional LEED scope of work, while maintaining the original schedule completion date of July 31, 2009. The total cost for this work including: design/build MEP and sprinkler; revised LEED construction for all trades throughout and commissioning/management/oversight/coordination is \$1,311,224.”

³⁶ Auditor interview on July 14, 2010 with Savoy Project Manager

To ensure that school modernization funds are used in the most cost effective manner, OPEFM should establish and maintain a record of key decisions that is readily available for review by the Auditor, the Council of the District of Columbia, the Mayor, and others.

RECOMMENDATIONS

1. OPEFM Executive Director should establish and maintain a record of key decisions, recommendations, and agency directives concerning DCPS modernization and stabilization projects.
2. OPEFM Executive Director should establish policies and procedures to ensure that expenditures for modernization and stabilization projects are reviewed and approved by the Chief Financial Officer (CFO) of the District of Columbia. To facilitate review by the CFO, OPEFM should install a web based software system to record project expenditure requests, justifications, and electronic signature approvals by project decision makers and the CFO of the District. This data collection technology would document the rationale for decisions, provide real time project status information, ensure complete project records, eliminate overspending, increase transparency, facilitate accountability and provide a verifiable audit trail.

OPEFM PAID \$12.7 MILLION FOR PROJECT MANAGEMENT SERVICES BUT DID NOT REQUIRE WRITTEN DOCUMENTATION OF ISSUES AND RECOMMENDATIONS

The GAO Standards for Internal Control state: “Internal control activities help ensure that management’s directives are carried out. The control activities should be effective and efficient in accomplishing the agency’s control objectives.”³⁷

In FY 2008, OPEFM paid DCPEP \$4,449,887 and \$8,387,160 in FY 2009 for program management of DCPS modernization and stabilization projects.³⁸ The DCPEP program management contract states: “The Program Manager, DCPEP, shall immediately report to the Office³⁹ any **issues that required Office input**, shall develop, and provide the Office with **recommendations to resolve** any such issues and shall oversee the implementation of the Office’s decisions and directives to address and resolve any such issues. [Auditor’s Emphasis]”⁴⁰

³⁷ Standards for Internal Control in Federal Government, GAO/AIMD-00-21.3.1 (11/99) p. 11

³⁸ OPEFM Vendor Payment Transaction Reports FY 2008 and 2009.

³⁹ In the contract between OPEFM and DCPEP, OPEFM is referred to as the Office.

⁴⁰ Program Management Agreement, District of Columbia by and through its Office of Public Education Facilities Modernization, Section 1.4.

The Auditor found that DCPEP did not maintain written records of reports to OPEFM of “issues that required Office input” or “recommendations to resolve such issues.” However, the program management contract did not require DCPEP to document issues and recommendations in writing and OPEFM did not require DCPEP to provide written documentation. As a result, DCPEP did not maintain a written record of issues or recommendations regarding LEED certification for SWOW.

According to DCPEP, written documentation of issues, recommendations or OPEFM directives was not provided because DCPEP was in “constant communication” with OPEFM’s Executive Director.⁴¹

The Auditor found that OPEFM relied on inefficient, unreliable, undocumented verbal communications between the OPEFM Executive Director and a long-time contractor to the Executive Director. As a result, neither the Auditor nor the residents of the District have a comprehensive, clear, accurate record of key issues, recommendations, or OPEFM directives pertaining to DCPS modernization and stabilization projects.

RECOMMENDATIONS

1. OPEFM Executive Director should effectively monitor the performance of DCPEP and implement measures to ensure that DCPEP documents issues, recommendations and OPEFM directives pertaining to DCPS modernization and stabilization projects.
2. The program management contract between DCPEP and OPEFM should be modified to explicitly state that DCPEP should provide written reports of issues and recommendations pertaining to DCPS modernization and stabilization projects.

OPEFM MODERNIZATION PROJECTS FAILED TO CONSISTENTLY COMPLY WITH REQUIREMENTS OF DESIGN GUIDELINES

The OPEFM draft Design Guidelines (DG) list specifications, finishes, and furnishings for the modernization and stabilization of DCPS facilities. The DCPS DG were first issued in 2000. OPEFM updated the DCPS DG in 2008⁴² as part of a draft Master Facility Plan (MFP). At the time of the audit, OPEFM had not finalized the draft DG.⁴³

OPEFM provided architects with the draft DG for use in designing DCPS facilities.⁴⁴ The OPEFM/DCPS report entitled, Facility Modernization Process, states: “The Project Manager, DCPS, and OPEFM work with the architects to ensure that the conceptual and

⁴¹ July 20, 2010 Interview with DCPEP Co-Principal, Christopher Dunlavey

⁴² DCPS/OPEFM Facility Modernization Process, page 3.

⁴³ February 22, 2010, email from Christopher Dunlavey to the Auditor.

⁴⁴ April 26, 2010, Auditor Interview with DCPEP Program Director, Teddy Gebremichael

schematic drawings adhere to the Design Guidelines...”⁴⁵ Additionally, the OPEFM Design 2009 Guidelines (DG) state: “The DG were prepared to assure uniform, cost effective and educationally- advanced facilities for the children of the District of Columbia Public Schools...Design Guidelines **control costs and maximize facility funding**. [Auditor’s Emphasis]”⁴⁶

The Auditor found that OPEFM did not consistently follow specifications detailed in the DG. As a result, materials used at some schools exceeded standards, while materials used at other schools did not meet the DG standard.

The Auditor toured four DCPS facilities modernized by OPEFM.⁴⁷ Of the four schools toured, the Auditor found that OPEFM used finishes that were inconsistent with the DG in two of the schools. For example, the DG state that bathroom “materials, panels, doors, pilasters, and screens shall be fabricated from solid 1-inch thick high density polyethylene forming a single component panel that is waterproof, corrosion proof, impact resistant...”⁴⁸ At Wheatley,⁴⁹ the Auditor observed that bathroom doors and panels in the boy’s bathroom located on the first floor measured less than half an inch thick and did not meet the 1-inch standard required by the DG. Additionally, 2 of 3 bathroom stalls did not have doors. It was reported that bathroom stall doors at Wheatley broke and thus had to be removed. The doors broke, it appears, because the doors were not durable and did not meet DG standards. In comparison, the Auditor observed that bathroom doors and panels at Savoy measured more than 1-inch thick.

OPEFM completed the modernization of Wheatley in August 2009, at a cost of \$23.8 million. It is troublesome to find that less than a year after the completion of modernization of Wheatley, bathroom stalls were missing doors because the doors were not durable and did not meet OPEFM’s draft DG standards. The absence of bathroom doors at Wheatley is particularly significant because the lack of doors in DCPS bathrooms has been used repeatedly to illustrate the poor condition of DCPS’s educational facilities. Consider the fact that in a 2003 report, the American Society of Civil Engineers state: “Conditions at scores of D.C. public schools are simply deplorable. Some schools have gaping holes in the floors and walls, poles on playgrounds and missing doors on bathroom facilities.”⁵⁰

⁴⁵ DCPS/OPEFM Facility Modernization Process, page 5.

⁴⁶ 2009 Design Guidelines, District of Columbia Public Schools, page 1201/3.

⁴⁷ The Auditor toured Deal Middle School, Savoy Elementary School, School Without Walls High School and Wheatley Education Campus.

⁴⁸ Ibid, page 8110-102113-1, Part 2, Section 2.02

⁴⁹ Auditor Tour of Wheatley Education Campus, June 2010.

⁵⁰ American Society of Civil Engineers, Report Card for America’s Infrastructure, August 2003.

Another example of OPEFM failing to follow DG standards pertains to the entrance lobby of SWOW. The DG specifies carpet as the flooring that should be used for high school entrance lobbies.⁵¹ However, at SWOW, OPEFM installed stained concrete in the entrance lobby.⁵² The Auditor found that OPEFM could not provide written documentation to explain why stained concrete was used instead of carpet.

Stained concrete for SWOW's lobby cost \$18,150⁵³ for an area that measured 31 square yards.⁵⁴ If carpet, at \$38 per square yard, was installed in the SWOW entrance lobby, the cost would have been \$1,178 a cost difference of \$16,972. Based on a comparison of the costs of carpet and stained concrete, OPEFM's decision to spend \$18,150 for stained concrete was not a cost effective use of DCPS modernization and stabilization funding.

Years of deferred maintenance of the District's public schools resulted in one-third of the schools being classified as in a state of general disrepair.⁵⁵ Given the large demand for school facility modernization and the District's funding limitations, it is imperative that OPEFM comply with the draft DG standards to ensure that resources are equitably distributed between schools and recommended materials are used in each project.

RECOMMENDATION

OPEFM's Executive Director should ensure that DCPS's modernization and stabilization resources are equitably distributed among all schools. Towards that end, OPEFM should establish effective mechanisms to ensure compliance with the requirements of the draft Design Guidelines.

OPEFM PAID \$1.3 MILLION TO RENOVATE AND LEASE OFFICE SPACE INSTEAD OF USING OFFICE SPACE OWNED BY THE DISTRICT OF COLUMBIA

The District Facilities Plan (the Plan),⁵⁶ prepared by the Office of Property Management, now the Department of Real Estate Services (DRES), provides an overview of all District of Columbia owned and leased space except for schools, libraries, residential properties, and right-of-way. The Plan for Fiscal Years 2009-2013 states: "Major initiatives over the next three years include reducing the District's leased space portfolio by approximately 13%..."

⁵¹ Design Guidelines, DCPS, Chapter 6, High Schools, 6108, H-AD-1, Entrance Lobby

⁵² Turner Construction, January 6, 2009 Letter to OPEFM Executive Director.

⁵³ Hyde Concrete, December 8, 2008, Proposal to LA Howard Construction.

⁵⁴ According to the Hyde Concrete Proposal the area measured 275 square feet. Formula for the conversion of square feet to square yards: Divide total square feet by 9.

⁵⁵ DCPS, Capital Plan, FY 2008, Page GAO-1.

⁵⁶ Office of Property Management, District of Columbia, District Facilities Plan, Fiscal Years 2009-2013, page 1

OPEFM assumed control over the functions, assets, and personnel that were administered by the Office of Facilities Management (OFM) of DCPS. OFM offices were located at Penn Center in space owned by the District of Columbia. However, OPEFM did not conduct business at the Penn Center offices. Instead, OPEFM established operations at RFK (RFK) Stadium. According to the OPEFM Chief of Staff/Consultant, OPEFM located operations at RFK instead of Penn Center because the OPEFM Executive Director “preferred RFK”.⁵⁷

Before occupying offices at RFK, OPEFM used \$690,069 in capital funds to modernize RFK offices that it would occupy. During the modernization process, OPEFM conducted business from rented trailers located on the RFK parking lot at a cost of \$174,947. OPEFM moved into the RFK renovated offices in December 2008.

OPEFM paid \$23,400 per month to lease the office space at RFK. OPEFM paid a total of \$210,600 in FY 2009 and \$280,800 in FY 2010 to lease space at RFK. OPEFM’s Executive Director wasted a total of \$1,356,416 in capital funds intended for DCPS facilities modernization and stabilization for RFK office space renovation, trailer rental, and monthly RFK lease costs. Table IV presents costs of OPEFM’s modernization of RFK offices, trailer rental and monthly lease.

Table IV
RFK Office Modernization, Trailer Rental and Monthly Lease

Renovate and Furnish RFK Offices	\$690,069
Trailer Rental (Lot space, security, utilities)	\$174,947
OPEFM RFK Monthly Lease FY 2009	\$210,600
OPEFM RFK Monthly Lease FY 2010	\$280,800
TOTAL	\$1,356,416

Additionally, the \$1.3 million that OPEFM spent to renovate offices at RFK was an unnecessary and inappropriate use of funds that OPEFM should have used to construct and modernize public school facilities for the children of the District of Columbia.

⁵⁷ Auditor’s July 7, 2010, interview with OPEFM Chief of Staff.

RECOMMENDATION

The Executive Director of OPEFM should work with DRES to develop a cost effective plan to relocate the offices of OPEFM to rent free space owned by the District of Columbia.

OPEFM RULES AND REGULATIONS ON CONSULTING SERVICES ARE SILENT ON CONTRACTING PROVISIONS FOR EXPERT AND CONSULTING SERVICES, HOWEVER, CURRENT PRACTICES ARE INCONSISTENT WITH DISTRICT OF COLUMBIA PROCUREMENT REGULATIONS

The OPEFM Executive Director contracted with an individual in August 2008 at the rate of \$195,000 annually to serve as an “on-site consultant.”⁵⁸ The contract’s Scope of Work listed the individual’s duties as “coordinating OPEFM activities in areas designated by the Executive Director” and serving as OPEFM liaison “as directed by the Executive Director.”⁵⁹ The Auditor found that the OPEFM Procurement Rules were silent with regards to contracting for expert and consulting services.

Title 27 DCMR, Sections 1901.2 and 1901.3 state:

“...a contracting officer shall not contract for expert or consulting services...to perform work of a policy-making, decision-making, or managerial nature that is the direct responsibility of agency officials;”⁶⁰

“a contracting officer shall not contract for expert or consulting services ...to bypass or undermine pay limitations, or competitive employment procedures;”⁶¹ [Auditor’s Emphasis]

“...the contracting officer shall ensure that a contract for expert or consulting services does not establish or allow any of the following... an employer-employee relationship between the District and the contractor⁶² ...detailed control or supervision by District personnel⁶³,” [Auditor’s Emphasis]

⁵⁸ OPEFM Contract with Warren Graves, October 22, 1008, page 1.

⁵⁹ OPEFM Contract with Warren Graves, October 22, 1008, Section C.2.3, Scope of Work, “Coordinate OPEFM activities in areas designated by the Executive Director including, but not limited to government relations and external affairs. As directed by the Executive Director, the Consultant shall serve as liaison the [sic] between OPEFM and the legislative and executive branches of the District of Columbia and federal governments, and such other civic and community groups, neighborhood, parent-teacher and business associations as may be necessary to promote the interests and the goals of OPEFM effectively and efficiently to carry out the functions of OPEFM under the Act.”

⁶⁰ Title 27 DCMR 1901.2(a).

⁶¹ Title 27 DCMR 1901.2(b).

⁶² Title 27 DCMR 1901.3(a).

⁶³ Title 27 DCMR 1901.3(b).

While OPEFM has independent contracting authority and therefore is not subject to Title 27 DCMR, Sections 1901.2 and 1901.3, OPEFM receives public District funds. As a consequence, the OPEFM Executive Director has a fiduciary responsibility to ensure that OPEFM's fiscal and contracting operations are conducted in a cost effective, ethical, and transparent manner.

OPEFM's Procurement Rules are silent on the matter of contracts for consulting services. However, the Auditor found that the contract for the services of this consultant violated Title 27 DCMR, Section 1901.2 because the consultant performed work of a "managerial nature", established an employer-employee relationship, and allowed the consultant to exercise detailed control and supervision of District government employees. Further, this contractual agreement allowed the individual to bypass and undermine pay limitations established by the Council of the District of Columbia. For example, the OPEFM organizational chart listed this consultant as Chief of Staff. As Chief of Staff, the consultant performed managerial tasks such as conducting annual performance reviews for the staff of OPEFM's Design Management Section.

The Auditor found that the annual \$195,000 rate of pay provided in the OPEFM contract would have violated District of Columbia salary restrictions. According to the District of Columbia Salary Schedule,⁶⁴ the maximum salary for District of Columbia employees in FY 2008 and FY 2009 was \$179,096. Additionally, the OPEFM contract provided for a monetary award, of up to \$29,500 which exceeded the permissible limit under the District's incentive award plan of \$5,000, or 10%, of the employee's pay.⁶⁵

RECOMMENDATION

OPEFM Executive Director should revise OPEFM procurement rules and regulations for expert services under consulting contracts that are consistent with District procurement rules and regulations.

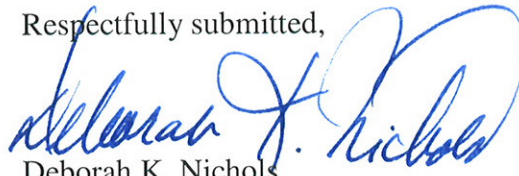
⁶⁴ District of Columbia Government Salary Schedule: Management Supervisory Service FY 2008 and FY 2009 maximum salary \$152,686. District of Columbia Salary Schedule: Executive Schedule FY 2009 maximum salary \$179,096. District of Columbia Government Salary Schedule: Career Service (General) maximum salary \$109,648.

⁶⁵ DPM Section 1903.1 which states: "Only one monetary award may be granted to an employee for a single contribution, including performance contributions, and such an award may be granted in combination with a tangible item award, a time off award, an honorary award, or any combination thereof. However, the total monetary value of incentive awards given to an employee for any single contribution in a fifty-two week (52-week) period, including a performance contribution, may not exceed five thousand dollars (\$5,000) or ten percent (10%) of an employee's scheduled rate of basic pay, whichever is greater."

CONCLUSION

The Auditor found that OPEFM established a procurement contract record management system that did not facilitate a review of school-and project-specific expenditures for school facility capital improvements, maintenance, repairs, and operating costs. OPEFM's contract and procurement files did not consistently contain sufficient information to constitute a complete history of contract and procurement transactions. OPEFM did not create or maintain meeting minutes, written summaries of key decisions, lists of project next steps, or reports on the impact that changes in project scopes had on subsequent modernization projects. Finally, OPEFM issued payments to a vendor without a valid contract and assigned managerial functions to a contractor.

Respectfully submitted,



Deborah K. Nichols

District of Columbia Auditor

AUDITOR'S RESPONSE TO OPEFM'S COMMENTS

The Auditor appreciates comments on the draft report that were provided by the Office of Public Education Facilities Modernization. The Auditor made revisions, where appropriate, to the final report based on these comments and offers the following response to certain OPEFM comments.

1. **OPEFM's Comment:** The Draft Report states that OPEFM did not establish a "school and project specific-record keeping system to account for all expenditures for school facility capital improvements, maintenance, repairs, and operating costs" and this complicated the Auditor's review. However, OPEFM's contract files are organized by contractor name and contract number, and it would be **unworkable to use the school name** for several reasons. First on the large modernization projects, there are multiple contractors working on each such project...Further, OPEFM has a number of indefinite delivery/indefinite quantity type contracts that address stabilization efforts [Auditor's Emphasis]."

Auditor's Response: As stated in the draft report, pursuant to Title 38, Section 2973.05 of the District of Columbia Code: "...the District of Columbia Auditor shall prepare an annual report to the public on the use of the capital funds by the District of Columbia Public Schools during the preceding fiscal year. The report shall include a **school-and project-specific audit** of all expenditures for school facility capital improvements, maintenance, repairs, and operating costs... [Auditor's Emphasis]" Without a school-and project-specific record keeping system, a school-and project-specific audit is "unworkable." As OPEFM notes in their response, multiple contractors work on each project and the methodology for tracking costs are tracked in numerous ways. The current OPEFM recordkeeping and contract file system is opaque, cumbersome, and obstructs transparency. Since multiple contractors work on each project and OPEFM's current methodology for tracking costs are numerous, it is imperative that OPEFM establish a recordkeeping and contract file system that is school-and project-specific. This will establish a proper audit trail, facilitate the audit process, provide transparency, and ensure that the Auditor, Council of the District of Columbia, and the Mayor have access to contract files that contain complete, comprehensive, school and project-specific information necessary to properly document and account for the use of public funds spent. Further, a school and project specific record keeping and contract file system will facilitate stakeholders in making informed decisions and assessments regarding expenditures for school facility capital improvements, maintenance, repairs, and operating costs on a school and project specific basis. The Auditor affirms the statement that OPEFM must comply with the requirements of Title 38, Section 2973.05 of the District of Columbia Code and establish a school-and project-specific record keeping system.

2. **OPEFM's Comment:** The files maintained by the Program Manager are essentially **"desk files"** and are not intended to serve as official vendor payment records [Auditor's Emphasis].

Auditor's Response: The draft DCPEP Policies and Procedure Manual states: "PMs were responsible for reviewing and **certifying the accuracy and completeness of vendor pay requests** for stabilization and modernization project." [Auditor's Emphasis] Despite OPEFM's attempt to minimize the importance of Program Manager files by referring to them as "desk files", the fact of the matter is that DCPEP's Project Managers were responsible for reviewing and certifying the accuracy and completeness of vendor payments. Our review found that the Project Managers' payment records were inaccurate and incomplete. The Auditor maintains the position that Project Manager files should be a reliable source of documentation to justify and support vendor pay requests.

3. **OPEFM's Comment:** Significant decisions, such as plan and sequencing of school renovation activities, are documented through the Master Facilities Plan, the Capital Improvement Plan and school-specific education specifications.

Auditor's Response: Page 6 of OPEFM's comments on the draft report includes the statement: "Implementing a portfolio of this size requires that **thousands of decisions be made. Because of the very fast pace and fluid** nature of the program, which is essential to the success OPEFM has achieved in moving forward and completing projects...[Auditor's Emphasis]" While we agree that OPEFM made "thousands of decisions", we disagree that significant decisions were documented through the Master Facilities Plan, the Capital Improvement Plan, school-specific education specifications, or any other documentation made available to the Auditor, despite our repeated requests. The Master Facilities Plan, the Capital Improvement Plan, and school-specific education specifications are static documents that did not document or reflect the "thousands of decisions" that OPEFM made. The Auditor maintains the position that OPEFM did not maintain a comprehensive, written record of recommendations, decisions, or key issues including those presented by the DCPS Chancellor or the State Superintendent of Education regarding modernization, stabilization, maintenance, and repair of public schools.

4. **OPEFM's Comment:** Valid written contracts exist authorizing payments totaling \$411,425.

Auditor's Response: To support the assertion that valid contracts exist, OPEFM refers to an engagement letter between OPEFM and McKissack & McKissack. An engagement letter is not a contract. In addition, OPEFM refers to Office of Facilities Management (OFM) contract GAFM-2006-C-001 to support a \$120,939 payment to McKissack & McKissack. During the course of the audit, OPEFM provided the Auditor with a list of OFM contracts, however, OFM contract GAFM-2006-C-001 was not included in the OPEFM list of OFM contracts. Additionally, OPEFM did not provide the Auditor with a copy of contract GAFM-2006-C-001 to support its assertion. OPEFM did not have a contract file for McKissack & McKissack and an OPEFM email to the Auditor stated that OPEFM did not have a contract with McKissack & McKissack. Thus, the Auditor maintains the finding that OPEFM made payments to McKissack & McKissack totaling \$411,425 without a valid written contract.

5. **OPEFM's Comment:** The Draft Report suggests that the cost of LEED certification for School Without Walls would have been less had this decision been made earlier in the process. This is substantially incorrect...The only incremental cost increase resulting from starting the LEED process midway were certain redesign costs that were on the order of \$60,000.

Auditor's Response: Our review found that, since the decision to obtain LEED certification was made after the conceptual and design stages of School Without Walls, it was necessary to redesign walls, floors, ceilings and the sprinkler system. The draft report includes an email from the OPEFM contractor that states: "The work includes a significant amount of wall, floor and ceiling redesign; MEP and sprinkler system redesign, and revised LEED required site improvements. We have also included costs for managing and coordinating the additional LEED scope of work, while maintaining the original schedule completion date of July 31, 2009. The total cost for this work including: design/build MEP and sprinkler; revised LEED construction for all trades throughout and commissioning/management/oversight/coordination is \$1,311,244 [Auditor's Emphasis]." Thus, the Auditor maintains the finding that it would have been more economical if OPEFM decided to obtain LEED certification for SWOW during the conceptual and schematic design stages of the SWOW modernization.

AGENCY COMMENTS

AGENCY COMMENTS

On April 22, 2011, the Office of the District of Columbia Auditor submitted the report in draft for review and comment to the Office of Public Education Facilities Modernization (OPEFM). On May 3, 2011, the Auditor received comments from OPEFM.

Where appropriate, the draft report was revised based on written comments and supporting documentation provided by OPEFM.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Office of the City Administrator

May 3, 2011

By Electronic Mail

Deborah K. Nichols
District of Columbia Auditor
717 – 14th Street, NW
Suite 900
Washington, D.C. 20005

Re: Letter Report & Findings

Dear Ms. Nichols:

The Office of Public Education Facilities Modernization (OPEFM) is in receipt of your letter dated April 22, 2011 as well as the draft letter report regarding the Operations and Administration of the Office of Public Education Facilities Modernization (the "Draft Report"). OPEFM has carefully reviewed and respectfully disagrees with many of the findings and recommendations set forth in the Draft Report. Accordingly, OPEFM submits the foregoing comments and requests that its comments are included as an appendix to your final report.

OPEFM's comments are organized in three parts: Part 1 presents an overview of OPEFM, its history, business practices and statutory mandate; Part 2 addresses the specific findings contained in the Draft Report; and Part 3 addresses the recommendations.

1. Overview

OPEFM was established by the District of Columbia Public Education Reform Amendment Act of 2007 (the "Act") with the specific mission of remaking and modernizing the physical infrastructure serving the District of Columbia Public Schools and the children and teachers who inhabit those buildings. As you are aware, the condition of the District's public schools was deplorable when OPEFM was established. Bathrooms were dysfunctional, roofs were leaking and three schools had to be closed in January and February of 2007 due to lack of heating. These conditions were the result of decades of deferred (or non-existent) maintenance, as well as delays that were encountered in implementing new construction and capital improvement projects.

Although OPEFM was originally tasked with implementing the Master Facilities Plan (the "MFP"), it quickly became evident that DCPS' physical needs were more far reaching and that urgent corrective action was required. In response to these needs and as contemplated by the Act, OPEFM established a nimble organization that adopted the best business practices of both

the public and private sectors. OPEFM's organizing statute granted it independent procurement and personnel authority. Hence, OPEFM intentionally dispensed with much of the bureaucracy and top-hamper that had traditionally impeded progress, and instead assembled a highly qualified team of construction and development professionals with proven track records of implementing large sophisticated projects.

OPEFM's initial task was to assume control over a number of DCPS legacy projects that were already underway. These legacy projects included Savoy, Wheatley, School Without Walls and Sousa. In addition, OPEFM, along with the District's leaders, recognized the immediate need to correct key deficiencies with the school facilities and, thus, during 2008 and 2009, a stabilization program was developed and implemented for the entire school portfolio. To this end, contracts were awarded to remedy fire code, life safety, heating and cooling, bathroom deficiencies and to make other repairs. Much of this work was performed over the summers of 2008 and 2009. It should be noted that much of the stabilization work performed during this period was funded by "unspent budget authority," which were money previously appropriated to DCPS for facility purposes but which the former DCPS Office of Facilities Management ("DCPS-OFM") had been unable to spend due to its slow-moving bureaucracy and contracting processes.

In FY 2008 and FY 2009, OPEFM put in place approximately \$722 million in school construction work. Approximately, \$200 million was related to stabilizing the existing school system, and the remainder in new construction or major renovations. The business and management processes employed by OPEFM were consciously different than those traditionally used by the District government and are consistent with best practices used to deliver large-portfolio projects.

Lastly, OPEFM takes issue with the ominous characterization of a "shadow workforce" and the contention that OPEFM's consultants duplicate the functions of its employees. This statement, which is neither substantiated nor elaborated upon elsewhere in the report, is misleading and requires a response. OPEFM has engaged a program management team¹ through two, publicly advertised, formal procurements – one in 2007 and the second in 2010. Both of the contracts that resulted from these procurements were submitted to, and approved by, the Council of the District of Columbia. It is neither an unusual nor an inappropriate practice to manage major public capital programs. There are numerous examples of private program management firms being engaged to oversee large-scale public capital programs, in such cities as Philadelphia, New Orleans, Detroit, Chicago, Dallas, and Los Angeles.

The management processes used by OPEFM have resulted in a marked improvement in the DCPS facilities and have overcome years of neglect and deferred maintenance. This is not only OPEFM's view, but the consensus feedback from students, teachers, administrators, parents, and the general public, all of whom have reached the same conclusion. These processes have also

¹ OPEFM's program management team is a joint venture consisting of two local, CBE certified companies. These companies, Brailsford & Dunlavey and McKissack & McKissack, are both successful program management firms with nationwide clienteles. Each has been in business for approximately 20 years. The revenue derived from OPEFM, while significant, represents less than 30% of their annual revenues in 2010.

proved to be quite cost effective. As a percentage of construction value, OPEFM's total management cost – including both internal and outside consultants – is less than 5%. This is consistent with a private-sector cost model and below what one would normally expect in a government environment.

With that being said, below are OPEFM's responses and observations with regard to the Draft Report's specific findings.

2. Findings

A. OPEFM Established a Poorly Designed Contract and Procurement Records Management System that Obstructed Review of School and Project-Specific Expenditures.

The Draft Report states that OPEFM did not establish a "school and project specific-record keeping system to account for all expenditures for school facility capital improvements, maintenance, repairs and operating costs" and that this complicated the Auditor's review. (See Draft Report at p. 4). However, OPEFM's contract files are organized by contractor name and contract number, and it would be unworkable to use the school names for several reasons. First, on the large modernization projects, there are multiple contractors working on each such project. For example, the Wilson High School project involves the following contracts: (i) a design contract held by Cox, Graae + Spack; (ii) an environmental assessment conducted by AECOM; (iii) a design/build contract held by GCS-SIGAL; (iv) a contract for third-party plans review and inspections; and (v) a variety of purchase orders related to FF&E and other miscellaneous items.

Further, OPEFM has a number of indefinite delivery/indefinite quantity type contracts that address stabilization efforts. For example, OPEFM has entered into contracts with two HVAC contractors to address heating and cooling issues in the schools. Each of these contractors supports a group of approximately 60 schools and responds to issues as they arise on an on-call basis.

OPEFM's financial system does, however, contain the necessary information to track costs on a school-by-school basis. For the larger renovation projects (i.e., the high schools, Phase 1 modernizations and the like), costs are reported and tracked on a school-by-school basis. For the stabilization work, costs are tracked in SOAR (the District's financial software) on a portfolio basis. The Office of the Chief Financial Officer also maintains a separate report that allocates such costs on school-by-school basis; thus, such information is readily available.

B. Project Manager Vendor Payment Records Were Inaccurate and Incomplete.

Under the District's charter, the Office of the Chief Financial Officer ("OCFO") is responsible for managing the District's financial affairs and maintaining its financial records. OPEFM has operated consistent with this practice and has a dedicated, on-site team from the OCFO that manages its financial affairs. These individuals, rather than the Program Management team, are responsible for maintaining OPEFM's financial and payment records. The files maintained by

the Program Manager are essentially “desk files” and are not intended to serve as official vendor payment records.

C. Drafting of Change Orders by a Partner at the Law Firm OPEFM Contracted to Serve as Procurement Manager/Consultant Created the Appearance of Impropriety.

Since April 29, 2008, the partner in question has recused himself from matters involving Turner Construction Company. Since that time, all contracts and change orders related to Turner Construction Company have been handled either by OPEFM’s in-house counsel or other attorneys at the Law Firm.

D. OPEFM Failed to Document Consultations with DCPS Chancellor and the State Superintendent of Education Regarding School Modernization.

OPEFM works closely with the Chancellor and the State Superintendent to implement its plans. Weekly meetings are held with DCPS to discuss facility issues. These are, for the most part, staff level meetings that discuss operational and detailed design-level questions. Significant decisions, such as the plan and sequencing of school renovation activities, are documented through the Master Facilities Plan, the Capital Improvement Plan and school-specific education specifications. All of these documents are public documents and are available for review.

E. The OPEFM Executive Director Did Not Comply with a Statutory Mandate to Provide Public School Modernization Advisory Committee Members with Quarterly Status Reports on Capital Improvement Projects.

The Public School Modernization Advisory Committee (“PSMAC”) was created in 2006 pursuant to D.C. Law 17-9. That law was subsequently amended as part of the Education Reform Act of 2007 and required OPEFM’s Executive Director to “consult with” the PSMAC in developing the Master Facilities Plan, the Capital Improvement Plan and the budget. Pursuant to this legislative mandate, OPEFM met frequently with PSMAC during the evolution of the MFP. The Committee itself acknowledged this fact by letter dated September 7, 2008 to the Chairman of the Council for the District of Columbia.

Based on communications between OPEFM and PSMAC, it was OPEFM’s understanding that the PSMAC did not have adequate staff to monitor the implementation of the MFP and that the Committee essentially disbanded. As such and given the absence of any action on the part of the Committee, OPEFM discontinued briefing the Committee.

F. OPEFM’s Contract and Procurement Files Did Not Contain Documentation to Support \$15.3 Million in Payments.

The Draft Report is correct that the paper files did not contain copies of the indicated purchase orders. While paper copies of the purchase orders should have been included in the files, it is important to note that the purchase orders had been entered in PASS and that the OCFO verified the existence of such purchase orders prior to making payments.

G. OPEFM Made Payments Totaling \$411,425 Without a Valid Written Contract.

Valid written contracts exist authorizing the indicated payments. According to the Draft Report, the indicated amount relates to two separate purchase orders. This amount consists of \$290,485, which was paid against Purchase Order # 256468 and covers services that were performed under an engagement letter between the OPEFM and McKissack & McKissack dated August 7, 2007. The balance of the amount consists of \$120,939, which was paid against Purchase Order # 304359. That purchase order relates to Contract Number GAFM-2006-C-001 that was issued by DCPS-OFM (the predecessor to OPEFM). That contract was an IQ/ID contract for Architectural Engineering Services, and DCPS-OFM issued a notice to proceed on March 20, 2006 for a task order for design services related to renovation of toilets, ADA ramp at elevator and fire protection at the Adams School.

H. OPEFM Lacked Written Documentation to Support the Decision to Spend \$1.3 Million to Obtain LEED Certification for School Without Walls.

The School Without Walls project was initiated prior to the establishment of OPEFM and prior to the effective date of the Green Building Act requirements and the original design was predicated upon a non-LEED compliant design. That project, however, as with many other projects managed by OPEFM's predecessor, had become stalled, and by the time OPEFM assumed control of the project, the Council had established a clear policy mandate to pursue LEED compliant buildings. In light of this Council directed mandate, OPEFM examined whether the School Without Walls project could meet LEED requirements.

It was ultimately determined that the project could achieve LEED goals, and a decision was made to implement this approach despite the fact that the project was technically grandfathered from the Green Building Act's requirements. This decision was supported by DCPS and the SIT team.

The Draft Report suggests that the cost of LEED certification would have been less had this decision been made earlier in the process. This is substantially incorrect. The vast majority of the LEED costs would have been incurred regardless of when the decision were made and reflect the cost of improved acoustical systems and more efficient MEP systems. The only incremental cost increase that resulting from starting the LEED process midway were certain redesign costs that were on the order of \$60,000. OPEFM believed – and continues to do so today – that this small cost premium was appropriate in light of the significant benefits that result from environmentally friendly construction.

I. OPEFM Paid \$12.7 Million for Project Management Services but Did Not Require Written Documentation of Issues and Recommendations.

OPEFM has worked to carefully integrate the Program Management team into its management process. Due to the breadth and complexity of the school modernization program, many of the DCPEP employees devote all or most of their time to OPEFM and are housed at OPEFM's

offices. As such, they function as an integral part of the OPEFM team and work closely with OPEFM and its management, procurement and financial team.

Implementing a portfolio of this size requires that thousands of decisions be made. Because of the very fast pace and fluid nature of the program, which is essential to the success OPEFM has achieved in moving forward and completing projects, these directions are most frequently provided verbally in meetings, including both weekly meetings between OPEFM's senior staff and DCPEP senior staff to monitor project progress, resolve issues, and anticipate potential problems, and in many project-specific meetings. OPEFM's final decisions are documented in the form of directions provided to the design and construction teams, and are recorded in project meeting minutes. Decisions that have major cost impact are documented in several different ways. The award of large contracts (i.e., those in excess of \$100,000) is documented by a formal memo to the file that describes the procurement process and the reason for the selection.

Budget reallocations are documented through reprogramming requests that must comply with the requirements of the District Code and the Home Rule Act. All contracts in excess of \$1 million must be submitted to the Council along with detailed documentation for the Council's review and approval. Similarly, any change order that increases a contract's value by more than \$1 million (either individually or the aggregate with prior change orders) are also submitted to the Council along with detailed documentation for the Council's review and approval.

Lastly, the Program Manager prepares and submits a detailed monthly report that describes each project under management to OPEFM's executive management and a copy of that report is also provided to the Council. Collectively, we believe this documentation adequately summarizes the key decisions as they are being made.

The level of documentation included in OPEFM's project files is consistent with best practices in the construction industry.

J. OPEFM Modernization Projects Failed to Consistently Comply with Requirements of Design Guidelines.

All four of the projects visited by the Auditor were inherited by OPEFM and were originated by DCPS prior to the establishment of OPEFM. In all four cases, the design was developed by architects working for DCPS-OFM, the predecessor to OPEFM. In 3 of the 4 cases, the construction contracts were awarded prior to OPEFM's creation and work was already underway. In the case of Wheatley, that project was fully designed and bid by OPEFM's predecessor agency, and the construction work was approximately fifty percent (50%) completed when OPEFM assumed control.

K. OPEFM Paid \$1.3 Million to Renovate and Lease Office Space Instead of Using Office Space Owned by the District of Columbia.

OPEFM believes that its RFK location has proved to be an inexpensive and cost-effective location for its workforce. When OPEFM was initially established, adequate office space was not readily available for its staff and consultants. In order to operate efficiently, a conscious decision was made to house all of OPEFM's executive management staff (program management,

legal, procurement, finance, human resources and executive management) in a single location. The space at RFK was readily available. As noted in the Draft Report, OPEFM has spent \$1.356 million to house its staff from June 2007 through September 30, 2010 – roughly 3.25 years. The OPEFM management team at RFK consists of approximately 60 individuals and occupies approximately 30,000 square feet of space.

This equates to a cost of roughly \$13 per year per square foot, which is well below the cost of office space in the District of Columbia. Office space in the District typically runs in the \$25 to \$40 per square foot range.

L. OPEFM Rules and Regulations on Consulting Services are Silent on Contracting Provisions for Expert and Consulting Services. However, Current Practices are Inconsistent with District of Columbia Procurement Regulations.

The Draft Report refers to the contractual arrangement between OPEFM and its former chief of staff. That individual is now a full-time District employee in the Office of the City Administrator. OPEFM's current chief of staff is a full-time, career service employee. The prior arrangement was the result of the unique and urgent circumstances that arose when OPEFM was formed, and OPEFM does not anticipate that it will reoccur.

3. Recommendations

The Office of Public Education Facilities Modernizations concurs with most of the objective in the recommendations. Below OPEFM sets forth its initial responses to the recommendations proposed by your office.

- A. OPEFM Executive Director should immediately take necessary steps to ensure that the OPEFM record keeping system is reorganized so that contract and procurement files, including records of expenditures, are organized specifically by school and project, as well as by contractor. This will aid in ensuring that the Auditor, the Council of the District of Columbia, and the Mayor have access to contract files that contain school- and project-specific records of all expenditures and transactions for school facility construction, capital improvements, maintenance, repairs, and operating costs.**

For the reasons described in Section 2.A above, this recommendation is not practical. OPEFM will, however, include in each contract file information that links the contract to the appropriate modernization project.

- B. OPEFM Executive Director should establish effective controls over the creation of school- and project-specific records by contractors to ensure that adequate, complete, and proper records are made, collected, and properly preserved.**

OPEFM will evaluate how to implement this recommendation. OPEFM believes, however, that the current record keeping system contains the necessary information. From a financial perspective, the OCFO will still track the various costs associated with each project in SOAR, the District's financial software. The OCFO, however, has created a more detailed cost-tracking

system which runs in parallel with SOAR and will provide more detailed way to track costs by school, ward and project type.

C. OPEFM Executive Director should properly monitor the project management contract with DCPEP to ensure that vendor pay request information contained in PM project files is complete, accurate, and reconciled.

OPEFM believes that this recommendation would generate unnecessary and duplicative costs. By statute, the OCFO is required to be responsible for vendor payments and financial records. OPEFM believes it would be an unnecessary waste of resources to maintain two duplicative systems.

D. The Executive Director of OPEFM should prevent the L and L partner from drafting any OPEFM change orders for Turner in order to remove any real or perceived conflict of interest or potential appearance of impropriety.

As noted above, OPEFM instituted this procedure in April 2008. From time to time, members of the Program Management team have overlooked this procedure and have inadvertently sent e-mails regarding Turner to the partner in question. OPEFM will re-issue the necessary directive to the Program Management team.

E. The Executive Director of OPEFM should establish a written record documenting communications with the State Superintendent of Education and the DCPS Chancellor regarding the school construction and modernization to ensure effective coordination throughout the school modernization process.

OPEFM believes that this recommendation is best addressed as the new planning process is developed. Last year, the Council established a new Office of Public Education Facilities Planning to oversee and implement the planning process. This office will be developing a new planning process. OPEFM will work with the planning office to develop the necessary record keeping system.

F. As required by Title 38, Section 38-2973.01 of the D.C. Code, the Executive Director of OPEFM should consult with the Public School Modernization Advisory Committee and provide written quarterly status reports on all capital improvement projects funded through OPEFM's capital budget.

As discussed in item "E" above, it was OPEFM's understanding that the PSMAC did not have adequate staff and disbanded. To the extent this is not the case, OPEFM will develop a strategy for consulting with, and providing reports to, the PSMAC.

G. OPEFM Executive Director should promptly ensure that each contract and procurement file contains a complete history of each transaction.

As required by the District's charter, payment records are maintained by the OCFO. OPEFM does not believe it would be cost effective or productive to maintain a duplicate set of files, and as such, OPEFM does not intend to implement this recommendation.

H. OPEFM Executive Director should discontinue the improper practice of allowing contractors to provide goods or services without a valid written, duly executed contract.

OPEFM has an existing policy of prohibiting contractors from providing services without a written contract. Given the size of OPEFM's portfolio, there have been a handful of instances where work was performed without a written contract and these situations have been dealt with through Council ratifications or other appropriate processes.

I. OPEFM Executive Director should revise OPEFM's Procurement Rules to prohibit the authorization of payment for the value of supplies and services received without a valid written contract.

OPEFM implemented the proposed recommendation in 2009. Since that date, OPEFM's chief financial officer has required that there be a written contract and that the work was performed after the date of such contract. These requirements are checked as part of the payment request process.

J. OPEFM Executive Director should establish and maintain a record of key decisions, recommendations, and agency directives concerning DCPS modernization and stabilization projects.

OPEFM will develop a set of financial thresholds and the level of required documentation. At present, we envision that the first threshold will be \$100,000 and require an abbreviated memorandum that is approved by a director from the program management team. The second threshold will be \$250,000 and will require a more detailed level of assessment, be signed by a director or principal from the program management team and approved by OPEFM's executive director. The third threshold will be \$1,000,000 and will require a formal memorandum approved by OPEFM's executive director.

K. OPEFM Executive Director should establish policies and procedures to ensure that expenditures for modernization and stabilization projects are reviewed and approved by the Chief Financial Officer (CFO) of the District of Columbia. To facilitate review by the CFO, OPEFM should install a web-based software system to record project expenditure requests, justifications, and electronic signature approvals by project decision makers and the CFO of the District. This data-collection technology would document the rationale for decisions, provide real-time project status information, ensure complete project records, eliminate overspending, increase transparency, facilitate accountability and provide a verifiable audit trail.

OPEFM already requires the OCFO to approve all proposed financial expenditures before they occur through the requisition system built into PASS and SOAR, which should satisfy this recommendation. OPEFM does not believe, however, that it is appropriate or consistent with the District's charter to involve the OCFO in policy decisions. To the extent the recommendation would require the OCFO to have a say in policy or programmatic decisions, OPEFM believes this recommendation is inappropriate.

- L. OPEFM Executive Director should effectively monitor the performance of DCPEP and Implement measures to ensure that DCPEP documents issues, recommendations and OPEFM directives pertaining to DCPS modernization stabilization projects.**

OPEFM believes the comment on recommendation "J" should address this item.

- M. The program management contract between DCPEP and OPEFM should be modified to explicitly state that DCPEP should provide written reports of issues and recommendations pertaining to DCPS modernization and stabilization projects.**

Once the exact guidelines are developed for recommendation "J" above, OPEFM will issue an appropriate change order documenting these requirements.

- N. OPEFM's Executive Director should ensure that DCPS's modernization and stabilization resources are equitably distributed among all schools. Towards that end, OPEFM should establish effective mechanisms to ensure compliance with the requirements of the draft Design Guidelines.**

OPEFM believes that its current processes adequately address this issue.

- O. The Executive Director of OPEFM should work with DRES to develop a cost effective plan to relocate the offices of OPEFM to rent free space owned by the District of Columbia.**

As noted above, the RFK space is cost-effective and far below current market rates. Moreover, OPEFM believes it would be imprudent to develop such a strategy as OPEFM, along with the District's other capital agencies, may be consolidating into a new agency known as the "Department of General Services." OPEFM believes that the most prudent course is to develop its space-planning needs as part of the reorganization process.

- P. OPEFM Executive Director should revise OPEFM procurement rules and regulations for expert services under consulting contracts that are consistent with District procurement rules and regulations.**

Deborah K. Nichols

May 3, 2011

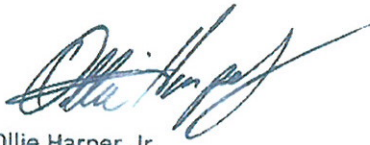
Page 11

It is OPEFM's understanding that new procurement regulations will be drafted for the proposed consolidated agency, and OPEFM believes that any such amendments to its regulations should be accommodated through that process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Allen Y. Lew".

Allen Y. Lew
City Administrator
District of Columbia

A handwritten signature in blue ink, appearing to read "Ollie Harper, Jr.".

Ollie Harper, Jr.
Acting Executive Director
OPEFM