



OFFICE OF THE DISTRICT OF COLUMBIA AUDITOR

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**Letter Report: Examination of District of Columbia
Sports & Entertainment Commission Contracts and
Expenditures for Program Management, Legal, and
Financial Management Services**

September 30, 2008

DISCONTINUED CONTENT



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The Honorable Vincent C. Gray
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NE, Suite 504
Washington, D.C. 20004

Letter Report: Examination of District of Columbia Sports & Entertainment Commission
Contracts and Expenditures for Program Management, Legal, and Financial Management
Services

Dear Chairman Gray:

Pursuant to section 455 of the District of Columbia Home Rule Act, as amended, Pub. L. No. 93-198,¹ D.C. Code § 1-204.55, the District of Columbia Auditor (Auditor) conducted an examination of specific contracts for program management, legal, and financial management services awarded by the District of Columbia Sports and Commission Entertainment Commission (DCSEC) in connection with the construction of the new Washington National Ballpark Stadium (Ballpark).

¹See section 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 other instrumentality of the District government and necessary to facilitate the audit."

OBJECTIVES, SCOPE AND METHODOLOGY

The objectives of this examination were to determine whether contracts for program management, legal, and financial management services were effectively administered, managed, and complied with all applicable D.C. Code laws, regulations, and relevant contract provisions.

The scope and period of the examination covered contracts awarded by DCSEC for program management, legal, and financial management services during fiscal years 2005 through 2007, as of July 31, 2007. In conducting this examination, the Auditor reviewed relevant D.C. Code provisions, the District of Columbia Municipal Regulations (DCMR), DCSEC contracts, amendments, modifications and change orders; internal documents including memoranda, by-laws, minutes; and invoices, and other relevant supporting documentation. The Auditor also conducted interviews with relevant DCSEC management and staff, and DCSEC contractors.

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.

BACKGROUND

DCSEC was established as a “component unit” of the District of Columbia government by the Omnibus Sports Consolidation Act of 1994, effective August 23, 1994, which was later amended by the Omnibus Sports Consolidation Amendment Act of 1998.² The current mission of DCSEC is “to improve quality of life and enhance economic development in the District by operating RFK Stadium, the D.C. Armory and its adjacent facilities and for presenting and promoting sports, entertainment and special events and activities in the District and the Washington Metropolitan Region.” One of DCSEC’s strategic goals is to manage the construction and development of a new major league baseball stadium.

²See the Omnibus Sports Consolidation Act of 1994, effective August 23, 1994, (D.C. Law 10-52; D.C. Code §§ 3-1401 *et seq.*). See also the Omnibus Sports Consolidation Amendment Act of 1998, DC Law 12-115, which amended DC Law 10-152 by substituting the phrase “Sports and Entertainment Commission” in lieu of “Sports Commission.”

On October 1, 2004, the Council of the District of Columbia (Council) approved the Ballpark Omnibus Financing and Revenue Act of 2004, effective April 8, 2005.³ This legislation authorized DCSEC to develop and construct a new baseball stadium. Specifically, the legislation, in part, states:

- (1) The Ballpark shall be a first-class, open air baseball stadium to be constructed on the ballpark site, having a natural grass playing field, a capacity of approximately 41,000 seats, and market-appropriate concession, entertainment, and retail areas, fixtures, furnishings, equipment, features, and amenities.
- (2) The ballpark shall be designed to comply with all public safety, accessibility and urban planning requirements, generally applicable to buildings for such scale, purpose, and location in the District of Columbia.

DCSEC is authorized to develop, construct, and lease the Ballpark in accordance with D.C. Law 15-320.⁴ While designing and constructing the new Ballpark, DCSEC continued to oversee repairs, maintenance, and renovation work to the Robert F. Kennedy Memorial Stadium (RFK Stadium).⁵

DCSEC management received \$6 million (\$2 million each fiscal year for 2005, 2006, and 2007) as a project administration fee to carry out their responsibilities related to the new Ballpark.⁶ DCSEC's \$6 million project administration fee was to cover DCSEC functions related to: (1) salaries for the DCSEC Office of the Chief Executive Officer (CEO) and the Finance Department; (2) cost for Legal/Procurement functions; and (3) related overhead costs.⁷ As cited in the Auditors' prior report⁸, issued June 28, 2007, DCSEC management was unable to provide a detailed itemized accounting breakdown as to how the \$6 million were allocated and used.

³See the Ballpark Omnibus Financing and Revenue Act of 2004, effective April 8, 2005, (D.C. Law 15-320; D.C. Code §§ 10.1601.01 *et seq.*)

⁴See D.C. Code § 3-1418.01.

⁵During FY 2006, DCSEC received \$1,593,929 from the District to fund oversight operations for the RFK Stadium repairs, maintenance, and renovations.

⁶See the Ballpark Omnibus Financing and Revenue Act of 2004, effective April 8, 2005, (D.C. Law 15-320; D.C. Code §§ 10.1601.01 *et seq.*)

⁷See DCSEC's analysis of project administration and project management, March 2007.

⁸See Audit Report Number DCA142007, June 28, 2007.

In addition to the \$6 million project administration fee, DCSEC awarded contracts for program management, legal, and financial management services to facilitate the construction of the new Ballpark. According to DCSEC, these contracts were necessary to properly manage the construction of the new Ballpark and continue ongoing maintenance, repairs, renovations to, and operation of RFK Stadium.⁹ Table I presents the contractors providing program management, legal, and financial management services for the construction of the new Ballpark and RFK Stadium renovations.

⁹For a complete financial and budgetary review of the baseball stadium project, please see the District of Columbia Auditor, *Letter Report: Responses to Specific Questions Regarding the District's Ballpark*, (Washington, DC: June 28, 2007).

TABLE I
Contractors Providing Program Management, Legal, and Financial Management Services
January 1, 2005 to July 31, 2007

VENDOR	DATE OF ORIGINAL CONTRACT	TOTAL ORIGINAL CONTRACT AMOUNT	TYPE OF SERVICE	TOTAL PAYMENTS
McKissack & McKissack	11/1/2004	\$374,801	Program ¹⁰ Management	\$589,524.41
Brailsford & Dunlavey	10/22/2004	\$62,850	Program ¹¹ Management	\$1,003,572.22
McKissack/Brailsford/Turner	3/31/2006	\$5,009,000	Program ¹² Management	\$3,697,199.00
Leftwich & Ludaway	10/1/2004	\$150,000	Legal ¹³	\$1,488,062.88
Covington & Burling	2/16/2002	None Stated	Legal ¹⁴	\$2,209,069.36
BearingPoint/Clemens	11/15/2004	\$126,453	Financial Management ¹⁵	\$1,008,816.82
TOTALS		\$5,723,104.00		\$9,996,244.19

Source: Original Contracts provided by DCSEC CFO

DCSEC Procurement Authority

The District's procurement and contracting law is found in the Procurement Practices Act of 1985 (Procurement Practices Act), D.C. Law 6-85, and codified at D.C. Code §§ 2-301.01 *et seq.*¹⁶

¹⁰McKissack & McKissack was awarded a contract to manage and review the activities of the selected design and construction entities related to RFK renovations and construction of the new Ballpark.

¹¹Brailsford & Dunlavey was awarded a contract to manage the planning, design, and completion of the architectural services related to RFK renovation and construction of the new Ballpark.

¹²McKissack/Brailsford/Turner was awarded a contract for the management of the day-to-day activities of architectural, engineering, and construction services for the new Ballpark.

¹³Leftwich & Ludaway was awarded a contract for legal and procurement consulting services associated with the renovation of RFK and the new Ballpark.

¹⁴Convington & Burling was awarded a contract as DCSEC's principal outside general counsel on all legal matters.

¹⁵BearingPoint/Clemens was awarded a contract to review invoices, track expenditures, and develop monthly cost summary reports related to the construction of the new Ballpark.

¹⁶See also the Procurement Practices Act of 1985, effective February 21, 1986, (D.C. Law 6-85; D.C. Code §§ 2-301.01 *et seq.* (2001)).

The Procurement Reform Amendment Act of 1996, effective April 12, 1997, D.C. Law 11-259, amended the Procurement Practices Act and attempted to centralize the District's procurement operations and expand the reach of the District's procurement law by making it applicable to many independent agencies, departments, instrumentalities, and employees.¹⁷ According to a United States Government Accountability Office (GAO) report issued in January 2007,¹⁸ despite attempts to centralize the procurement operations of the District of Columbia, the reform act instead excluded many entities from the authority of both the Office of Contracting and Procurement (OCP) and the Procurement Practices Act.¹⁹

DCSEC is one of the agencies granted independent procurement authority. The implementing regulations are set forth in Title 19, Chapter 28 of the DCMR. Specifically, 19 DCMR § 2800.1 states:

“The following policies, rules and procedures governing the procurement, management and disposal of goods and services are hereby adopted by the District of Columbia Sports and Entertainment Commission (the "Commission"), notwithstanding, and in lieu of, the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, D.C. Code §§ 1-1181.1, et seq. (1999 Repl.).”

DCSEC powers are enumerated in D.C. Code §§ 3-1406 and § 3-1407, which include the power to adopt policies, rules and procedures governing its procurement of goods and services.²⁰ D.C. Code § 3-1406 (9) states that DCSEC has the power to enter into contracts and execute any instrument necessary or convenient to accomplish its purposes.

¹⁷See D.C. Code § 2-301.04 (a) which states the applicability of the procurement law to District entities and provides for the exemptions found in D.C. Code § 2-303.20.

¹⁸See United States Government Accountability Office, *District of Columbia: Procurement System Needs Major Reform*; (Washington, DC: January 2007).

¹⁹See D.C. Code § 2-303.20 (f) which states: “Nothing in this chapter [procurement practices for the District of Columbia] shall affect the authority of the Sports Commission pursuant to Chapter 14 of Title 3.”

²⁰See D.C. Code § 3-1407 (a) (12). Note also that D.C. Code § 3-1404 (f) states that the powers of the Sports and Entertainment Commission shall be vested in a majority of the Board.

On February 23, 2006, the Board of Directors delegated contract authority to DCSEC's CEO to approve contracts, amendments, and change orders not to exceed \$250,000 related to the construction and development of the new Ballpark.²¹ On September 6, 2006 the DCSEC Board increased the CEO's contract authority from \$250,000 to a not to exceed limit of \$500,000. As a result of the delegation, the CEO was authorized to enter into contracts valued at less than \$500,000 without obtaining the prior approval of the DCSEC Board.²²

The Board's delegation, however, required the concurrence of DCSEC Chief Financial Officer (CFO) and the DCSEC General Counsel all such contracting actions and required the submission of detailed monthly report summaries to the Board. The delegation also placed aggregate stop limits which prohibited the CEO from taking contract actions in any given month that would result in a variance of more than \$1 million in the approved new Ballpark budget.

D.C. Code § 3-1405 (b) (1) - (7) states in part, that the Executive Director of DCSEC shall direct and supervise the administration, management, and affairs of DCSEC in accordance with policies, rules, and regulations; and report and make recommendations to the Board on the merits and status of any proposed facility and present financial reports at each Board meetings.

²² 27 DCMR 2801.1 states the Executive Director (chief executive officer) shall serve as the Chief Contracting Officer and is authorized to execute contracts.

FINDINGS

LACK OF INTERNAL PROCUREMENT POLICIES RESULTED IN NON-COMPLIANCE WITH PROCUREMENT LAWS AND IMPROPER OVERSIGHT OF PROCUREMENT ACTIVITIES

As stated earlier, DCSEC adopted rules and procedures governing the procurement, management and disposal of goods and services.²³ The regulations cover the following types of procurements: (1) purchases orders (not to exceed \$25,000);²⁴ (2) small purchases (not to exceed \$100,000);²⁵ (3) formal solicitations (competitive bidding required for procurements exceeding \$100,000);²⁶ (4) sole source procurements (awarded where there is a reasonable basis);²⁷ and (5) emergency procurements (unanticipated occurrence demanding immediate actions).²⁸ While DCSEC has “the power to adopt polices, rules, and procedures that govern their procurements” and “may adopt operating procedures and guidelines” consistent with applicable regulations, DCSEC does not have any policies or guidelines currently in place. The regulations do not provide any guidance on the development of its procurement system, internal procurement standard operating procedures, or compliance with minimum procurement standards. To ensure accountability and integrity of the procurement process, at a minimum, DCSEC must maintain appropriate documentation of the complete history of each procurement transaction to ensure compliance with applicable laws, regulations, and rules.

The Auditor’s examination of DCSEC’s contracts awarded for program, legal, and financial management services related to RFK renovations and the construction of the new Ballpark revealed that a lack of effective oversight by the Board and inadequate internal procurement policies and procedures resulted in:

- non-compliance with sole source procurement regulations;
- allowance of contractors to provide services without a contract;

²³See 19 DCMR § 2801.1

²⁴See 19 DCMR § 2802.1

²⁵See 19 DCMR § 2803.1

²⁶See 19 DCMR § 2804.1

²⁷See 19 DCMR § 2805.1

²⁸See 19 DCMR § 2806.1

- non-compliance with minimum procurement standards; and
- inadequate and nonexistent procurement documents within DCSEC procurement process and contract files record keeping.

The Auditor addressed the same issues noted above in an October 17, 2003 report entitled, “District of Columbia Sports and Entertainment Commission’s Executive Leadership Failed to Implement an Effective Governance Structure to Ensure Sound Financial Management Decisions, Management Accountability, and Compliance with Applicable Laws and Regulations.”²⁹ Although it has been four years since the release of the audit report, and the Auditor’s examination found that DCSEC has failed to implement key recommendations made in the October 2003 report which would have established internal procurement standard operating procedures and improve DCSEC’s compliance with minimum District procurement standards.

RECOMMENDATION:

To ensure accountability and integrity, the DCSEC CEO establish internal procurement policies and procedures to ensure that DCSEC procurement operations are conducted in a manner that promotes public’s confidence in the integrity of the procurement process; maintenance of appropriate documentation of the complete history of each procurement transaction; as well as compliance with applicable laws, regulations, and rules.

Sole Source Contracts Totaling \$860,000 Were Awarded To BearingPoint/Clemens By The Former DCSEC CEO Without A Complete Determination Of Findings, As Required By 19 DCMR § 2805.5

DCSEC adopted rules and procedures governing the procurement, management and disposal of goods and services requires formal solicitations (competitive bidding) for procurements exceeding \$100,000. Pursuant to 19 DCMR § 2805.4, the DCSEC CEO is required to take all reasonable steps to avoid using sole source procurement. Further, 19 DCMR § 2805.1 states that DCSEC may only award sole source contracts where there is a reasonable basis to conclude that DCSEC contracting needs for goods, services, or construction can only be satisfied by the proposed sole source contract. Further, according to 19 DCMR § 2805.3 (a) - ©, sole source procurements shall not be justified solely on the basis of: (a) lack of time, unless there is a legitimate emergency or when the delays have been determined by DCSEC to be excusable; (b) the desire for a particular brand name when others of equal nature are available; or © convenience alone.

²⁹See Audit Report Number DCA204, October 17, 2003.

Additionally, 19 DCMR § 2805.5 states that the CEO must provide the Board with a prior written determination of findings that the Commission's needs may only be met by the proposed sole source contract. Additionally, the determination shall include the following findings:

- a description of DCSEC requirement, including estimated cost;
- an explanation of the unique nature of the procurement;
- an explanation of the contractor's unique qualifications;
- a determination that the costs to DCSEC will be fair and reasonable; and
- a description of the market survey conducted, list of potential sources contacted, or explanation for why such a survey or list was not possible.³⁰

The Auditor found that on July 17, 2006, the former DCSEC CEO awarded a one year sole source contract to BearingPoint totaling \$510,000 to provide financial management services for the new Ballpark stadium without providing the Board with an adequate prior written determination of findings, as required by 19 DCMR § 2805.5. The justification provided by the former CEO at a May 3, 2006 board meeting stated:

"In light of the amount of effort expended to date, it would not be efficient or cost effective to seek the services of another financial services/accounting firm at this point. Any new firm would be faced with a significant learning curve. In addition, a formal procurement process would take several months to complete and we cannot afford any delays due to the tight construction schedule."³¹

The Auditor found that the justification for the award of the July 17, 2006 sole source contract did not contain a written determination that included the following findings: (1) the estimated cost; (2) an explanation of the unique nature of the procurement; (3) the unique qualifications of the contractor, (4) a determination or finding that the costs would be fair and reasonable; or (5) a description of the market survey conducted, list of potential sources contacted, or explanation for why such a survey or list was not possible.

³⁰See 19 DCMR 2805.6 (a) - (e).

³¹See Proposed Action Memorandum from DCSEC CEO to DCSEC Board, May 3, 2006.

The Auditor also found that the former CEO awarded another sole source contract on June 29, 2007 to BearingPoint/Clemens totaling \$350,000 to provide financial management services for the new Ballpark. Again, the CEO failed to provide the Board with a sufficient prior written determination with all findings in support of the award of this contract, as required by 19 DCMR § 2805.5. In the absence of documentation justifying the sole source award of these contracts, there was no assurance that BearingPoint/Clemens was not given preferential treatment, that the goods or services were obtained from the only source available, and that the goods or services were reasonably priced and necessary.

Adequate and reasonable steps to avoid using the sole source method of procurement for financial services were not planned or implemented by the former DCSEC CEO. It's apparent BearingPoint/Clemens has been awarded contracts and contract modification memorandums based on convenience alone. The Auditor found that BearingPoint/Clemens was originally engaged by DCSEC for a 6 month contract, totaling \$126,453, in November 15, 2004 to provide financial management services in connection with the renovation of the RFK Memorial Stadium.³² The Auditor found that BearingPoint's original 6 month contract scope of work and duration were extended. Further between May 2005 and July 2006, the former DCSEC CEO issued BearingPoint/Clemens 7 contract modification memorandums totaling \$490,253 to provide month-to-month financial and accounting services for construction of the new Ballpark Stadium.

Failing to prepare a sufficient prior written determination of findings violated 19 DCMR § 2805.5, and precluded opportunities for full and open competition, as well as possible cost savings. As of July 31, 2007, BearingPoint/Clemens had been paid a total of \$1,008, 816 for financial management services.

RECOMMENDATIONS:

1. DCSEC Board of Directors and the DCSEC CEO comply with 19 DCMR § 2805.5 by requiring sufficient prior written determination of findings statement justifying the use of the sole source contracting method. Detailed specifications and justifications for sole source procurement actions along with potential cost savings and efficiency should be documented, reviewed, and submitted to the DCSEC Board before awarding sole source contracts.

³²The contract (GS-23F-9796H) period was November 15, 2004 to May 15, 2005.

2. DCSEC Board of Directors exercise more extensive and effective oversight of DCSEC's procurement and contracting activities by ensuring that the DCSEC CEO properly and adequately plans all future contracts in advance as a means to avoid awarding non-competitive sole source contracts.
3. DCSEC's Board of Directors establish policies and procures that ensure the Board's scrutiny and approval of contracts exceeding \$50,000 before DCSEC's CEO awards such contracts; and require DCSEC's CEO to strictly adhere to requirements under DCSEC's procurement regulations with regards to the award of sole source contracts.

DCSEC Allowed Contractors to Provide Services Totaling \$3,037,881.46 Without Having A Valid Written Contract In Place

DCSEC procurement regulations are silent with regards to services provided by a vendor without a valid written contract, and the use of contract modifications or memorandums after a contract has expired to justify and support a continuation of service delivery. Although granted independent procurement authority pursuant to D.C. Code Section 2-303.20, DCSEC should, as a guide, adhere to minimum procurement conduct requirements. D.C. Code § 2-301.05 (d)(1) which states that, "after April 12, 1997, no District employee shall enter into an oral agreement with a vendor to provide goods or services to the District government without a valid written contract. Any violation of this paragraph of shall be cause for termination of employment of the District employee". Further, 27 DCMR § 1901.9, states that:

"a contract for expert or consulting services shall not be extended by contract modifications. When additional services are required, a new contract shall be awarded subject to the requirements and limitations of this section."

The Auditor's review of the original contracts for vendors cited in Table II found that the former DCSEC CEO permitted five contractors to continue to provide services after their contract had expired. The Auditor found that between February 2005 and June 2007 the former DCSEC CEO issued 17 contract memorandums increasing the contract dollar value and extending the expiration date of the already expired contract, extending service delivery on a month-to-month basis after the services had already been provided by the contractor. Table II presents the five vendors that provided services without having a valid contract in place and instances in which contract memorandums were issued after the services had been provided, in addition to the total payments

made to these vendors. Appendix I presents a detailed time-line showing the dates the contractors worked without a valid contract in place, and instances where contract modification memorandums were issued after the delivery of services.

TABLE II
Total Payments and Number of Contract Modifications Memorandums or Change Orders
Issued After Services were Rendered between February 11, 2005 to June 15, 2007

Vendor and Date of Original Contract	Total Contract Modification Memorandums Issued	Total Contract Modifications Memorandums Issued After Services Were Rendered	Total Payments for Contract Modifications Issued After Services Were Rendered.
McKissack & McKissack 11/1/2004 ³³	9	3	\$128,650.00
Brailsford & Dunlavey 10/22/2004 ³⁴	6	4	\$1,115,000.00
McKissack\Brailsford\Turner March 31, 2006 ³⁵	10	1	\$638,000.00
Leftwich & Ludaway October 1, 2004 ³⁶	7	6	\$1,015,000.00
BearingPoint/Clemens November 15, 2004 ³⁷	8	3	\$141,231.46
Totals	40	17	\$3,037,881.46

Source: Contract Modification Memorandums provided by DCSEC CFO.

³³ This vendor was originally awarded a contract for program management services solely related to the RFK Stadium renovations.

³⁴ *Ibid.*

³⁵ This vendor was awarded a contract for program management services related to the new Ballpark Stadium.

³⁶ This vendor was originally awarded a contract for legal services solely related to the RFK Stadium renovations.

³⁷ BearingPoint was originally awarded a contract for services solely related to the RFK Stadium renovations. Clemens Consulting Group is a sub-contractor to BearingPoint which performs the accounting services for the new Ballpark Stadium.

RECOMMENDATIONS:

1. DCSEC CEO discontinue the practice of allowing contractors to provide services without a written contract in place and establish internal written policies and procedures to ensure compliance with applicable District laws and regulations.
2. DCSEC Board of Directors prohibit the CEO from entering into oral agreements.

DCSEC's Record Keeping Practices Were Insufficient To Demonstrate That Contract Awards Were Based On A Fair and Open Competitive Process

Under 19 DCMR § 2804.1, competitive bidding is required whenever a contract for goods and services is reasonably expected to exceed \$100,000. Further, 19 DCMR § 2804.2 states, in part, the following:

the term “competitive bidding” shall mean the employment of such procedures, requirements and techniques as will result in fair and reasonable competition among suppliers, equality of opportunity, optimal pricing and quality, and maximization of the best interest of the Commission.

The Auditor found that DCSEC failed to implement an adequate effective record keeping system. DCSEC's procurement regulations do not set forth requirements regarding the maintenance of documentation nor specific minimum requirements that must be met in soliciting and evaluating bids and proposals. 19 DCMR § 2801 assigns the responsibility for the development of such procedures to the Chief Contract Officer, in this case the CEO. The Auditor's review of contract files for contracts awarded by DCSEC for program management, legal, and financial management services between January 2005 and July 2007 found that:

- DCSEC could not provide a contract file for a contract awarded to Brailsford & Dunlavey for program management services totaling \$62,850;
- some contract files were incomplete and not organized in any discernible order;
- key contract information contained deficiencies such as: (a) transposition of dates, and (b) errors the contract totals;

- key contract information was not consolidated in a single file or in logical order; and
- contract files lacked any supporting procurement documents, such as request for proposals or tabulation sheets of all the bids received, or any supporting documentation related to the bid and evaluation process.

Overall, the Auditor found that DCSEC lacked adequate and sufficient procurement documentation to support the proposal/bid evaluation and selection process for approximately \$714,104 in contracts awarded for program, legal, and financial management services related to RFK renovations and construction of the new Ballpark. Due to the lack of sufficient procurement documentation the Auditor can not adequately determine if the contracts were awarded in through an open competitive process or that the pricing associated with the contracts were fair and reasonable.

RECOMMENDATIONS:

1. DCSEC Board of Directors hold the DCSEC CEO accountable for promptly developing and implementing an adequate effective procurement record keeping system for the maintenance of contract files, and various other documents that support all operational expenses.
2. DCSEC CEO develop specific internal procurement policies and procedures which outline requirements for proper documentation to be maintained by management in the solicitation and evaluation of proposals submitted through the competitive bidding process for each contract file.

DCSEC Regulations Lack Procedures For The Award Of Expert And Consulting Services Or The Use Of Indefinite-Quantity Contracts

The acquisition of expert and consulting services are not addressed in DCSEC's procurement regulations. At a minimum, DCSEC should adhere to 27 DCMR. 27 DCMR § 1901.8 (b), states that the contracting officer shall ensure that, for procurement of expert or consulting services, each work

statement is specific and complete, and states a fixed period of performance within which the services are to be provided.

Additionally, the use of indefinite-quantity contracts, when the exact quantities of supplies or services are not known at the time of the contract award, are also not addressed in DCSEC's procurement regulations. However, 27 DCMR § 2416.5 (a) states, in part, that the contracting officer shall include a realistic estimate of the total quantity to be ordered, based on the most current information available.³⁸ Further, 27 DCMR § 2416.9 states that:

“the contracting officer may use an indefinite-quantity contract when the contracting officer cannot predetermine, *above a specified minimum*, the precise quantity of supplies or services that will be required *during the contract period*, and the contracting officer determines that it is inadvisable to commit the District for more than a minimum quantity. [Auditor's Emphasis]

The Auditor found that indefinite quantity contracts for legal services awarded by the former DCSEC CEO failed to meet minimum requirements under District procurement regulations in that legal service contracts were awarded without a specific termination date or without specified contract minimum quantities.

The Auditor found that DCSEC awarded Covington and Burling an indefinite-quantity contract on February 6, 2002 without a contract limit and termination of service date. The Auditor further found that the CEO awarded Leftwich & Ludaway an indefinite quantity contract for \$150,000 on November 1, 2004 without a termination of service date.

RECOMMENDATION:

DCSEC Board of Directors prohibit the practice of awarding contracts that do not contain a minimum contract limit or termination of service date and establish internal policies and procedures to ensure that all indefinite quantity contracts awarded for expert and consulting services adhere at a minimum, to 27 DCMR S§ 1901.8 (b) and 27 DCMR § 2416.9.

³⁸See 27 DCMR § 2416.5 (a)

DCSEC Procurement Regulations Lack Procedures For The Use Of Contract Modification Memorandums and/or Change Orders

DCSEC's procurement regulations do not address specific minimum guidance on the definition, use, and administration of contract modifications and/or change orders. According to 27 DCMR § 3699.1, "a contract modification" is defined as any written change in the terms of a contract, and "a change order" is defined as a written order, signed by the contracting officer, directing the contractor to make changes to the scope of work stated per the original contract without the contractor's consent. Additionally, DCMR Title 27, Chapter 36 provides guidance on the use of contract modifications and change orders.

The Auditor found that DCSEC's contract modification memorandums/change orders failed to indicate how the extended services provided by contractors were services outside and/or different from those stated per the terms of the original contract. Additionally, the contract modification memorandums/change orders issued by the former DCSEC CEO lacked detailed work specifications, and proper justification for exceeding the original contract limit and extending services on a month-to-month bases.

RECOMMENDATION:

DCSEC Board of Directors ensure that the Contracting Officer, the CEO, develop and issue policies and procedures regarding contract modification memorandums/change orders that comply with 27 DCMR, § 1901.9 and 27 DCMR, Chapter 36.

DCSEC Monthly Cost Summary Reports Lacked Critical Information to Properly Monitor Contract Costs

As previously stated, detailed monthly reports are to be submitted to the Board by the DCSEC CEO and CFO detailing all contract actions. In addition to the monthly Cost Summary Reports DCSEC's CEO and CFO hold weekly telephone conference meetings with Board members, however, attendance is optional. During this informal weekly meeting, Board members are given the opportunity to discuss any issues related to the cost and procurement activity of the new Ballpark.

The Auditor found that Cost Summary Reports submitted to the Board lacked sufficient and adequate details of costs and procurement actions by the former CEO. Although the Cost Summary Report details to date that the aggregated expenditure totals for each cost category line item stayed within the budget, the report does not capture how costs increased per cost category line item, or how funds changed between the line items. As a result, the Board may be unaware of contracts that exceeded their contract limits and by how much, or the number of contractors that have been hired to perform services among the different cost category line items.

The Auditor found that the Cost Summary Report lacked the following contractual information which could further aid the Board in properly monitoring contract costs:

- The total number of individual contractors hired for that particular cost category line item;
- Total number of contract modification memorandums and/or change orders issued per contractor;
- The percentage of increased cost to the contract's original cost;
- Cost analysis on how cost and allocation of funds among cost category line item have been allotted and/or changed quarterly or annually; and
- Detailed descriptions of particular procurement actions taken by the CEO.

Table III represents the contract modification memorandums and/or change orders issued by the CEO that increased cost and were not sufficiently communicated in detail to the Board through the monthly Cost Summary Reports.

Table III
Contract Modification Memorandums and/or Change Orders
Which Increased Contract Cost Limits

Vendor	Contracted Project	Number of Contract Modification Memorandums	Percentage Cost Increase over Original Contract Cost	Total Cost increase over Original Contract Cost Limit
Brailsford & Dunlavey	RFK	3	40%	\$75,580
Brailsford & Dunlavey	New Ballpark	2	71%	\$380,000
Leftwich & Ludaway	RFK	4	540%	\$810,000
Leftwich & Ludaway	New Ballpark	3	21%	\$107,000
TOTAL		12		\$1,372,580

Source: Original Contracts and Contract Modification Memorandums and/or Change Orders provided by the DCSEC CFO.

RECOMMENDATION:

DCSEC monthly Cost Summary Report formats be revised to provide the Board sufficient detailed information to adequately monitor the CEO procurement actions and contract cost related to the new Ballpark. These contract cost should be sufficiently detailed and accounted for by cost line item and by contractor.

The DCSEC CFO Approved Payments Totaling \$461,774.11 That Were Not In Compliance With Contract Terms

BearingPoint/Clemens monitors all contractor invoices and expenditures, exclusive of legal service contractor invoices, for the new Ballpark.³⁹ BearingPoint/Clemens had been paid \$1,008,816, or approximately \$333,000 per year, as of July 15, 2007 to provide these financial services for both the RFK Stadium renovations and the new Ballpark.

³⁹Monitoring of invoices for legal services and approval of invoices for payment for DCSEC legal service contractors are not conducted by BearingPoint/Clemens but rather by the DCSEC General Counsel.

BearingPoint/Clemens is responsible for reviewing invoices, approving and recommending payment of invoices, tracking expenditures and contractual commitments to the approved budget and preparing monthly Cost Summary Reports provided to the Board, the DCSEC General Counsel, and the DCSEC CFO. According to the CFO, BearingPoint/Clemens is not a part of DCSEC's financial management staff but is viewed as an extension of DCSEC's accounting department. The DCSEC CFO is responsible for overseeing the financial operations of DCSEC and therefore is ultimately responsible for approving payment of invoices and monitoring and managing expenditures related to construction of the new Ballpark.

After BearingPoint/Clemens has completed its review process of construction contractor invoices, a recommendation letter is issued by BearingPoint/Clemens for payment and the letter and invoices are forwarded to the CFO for review and final approval for payment. The CFO conducts a reasonableness review of the recommendation letter and invoices and also approves all invoices submitted by BearingPoint/Clemens for financial and accounting services and invoices submitted by the legal service contractors. All invoices require the signatures of both the DCSEC CFO and CEO for proper approval of payment prior to being sent to the DCSEC accounts payable department.

According to DCSEC's CFO, the reasonableness review consists of a scan of the invoices or recommendation letter for any abnormalities and to ensure that the contractor's expenditures do not exceed contract limits. Additionally, according to the CFO, as long as there were available funds and the invoices did not exceed the total contract or increased contract amount as stated per the contract or contract modification memorandums/change orders, the payments were proper. The Auditor found, however, that the CFO does not compare any of the invoices to the original contract or contract modification memorandums/change orders to ensure that the charges are in fact in accordance with contract terms or contract modification memorandums/change orders.

The Auditor reviewed all 99 payments made to the vendors cited in Table I and found 37, or 37%, of the supporting invoices for these payments contained charges for services that did not adhere to the terms of the original contract. The inappropriate or improper charges were due to the following:

- Consistent billing by contractors at incorrect hourly rates;
- Billing hourly rates for individuals whose position titles and hourly rates were not declared in the original contract nor approved by the CEO; and
- Charges for expenses that were not expressly stated as reimbursable under the contract.

Insufficient review by the CFO resulted in improper payments and additional contract costs totaling \$461,774.11. Table IV presents the payments to contractors for services that were not in compliance with contract terms, contract modification memorandums, and/or change orders.

Table IV
Summary of Inappropriate Charges per Contractor

Contractor	Total Number of Payments Found Not to Comply Per Contract Terms and/or Contract Modification /Change Orders	Additional Cost	Description Of Non-Compliance
McKissack & McKissack	2	\$1,900.00	Payment of administrative fees which were not included in original contract or contract modification memorandums.
Leftwich & Ludaway	23	\$38,903.11	Billing incorrect hourly rates and reimbursement for expenses not expressly stated in contract.
BearingPoint/Clemens	12	\$420,971.00	Billing for individuals whose position titles and hourly rates were not declared in the original contract, and billing for hours over the allowable hours permitted as stated per the contract.
Total	37	\$461,774.11	

Source: Original Contracts, invoices, and checks provided by the DCSEC CFO.

RECOMMENDATIONS:

1. DCSEC CFO discontinue the practice of approving payment for services that are not in full compliance with contract terms or contract modification memorandums and/or change orders.

2. DCSEC Legal Counsel, who is responsible for the procurement function, thoroughly review all contracts prior to execution to ensure payment terms are expressly stated in the contract. Payment terms such as, allowable reimbursements and hourly rates, must be clearly and expressly stated in the contract.

Invoices For Legal Services Were Not Properly Reviewed By DCSEC's General Counsel

The Office of the Chief Financial Officer (OCFO) has established written policies and procedures concerning internal controls for the disbursement of public funds. Specifically, the OCFO's Financial Policies and Procedures Manual (FPPM), Section 3020.700, Internal Control, states that payments are not to be made until the certifying or disbursing officer determines that the payment is proper, correct, and supported by adequate documentation.⁴⁰

The DCSEC CFO stated that current disbursement procedures require DCSEC's General Counsel to review and approve all invoices submitted by legal services contractors prior to payment. The CFO further stated that, once invoices have been reviewed, a signed recommendation letter from DCSEC's General Counsel or Assistant General Counsel must be attached to each invoice as a certification for payment. The Auditor reviewed all 99 payments made to the vendors cited in Table II of which 48 payments were made to legal services contractors. Of the 48 legal services payments reviewed, 22, or 45%, lacked appropriate supporting documentation, recommendation letter, to indicate proper reviewed and approved of the payments by DCSEC's General Counsel or Assistant General counsel .

Additionally, DCSEC did not maintain contractual information, such as total allowable hours to be worked, hourly rates, or allowable reimbursable expenses in the Covington & Burling contract file since 2002. There was no supporting documentation from which a determination could be made as to the propriety and legitimacy of the contractor's claim for payment; and whether the claims for payment were based on work performed within the scope and terms of the agreement. The lack of contractual information within the Covington & Burling contract file, raises concern that payments to Covington & Burling may have been inappropriate.

⁴⁰See District of Columbia Office of the Chief Financial Officer, Office of Financial Operations and Systems, Policies and Procedures Manual, Volume I, August 31, 1998, (Last Updated: Fiscal Year 2004).

RECOMMENDATION:

The DCSEC CFO immediately cease the practice of approving payments for legal services until the DCSEC General Counsel has properly reviewed and certified invoices and determined that the payment is proper, accurate, and supported by adequate appropriate documentation, including a recommendation letter.

AUDITOR'S CONCERN DUE TO THE LACK OF FORMAL WRITTEN DOCUMENTATION WITHIN THE CONTRACT FILE MAY GIVE THE APPEARANCE OF PREFERENTIAL TREATMENT IN AWARDING CONSULTING FINANCIAL MANAGEMENT SERVICES CONTRACTS

Although DCSEC lacks internal policies or guidelines with regards to the conduct of procurement business, pursuant to 27 DCMR §1006.1, the procurement business of the District shall be conducted in a manner above reproach and, except as authorized by law, with complete impartiality and with preferential treatment for none. Although granted independent procurement authority pursuant to their exemption stated in D.C. Code, Section 2-303.20, DCSEC should conduct its procurement operations in a manner that: promotes the public's confidence in the integrity of the procurement process; results in the maintenance of appropriate documentation of the complete history of each procurement transaction; and ensures full compliance with applicable laws, District regulations, and rules.

Effective August 2005, Clemens Consulting Group, a company formed by the current DCSEC CEO, became a subcontractor to BearingPoint. Prior to forming Clemens Consulting group, DCSEC's current CEO was employed as a Senior manager for BearingPoint. Between November 2004 and December 2006 the current CEO was one of two BearingPoint/Clemens employees to provide DCSEC with financial services related to the RFK Stadium renovations and the construction of the new Ballpark.

In December 2006, the current CEO became the Chief Development Officer (CDO) in the Mayor's Office of Planning and Economic Development. As the CDO, he served as the Mayor's representative and lead on large economic development projects inclusive of the new Ballpark as well as serving on DCSEC's Board as the Mayor's representative (ex-officio member). According to the CEO, in December 2006 and prior to accepting the CDO position he sold his financial interest in Clemens Consulting. In July 2007, he resigned his position as CDO and DCSEC board member and became DCSEC's current CEO.

The CEO readily volunteered all the above information, and fully cooperated with the Auditor by making available any and all documentation requested regarding the audit. However, in order for DCSEC to ensure and promote the public's confidence in the integrity of DCSEC's procurement process related to the construction of the new Ballpark, any procurement situation which involves DCSEC's current CEO and former owner of Clemens, should be properly documented within BearingPoint/Clemens contract file, as well as within DCSEC's Board minutes.

The Auditor found that in absence of sufficient written determination of findings justifying the sole source contracts awarded to BearingPoint/Clemens totaling \$860,000, as previously noted, and full disclosure that a former BearingPoint employee and previous owner of Clemens served on the DCSEC Board and is DCSEC's current CEO creates, at a minimum, the appearance of preferential treatment, limited competition, and conflict of interest.

RECOMMENDATION:

The DCSEC Board of Director's fully document any and all procurement activity awarded to companies the current CEO, such as the former owner of Clemens, subcontractor to BearingPoint/Clemens, and maintain this documentation in the contract files.

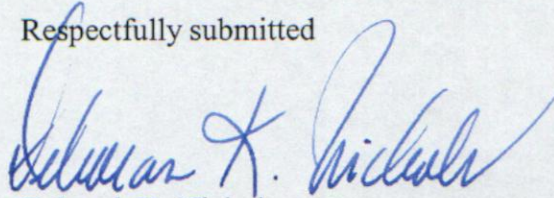
CONCLUSION:

The Auditor's examination found significant deficiencies in the administration, management, and oversight of contracts for program management, legal, and financial services awarded by DCSEC in connection with the construction of the new Ballpark. Specifically, the Auditor found that a lack of effective oversight by the Board and inadequate internal procurement policies and procedures resulted in: (1) non-compliance with sole source procurement regulations; (2) allowance of contractors to provide services without a contract; (3) non-compliance with minimum procurement standards; and (4) inadequate and nonexistent procurement documents within DCSEC's contract files. The Auditor cited a number of the same deficiencies in a prior ODCA audit report released October 17, 2003. The same deficiencies still existed 5 years later.

Additionally, the Auditor found that, as cited in a Auditors' prior report issued June 28, 2007, DCSEC management was still unable to provide a detailed itemized accounting breakdown as to how \$6 million dollars were allocated and used as a project administration fee to carry out their responsibilities related to the new Ballpark. DCSEC's \$6 million project administration fee was to cover DCSEC functions related to: (1) salaries for the DCSEC Office of the Chief Executive Officer (CEO) and the Finance Department; (2) cost for Legal/Procurement functions; and (3) related overhead costs.

As cited in their response to this report, and responses to prior examinations of DCSEC contracting and financial operations conducted by this office, DCSEC continues to defend their contracting and procurement deficiencies by stating they are not subject to the Procurement Practices Act of 1985, nor the 27 DCMR. While the Auditor acknowledges DCSEC's independent contracting authority DCSEC still receives public District funds and thus DCSEC has a fiduciary responsibility to ensure that their fiscal and contracting operations are conducted in an efficient, cost effective, and transparent manner. Therefore, the Auditor continues to recommend that DCSEC utilize the DCMR as a minimum standard or incorporate other procurement best practices into their current procurement policies and procedures in areas where their current regulations, policies and procedures are silent, incomplete, outdated, or weak.

Respectfully submitted



Deborah K. Nichols

District of Columbia Auditor

APPENDIX

AGENCY COMMENTS

AGENCY COMMENTS

On April 25, 2008, the District of Columbia Auditor (Auditor) submitted this report in draft to the D.C. Sports & Entertainment Commission (DCSEC) and Board, as well as the Office of the Chief Financial Officer (OCFO) for review and comment. An exit conference was requested by DCSEC, but was not held because DCSEC did not comply with the Auditor's exit conference protocol procedures. No exit conference was requested by the OCFO.

The Auditor received written comments from the DCSEC's Board of Directors, Executive Director, and the Executive Director of the OCFO's Office of Integrity and Oversight. Where appropriate, the Auditor made changes to the final report based on the comments. All agency comments are appended in their entirety to this final report. The Auditor offers the following analysis addressing specific agency comments.

AUDITOR'S RESPONSE TO AGENCY COMMENTS

The Auditor appreciates the comments on this report that were provided by DCSEC's Board of Directors, Executive Director, and the OCFO, Office of Integrity and Oversight, Executive Director. All comments are appended in their entirety to this final report. The Auditor made revisions to the final report, based on these comments, and also offers the following analysis and response to specific agency comments.

D.C. Sports & Entertainment Commission Comments

1. **Lack of Internal Procurement Policies Resulted in Non-Compliance With Procurement Laws and Improper Oversight of Procurement Activities** DCSEC response stated that, "D.C. Council established and granted DCSEC with independent procurement authority to enable DCSEC to operate in a more efficient manner. DCSEC disagrees with the finding and believes that it is duplicative of the more specific findings set forth in the report. DCSEC will review its current operations and will determine whether any changes in its operations are appropriate in order to enhance their performance."

Auditor's Analysis: The Auditor acknowledged in this report the fact that the DCSEC is granted independent procurement authority. Nevertheless, the Auditor addressed areas where DCSEC's current procurement regulations, policies and procedures are silent or inadequately address certain DCSEC procurement practices and activities. The Auditor continues to recommend that DCSEC utilize the 27 DCMR as a minimum standard or incorporate other procurement best practices into their current procurement policies and procedures in areas where their current regulations, policies, or procedures are silent or do not address certain DCSEC procurement practices and activities.

2. **Sole Source Contracts Totaling \$860,000 Were Awarded to BearingPoint/Clemens By the Former DCSEC CEO Without a Complete Determination of Findings, as Required By 19 DCMR §2805.5** DCSEC response stated that, "their former CEO did not violate any procurement regulations by awarding BearingPoint a contract because the contractor was chosen from GSA Supply Schedule Contract in November of 2004. Change Orders issued to BearingPoint were issued as extensions of the GSA Supply Schedule contract, and thus, not sole source contracts. The DCSEC also disagrees and believe they were in compliance with 19 DCMR 2805.5."

Auditor's Analysis: It is poor procurement and contracting practice for the former CEO to utilize contract change orders to extend an expired contract. Further, DCSEC awarded the sole source contract for financial services by circumventing the formal procurement process and selecting BearingPoint as the only suitable contractor to provide financial services for the Ballpark. (See Proposed Action Memorandum from DCSEC CEO to DCSEC Board, May 3, 2006.) The DCSEC should have adhered to requirements set forth in 19 DCMR § 2805.1 and §2805.5.

3. **DCSEC Allowed Contractors to Provide Services Totaling \$3,037,881.46 Without Having a Valid Written Contract in Place** DCSEC response stated that, “ they will implement the two recommendation made by the Auditor. In all of these instances a written contract was already in place. Change order [sic] was being processed while services were being rendered, however funds were not released until the contract modifications were released.”

Auditor's Analysis: The Auditor found that the referenced contracts had expired, and therefore were not enforceable. It is in the best interest of the District not to allow contractors to continue to provide services without a contract after a contract has expired. Without a valid written contract in place, DCSEC has no legal recourse should the contractor not perform expected services.

4. **DCSEC's Record Keeping Practices Were Insufficient to Demonstrate That Contract Awards Were Based on a Fair and Open Competitive Process** DCSEC response stated that, “ they do not disagree with the finding, however, DCSEC has prepared a standard template of the information that should be included in its contract files and will make such revisions as are necessary. The DCSEC also stated it's important to note that the Auditor cites no evidence that the contracts were not awarded in a fair and open manner or that the pricing associated with this contract was unfair to the Commission.”

Auditor's Analysis: Due to DCSEC's lack of sufficient procurement documentation the Auditor was unable to adequately and properly determine whether the contracts were awarded on a fair and open competitive basis or that the pricing associated with the contracts were fair and reasonable.

5. **DCSEC Regulations Lack Procedures For The Award Of Expert and Consulting Services or the Use of Indefinite-Quantity Contracts** DCSEC response stated that, “DCSEC has independent contracting authority and therefore does not have to comply with the Procurement Practice Act and its implementing regulations. The Covington & Burling contract was awarded prior to the commencement of the Ballpark project. The Leftwich & Ludaway was awarded a contract in November of 2004 with the expectation that the duration of the contract would be limited by the termination of the specific assignments per the contract.”

Auditor’s Analysis: The Auditor acknowledges the fact that the DCSEC is granted independent procurement authority. However, where DCSEC’s current procurement policies and procedures are silent or do not address best procurement practices, DCSEC should utilize 27 DCMR as a minimum standard or guideline to enhance their procurement policies and procedures. Further, it is poor contracting practice to issue a contract without a termination of service date. The Auditor’s examination found that DCSEC issued Covington & Burling an indefinite quantity contract without a termination date in February of 2002. In six years, no other contract was awarded to Covington & Burling. The Auditor further found, in 2004, that DCSEC again awarded another sole source indefinite quantity contract for legal services to Leftwich & Ludaway without a termination of service date.

6. **DCSEC Procurement Regulations Lack Procedures for the Use of Contract Modification Memorandums and/or Change Orders** DCSEC response stated that, “they are not subject to the Procurement Practices Act and therefore disagrees with this recommendation. Nonetheless, DCSEC will review its procedures and make any adjustments that are appropriate.”

Auditor’s Analysis: The Auditor acknowledges in the report that DCSEC is not mandated to adhere to 27 DCMR, however, in areas where DCSEC current policies and procedures are silent or weak the Auditor continues to recommend, at a minimum, that DCSEC policies and procedures adhere to 27 DCMR or other government contracting and procurement best practices.

7. **DCSEC Monthly Cost Summary Reports Lacked Critical Information to Properly Monitor Contract Costs** DCSEC response stated that, “DCSEC does not intend to revise the cost summary report. DCSEC will provide the Board with a monthly procurement action report that identifies the specific contract actions taken during that month.”
-

Auditor's Analysis: Providing the DCSEC Board with sufficiently detailed procurement information that accounts for cost by line item and by contractor ensures continuous monitoring of DCSEC procurement actions and contract costs related to the new construction of the Ballpark.

Office of the Chief Financial Officer (OCFO) Comments

1. **DCSEC CFO Approved Payments Totaling \$467,818.11 That Were Not In Compliance With Contract Terms** The OCFO response stated that, “**McKissack & McKissack**-Change Order No. 2 (dated June 23, 2005) provided authorization for the payment of \$750 in administrative fees. A letter from the former CEO dated October 25, 2005 to McKissack & McKissack approved administrative fees in the amount of \$950 for each month unless revoked by a subsequent approval letter. **Leftwich and Ludaway**-DCSEC paid Leftwich and Ludaway invoices based on rates on the General Service Administration (GSA) schedule of rates for the appropriate time period. DCSEC’s analysis did find that minor billings and payments to the administrative assistant were both lower and slightly above the schedule rates during this time period. **Covington and Burling**- DCSEC reimbursed for typical reimbursable expenses, specifically, duplicating, scanning, courier & messenger, and long distance calls. **BearingPoint/Clemens**- The original Bearing Point contract for RFK Renovation work dated November 15, 2004, stated approximate hours, and did not state an exact number of hours. This is a “Time and Material” contract with not-to-exceed dollar amounts.”

Auditor's Analysis: DCSEC CFO is responsible for overseeing the financial operations of DCSEC and therefore is ultimately responsible for approving payment of invoices. McKissack & McKissack Contract Change Order No. 2 was issued to cover Administrative fees that were not covered by the original contract after administrative expenses were disallowed by BearingPoint. DCSEC CEO memorandum dated October 25, 2005 is not a valid contract or contract instrument therefore, payments for Administrative Fees should not have been approved by DCSEC CFO for the periods cited under the October 25, 2005 letter.

Along with the improper payments to the Leftwich & Ludaway’s administrative assistant, the DCSEC CFO approved payments for invoices at incorrect hourly rates, billings for individuals whose position titles were not included within the original contract, as well as expenses that were not included within the original contract.

BearingPoint contract modifications, which were used by DCSEC as valid written contracts, state specific definitions as to what full-time and part-time basis employee would be defined as, along with the job category/title and hourly rate. Based on the Auditor's review of the 15 payments made to BearingPoint, we found only 3 payments were paid per the terms of the contract. In addition, the Auditor found DCSEC CFO approved payment for a senior consultant whose position title was not included within the original contract and without prior notification and approval from the Commission's Chief Executive officer.

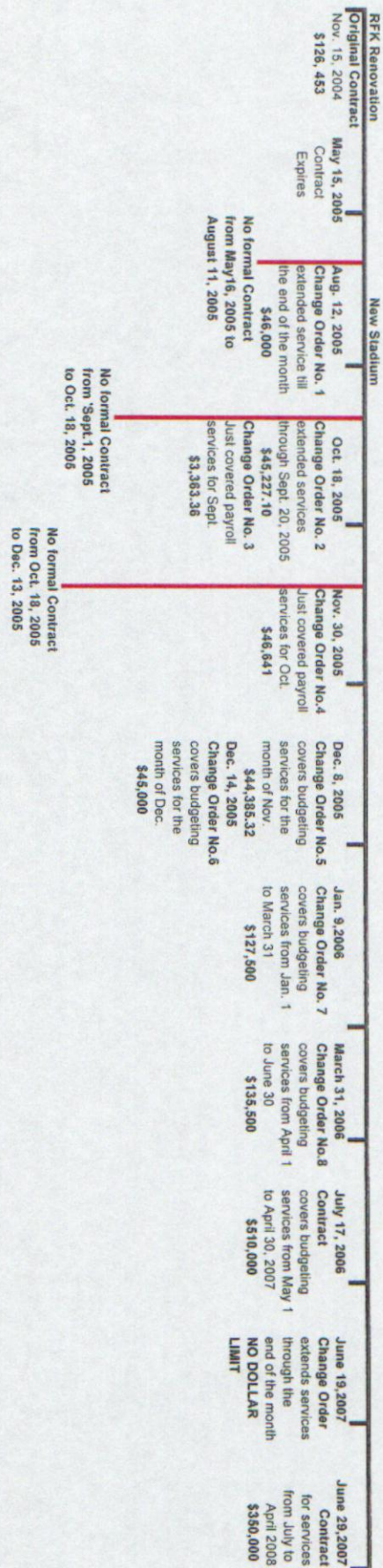
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The OCFO response stated that, "DCSEC located 21 of the 22 invoices. Of the 21 invoices, all but 1 were reviewed and signed by the General or Assistant General Counsel or the former Chief Executive Officer as the authorization to make payment."

Auditor's Analysis: Initials should not be viewed as full signatures or proper certification of invoices. Therefore, DCSEC CFO should not approve payments based on initials by DCSEC's General or Assistant General Counsel or the former CEO. Additionally, the 22 invoices reviewed by the Auditor lacked the formal recommendation letter required from DCSEC General/Assistant General Counsel .

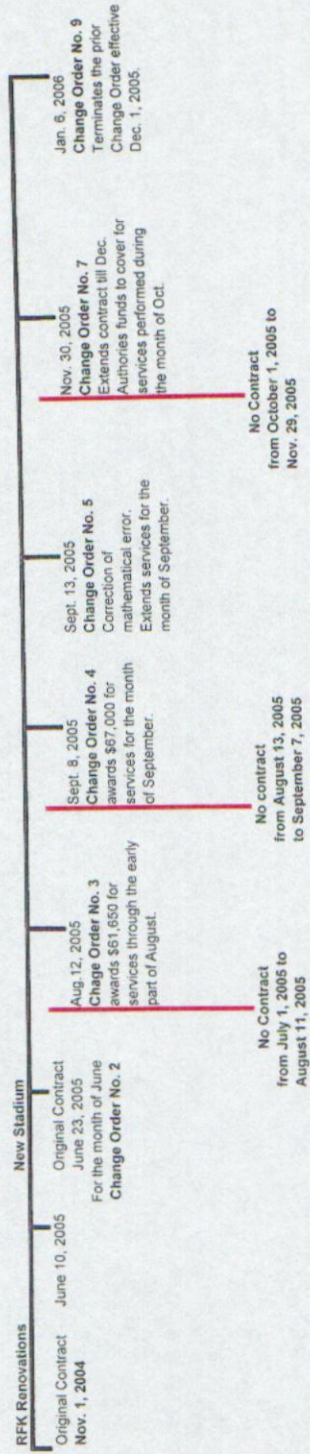
APPENDIX

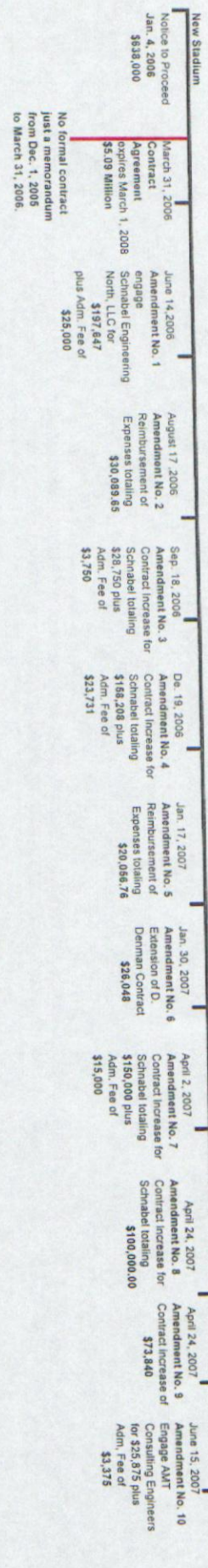
BearingPoint Contract Time-line for Financial Services



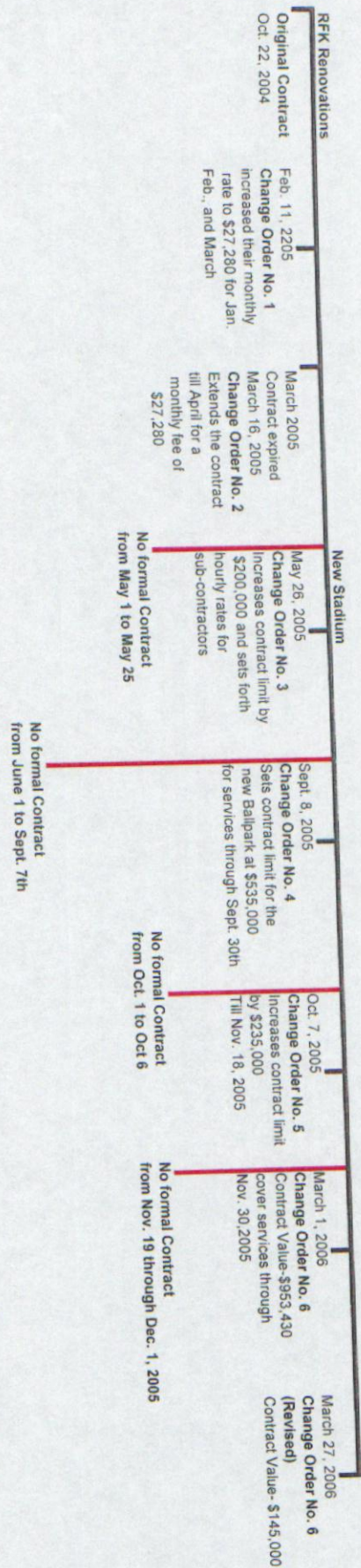
APPENDIX I

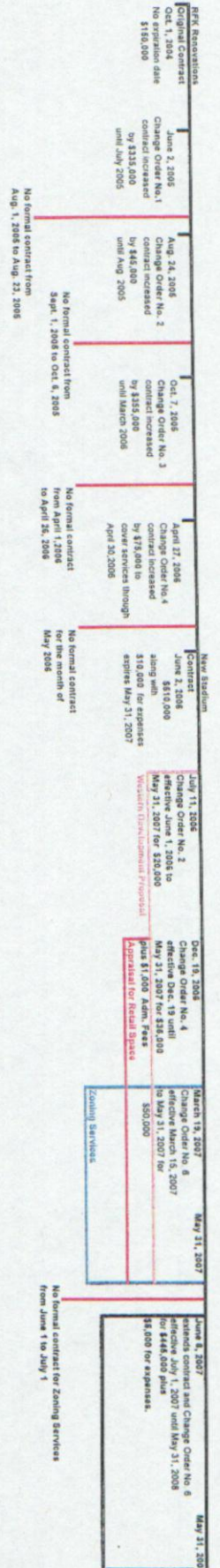
McKissack & McKissack Contract Time-line for Program Manager Services





Brailsford & Dunlavy Contract Time-line for Program Manager Services





Covington & Burling Contract Time-line for Legal Services

APPENDIX I

Legal Outside Counsel

Feb. 6, 2002

July 2007

AGENCY COMMENTS

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Auditor's Analysis: DCSEC CFO is responsible for overseeing the financial operations of DCSEC and therefore is ultimately responsible for approving payment of invoices. McKissack & McKissack Contract Change Order No. 2 was issued to cover Administrative fees that were not covered by the original contract after administrative expenses were disallowed by BearingPoint. DCSEC CEO memorandum dated October 25, 2005 is not a valid contract or contract instrument therefore, payments for Administrative Fees should not have been approved by DCSEC CFO for the periods cited under the October 25, 2005 letter.

Along with the improper payments to the Leftwich & Ludaway's administrative assistant, the DCSEC CFO approved payments for invoices at incorrect hourly rates, billings for individuals whose position titles were not included within the original contract, as well as expenses that were not included within the original contract.

BearingPoint contract modifications, which were used by DCSEC as valid written contracts, state specific definitions as to what full-time and part-time basis employee would be defined as, along with the job category/title and hourly rate. Based on the Auditor's review of the 15 payments made to BearingPoint, we found only 3 payments were paid per the terms of the contract. In addition, the Auditor found DCSEC CFO approved payment for a senior consultant whose position title was not included within the original contract and without prior notification and approval from the Commission's Chief Executive officer.

2. **Invoices for Legal Services Were Not Properly Reviewed By DCSEC's General Counsel**

The OCFO response stated that, "DCSEC located 21 of the 22 invoices. Of the 21 invoices, all but 1 were reviewed and signed by the General or Assistant General Counsel or the former Chief Executive Officer as the authorization to make payment."

Auditor's Analysis: Initials should not be viewed as full signatures or proper certification of invoices. Therefore, DCSEC CFO should not approve payments based on initials by DCSEC's General or Assistant General Counsel or the former CEO. Additionally, the 22 invoices reviewed by the Auditor lacked the formal recommendation letter required from DCSEC General/Assistant General Counsel .



May 6, 2008

By Hand Delivery

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

Reference: Draft Letter Report 25-April-2008

Subject: DCSEC Response to Audit Findings

Dear Ms. Nichols:

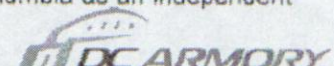
We are in receipt of your draft report entitled "Letter Report: Examination of District of Columbia Sports and Entertainment Commission Contracts and Expenditures for Program Management, Legal and Financial Management Services," dated April 25, 2008. As you are aware, this is the second audit conducted by your office of the Ballpark project. The first audit reviewed the hard and soft costs for the Ballpark and concluded that the Commission's spending was consistent with the "Ballpark Hard and Soft Costs Cap Act of 2007".

In general, the Commission believes that it has adopted a management structure that is specifically tailored to administer the Ballpark project. As permitted by the Commission's organizing statute, this structure is – admittedly and intentionally – different from the District's standard procurement process and was intended to ensure that the Ballpark project was delivered on-time and within the confines of the cost cap imposed by the Council of the District of Columbia. As is more fully described below, many of the specific findings and recommendations set forth in the draft report are based on comparisons to the traditional District practice and, thus, are not applicable to the Commission. It is important to note, however, that the Commission has put in place alternative management tools that were designed to provide the level of control and oversight appropriate for this project.

Through your efforts and this report, we will be able to continue and even improve our sound fiscal management of the District of Columbia Sports and Entertainment Commission (the "Commission") while still functioning in an efficient and cost-effective manner. We also appreciate your inviting our comments and suggestions to clear up any misunderstandings. The following are the Commission's comments on the findings and recommendations. In the interest of clarity, our comments are organized around the findings set forth in your report.

1. Finding #1 - Lack of Internal Procurement Policies Resulted in Non-Compliance with Procurement Laws and Improper Oversight of Procurement Activities

The audit asserts that the District of Columbia Sports and Entertainment Commission ("Commission") lacked internal procurement policies to ensure compliance with procurement laws and ensure proper oversight of procurement activities. For the most part, the Commission disagrees with this finding and believes that it is duplicative of the more specific findings set forth in the report. At the outset, it should be noted that the Commission was established by the Council of the District of Columbia as an independent



corporate instrumentality of the District government and that the Council specifically gave the Commission independent procurement authority to enable the Commission to operate in a more efficient manner.

In this light, it should be noted that the Commission has adopted a procurement process that is markedly and intentionally different from the traditional District procurement practice. Given the size and speed of the Ballpark project, the Commission developed a detailed delegation of authority that would govern the manner in which the project was managed. The delegation of authority was modeled on a similar delegation that was successfully used for the Convention Center project. Among other things, it was specifically designed to address the realities of large construction projects and avoid the problems that were typically encountered in large District government projects. Such projects are often plagued by delays that cause expensive cost overruns and result from slow decision making on the part of the government agencies managing those projects. Given the District's contractual obligations with Major League Baseball and the requirements of the cost cap imposed by the Council, neither delays nor cost overruns could be allowed on this project. This was achieved without sacrificing the integrity of the process.

In order to avoid costly delays, the delegation established a threshold of \$500,000 for Board approval of contract actions. This delegation, however, contained the following safeguards to ensure that the Board had adequate oversight over the CEO and the project.

- The delegation imposed aggregate "stop limits" which required that the CEO obtain the Board's approval prior to taking actions that would result in a variance of more than \$1 million in the project budget line items.
- The delegation required that all contract actions must be approved by the General Counsel and the Commission's Chief Financial Officer. As such, even those contracts that did not require Board approval (i.e. less than \$500,000) must be approved by the CEO and concurred by the General Counsel and the Commission's Chief Financial Officer who is an employee of the independent Office of the Chief Financial Officer.
- The delegation required that a cost report be submitted to the Commission's Board on a monthly basis. Throughout the entire life of the project, the Board met on a monthly basis and the cost reports were reviewed by the Board on a monthly basis. In addition, the Board's Executive Committee held weekly meetings at which key issues were raised and discussed by the CEO, the Commission's senior staff and the Executive Committee members. The Board also appointed a finance committee which was chaired by a representative of the statutorily independent Office of the Chief Financial Officer to help oversee the Commission's finances and that Committee met on a monthly basis throughout the life of the project.

Finally, it should be noted that the Commission has a standing practice that all contract matters presented to the Board of Directors are done so through a formal written memorandum that sets forth the proposed action, its impact on the budget and a description of the key facts surrounding the proposed action. The Board only acted on these actions after they were certified by the Chief Financial Officer and the Commission's General Counsel and a discussion with the CEO at a formal Board meeting.

Response to Recommendation. The Auditor recommends that the Commission establish internal procurement policies and procedures to ensure that the Commission conducts its procurement actions in accordance with its procurement regulations. The Commission disagrees with this recommendation and believes that its current Procurement Regulations when combined with the delegation of authority adopted for the Ballpark project provide a sufficient level of detail to govern its operations. The Commission is, however, reviewing its current operations and will determine whether any changes in its operations are appropriate in order to enhance the Commission's performance.

2. Finding #2 - Sole Source Contracts Totaling \$860,000 Were Awarded to BearingPoint/Clemens by the former DCSEC CEO without a Complete Determination of Findings as Required by 19 DCMR 2805.5

Background & Observation.

As is more fully described below, the Commission believes this finding is premised upon an erroneous understanding of the facts related to this matter.

A. The audit asserts that a sole source contract was awarded to BearingPoint and their subcontractor, Clemens Consulting LLC, to provide financial management services for the RFK renovations as well as the construction of the new Ballpark. The Commission's former CEO did not violate any procurement regulations. BearingPoint was engaged through a GSA Supply Schedule contract in November of 2004. Under well established contracting principles, purchasing entities may use the GSA Supply Schedules, and the resulting contracts are not considered sole source contracts.

GSA Supply Schedule contracts are awarded through a competitive process by the federal General Services Administration. As part of this process, GSA conducts a rigorous review of the contractor to ensure that it is qualified to provide the services in question and determines that the rates charged by the contractor are market appropriate and reasonable. The rates charged by BearingPoint for the services provided were those approved by GSA, and all work was provided in accordance with the terms of the GSA contract (which were expressly incorporated by reference into BearingPoint's contract with the Commission).

The audit report mentions a number of change orders that extended the duration of the BearingPoint contract. These change orders were issued as extensions of the GSA Supply Schedule contract, and thus, they are not sole source contracts.

The audit also contends that detailed procedures should be adopted to ensure that the Board of Directors has adequate oversight of contract actions. Adequate measures, however, were in place to ensure proper oversight. As is noted in the introductory section of the audit report, the Commission's Board had adopted a delegation of authority which authorized the Commission's Chief Executive Officer to authorize contract actions less than \$500,000 only where (a) the CFO, who reports to the statutorily independent Office of the Chief Financial Officer, authorizes such action; and (b) the Commission's General Counsel separately authorizes such action. Also relevant to the degree of Board oversight is that on a project of this magnitude, \$500,000 is less than 0.1% of the total project budget.

Response to Recommendations. In the draft report, the Auditor makes three specific recommendations. First, the report recommends that the Commission comply with 19 DCMR 2805.5. The Commission is already in compliance with these requirements and will continue to comply. Specific to the audit's findings, however, the Commission does not agree that the BearingPoint contract was a sole source contract for the reasons described above. Second, the report recommends that the Commission "exercise more extensive and effective oversight of DCSEC's procurement and contracting activities". The Commission disagrees and believes that it exercised extensive and effective oversight. Third, the report recommends that the Commission "adopt policies and procedures that ensure the Board's approval of contracts in excess of \$50,000". With regard to the Ballpark project, the Commission disagrees that \$50,000 is the appropriate threshold (which represents less than 0.01% of the total Ballpark budget and would have required the Board to individually approve hundreds of matters) and will continue to use the delegation of authority adopted for that project. With regard to operating matters, the Commission currently requires that all contracts in excess of \$50,000 require Board approval, and the Commission will continue this practice.

3. Finding #3 – DCSEC Allowed Contractors to Provide Services Totaling \$3,037,881.46 without Having a Valid Written Contract in Place.

Background & Observation. The audit notes that there were instances where contractors continued to provide services pending the issuance of a formal change order. It should be noted, however, that in all of these instances a written contract was already in place between the Commission and the contractor and that the finding relates to work that proceeded while a change order was being processed. In order to maintain control over the project budget, the Commission made a deliberate decision that Program Management and legal consultants would be engaged through the life of the project. The Commission, however, decided not to release all of the funds upfront and was of the opinion that funds should be released through contract modifications at various points throughout the project. This served as an added check and safeguard on Commission spending.

The audit report notes that this process is different than that contemplated in the Procurement Practices Act and its implementing regulations. While this may be true, the Commission is not subject to those regulations and has the legal authority to implement and manage its contracts in a different manner.

Response to Recommendations. Specifically, the Auditor makes two recommendations to address this issue. First, the Auditor recommends that the Commission "discontinue the practice of allowing contractors to provide services without a written contract in place." The Commission will implement this recommendation by issuing such change orders more promptly on a going forward basis. Second, the Auditor recommends that the Commission "prohibit the CEO from entering into oral contracts." The Commission will implement this recommendation. Specific to the finding and both recommendations, however, the Commission would note that the written contracts were in place and that the items noted were instances where work continued for a short period of time while a change order was being processed.

4. Finding #4 – DCSEC's Record Keeping Practices were Insufficient to Demonstrate that Contract Awards Were Based on a Fair and Open Competitive Process.

Response to Recommendation. The draft audit report makes two recommendations with regard to record keeping. First, the Auditor recommends that the Commission develop and implement an adequate "procurement record keeping system". Second, the Auditor recommends that the Commission develop "procurement policies and procedures which outline requirements for proper documentation". The Commission has prepared a standard template of the information that should be included in its contract files. The Commission will review the template and make such revisions as are necessary.

When considering these recommendations, it is important to note that the Auditor cites no evidence that the contracts were not awarded in a fair and open manner or that the pricing associated with this contract was unfair to the Commission.

5. Finding #5 – DCSEC Regulations Lack Procedures for the Award of Expert and Consulting Services or the Use of Indefinite Quantity Contracts.

Background & Observation. The audit report contends that the Commission used contracts in a manner that does not comply with the Procurement Practices Act and its implementing regulations. As noted above and in the audit's introductory section, the Procurement Practices Act and its regulations are not applicable to the Commission. Again, had the expectation been that Title 27 of the DCMRs would apply to the Commission there would be no reason to require the Commission to develop its own procurement regulations, but rather the legislation would have simply provided that Title 27 applies to the Commission.

Specifically, the audit report notes two contracts. The first relates to a contract that was awarded to Covington & Burling. This contract was awarded prior to the commencement of the Ballpark project. The second contract was awarded to Leftwich & Ludaway in November of 2004. That contract was awarded in November of 2004 and required the contractor to provide legal and procurement management services for the renovation of the RFK stadium for the incoming Washington Nationals franchise. At the time the contract was awarded, the Commission expected that the renovations would occur between November 2004 and April 2005 and that close out activities would extend for several months beyond April 2005. Given these circumstances, the Commission believes that the duration of this contract was sufficiently defined.

Response to Recommendations. In the draft audit report, the Auditor makes two specific recommendations with regard to this finding. First, the Auditor recommends that the Commission implement "minimum" amount to be purchased in an Indefinite Delivery/Indefinite Quantity contract. Second, the Auditor recommends that the Commission require an end date in all ID/IQ contracts. The Auditor notes that these requirements are contained in the regulations implementing the Procurement Practices Act. As the Commission is not subject to the Procurement Practices Act, the Commission does not intend to implement the first recommendation, but will implement the second. Specific to the finding, however, the Commission notes that the contracts in question were related to specific projects (i.e. the renovation of RFK or the negotiation of the baseball agreements), and thus, the contracts were limited by the termination of those specific assignments.

6. Finding #6 – DCSEC Procurement Regulations Lack Procedures for the Use of Contract Modification Memorandums and/or Change Orders.

Response to Recommendations. The Auditor recommends the Commission adopt procedures for processing change orders and contract modifications that comply with the requirements of the Procurement Practices Act and its implementing regulations. As the Commission is not subject to the Procurement Practices Act, the Commission disagrees with this recommendation. Nonetheless, the Commission will review its procedures and make any adjustments that are appropriate.

7. Finding #7 – DCSEC Monthly Cost Summary Reports Lacked Critical Information to Properly Monitor Contract Costs.

Background & Observation. The draft audit report contends that the monthly cost reports delivered to the Board of Directors do not contain sufficient detail to allow the Board to manage the project's costs. DCSEC does not agree with this assertion. The audit report contends that such reports should have addressed the number of contractors providing such services and the number of change orders issued. As was addressed in item 2.B, the Board adopted a detailed delegation of contracting authority which was designed to control the contracting process and ensure that the Board had the necessary information to oversee the project. In addition, the Board appointed an Executive Committee which meets on a weekly basis to discuss pending issues. Attendance at those meetings is mandatory for Executive Committee members, and all other Board members are invited to participate.

Response to Recommendation. The Commission does not intend to revise the cost summary report. On a going forward basis, the Commission will provide the Board with a monthly procurement action report that identifies the specific contract actions taken during that month. In addition, the comments set forth in item #11 (below) should be considered as it appears that the audit misunderstood the history of the change orders related to the legal and program management consultants.

8. Finding #8 – The DCSEC CFO Approved Payments Totaling \$467,818.11 that were not in Compliance with Contract Terms.

Response to Recommendation. In the draft audit report, the Auditor found that various payments that were not in accordance with contract terms. The Office of the Chief Financial Officer has responded to this finding by a separate letter and that response is hereby incorporated by reference.

9. Finding #9 – Invoices for Legal Services were not Properly Reviewed by DCSEC's General Counsel.

Response to Recommendation. In the draft audit report, the Auditor found that legal invoices were paid without them first being approved by the Commission's "General Counsel". It should be noted, however, that the findings related to actions taken by the Commission's former General Counsel. The Office of the Chief Financial Officer has responded to this finding by separate letter and that response is hereby incorporated by reference.

10. Finding #10 – Auditor's Concern Due to Lack of Formal Written Documentation within the Contract File May Give the Appearance of Preferential Treatment in Awarding Consulting Financial Management Services Contracts.

Background & Observation. The audit report notes that Commission's current CEO was an employee of BearingPoint in 2004 and was an owner of Clemens Consulting LLC (a subcontractor of BearingPoint) from 2005 to 2006. In January 2007, the CEO was appointed to serve as the District's Chief Development Officer. In December 2006 and in preparation for accepting that appointment, the CEO sold all of his interest in Clemens in order to avoid the appearance of any conflict of interest in District projects. This fact was disclosed to Commission's Board of Directors and the CEO recused himself from actions affecting BearingPoint's contract. Because all of the appropriate safeguards were taken, the Commission disagrees that there was an appearance of impropriety – let alone any actual impropriety.

Response to Recommendations. In the draft audit report, the Auditor recommended that a memorandum describing the events described above be placed in the procurement file relating the BearingPoint. The Commission has fully disclosed all procurement activities related to these transactions. Nonetheless, the Commission will comply with that portion of the recommendation that recommends that a memorandum be placed in the procurement file.

11. Other Matters.

A. On page 6 of the draft report, the Auditor states that "DCSEC management received \$6 million" as an administrative fee. The amounts were not paid to DCSEC management, but were instead transferred into the Commission's operating account and used to defray various expenses incurred by DCSEC.

B. With regard to Table 1, it should be noted that the McKissack and Brailsford & Dunlavey contracts were originally awarded to cover the renovation of RFK which occurred between November 2004 and April 2005. These two contracts were extended to cover the new Ballpark project until such time as permanent program management contract could be put in place for the new Ballpark. A permanent program management contract was competitively procured and put in place in the early fall of 2005. The increase in these contract values is attributable to the services provided by these firms for the new Ballpark between April 2005 and the inception of the permanent program management contract. Leftwich & Ludaway was originally awarded a contract to provide services in connection with the RFK renovation effort. The value noted in Table 1 was only intended to cover that effort. The contract, however, was subsequently extended to provide services in connection with the new Ballpark project.

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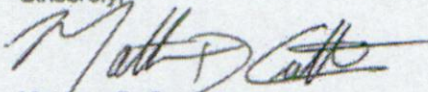
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Ms. Deborah K. Nichols
District of Columbia Auditor
May 6, 2008
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Should you have any questions or wish to discuss these matters further, please feel free to contact our Chief Executive Officer, Greg O'Dell, at (202) 608-1162, or myself at (202) 457-6079.

Sincerely,

A handwritten signature in dark ink, appearing to read "Matt Cutts", with a stylized flourish extending from the end.

Matthew D. Cutts
Chairman of the Board

Copy: DCSEC Board of Directors
G. O'Dell
W. Matthias

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PUBLIC EDUCATION FACILITIES MODERNIZATION



Allen Y. Lew
Executive Director

2400 East Capitol Street, SE
Washington, D.C. 20003
Phone: (202) 698-7700

May 5, 2008

By Facsimile

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

RE: **Draft Letter Report: Examination of District of Columbia Sports and Entertainment Commission Contracts and Expenditures for Program Management, Legal, and Financial Management Services**

Dear Ms. Nichols:

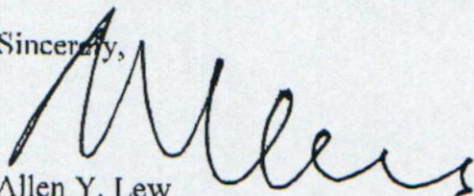
Thank you for the opportunity to review and provide comments on the draft letter report referenced above ("Draft Report"). In connection with the Washington Nationals ballpark project, DCSEC developed a project management and procurement process designed to be transparent, acceptable to the DCSEC Board of Directors, in compliance with DCSEC regulations and other applicable law, and able to deliver the ballpark project on time and within the cost cap. After reviewing the Draft Report and the responses developed by the D.C. Sports and Entertainment Commission ("DCSEC"), I agree with the responses provided by DCSEC to the Draft Report. I also believe that DCSEC's actions during my tenure as CEO accomplished the goals we set at the beginning of the ballpark project.

DCSEC used generally accepted contracting methods and program management tools to achieve these goals, including using vendors from GSA schedules, funding service contracts by task rather than in an upfront lump sum, and maintaining thorough and substantive budget and cost reports. I also believe that the delegation of authority to me from the Board of Directors was appropriate, necessary, and sufficiently transparent. All of these practices were critical to completing this project on time, within the costs cap and in compliance with applicable laws and regulations.

Ms. Deborah K. Nichols
May 5, 2008
Page 2

Thank you again for the opportunity to comment and if you have any additional questions or concerns, please contact me at (202) 698-7742.

Sincerely,

A handwritten signature in black ink, appearing to read "Allen Y. Lew". The signature is fluid and cursive, with a large initial "A" and "L".

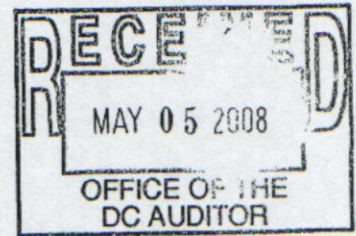
Allen Y. Lew
Executive Director

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

Office of Integrity and Oversight



May 5, 2008



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

Dear Ms. Nichols:

Thank you for the opportunity to respond to the recommendations in your draft report entitled "Letter Report: Examination of District of Columbia Sports and Entertainment Commission Contracts and Expenditures for Program Management, Legal and Financial Management Services," dated April 25, 2008. I am responding on behalf of the Office of the Chief Financial Officer (OCFO), and this response will address the recommendations addressed to the OCFO.

Approval of Payments Totaling \$467,818.11 That Were Not In Compliance With Contract Terms

The CFO disagrees with the finding and recommendation regarding the DCSEC CFO's approval of payments that were not in compliance with contract terms.

The Auditor's report did not include a critical part of the new stadium invoice approval process that was discussed with the audit staff, and in fact, misquoted the DCSEC CFO regarding the invoice approval process. Specifically, the audit report failed to mention that the DCSEC CFO obtains a recommendation letter from the DCSEC's General or Assistant General Counsel in addition to the recommendation letter from BearingPoint for all new stadium invoices, except for BearingPoint/Clemens. DCSEC's Counsel is responsible for the procurement function at the Commission, and therefore, by submitting a recommendation letter to the CFO, ensures that the payment agrees with the contract terms. The DCSEC CFO relies on the BearingPoint/Clemens detailed financial review, General Counsel's procurement review, as well as a reasonableness review before invoices are processed and paid.

Regarding the specific charges reported by contract, see below:

- McKissack and McKissack – \$1900 administrative fees

Change Order No.2 dated June 23, 2005 provided authorization for the payment of \$750 in administrative fees.

October 25, 2005 letter from the former CEO to McKissack & McKissack regarding "Payment of Expenses and Related Fees" provides authorization for payment of administrative fees for the months of July, August, and September 2005 in the amount of \$950 for each month. In addition, the document states that "unless revoked by a subsequent approval letter, this authorization shall remain effective for so long as McKissack & McKissack continues to provide services under this engagement." This statement provided authorization for the payment of \$950 in October 2005.

- Leftwich and Ludaway – Billing hourly rates

DCSEC paid Leftwich and Ludaway invoices based on rates on the General Service Administration (GSA) schedule of rates for the appropriate time period. DCSEC began making payments to Leftwich and Ludaway during the "first option year" of the contract. DCSEC's comparison of payments made from the October 2004 through May 2005 showed that the majority and most significant member and associates rates agreed with the "first option year" rates. In addition, payments made to members and associates during the "second year option" time period of May 2005 through June 2006 were in fact also made using the "first year option" (lower) rates, as a result of discounted billing. DCSEC's analysis did find that minor billings and payments to the administrative assistant were both lower and slightly above the schedule rates during this time period.

- Covington and Burling - Reimbursement of Expenses

DCSEC reimbursed Covington and Burling for typical reimbursable expenses, specifically, duplicating, scanning, courier & messenger, and long distance calls.

- Bearing Point/Clemens – Allowable Hours

The original Bearing Point contract for RFK Renovation work dated November 15, 2004, and related subsequent change orders, is a "Time and Material" contract with not-to-exceed dollar amounts. The contract stated approximate hours, and did not state an exact number of hours.

Invoices For Legal Services Were Not Properly Reviewed By DCSEC's General Counsel

The OCFO disagrees with the finding and recommendation regarding the CFO's approval of legal invoices without General Counsel's review and approval.

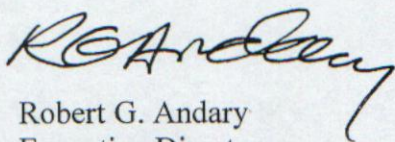
In regards to the 22 invoices that the Auditor's report stated "lacked appropriate documentation to indicate that the DCSEC Legal Counsel reviewed the approved payments," DCSEC located 21 of the 22 invoices. Of the 21 invoices, all but 1 were reviewed and signed by the General or Assistant General Counsel or the former Chief Executive Officer as the authorization to make payment. Most of the invoices were for operations, and were not new stadium or RFK related.

Operations invoices do not have recommendation letters, but rather signatures indicating authorization, i.e. "ok to pay." The one invoice that did not have General Counsel's signature approval was processed in July 2005 by the former DCSEC CFO.

Due to the volume, DCSEC supporting documents for the above comments have been sent under separate cover.

If you have any questions or need additional information regarding these comments, please contact me at (202) 442-6433, or Wilma G. Matthias, DC Sports and Entertainment Commission, at (202) 608-1137.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. Andary", with a stylized flourish at the end.

Robert G. Andary
Executive Director

cc: Natwar M. Gandhi, Chief Financial Officer, Government of the District of Columbia
Wilma Matthias, Agency Chief Financial Officer, DC Sports and Entertainment
Commission