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Auditor's Examination of
McKinley Technology High School
Modernization Project

September 6, 2006

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EXECUTIVE SUMMARY

PURPOSE

Pursuant to Section 455 of Public Law 93-198¹ and a request from Councilmember Kathy Patterson, the District of Columbia Auditor (Auditor) conducted an audit of the District of Columbia Public Schools' (DCPS) capital improvement project for the renovation/rehabilitation of McKinley Technical High School (McKinley).

CONCLUSION

The Auditor's review of the McKinley renovation/rehabilitation project found that the recorded costs to modernize McKinley increased significantly over the original budgeted cost. Recorded cost totaled approximately \$81 million and exceeded the original budgeted cost estimate by approximately \$56 million. The recorded costs included the award of over \$11 million in sole source contracts, of which \$1.2 million lacked required justification and approval. The audit also revealed that anticipated public/private financing of approximately \$30 to \$40 million for the McKinley Technology Initiatives never materialized. Thus, the lack of anticipated private funding resulted in DCPS and the District bearing 100% of the projected costs of the McKinley initiatives.

The Auditor found several key factors that contributed to the increased cost including: (1) inadequate advance planning by DCPS; (2) contract modifications which changed the scope of work; and (3) errors and/or omissions by the architect/designer. The Auditor also found that DCPS failed to adequately monitor, review, and approve contract modifications issued by the United States Corps of Engineers (USACE) that ultimately increased the project's costs.

In addition to inadequate monitoring and oversight of contract modifications, the Auditor found that DCPS failed to adequately, if at all, review invoices submitted by USACE. In fact, the audit revealed that DCPS failed to request available supporting documentation for invoices to ensure proper certification and support prior to payment. Although USACE was responsible for managing

¹See section 455 (b) of the District of Columbia Home Rule Act, approved December 24, 1973 (Pub. L. No. 93-198; 87 Stat. 803); D.C. Code §1-204.55 (b) (2001) which 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. In the determination of the auditing procedures to be followed and the extent of the examination of vouchers and other documents and records, the District of Columbia Auditor shall give due regard to generally accepted principles of auditing including the effectiveness of the accounting organizations and systems, internal audit and control, and related administrative practices."

the renovation/rehabilitation of McKinley, the Auditor found that, overall, DCPS failed in providing the necessary planning, monitoring, and oversight of the project.

MAJOR FINDINGS

1. Recorded Costs of Approximately \$81 Million to Modernize McKinley Exceeded the Original Budgeted Cost Estimate of \$25 Million by \$56 Million.
2. Lack of Adequate Planning by DCPS Prior to Starting the McKinley Project Contributed to Increased Costs.
3. Contract Modifications Changing the Scope of Work for the McKinley Project Increased Costs by Approximately \$13 Million.
4. Architect/Designer Errors and/or Omissions Ultimately Contributed to Many of the Increased Costs of the McKinley Modernization Project.
5. Anticipated Public/Private Financing of Approximately \$30 to \$40 Million for the McKinley Technology Initiatives Never Materialized.
6. USACE Awarded \$11.3 Million in Sole Source Contracts.
7. USACE Awarded a \$1.2 Million Contract to a HUBZone Contractor Without Justification and Approval as Required by Federal Acquisition Regulations.
8. DCPS Failed to Adequately Monitor, Review, and Approve Contract Changes and Modifications.
9. DCPS Approved Proposed Change Orders Without Obtaining and Reviewing Supporting Documentation.
10. Inadequate Language in the Memorandum of Agreement (MOA) and Support Agreements (SA) and Invoices That Lacked Adequate Detail May Have Contributed to Questionable Costs Charged to DCPS and the District.
11. USACE Incurred Cost Not Explicitly Authorized in the MOA or SA.

MAJOR RECOMMENDATIONS

1. DCPS's Director of the Office of Facilities Management (OFM) and USACE officials review all change orders attributable to architect/designer errors or omissions to determine if costs can be recovered, as allowed by Federal Acquisition Regulation (FAR) 36.608.
2. DCPS's Superintendent and Director of OFM adequately plan for all renovation and modernization projects well in advance of the start of such projects. The required educational specifications, site specific specifications, and related documents must be developed, reviewed, and approved before a renovation project is started.
3. USACE prepare a written justification and approval as required by the FAR for sole source contracts awarded for any additional work necessary to complete the McKinley project.
4. USACE and DCPS award all future contracts on a competitive basis, where possible, instead of a sole source basis. Further, all provisions of the FAR or DCPS procurement regulations must be followed as applicable.
5. USACE and DCPS closely monitor and review all future indefinite delivery contracts to ensure compliance with the FAR.
6. For future projects such as this, DCPS Contracting Officers should require in the contract and MOA that change orders or modifications over a set threshold must require DCPS prior approval and that DCPS take an active role in reviewing all factors that increase the total contract price.
7. For future projects such as this, DCPS's Director of OFM must adhere to established procedures and require the submission of supporting documentation prior to review and approval of change orders or modifications.
8. OCFO-DCPS and the Director of OFM require that USACE submit detailed invoices which properly identify all services rendered, the location at which the services were rendered, the staff, by name, who performed the services, and the Service Agreement (SA) which authorized the services. Where necessary, supporting documentation from the vendor or consultant that provided the services must be submitted with the invoice.

9. For future arrangements such as this, DCPS's Director of OFM ensure that the MOA and SAs clearly define allowable costs that will be reimbursed to USACE, by DCPS, and modify the current MOA and SAs as necessary.

PURPOSE

Pursuant to Section 455 of Public Law 93-198² and a request from Councilmember Kathy Patterson, the District of Columbia Auditor (Auditor) conducted an audit of the District of Columbia Public Schools' (DCPS) capital improvement project for the renovation/rehabilitation of McKinley Technical High School (McKinley).

OBJECTIVES, SCOPE AND METHODOLOGY

The objectives of the audit were to determine:

1. total costs incurred by DCPS and the District for the renovation and rehabilitation of McKinley;
2. whether processes used in the award of contracts, including contract change orders or modifications, for the renovation and rehabilitation of McKinley were in accordance with applicable District and Federal procurement rules and regulations;
3. whether costs billed to and paid for by DCPS were allowable and in accordance with applicable contracts, the memorandum of agreement, and support agreements; and
4. whether invoices and related supporting documentation were properly submitted, reviewed, and approved by DCPS officials prior to payment.

The scope of the examination covered fiscal years 1998 through 2005, as of June 30, 2005. In conducting the audit, the Auditor reviewed relevant budget documents, District and Federal laws and regulations, contracts awarded by the United States Army Corps of Engineers, Baltimore District (USACE) on behalf of DCPS, contract change order forms, proposed change order forms, and invoices submitted to DCPS by USACE. Additionally, the Auditor interviewed appropriate USACE and DCPS officials, including officials of the Office of Facilities Management (OFM) and the Office of the Chief Financial Officer for DCPS (OCFO-DCPS) to document and evaluate internal processes of USACE and DCPS related to the renovation/rehabilitation of McKinley.

²See section 455 (b) of the District of Columbia Home Rule Act, approved December 24, 1973 (Pub. L. No. 93-198; 87 Stat. 803); D.C. Code §1-204.55 (b) (2001) which 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. In the determination of the auditing procedures to be followed and the extent of the examination of vouchers and other documents and records, the District of Columbia Auditor shall give due regard to generally accepted principles of auditing including the effectiveness of the accounting organizations and systems, internal audit and control, and related administrative practices."

The examination was conducted in accordance with generally accepted government auditing standards and included such tests of documentation as deemed necessary and appropriate under the circumstances.

BACKGROUND

McKinley was originally constructed in 1928. An addition to the school was completed in 1957. According to DCPS officials, DCPS stopped using McKinley in 1997 primarily because of declining student enrollment. In the fall of 1999, McKinley was selected and approved for modernization to support Mayor Anthony William's Technology High School initiative. As the cornerstone of the Mayor's initiative, McKinley was included as a priority in the final 2001 DCPS Facility Master Plan (FMP), with a recommendation for full modernization.³

According to DCPS-OFM officials, at that time DCPS lacked the in-house capacity to manage its capital projects and school modernization program. A decision was made to solicit USACE to assist DCPS in managing its capital projects and school modernization program, and serving as the project manager for the McKinley project. In April 1998, DCPS and USACE had already entered into a Memorandum of Agreement (MOA).⁴ In addition to the MOA, DCPS was to, as necessary, execute support agreements (SA) which were to more specifically enumerate the responsibilities and duties of DCPS and USACE concerning acquisition of design, construction, and related services for specific capital projects required to achieve the necessary facility remediation.

In 1998, Congress also passed Public Law 105-277 which authorized the USACE to accept orders for engineering, construction, and related services for the repair and improvement of District public school facilities and provide project management services to DCPS on a reimbursable basis. In accepting these orders and providing these services to DCPS, USACE was not required to adhere to District contracting and procurement regulations. Instead, USACE was directed to follow the

³See Final 2001 Facility Master Plan, 1st approval December 20, 2000, 2nd approval March 7, 2001, and Executive Summary revised May 16, 2001 issued by DCPS which outlines an approach to rebuild and update the DCPS facility inventory during the next 10-15 years.

⁴See MOA effective April 17, 1998, signed and approved by the Chief Executive Officer of DCPS, a representative of the Baltimore District of USACE, the Executive Director of the District of Columbia Financial Responsibility and Management Assistance Authority (Control Board), and the Chief Procurement Officer of the District of Columbia. The MOA states that the purpose was to establish a mutual framework governing the respective responsibilities of the parties for the provision, by USACE, of engineering, procurement, and technical services related to and in support of USACE's overall responsibility, as specified in Support Agreements for project management of the assessment, renovation, restoration, operation and maintenance of public schools in the District of Columbia.

Federal Acquisition Regulations (FAR) and the implementing Department of Defense regulations.⁵ DCPS was also no longer required to advance funds to USACE before USACE procured services. Instead, as previously noted, PL 105-277 allowed USACE to provide services to DCPS on a reimbursable basis. These new provisions became effective in fiscal year 1999 and applied to each fiscal year thereafter.⁶ Based on authority set forth in PL 105-277, USACE awarded several contracts, delivery orders, and purchase orders to contractors and vendors to provide services related to the McKinley modernization project.⁷

USACE selected the following major contractors to complete various major phases of the McKinley project: (1) McKissack & McKissack for architect engineer design services; (2) Dalco, Inc., for window replacement; (3) HRGM for demolition and asbestos abatement; and (4) Davis/HRGM, joint venture for the actual renovation/construction work. USACE also used other contractors and consultants as they deemed necessary to complete the McKinley renovation project.

⁵See Public Law 105-277, Omnibus Consolidated and Emergency Supplemental Appropriations effective October 21, 1998. Section 132 states the following: In using funds made available under this Act or any other Act for the repair and improvement of the District of Columbia's public school facilities, any entity of the District of Columbia government, including the District of Columbia Financial Responsibility and Management Assistance Authority, or its designee, may place orders for engineering and construction and related services with the Chief of Engineers of the U.S. Army Corps of Engineers. The Chief of Engineers may accept such orders on a reimbursable basis and may provide any part of such services by contract. In providing such services, the Chief of Engineers shall follow the Federal Acquisition Regulations and the implementing Department of Defense regulations. This section shall apply to fiscal year 1999 and each fiscal year thereafter.

⁶See House Report 105-670 which states the following: The bill includes language requested by the District of Columbia Public Schools clarifying its relationship with the Army Corps of Engineers for the repair and maintenance of aging facilities. The D.C. Public Schools recently entered into a Memorandum of Understanding with the U.S. Army Corps of Engineers under which the Corps is providing technical assistance to the District's public schools to support implementation of the public schools \$84,000,000 fiscal year 1998 capital improvement program. In light of the limited capacity of the District's public schools with its current staffing levels to manage an on-going large-scale capital program, the well-established qualifications of the Corps in this area, and the early success of the partnership under the MOA, the Committee has included language, at the request of District school officials and the Corps, allowing the Corps to assume a more comprehensive role in implementing the school system's capital program in fiscal year 1999 and beyond. The Committee's recommendations will allow the Corps to assume contracting authority over the public school's capital projects with the mutual agreement of both the school system and the Corps. The provision allows the Corps to provide for the same services the District's public schools that it currently provides to any federal agency.

⁷See FAR 2.101 (as of January 1, 2002). Delivery order means an order for supplies placed against an established contract or with Government sources. See also FAR 2.101 (as of January 1, 2002). Purchase order, when issued by the Government, means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.

FINDINGS

RECORDED COSTS OF APPROXIMATELY \$81 MILLION TO MODERNIZE MCKINLEY HAVE EXCEEDED THE ORIGINAL BUDGETED COST ESTIMATES OF \$25 MILLION BY \$56 MILLION

The estimated costs for the modernization of McKinley was first included in DCPS' December 2000 Facilities Master Plan (FMP) under "current projects."⁸ McKinley was included in the final 2001 FMP with a recommendation for full modernization. According to the FMP, modernizing McKinley would be equivalent, in part, to building a new school that would: (1) comply with all District health and safety codes; (2) meet DCPS educational specifications; and (3) be appropriately sized for efficient utilization and maintenance.

The Auditor found that in fiscal year 2000, \$25 million was originally budgeted for the modernization of McKinley.⁹ However, since fiscal year 2000, budgeted costs have escalated to almost \$100 million. Table I presents the McKinley project budgeted costs for fiscal years 2000 through 2005.

⁸See FMP which states the following: Current projects represented those that were already under development when the FMP was prepared, had completed site educational specifications, and were already under design or construction. It appears that McKinley was only an "add on" to the December 2000 FMP. This FMP did not include discussions on the complete modernization plans for McKinley. The estimated costs to modernize McKinley as presented in the 2000 FMP was \$8.9 million for the first year and increased to \$44.7 million in FY 2003.

⁹The Auditor questioned DCPS representatives concerning why the FY 2000 budgeted cost was \$25 million when the estimated cost as reported in the FY 2000 FMP was \$44.7 million. General responses were that it was assumed that approximately \$25 million in additional funding would be received from private donations. However, DCPS representatives could not provide any documentation that substantiated this assumption.

TABLE I
DCPS
McKinley Project Budget
for Fiscal Years 2000 through 2005

Project Number¹⁰	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
NJ837	-	-	23,336,000	52,040,000	52,040,000	58,477,000
NJ837 Budget revision through reprogramming¹¹						8,018,000
NJ833	-	-	1,000,000	1,000,000	1,000,000	1,000,000
SG 411¹²	25,000,000	25,000,000	23,500,000	23,500,000	26,559,000	26,559,000
Total Budget & Reprogramming	<u>25,000,000</u>	<u>25,000,000</u>	<u>47,836,000</u>	<u>76,540,000</u>	<u>76,599,000</u>	<u>94,954,000</u>

Source: OBP Budget Book/CFO Website, DCPS OFM, and SOAR

As previously noted, the original budget for the renovation of McKinley was \$25 million in FY 2000 and increased to approximately \$94 million by FY 2005. Table II presents the total recorded funds expended for the McKinley modernization project, as of March 31, 2006.

¹⁰Project numbers are assigned by the Office of Budget and Planning (OBP) to track budgeted amounts for each capital project. Source for NJ837: Office of Budget and Planning (OBP) budget book for the District of Columbia FY 2002 to FY 2005 and proposed budget and financial plan capital appendices submitted to the Congress of the United States. NJ837 and NJ833 projects began in FY 2002.

¹¹System of Accounting and Reporting (SOAR) shows that approximately \$8 million was approved for reprogramming from other DCPS capital projects to the McKinley project to cover a budget shortfall. No line itemization or supporting documentation for this reprogramming could be provided to the Auditor by DCPS.

¹²Source for SG411: SOAR uploaded budget and DCPS OFM. It should be noted that the SOAR uploaded budget could be different from the approved budget because of possible reprogrammings.

TABLE II
McKinley Modernization Project
Total Recorded Funds Expended
Fiscal Years 2000 Through 2006

FY	Cash Expenditures	Accrued	Encumbrances	Intra - District¹³	Total Expenditures
2000	0	87,470	0	25,000	112,470
2001	981,074	0	23,314,249	25,000	24,320,323
2002	19,937,430	7,698,541	0	25,000	27,660,971
2003	40,766,394	13,847,882	253,064	25,000	54,892,340
2004	65,076,126	10,006,820	610,824	25,000	75,718,770
2005	78,916,144	0	1,728,735	25,000	80,669,879
2006	79,315,919	45,681	1,683,054	25,000	81,069,654

Source: SOAR/EIS as of March 13, 2006

The Auditor found that, as of March 13, 2006, DCPS had expended approximately \$81,000,000 in capital funds to renovate McKinley including a \$25,000 intra-district payment, and an additional \$1,683,054 in capital funds encumbranced for services already rendered but not actually paid. The Auditor found that the \$81 million expended for the modernization of McKinley exceeded the original McKinley FY 2000 budget of \$25 million by approximately \$56 million, or 224%.

Further, the Auditor found that the total \$81,069,654 in expenditures and encumbrances does not represent the final cost for the McKinley project. According to an OFM official, there are additional work items still requiring completion that the contractor estimates will cost more than \$1.2 million as of March 13, 2006. These item include: (1) auditorium stage lighting; (2) auditorium seating; and (3) a school sign. Thus, the actual cost to complete the McKinley project will likely exceed the \$81 million already expended before the final close-out of the project.

¹³ According to an OFM official, intra-district accounts were established to pay other District agencies for services rendered on behalf of DCPS-OFM. For example, DCRA and DOH assisted DCPS in obtaining building permits.

Lack of Adequate Planning by DCPS Prior to Starting the McKinley Project Contributed to Increased Costs

The Auditor found that DCPS initiated changes accounted for 40, or 17%, of the proposed change order forms reviewed by the audit team. According to the DCPS-OFM McKinley Project Manager, the curriculum should have been the basis for the architectural design of McKinley, however, DCPS did not fully develop and finalize the curriculum or program requirements for McKinley prior to developing the final Education Specifications and feasibility study.¹⁴ According to the Project Manager, DCPS developed a broad scope curriculum for the technology school but the specific core courses and classes had not been fully developed prior to the architectural design. Instead, DCPS Management made changes after the architectural design as well as during the construction phase of the McKinley project.

In other words, the architect/designer, McKissack & McKissack, designed McKinley, based on its perception of what DCPS wanted the technology school to be rather than the final, approved education specifications and feasibility study. Also, when McKinley's principal was hired and developed specific details for the curriculum, DCPS made changes to accommodate the specifications necessitating additional change orders.

Contract Modifications Changing the Scope of Work for the McKinley Project Increased Costs by Approximately \$13 Million

The Auditor reviewed a contract awarded by USACE to Davis/HRGM for \$38,243,121 to perform all site, interior, roof, and exterior shell renovations for McKinley.¹⁵ As of November 2005, payments to Davis/HRGM for the McKinley project totaled \$52,717,886 which exceeded the original contract amount by \$14,474,765, or approximately 38%. At the time of the audit, payments to Davis/HRGM accounted for approximately 65% of the total costs thus far incurred by DCPS for the McKinley project.

¹⁴See FMP final 2001. *Educational Specifications* are text documents that describe the current and future educational specifications that the school facility should accommodate. These educational specifications are given to the architect to guide the design of the school. The educational specifications address in extensive detail all program areas for the school, including core academics and specialized area, such as Special Education. These educational specifications describe the goals and outcomes of the instructional program, activities to be conducted, persons to be served, spatial relationships of the program areas, equipment and technology needs, and special consideration, including community or other non-school activities to be supported in the facility. The specifications describe the size of classrooms, adjacencies, what types of classrooms and special spaces are needed, and the amenities needed for these spaces to support the instruction and other activities scheduled to take place in them. Educational specifications were developed by curriculum specialists in DCPS, principals, teachers and parents over a 6-month period in 1999 for elementary schools, middle schools and senior high schools. These standard specifications guide the site-specific specifications that are developed for each school modernization or replacement project.

¹⁵See contract No. DACW31-02-C-0021 dated May 22, 2002 between USACE and Davis/HRGM.

The Auditor found that USACE budgeted 5%, or approximately \$1.9 million, of the contract price for contract modifications.¹⁶ However, \$11.7 million in actual contract modifications have been paid to Davis/HRGM, which was approximately \$9.8 million, or 515%, more than USACE anticipated and budgeted for contingencies or contract modifications. Table III presents the total payments made to Davis/HRGM.

TABLE III
Davis/HRGM Contract Payments

Type of Payment	Budgeted Amount	Actual Payments	% of total payments made to Davis/HRGM
Contract payments	38,243,121	38,503,167	73%
Change Orders	1,900,000	11,702,394	22.2%
Award Fees ¹⁷	1,700,000	1,699,980	3.2%
Options exercised ¹⁸	812,345	812,345	1.6%
Total Payments to Davis/HRGM	42,655,466	52,717,886	100%

Source: USACE

The Auditor found that USACE issued approximately 539 change orders for modifications to the contract awarded to Davis/HRGM. Of the \$14,474,765 paid in excess of the \$38,243,121 original contract amount, \$11.7 million, or approximately 80%, was for change orders or modifications to the original contract terms. The Auditor found that the major causes for these contract change orders or modifications were:

- designer errors and/or omissions;
- owner (DCPS) initiated; and
- differing site conditions.

¹⁶See FAR 2.101 and 43.103. A *contract modification* means any written change in the terms of a contract.

¹⁷See FAR 16-305, *award fee* is an award amount, based upon a judgmental evaluation by the Government, sufficient to provide motivation for excellence in contract performance.

¹⁸See FAR 2.101 which defines an *option* as a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

The Auditor further found that some change orders not only resulted in additional costs but also impacted Davis/HRGM's schedule thus increasing the number of days to complete the project. Change orders caused delays that also increased the time necessary to complete the project by at least 232 days or almost eight months.¹⁹ The Auditor found that at least \$2.4 million of the \$11.7 million in contract modifications were for delay costs. The delay costs included the contractor's overhead, profit, and bond rate.

In addition to the Davis/HRGM contract, the Auditor found that significant contract modifications and change orders for three other major contracts accounted for \$3,236,357 in increased costs. Table IV presents the total payments to the three contractors.

¹⁹The Auditor notes that McKinley was initially scheduled to open in July 2003 but did not open until September 2004.

TABLE IV
Summary of Payments to
HRGM,²⁰ Dalco and McKissack

Contractor	Type of Payment	Amount	% of total payments
HRGM	Contract payments	1,744,333	40.9%
	Change Orders	1,313,065	30.9%
	Delivery Orders ²¹	1,200,676	28.2%
	Total Payments to HRGM	<u>4,258,074</u>	<u>100.0%</u>
DALCO	Contract payments	2,996,787	75%
	Change Orders	992,085	25%
	Total Payments to DALCO	<u>3,988,872</u>	<u>100%</u>
MCKISSACK	Contract payments	2,908,090	45%
	Change Orders	931,207	14%
	Delivery Orders	2,371,509	37%
	Equitable adjustment	275,098	4%
	Total Payments to McKissack & McKissack	<u>6,485,904</u>	<u>100%</u>

Source: USACE payments and contract documents

Designer Errors and/or Omissions Ultimately Contributed to Many of the Increased Costs Associated with the McKinley Modernization Project

FAR 36.608 states that an architect-engineer contractor may be liable for government costs resulting from errors or deficiencies in designs furnished under its contract. This provision of the FAR further states that the contracting officer shall consider the extent to which the architect-

²⁰HRGM received contracts as a single company in addition to a contract awarded while working as a Joint Partner with Davis Corporation (Davis/HRGM).

²¹See FAR 2.10. *Delivery order* means an order for supplies placed against an established contract or with Government sources.

engineer may be reasonably liable.²² According to RSMeans, contract modifications or change orders can be caused by several factors including:

- Unforeseen field conditions that require a change in the scope of work.
- Correction of design discrepancies, errors, or omissions.
- Owner-requested changes, either by design criteria, scope of work, or project objectives.
- Completion date changes for reasons unrelated to the construction process.
- Changes in building code interpretations, or public authority requirements that require a change in work.
- Changes in availability of existing or new materials and products.²³

The Auditor reviewed 239 *DCPS Proposed Change Order Forms (Forms)* that ultimately increased the total costs for the Davis/HRGM contract. The proposed change order forms were used by DCPS to indicate their approval or disapproval of proposed change orders. Table V presents the stated reason for each form reviewed.

²²See FAR 36.608 which states the following: architect-engineer contractors shall be responsible for the professional quality, technical accuracy, and coordination of all services required under their contracts. A firm may be liable for Government costs resulting from errors or deficiencies in designs furnished under its contract. Therefore, when a modification to a construction contract is required because of an error or deficiency in the services provided under an architect-engineer contract, the contracting officer (with the advice of technical personnel and legal counsel) shall consider the extent to which the architect-engineer contractor may be reasonably liable. The contracting officer shall enforce the liability and collect the amount due if the recoverable cost will exceed the administrative cost involved or is otherwise in the Government's interest. The contracting officer shall include in the contract file a written statement of the reasons for the decision to recover or not to recover the costs from the firm.

²³RSMeans is a well-known company in the construction industry that provides construction cost data which can be used to project and estimate the cost of a construction or renovation project. DCPS uses data supplied by RSMeans to estimate the cost of its capital projects.

TABLE V
Stated Reasons for Davis/HRGM Change Orders

Stated Reason	# of Orders	% of total orders
Designer/Architect Error and/or Omissions	172	72%
Owner (DCPS) Initiated	40	17%
Differing Site Conditions	15	6%
Not Indicated	12	5%
Total	239	100%

Source: DCPS OFM

On 172, or 72%, of the 239 forms reviewed by the Auditor, the stated reason for the change was an architect/designer omission or error.²⁴

RECOMMENDATIONS

1. DCPS's Director of OFM and USACE officials review all change orders attributable to designer/architect errors or omissions to determine if costs can be recovered, as allowed by FAR 36.608.
2. DCPS Superintendent and Director of OFM adequately plan for all renovation and modernization projects well in advance of the start of such projects. The required educational specifications, site specific specifications and related documents must be developed, reviewed, and approved before a renovation project is started.

²⁴The Auditor notes that prior to awarding the design contract to McKissack & McKissack, USACE awarded McKissack & McKissack delivery orders to conduct existing condition surveys of McKinley. According to the scope of services, McKissack & McKissack was to conduct property surveys; topographic surveys; boundary surveys; and a building survey. The building survey was to include the following: (1) visit to the project site to determine the existing conditions affecting the project design; (2) obtain and document all necessary dimensional, utility (electrical, mechanical, communications, etc.), physical (condition of finishes, building shell, structural components), and functional data; (3) verify all applicable as-built drawings and determine any relevant existing conditions not available on existing as-built drawings; (4) prepare measured drawings; and (5) immediately provide notification if any hazardous materials or situations were observed during the field investigations. In addition, McKissack & McKissack was to ensure that all hazardous materials were inspected and identified prior to the demolition or renovation of the school. McKissack was paid approximately \$340,000 to conduct the surveys.

ANTICIPATED PUBLIC/PRIVATE FINANCING OF APPROXIMATELY \$30 TO \$40 MILLION FOR THE MCKINLEY TECHNOLOGY INITIATIVES NEVER MATERIALIZED

In April 2002, DCPS and the Executive Officer of the Mayor (acting through the DC Office of the Chief Technology Officer (OCTO)) entered into a Memorandum of Understanding (MOU) for the McKinley Technology Campus and Technology High School Initiatives (McKinley Initiative). The MOU was to guide and inform the design, construction, and implementation of the McKinley Technology Campus as a “world-class technology high school” in Washington, D.C.²⁵

According to the MOU, future capital funding for the campus was “envisioned to be a combination of District Government capital appropriations and public/private partnership funding.” According to the MOU, private donation funding was expected to reach a level of \$30 to \$40 million.²⁶ The MOU further stated that the total project capital costs were expected to be in the \$80 to \$85 million range. However, according to OCTO officials, private donations or funding for the McKinley initiatives never materialized. The Auditor found that the lack of anticipated private funding resulted in DCPS and the District bearing 100% of the projected costs of the McKinley initiatives. The Auditor is conducting a review of the MOU and related expenses. A report of our findings from this review will be submitted when it is complete.

USACE AWARDED \$11,264,868 IN SOLE SOURCE CONTRACTS

The Auditor found that USACE awarded sole source contracts, totaling \$11,264,868, for the renovation of McKinley. Table VI presents the \$11,264,868 in sole source contracts awarded by USACE for the McKinley project.

²⁵See Memorandum of Understanding Between the District of Columbia Public Schools and the Mayor’s Office of the District of Columbia for the McKinley Technology Campus and Technology High School Initiatives, April 11, 2002. According to the MOU, “The McKinley technology campus projects are divided into two unique but integrated initiatives. The first initiative is the design, construction and operation of a world-class technology high school (McKinley). This school will focus on pedagogy designed to challenge instruction and to stimulate advanced technology training for students throughout the city. This technology high school will anchor the second initiative, the creation of the McKinley campus. The MOU participants expect these initiatives to set new standards for the way the District of Columbia, and to a larger degree, America measures and stimulates technology and academic reform while simultaneously advancing economic development and workforce development.”

²⁶See Memorandum of Understanding Between the District of Columbia Public Schools and the Mayor’s Office of the District of Columbia for the McKinley Technology Campus and Technology High School Initiatives, April 11, 2002, page 3.

TABLE VI
Sole Source Contracts Awarded by USACE
for Direct Services to McKinley
Fiscal Years 2000 to 2005

Payee	Date ²⁷	Amount Paid	Type of Award	Services Provided
McKissack & McKissack	8/25/00	2,236,023	Sole Source*	Various (including existing conditions survey and construction management)
McKissack & McKissack	4/30/01	<u>3,839,297</u> 6,075,329	Sole Source	Architectural design/construction management
HR General Maintenance Corp. (HGRM)	2/6/02	1,200,676	Sole Source*	Asbestos abatement
DALCO of Arizona (Dalco)	1/24/02	3,988,872	Sole Source	Window installation package
Total		11,264,868		

Source: USACE

*Denotes delivery order contract

Public Law 105-277 authorized the USACE to provide services to DCPS on a reimbursable basis and to provide services by contract. In providing the services, USACE was directed to follow the FAR and Department of Defense implementing regulations.²⁸

According to FAR 6.302-5(a)(2)(I), full and open competition need not be provided when a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source. The Auditor found no documentation or statute that expressly authorized or required that the acquisition of services for the McKinley project be made through another agency or from a specified source, thereby authorizing the award of these services through the sole source procurement method.

²⁷The date represents USACE's obligation date. For delivery order contracts the date represents the date of the first delivery order awarded for McKinley under each contract.

²⁸See Public Law 105-277, Section 132 which states the following: In using funds made available under this Act or any other Act for the repair and improvement of the District of Columbia's public school facilities, any entity of the District of Columbia government, including the District of Columbia Financial Responsibility and Management Assistance Authority, or its designee, may place orders for engineering and construction and related services with the Chief of Engineers of the U.S. Army Corps of Engineers. The Chief of Engineers may accept such orders on a reimbursable basis and may provide any part of such services by contract. In providing such services, the Chief of Engineers shall follow the Federal Acquisition Regulations and the implementing Department of Defense regulations. This section shall apply to fiscal year 1999 and each fiscal year thereafter. In addition, the MOU states that, "Unless otherwise required by law, all contracts awarded by DCPS utilizing the services of the Baltimore District shall be governed by the FAR. Unless otherwise provided by law, services provided in support of contracts awarded by DCPS shall be in accordance with applicable DCPS regulations and policies."

According to the Department of Small and Local Business Development and USACE officials, HRGM and McKissack & McKissack are certified Local, Small and Disadvantaged Business Enterprises (LSDBE). USACE officials indicated that McKissack & McKissack and Dalco are certified 8(a) business concerns and HRGM is also located in a HUBZone. USACE officials indicated that the Mayor, DCPS officials, and citizens expressed concern regarding USACE's inadequate use of LSDBEs for contracts awarded by USACE. The Auditor reviewed correspondence from the Mayor to USACE requesting that USACE consider the interest of District LSDBEs in contract work related to DCPS.

According to the correspondence, officials from the Office of Contracting and Procurement met with USACE on several occasions to discuss increasing LSDBE participation on DCPS construction projects. USACE officials indicated that the sole source contracts awarded to local, minority firms HRGM, McKissack & McKissack, and Dalco were, in part, a response to the District's expressed concerns. Nevertheless, this was not an acceptable justification for noncompliance with the FAR. In awarding contracts on a sole source basis, USACE may not have used the most qualified vendors at the most competitive prices.

Notwithstanding the fact that USACE's objective was to award contracts to LSDBEs, it was incumbent upon USACE to choose those certified local, small and disadvantaged businesses that would provide quality work at the best price. The District's contracting policies and procedures as well as best practices suggested by the U. S. Small Business Administration indicate that USACE should have obtained bids from several qualified contractors and selected contractors that were qualified to provide the best service at the most competitive price.²⁹

²⁹See letter from SBA to USACE, dated September 30, 2002. See also 27 DCMR §1701.1 (1988).

USACE Awarded Contract to \$1.2 Million to a HUBZone Contractor Without a Justification and Approval as Required by the FAR

According to Section 19.805.1 of the FAR, contracts may be awarded sole source to eligible certified 8(a) business concerns if the anticipated total value of the contract will not exceed \$3,000,000 and to eligible HUBZone small business concerns.³⁰ However, according to FAR 6.302-5, a justification and approval is required for sole source contracts awarded under the HUBZone program. The Auditor found that the HRGM contract was awarded as a HUBZone contract and as such, the USACE contracting officer should have prepared a justification and approval, however no justification and approval was provided³¹

Total Delivery Orders Awarded to McKissack & McKissack in the Base Year and Each of the Two Option Years Exceeded the \$1 Million Limitation

The Auditor found that the sole source contracts awarded to McKissack & McKissack and Dalco, pursuant to the 8(a) program both exceeded the \$3 million threshold under which contracts may be awarded sole source to eligible certified 8(a) businesses. According to FAR 16.5, an indefinite delivery contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award.

The Auditor found that McKissack & McKissack received approximately \$6.8 million as a result of a sole source indefinite delivery order contract. Approximately \$2.2 million of the \$6.8 million contract was directly attributable to the McKinley project. However, according to the terms of the indefinite-delivery contract, the contract amount was not to exceed \$1,000,000 in the base year or any of the two option years. The Auditor found that the total delivery orders issued to McKissack & McKissack for McKinley and other DCPS capital projects exceeded the \$1 million threshold by approximately \$3.8 million over the three-year period. According to the Code of Federal

³⁰See FAR 2.101: HUBZone means a historically underutilized business zone that is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, or lands within the external boundaries of an Indian reservation. The 8(a) program refers to contracts with the Small Business Administration. A HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration. Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) established a program that authorizes the Small Business Administration (SBA) to enter into all types of contracts with other agencies and let subcontracts for performing those contracts to firms eligible for program participation. The SBA's subcontractors are referred to as "8(a) contractors." According to the SBA, a certified 8(a) firm is a firm owned and operated by socially and economically disadvantaged individuals and eligible to receive federal contracts under the SBA's 8(a) Business Development Program.

³¹According to FAR 6.303-1, when required, the contracting officer must justify the use of the sole source in writing, certify the accuracy and completeness of the justification, and obtain the required approvals.

Regulations, a modification beyond the scope of the initial 8(a) contract is considered to be a new contracting action.³² The Auditor also found that although USACE sought approval from SBA for the modification and SBA approved the modification, language in SBA's approval letter suggested that the modification was not in accordance with best practices.³³

RECOMMENDATIONS

1. USACE prepare a written justification and approval as required by the FAR for sole source contracts awarded for additional work necessary to complete the McKinley project.
2. USACE and DCPS award all future contracts on a competitive basis instead of a sole source basis. Further, all provisions of the FAR or DCPS procurement regulations must be followed as applicable.
3. USACE and DCPS closely monitor and review all future indefinite delivery contracts to ensure compliance with the FAR.

DCPS FAILED TO ADEQUATELY MONITOR, REVIEW, AND APPROVE CONTRACT CHANGES AND MODIFICATIONS

The Auditor found that accountable DCPS managers failed to adequately monitor the more than 500 contract change orders and modifications that have occurred over the duration of the McKinley project. As of December 2005, USACE had issued approximately 539 change orders or contract modifications related to the Davis/HRGM construction contract. DCPS OFM officials reviewed only 239, or 44%, of the approximately 539 change orders processed by USACE. Initially, DCPS did not review or authorize any of the change orders. However, it appears that as work on the McKinley project progressed, DCPS officials became concerned about cost overruns as well as other budget issues. In a letter dated April 16, 2003, the interim Deputy Director of OFM directed USACE to obtain DCPS' review and approval of any change order or modification work which would exceed \$25,000 prior to implementing the work. (See Appendix I for specific requirements).

³²See Code of Federal Regulations, Section 124.514 (c) revised as of January 1, 2002.

³³In its letter, SBA stated that the increase was on a one-time-basis and that there would be no further increases authorized under the contract. SBA also suggested that, if USACE has a continuing need to increase the services under the contract, that they consider procuring the services under the SBA 8(a) competitive arena as a new contract.

The Auditor found that before DCPS initiated this review process USACE had already issued approximately 300 change orders. Of the 239 *Proposed Change Order Forms (Forms)* reviewed by the Auditor, DCPS officials approved 142, or 59%, another 35 or 15% were not approved, and 62, or 26%, of the 239 Forms did not indicate whether DCPS approved the change orders Table VII presents the results of DCPS' review of Forms.

TABLE VII
Davis/HRGM Construction Contract
Forms Provided by DCPS for Auditor's Review

DCPS' Review of Forms	Total	% of Total
Approved by DCPS Officials	142	59%
Not Approved by DCPS Officials	35	15%
No Indication of DCPS' Approval or Non Approval	62	26%
Total Change Order Forms Reviewed	239	100%

Source: OFM

The Auditor also found that even after DCPS became concerned and implemented a change order review process, USACE processed at least 35 change orders, totaling approximately \$1 million that did not have DCPS' approval or were in excess of amounts approved by DCPS.

DCPS Approved Proposed Change Orders Without Obtaining and Reviewing Supporting Documentation

In the April 16, 2003 letter to USACE, DCPS directed USACE officials to submit supporting documentation when submitting proposed contract modifications or change orders for DCPS's review and approval. However, the Auditor found that DCPS approved approximately 171 proposed change orders, or appropriately 72% of the 239 orders reviewed by DCPS without obtaining the required and available supporting documentation from USACE. Without supporting documentation, DCPS officials could not adequately or effectively review the basis for the anticipated cost or determine if the proposed cost increases were fair and reasonable.

RECOMMENDATIONS

1. For future arrangements such as this, DCPS Contracting Officers should require in the contract and MOA that change orders or modifications over a set threshold must require DCPS' prior approval and that DCPS take an active role in reviewing all factors that serve to increase the total contract price.
2. For future arrangements such as this, DCPS OFM must adhere to established procedures and require the submitting of supporting documentation, prior to its review and approval

INADEQUATE LANGUAGE IN THE MEMORANDUM OF AGREEMENT AND SUPPORT AGREEMENTS AS WELL AS INVOICES THAT LACKED ADEQUATE DETAIL MAY HAVE CONTRIBUTED TO QUESTIONABLE COSTS INCURRED BY DCPS AND THE DISTRICT

The Auditor found that neither the Memorandum Of Agreement (MOA) nor subsequent Support Agreements (SA) specifically identified what expenditures DCPS would reimburse USACE for, and they did not authorize USACE to unilaterally determine the need for services. The Auditor found that USACE charged DCPS for all costs incurred by USACE that USACE unilaterally determined it needed to complete the McKinley project.

Additionally, DCPS did not adequately review invoices submitted by USACE. The Auditor determined that contractors hired by USACE to provide services for DCPS projects submitted detailed documentation of services provided but that DCPS did not require USACE to submit any of this detailed documentation to DCPS. DCPS did not require USACE to submit invoices that included a detailed descriptions of services provided by vendors and contractors or that identified the specific facility at which USACE performed services.³⁴ The lack of critical information on invoices and clearly defined billable costs prevented program and finance officials from adequately identifying DCPS schools and facilities during the review and approval process and verifying that the services were needed, were actually performed, or that the services were authorized by the MOU and SAs.

³⁴Invoices submitted by USACE contained a summary page showing the total amount due and identifying the amount billed under each SA. The description of the services cited on these summaries did not always include the name of the school or the exact services that were performed.

Table VIII presents the Auditor's review of USACE invoices and examples of inadequate invoice line item descriptions provided to DCPS by USACE.

TABLE VIII
Line Item Descriptions on USACE Invoices

Billed Date	Vendor³⁵	Purpose/Line Item Description³⁶
September 2002	USA Engr. & Spt. Ctr.	Additional Funds for CEHNC, S&A IGE Support
	Jones & Wood Inc.	T&M Services
	Speciality Construction Management	General Contracting Services
	IT Corp.	Replaces Gov. Order %10120189 (Asbestos Abatement services for DCPS under rapid response)
	ADT Security Services	Security System Upgrades at Multi Schools Phase 2000
	Peemac Plumbing & Mechanical Ser.	Plumbing Services at Various DCPS 4 of 5 T&M
	A. Wash & Associates Inc.	T&M Contract for General Contractor 1 of 2
January 2003	Department of Energy	Continuation Support to DCPS Program
	Alpha Corporation	Mech Eng Support CWAQ, Alpha
	EA Engineering Science & Technol	Asbestos AHERA Mgmt Support
March 2003	Allen & Shariff	Allen & Shariff system support
September 2003	Jacobs Facilities Inc.	HVAC/Boiler program DCPS
	Allen & Shariff Corporation	Specialist Tech at CWAQ
November 2003	Jacobs Facilities Inc.	Jacobs Contracting Support
	Envirobate Global	Increase Existing Contract with Envirobate Global to Fund a cost growth
	Hayes, Seay, Mattern & Mattern	HVAC Upgrades - 2 DCPS Schools
March 2004	UNICOR	USSAH move-Unicor Reconfiguration quote
	Shaw Environmental, Inc.	Construction Management EMARC contract

Source: USACE Invoices

³⁵ As denoted directly from invoices.

³⁶ As denoted directly from invoices.

Additionally, the Auditor documented several instances in which the stated amounts and the purpose of the services were identical to amounts previously invoiced. The Auditor could not determine from the invoices submitted by USACE if this represented a duplicate billing because the description provided on the invoices failed to show the time period the work was performed. The Auditor questioned DCPS officials to determine if the amounts represented duplicate billings. DCPS' officials, however, could not determine if the amounts, represented duplicate billings and its records did not indicate that they had made a determination prior to paying the invoiced amount. The Auditor reviewed USACE's records and determined that the amounts did not represent duplicate billings. However, the fact that DCPS could not make that determination reflected DCPS' inadequate review of USACE invoices.

The Auditor also found that USACE billed for regular wages, overtime, as well as holiday pay, however, USACE invoices did not document the dates and number of hours worked or overtime or a holiday and did not identify the staff who worked these hours by name. The invoices also provided no indication of the work performed by the individuals or at what location the work was performed. Because the invoice did not provide sufficient detail, DCPS could not readily determine if the individuals for whom they were billed actually performed services for DCPS.

USACE INCURRED COST NOT EXPLICITLY AUTHORIZED IN THE MOA OR SA

Table IX presents additional questionable costs identified by the Auditor that were not explicitly authorized in the MOA or SAs.

TABLE IX
Questionable Costs
Incurred by USACE Not Explicitly Authorized in MOA or SA

Services/Purchases	Amount
Construction Work performed at Penn Center ³⁷	992, 267
Rental Space for USACE at Armed Forces Retirement Home (AFRH) ³⁸	643,361
Moving cost, furniture installation and renovation at AFRH ³⁹	527,718
Total	1,172,071

Source: USACE

The Auditor also identified additional questionable purchases and/or services performed by USACE such as Blackberry equipment and software; USACE staff training; rental cars for USACE contract specialists; local telephone bills; cell phone services; custodial services for various schools; rental of water cooler; and office supplies.

RECOMMENDATIONS

1. OCFO-DCPS and OFM require that USACE submit detailed invoices which properly identify all services rendered, the location at which the services were rendered, the staff who provided the services by name, and the SA which authorized the services. Where necessary, supporting documentation from the vendor or consultant that provided the services must be submitted with the invoice.
2. For future arrangements such as this, DCPS ensure that the MOA and SAs clearly define allowable costs that will be reimbursed to USACE by DCPS and modify the current MOA and SAs as necessary.

³⁷As stated on invoice.

³⁸As stated on invoice.

³⁹As stated on invoice.

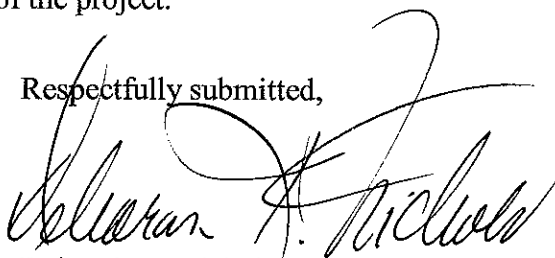
CONCLUSION

The Auditor's review of the McKinley renovation/rehabilitation project found that the recorded costs to modernize McKinley increased significantly over the original budgeted cost. Recorded cost totaled approximately \$81 million and exceeded the original budgeted cost estimate by approximately \$56 million. The recorded costs included the award of over \$11 million in sole source contracts, of which \$1.2 million lacked required justification and approval. The audit also revealed that anticipated public/private financing of approximately \$30 to \$40 million for the McKinley Technology Initiatives never materialized. Thus, the lack of anticipated private funding resulted in DCPS and the District bearing 100% of the projected costs of the McKinley initiatives.

The Auditor found several key factors that contributed to the increased cost including: (1) inadequate advance planning by DCPS; (2) contract modifications which changed the scope of work; and (3) errors and/or omissions by the architect/designer. The Auditor also found that DCPS failed to adequately monitor, review, and approve contract modifications issued by the United States Army Corps of Engineers (USACE) that ultimately increased the project's costs.

In addition to inadequate monitoring and oversight of contract modifications, the Auditor found that DCPS failed to adequately, if at all, review invoices submitted by USACE. In fact, the audit revealed that DCPS failed to request available supporting documentation for invoices to ensure proper certification and support prior to payment. Although USACE was responsible for managing the renovation/rehabilitation of McKinley, the Auditor found that, overall, DCPS failed in providing the necessary planning, monitoring, and oversight of the project.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deborah K. Nichols", is written over the typed name.

Deborah K. Nichols

District of Columbia Auditor

APPENDIX

APPENDIX I

- I. In April 2003, OFM's interim Deputy Director established the following levels of review/approval for change modification:
 - level 1- Project Manager, up to \$50,000 (with concurrence from lead project manager)
 - level 2- Lead project manager, up to \$100,000 (with concurrence from Supervisory PM)
 - level 3-Supervisory Project Manger, up to \$250,000 (with concurrence from Deputy Director)
 - level 4- Deputy Director/Executive Director, amounts exceeding \$250,000 and all non-contingency funding
- II. In March 2004, the Supervisor, construction management modified the approval level as follows:
 - USACE proposed change orders in the sum of ten thousand dollars (\$10,000) or less will only need an approval signature of the Project Manager.
 - USACE proposed change orders in excess of ten thousand (\$10,000) but not greater than fifty thousand (\$50,000) will require the signature of the Lead Project Manager.
 - USACE proposed change orders in excess of fifty thousand (\$50,000) and less than one hundred thousand (\$100,000) will require the signature of ALL levels of management.

AGENCY COMMENTS

AGENCY COMMENTS

On May 18, 2006, the District of Columbia Auditor (Auditor) submitted this report in draft to the Superintendent of the District of Columbia Public Schools (DCPS) and United States Army Corps of Engineers, Baltimore District (USACE), for review and comment.

DCPS did not request an exit conference. An exit conference to discuss the draft report was held on Thursday, June 1, 2006 with USACE representatives. The comments provided by USACE during the exit conference were insightful in providing additional information regarding the capital improvement project for the renovation/rehabilitation of McKinley Technical High School (McKinley).

In addition to oral comments provided by USACE representatives during the June 1, 2006 exit conference, written comments were received from USACE on June 7, 2006. Written comments to the draft report were also received from the DCPS Superintendent on June 5, 2006. Where appropriate, changes were made to the final report to reflect the written comments received. All comments are appended in their entirety to this final report.

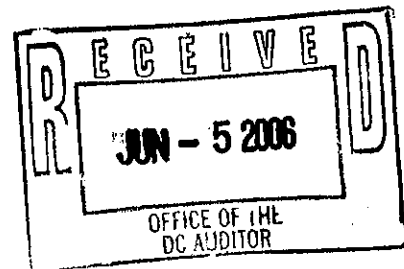


DISTRICT OF COLUMBIA PUBLIC SCHOOLS

OFFICE OF THE SUPERINTENDENT
825 North Capitol Street, NE, 9TH Floor
Washington, D.C., 20002-1994
(202) 442-5885 – fax: (202) 442-5026

June 5, 2006

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



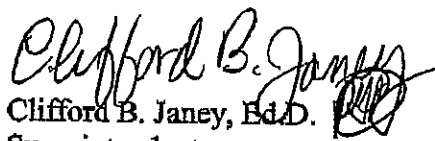
Dear Ms. Nichols:

Thank you for providing the District of Columbia Public Schools (DCPS) with an opportunity to respond to your draft audit report titled *Auditor's Examination of McKinley Technology High School Modernization Project*.

DCPS concurs with the report's recommendations and our responses (Attachment A) include a corrective action plan for each of your recommendations. I believe that our corrective actions are both responsive to the recommendations and will enhance the necessary controls for cellular telephone services.

Should you have any questions regarding this letter or our corrective action plan, please contact Cornell Brown, Executive Director of Facilities Management, at 202.576.5596 or John Cashmon, the Director of Compliance, at 202.576.5028.

Sincerely,


Clifford B. Janey, Ed.D.
Superintendent

CBJ:jc

cc: Peter Parham, Chief of Staff
Robert C. Rice, Ph.D., Special Assistant to the Superintendent
Thomas Brady, Chief Business Operations Officer
Cornell S. Brown, Jr., Executive Director of Facilities Management

Auditor's Examination of McKinley Technology High School Modernization Project

- Recommendation:** USACE review all change orders attributable to designer/architect errors or omissions to determine if the costs can be recovered, as allowed by FAR 36.608.
- DCPS Response:** DCPS concurs with the recommendation. DCPS will coordinate with the Baltimore District Office of USACE to review and recover, where possible, the costs of the change orders necessitated by architect's errors and omissions.
- Recommendation:** DCPS adequately plan for all renovation and modernization projects well in advance of the start of such projects. The required educational specifications, site-specific specifications and related documents must be developed and approved before the renovation project is started.
- DCPS Response:** DCPS concurs with this recommendation. DCPS' current policy for renovation projects is based on a Master Facilities Plan (MFP) under development, as well as Administrative Guidelines that guide planning the design and construction activities and milestones relative to the DCPS School Construction Program. It is through these guidelines and procedures that DCPS will comply with this recommendation.
- Recommendation:** USACE prepare a written justification and approval as required by the FAR for sole source contracts awarded for additional work necessary to complete the McKinley project.
- DCPS Response:** DCPS concurs with the recommendation. DCPS will coordinate with the Baltimore District Office of USACE to provide any necessary justifications to complete the McKinley project.
- Recommendation:** USACE and DCPS award all future contracts on a competitive basis instead of a sole source basis. Further, all provisions of the FAR or DCPS procurement regulations must be followed as applicable.
- DCPS Response:** DCPS concurs with this recommendation. DCPS and the USACE have implemented a transitional process where all projects that were in either the planning or design phases have been transferred from the USACE to DCPS for general management and oversight. In cases where DCPS must utilize the services of the USACE, all future contracts will be awarded on a competitive basis and in compliance with District procurement practice and/or policy.
- Recommendation:** USACE and DCPS closely monitor and review all future indefinite delivery contracts to ensure compliance with the FAR.
- DCPS Response:** DCPS concurs with this recommendation. DCPS and the USACE have implemented a transitional process where all projects that were in either the planning or design phases have been transferred from the USACE to DCPS for general management and oversight. In cases where DCPS must utilize the

services of the USACE, all future contracts will be closely monitored and reviewed as required to ensure compliance with applicable procurement law, policy, and practice.

Recommendation: For future arrangements such as this, DCPS should require in the contract and MOA that change orders or modifications over a set threshold must require DCPS prior approval and that DCPS take an active role in reviewing all factors that serve to increase the total contract price.

DCPS Response: DCPS concurs with the recommendation. The DCPS and the USACE have implemented a transitional process where all projects that were in either the planning or design phases have been transferred from the USACE to DCPS for general management and oversight. In cases where DCPS must utilize the services of the USACE, all future arrangements will be made in compliance with this recommendation as required for DCPS to take an active role in all contract price increases.

Recommendation: For future arrangements such as this, OFM must require that, prior to its review and approval, USACE submit supporting documentation for each proposed change.

DCPS Response: DCPS concurs with this recommendation. The OFM currently and will continue to require that the USACE submit supporting documentation for each proposed change prior to approval.

Recommendation: OCFO-DCPS and OFM require that USACE submit detailed invoices that properly identify all services rendered, the location at which the services were rendered, the staff who worked the services by name, and the SA which authorized the services. Where necessary, supporting documentation for the vendor or consultant that provided the services must be submitted with the invoice.

DCPS Response: DCPS concurs with the recommendation and will take the necessary steps to require that USACE submit detailed invoices for any future costs incurred under the various SAs.

Recommendation: For future arrangements such as this, DCPS ensure that the MOA and SAs clearly define allowable costs that will be reimbursed to USACE by DCPS and modify the current MOA and SAs as necessary.

DCPS Response: DCPS concurs with this recommendation. DCPS and the USACE have implemented a transitional process where all projects that were in either the planning or design phases have been transferred from the USACE to DCPS for general management and oversight. In cases where DCPS must utilize the services of the USACE, all future MOA and SA's will clearly define allowable costs for reimbursement to the USACE. DCPS will work to coordinate with the USACE as required to modify the current MOA and SA's that impact projects that are being transitioned out of USACE management authority.

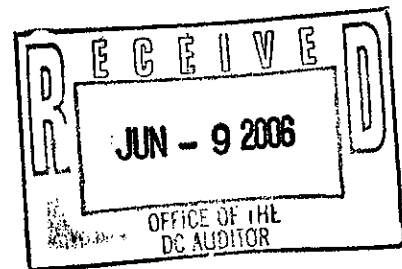


DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, CORPS OF ENGINEERS
DISTRICT OF COLUMBIA PROGRAM OFFICE
P.O. Box 29138
Washington D.C. 20017-9138

JUN 07 2006

REPLY TO
ATTENTION OF
Programs and Project
Management Division

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



Dear Ms. Nichols:

Thank you for furnishing my staff with a copy of your draft report entitled "Auditor's Examination of McKinley Technology High School Modernization Project," dated May 18, 2006.

Enclosed, please find my comments to specific items contained in the report.

If you have any further questions, please contact Mr. William Tully, Acting Program Manager, District of Columbia Program Office at 202-345-7573.

Sincerely,

Robert J. Davis
Robert J. Davis
Colonel, Corps of Engineers
District Engineer

Enclosure

Copy furnished:

Dr. Clifford Janey, Superintendent, D.C. Public Schools
Mr. Tom Brady, Chief Business Officer, D.C. Public Schools

June 2006

**USACE Comments to Specific Findings within the District of Columbia Auditor's
Draft Report, *Auditor's Examination of McKinley Technology High School
Modernization Project***

Finding: "Recorded costs of approximately \$81 million to modernize McKinley have exceeded the original budgeted cost estimates of \$25 million by \$56 million."

The fiscal year 2000 budget for project SG411 was for a "New Technology High School." This project was established by the District of Columbia's Capital Budget Office as an insert to the recommended DCPS Capital Budget with no defined site or location.

During fiscal years 2000 and 2001 planning and project development for SG411 was conducted. DCPS and other stakeholders recommended that the McKinley School be renovated and re-opened. At that time projects NJ837 and NJ833 were developed and sent through the BoE, City Council, and Congressional approval process. The first budget established for the renovation of McKinley, as opposed to a generic new technology high school, was \$47,836,000.

With reference to Table I, which provides a summary of the McKinley budget for each fiscal year from 2000 through 2005, the report states that, "...since fiscal year 2000, costs have escalated to almost \$100 million." While the table is very useful in portraying the evolution of the project budget, it does not describe the stage of the project at each point in this chronology. It is important to note that the design for the McKinley modernization was completed in fiscal year 2002. It was at this point, before the award of the main construction contract, that an April 2002 memorandum of understanding for the project between DCPS and the Executive Office of the Mayor "stated that the total project capital costs were expected to be in the \$80 to \$85 million range." The final construction contract was awarded in late May 2002, after this MOU was signed. Following the design phase and prior to the award of the main construction contract, the project budget requirements were acknowledged to be over \$80M. During that same time the FY03 budget was being developed increasing the McKinley budget from \$47,836,000 to \$76,540,000.

In summary, the initial budget for the renovation of McKinley was \$47,836,000. Subsequent budget increases were made following detailed planning and final design. The McKinley budget developed following the definition of the construction requirements was \$76,540,000. The "current costs of approximately \$81 million" represent a 5.8% cost growth from that \$76.5 million budget.

Enclosure

Recommendation: DCPS and USACE review all change orders attributable to designer/architect errors or omissions to determine if costs can be recovered, as allowed by FAR 36.608.

The report correctly indicates that "FAR 36.608 states that an architect-engineer contractor may be liable for government costs resulting from errors or deficiencies in designs furnished under its contract." However, the report does not explain the circumstances under which an architect-engineer may be found liable for such costs.

FAR subpart 36.609-2 requires the contracting officer to insert FAR clause 56-236.23 into all fixed price architect-engineer contracts. This clause states in part, "...the Contractor shall be and remain liable to the Government in accordance with applicable law for all **damages** to the Government caused by the Contractor's negligent performance of any of the services furnished under this contract" [emphasis added]. Key in this provision is the concept of "damages." Under Federal contract law, not all costs resulting from errors and omissions by A-Es are considered to be damages. Damages are the additional costs that the Government incurs due to an A-E firm's design errors or performance deficiencies, compared to the costs the Government would have incurred without the deficiencies. Put another way, damages are generally defined as costs that would not have been included in the construction contract price had the design been correct. Such costs can include tearout and demolition, scrap material, restocking charges, premium for expedited delivery, reinstallation, difference in new and salvage value of unused or removed material or equipment, delay and impact, and extended overhead.

Furthermore, under Federal contract law, for an A-E firm to be determined to be responsible for damage to the Government, it must be demonstrated that the firm made an error or omission, and that the error or omission resulted from negligence or from a breach of contractual duty.

USACE is committed to ensuring the quality of its products and services, including the quality of services rendered by architect-engineers (A-Es) under contract to USACE. To help ensure quality, USACE follows a formal process for ensuring that A-E firms are accountable for their work and that the Government recovers damages caused by A-E firms. Many factors are considered in evaluating whether the A-E has responsibility for additional costs. Briefly, the analysis must consider the source of the costs along with other concurrent circumstances on the project at the time of the change and whether the A-E was responsible for addressing the issue in question under its original scope of work.

As your report notes, the FAR also states that the contracting officer shall "collect the amount due if the recoverable cost will exceed the administrative cost involved or is otherwise in the Government's best interests." Any decision to pursue cost recovery must take into account the potential risks and benefits, including potential litigation costs, and an assessment of the likelihood of a successful outcome from litigation. USACE will continue to work closely with DCPS to evaluate the potential risks and benefits of cost

recovery and jointly agree on the course of action that is in the Government's best interests.

Statements: "USACE may not have used the most qualified vendors at the most competitive prices" And "The Auditor found no documentation or statute that expressly authorized or required that the acquisition of services for the McKinley project be made through another agency or from a specified source..."

There are three fundamental issues raised in this section of the report: authority for USACE to award sole source contracts; approval requirements for awarding sole source contracts; and whether quality services were received at fair and reasonable prices.

Authority to award sole source contracts. Regarding authority to award sole source contracts to eligible 8(a) firms, according to FAR 19.805.1, "contracts may be awarded sole source to eligible 8(a) business concerns if the anticipated total value of the contract will not exceed \$3,000,000." In fact, according to FAR 19.805-1(d), approval to award such contracts on a *competitive* (i.e., not sole source) basis must be specifically requested, and will be limited. Furthermore, 15 U.S.C. 637 provides express statutory authority for sole source awards through the 8(a) program.

In each case that USACE awarded a contract on a sole source basis to an 8(a) contractor, at the time of award the anticipated total value of the contract was less than \$3,000,000 (as evidenced by the original contract award amount, which in each case was less than \$3,000,000). However, in certain cases, the value of the contract increased after the initial contract award as a result of unanticipated contract modifications. The FAR does not prohibit this, and the rules governing such contract increases are provided in 13 CFR 124.514.

In the case of the McKissack indefinite delivery contract (contract number DACW31-00-D-0001), the USACE contracting officer requested and received approval from the Small Business Administration via letter dated September 30, 2002, to increase the capacity of the delivery order in accordance with 13 CFR 124.514(c).

In the case of the contract with Dalco (contract number DACW31-02-C-0001), the work associated with the contract modifications that caused the contract value to exceed the \$3,000,000 threshold was deemed by the contracting officer to be within scope, and therefore the contract modifications were executed in accordance with the 13 CFR 124.514(d), which states, "The procuring activity contracting officer may exercise a modification within the scope of the initial 8(a) contract... if it is in the best interests of the Government."

Approval requirements for sole source awards. Regarding approval requirements for awarding sole source contracts, the audit report states in a footnote that "According to FAR 6.303-1, when required, the contracting officer must justify the use of the sole source in writing, certify the accuracy and completeness of the justification, and obtain the required approvals." This is true, but FAR 6.302-5(c)(2)(i) specifically excludes the justification and approval requirement for sole source awards under the 8(a) Program.

Fair and reasonable prices. Regarding whether quality services obtained through sole source contracts were received at fair and reasonable prices, the FAR prescribes procedures both to ensure the acquisition of quality products and services, and to ensure fair and reasonable prices irrespective of whether acquisitions are executed on a sole source basis or through competitive procedures.

It should also be noted that the contracts awarded to McKissack & McKissack were architect-engineer contracts, which according to FAR 36.6 must be awarded on the basis of qualifications, not based on which vendor has the "most competitive price."

Competition in and of itself does not assure fair and reasonable prices. FAR Part 15.405(b) summarizes the objectives of a price negotiation to mean, "...a price that is fair and reasonable to both the Government and the contractor." USACE followed the provisions of the FAR, DFAR, AFAR, and EFAR in regards to the conduct of negotiated procurements. Independent Government Estimates were prepared and a comparative price, cost and technical analysis of the contractor's proposal was performed and documented. The documentation was in the form of a Price Objective Memorandum and a Price Negotiation Memorandum. These documents outlined the Government's negotiation objectives and a summary of the negotiation outcomes. In addition, independent reviews of both the objectives and outcomes were performed and documented in the memorandums prior to approval by the Contracting Officer. This entire process established what was a fair and reasonable price for a negotiated action.

Finding: "Total Delivery Orders awarded to McKissack & McKissack in the Base Year and each of the two Option Years exceeded the \$1 Million limitation."

Statement: "The Auditor found that McKissack & McKissack received approximately \$6.8 million as a result of a sole source indefinite delivery order contract

The option periods for an indefinite quantity contract cannot exceed one year, but they can be less if the capacity of the prior option period has been exhausted. According to FAR 17.207(c)(3) regarding the exercise of contract options, the contracting officer may exercise an option after determining that "the exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors (see paragraphs (d) and (e) of this section) considered." And FAR 17.207(e) states, "The determination of other factors under (c)(3) of this section should take into account the Government's need for continuity of operations and potential cost of disrupting operations." In the case of the McKissack contract, the contracting officer obtained \$1 million in capacity under the base contract, \$1 million each under the two options that were part of the base contract, and \$1 million each under three additional options added to the contract by modification, which the Small Business Administration authorized via letter dated September 30, 2002.

Finding: "DCPS failed to adequately monitor, review, and approve contract changes and modifications."

As the draft audit report states in the "Background" section, "DCPS lacked the in-house capacity to manage its capital projects and school modernization program." While USACE advocated DCPS involvement in a change management process from the outset of the modernization program (as documented in the Tier 1 Program Management Plan prepared by USACE and DCPS in 2001), it was not until 2003 that DCPS was able to formally implement the process.

USACE fully supported the change management process. Regarding supporting documentation for change order requests, it is unclear what the auditor determined to be "adequate supporting documentation." The agreement between USACE and DCPS with respect to change management forms was that approval for changes would be sought *prior* to requesting a cost proposal from the contractor, in order to avoid unnecessarily exercising the contractor in preparing price proposals for changes that ultimately were not desired by DCPS. Therefore, at the time USACE submitted most change requests, the only information that was available was a general scope of work and a rough-order-of-magnitude (ROM) cost. It was further agreed that USACE would resubmit the request if ultimately the final negotiated price of the change exceeded the ROM by 10%.

It is important to understand the purpose of the change management process. The purpose was to obtain DCPS concurrence on the scope of work and estimated cost of changes that were being contemplated. The purpose was not to obtain DCPS staff analysis as to whether contractor proposals were fair and reasonable—this was a duty, by Federal law and regulation, of the USACE contracting officer.

Regarding access to supporting documentation for change orders, while USACE was required to comply with certain restrictions on distribution of information protected in accordance with 41 U.S.C. 423 and FAR 3.104, USACE files were available for inspection by DCPS staff members upon request at any time. Indeed, for the first five years of the eight years USACE has supported DCPS, USACE staff and files were located within DCPS offices.

It is difficult to comment specifically on the 35 change orders that the auditor found were executed by USACE without DCPS approval since the report did not provide information identifying which changes fall into this category. In general, however, there were individual changes which DCPS desired USACE to execute, but DCPS staff did not agree with the USACE Contracting Officer's determination regarding contractor financial entitlement for the change. As USACE contracts must, by law, be executed in accordance with the FAR, in such cases as these, the USACE Contractor Officer had a duty to make the final determination regarding settlement of the change.

It is worth noting that during the eight years USACE has supported DCPS, there has been a significant amount of turnover in the key leadership within DCPS, including five different Superintendents and seven different Facility Chiefs, among others. This

lack of continuity led to inevitable changes in direction and a lack of understanding regarding established procedures and prior agreements, but despite these minor challenges, the partnership has accomplished major facility improvements and established the groundwork for continued success by DCPS.

At the request of the DCPS Superintendent in 2000, USACE did undertake efforts aimed at developing DCPS in-house capability. Under the "transition plan" USACE provided on a temporary basis a team of facility experts to work inside the DCPS organization, under the control of the Superintendent. The transition team's mission was to undertake organizational and hiring actions within DCPS aimed at building internal capacity to manage the program. USACE also developed a five year transition plan in 2000, which was subsequently approved by the Superintendent of DCPS, for the express purpose of ensuring an orderly and complete transition of responsibility to DCPS.

Finding: *"Inadequate language in the Memorandum of Agreement and Support Agreements, as well as invoices that lacked adequate detail may have contributed to questionable costs incurred by DCPS and the District."*

Statement: *"The auditor found that neither the Memorandum of Agreement (MOA) or subsequent Support Agreements (SA) specifically identified what expenditures DCPS would reimburse USACE for, and they did not authorize USACE to unilaterally determine the need for services or expenditures charged as overhead, or define overhead rates to be applied."*

The MOA states that "The DCPS shall pay all costs associated with the Baltimore District's provision of goods and services under this MOA." The purpose of this language in the MOA is to ensure compliance with Federal Law, specifically 31 U.S.C. 1301, which states that "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law." In other words, since USACE was not appropriated any funds by Congress for the purpose of DCPS capital improvements, USACE has no legal source of funds to pay costs associated with its work for DCPS other than DCPS itself. This would apply to estimated costs, cost overruns, liabilities, and claims—just as it would if such costs were the result of the internal action of DCPS. In this sense, DCPS has the same responsibilities that it would have if it had performed the work itself. This is one distinction between the MOA and a commercial contract—a contract is a legal instrument that makes it possible to shift risk from one party to another, but the MOA does not shift risk, because to do so would be a violation of Federal Law.

Regarding the provisions of the individual support agreements, the MOA describes the responsibility of each of the parties, specifically stating that DCPS would develop draft SAs to include scope of work statements. Early SAs were broad in scope, but were supplemented with official correspondence from DCPS specifically requesting USACE undertake projects with specified scopes and budgets. Later SAs were more specific as to the project scopes and amounts that DCPS requested USACE to undertake.

Statements: "...invoices submitted by USACE to DCPS lacked adequate documentation..." and "...USACE invoices did not document dates and number of hours worked or overtime or a holiday and did not identify the staff who worked these hours by name."

Each invoice submitted to DCPS consisted of several standard reports generated from the Corps of Engineers Financial Management System, as well as several custom reports generated at the request of DCPS, including the following reports: Department of the Army Form 4445-R (the Army version of U.S. Standard Form 1080, which constitutes the official bill or invoice), labor cost report by appropriation, detailed cost ledger report, customer order detailed report, transaction listing report, and billing allocation per support agreement report. These reports included the following information for each financial transaction:

Bill number and date, support agreement number, DCPS project number (when provided by DCPS), DCPS purchase request number (when provided by DCPS), USACE funding account number, work description, resource code, vendor name, contract number and delivery order number, dollar amount. In the case of USACE government employee labor, the reports included the employee identification number, number of hours charged, type of hours worked (e.g., regular, overtime, holiday, etc.), and dollar amount charged per project.

DCPS did not routinely request all supporting vendor billings to accompany USACE invoices, but when DCPS requested copies of specific vendor bills, those were provided in every instance.

It is worth noting that USACE has been audited on several occasions by the Department of Defense Inspector General to verify amounts invoiced to DCPS, and no irregularities have been identified. USACE continues to maintain complete detailed files of every expenditure it has incurred in support of DCPS. USACE has accommodated any request from DCPS or from any other DC Government agency for additional supporting information regarding any expenditure for which it has requested reimbursement.

Table IX: the draft audit report provides a listing of "questionable costs,"

Statement: "The Auditor also identified additional questionable purchases and/or services performed by USACE."

Each of the expenses cited as "questionable" in the draft report were either specifically requested by DCPS, or were expenditures necessary to accomplish projects requested by DCPS. As required by Federal law, USACE requested reimbursement of any costs it incurred in support of DCPS that it would not have incurred otherwise. Incidental costs such as travel, phone service, office supplies, rent, moving costs, etc., amounted to less than 0.3% of total expenditures.

Mr. William Tully Rating Period 2005-10-01 to 2006-09-30

From February 2006 through June 2006, Mr. Tully was the Acting Program Manager for the DC Project Office. This assignment was extended in June through October 2006.

Duties: Operate a Regional Program Office located in the national capital region. Oversee customer care the execution of assigned projects. Manage the program budget. Oversee the personnel management. Provide clear guidance to subordinate supervisors on all procedural matters. Provide leadership and vision to drive PMBP improvements. Foster effective communications and relationships with customers, governing entities and industry.